

Inst # 2018024780 Thu Jun 28 10:04:36 CDT 2018

Filing Fee: \$76.00
Lancaster County, NE Assessor/Register of Deeds Office AGRMT
Pages 12



After recording return to:

Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

COMMON DRIVE EASEMENT AND MAINTENANCE AGREEMENT

This Common Drive Easement and Maintenance Agreement ("Agreement") is made and entered into as of this 7 day of June, 2018, by and between Ironwood Properties, LLC, a Nebraska limited liability company ("Ironwood"), Rosasco Properties, LLC, a Nebraska limited liability company ("Rosasco"), Thompson Creek Blvd. Condominium Regime, an unincorporated association ("Condo Association"), and ENG Properties, LLC, a Nebraska limited liability company ("ENG").

WHEREAS, Ironwood is the owner of Lots 1 – 9, Thompson Creek 9th Addition, Lincoln, Lancaster County, Nebraska (collectively, the "9th Addition Lots" and each individually a "9th Addition Lot"); and

WHEREAS, Rosasco is the Owner of Unit 2, Thompson Creek Blvd. Condominium Regime created under the Declaration of Thompson Creek Blvd. Condominium Regime dated May 20, 2004 and recorded on May 21, 2004 in the Lancaster County, Nebraska Register of Deeds as Instrument No. 2004032796 (the "Rosasco Unit"); and

WHEREAS, ENG is the Owner of Unit 1, Thompson Creek Blvd. Condominium Regime created under the Declaration of Thompson Creek Blvd. Condominium Regime dated May 20, 2004 and recorded on May 21, 2004 in the Lancaster County, Nebraska Register of Deeds as Instrument No. 2004032796 (the "ENG Unit"); and

WHEREAS, Rosasco and ENG are the sole unit owners and members of the Condo Association which manages the general common elements and limited common elements of the Thompson Creek Blvd. Condominium Regime (the "Condo Regime") as established on Lot 14, Block 3, Thompson Creek Addition, Lincoln, Lancaster County, Nebraska ("Lot 14"); and

WHEREAS, the Rosasco Unit, the ENG Unit and the 9th Addition Lots are hereinafter referred to collectively as the "Lots" and individually as a "Lot"; and

WHEREAS, the record owner(s) of a Lot shall hereinafter be referred to as a "Lot Owner"; and

THC/RCO
THC/RCO

Chg C/O \$76.00

WHEREAS, public access easements have been granted over the east 10 feet of Lot 14 and the west 10 feet of the 9th Addition Lots permitting public use of said property for vehicular and pedestrian access ("Public Access Easement Area"); and

WHEREAS, a common drive has been constructed within the Public Access Easement Area (the "Common Drive") providing access to and from the Lots to Thompson Creek Blvd. and Billing's Court and also providing access to parking stalls that have been constructed within the Condo Regime adjacent to the Public Access Easement Area and are utilized by the Rosasco Unit and the ENG Unit; and

WHEREAS, the parties desire to enter into an agreement that grants each other mutual easements over the Public Access Easement Area and provides for the insurance, maintenance, repair, reconstruction and replacement of the Common Drive located within the Public Access Easement Area.

NOW THEREFORE, in consideration of the above and the covenants and conditions contained herein, the parties agree as follows:

1. Grant of Private Easements. Ironwood hereby grants to and for the benefit of the owners of the Rosasco Unit and ENG Unit and the Condo Regime, and to their heirs, successors, assigns, licensees, invitees, mortgagees, tenants, agents and employees, a permanent nonexclusive easement on, over and across the west 10 feet of the 9th Addition Lots for the purpose of providing access to and from Billings Court and Thompson Creek Blvd. and to the parking stalls as constructed on Lot 14 adjacent to the Public Access Easement Area in a reasonable manner. Rosasco, ENG and the Condo Association hereby grant to Ironwood to and for the benefit of the owners of the 9th Addition Lots and to its heirs, successors, assigns, licensees, invitees, mortgagees, tenants, agents and employees, a permanent nonexclusive easement on, over and across the east 10 feet of Lot 14 for the purpose of providing access to and from Billings Court and Thompson Creek Blvd. to the 9th Street Lots in a reasonable manner. No barriers of any kind and no parking of any vehicles shall be permitted within the Public Access Easement Area.

2. 9th Addition Lots Construction Matters. Following the execution and recording of this Agreement, Ironwood intends to develop the 9th Addition Lots upon which there will ultimately be constructed nine individual villa or townhome type residential units, one on each individual 9th Addition Lot (the "Villa Units"). Initially, Ironwood will perform the site development work on the 9th Addition Lots which includes the grading and the construction and installation of public infrastructure including streets, sewers and utility improvements (the "Site Development Work"). Prior to commencement of the Site Development Work, Ironwood will install a construction fence on and along the east boundary of the Public Access Easement Area and shall prohibit construction vehicles and contractors from using and parking on and along the Public Access Easement Area for access or construction staging areas. The construction fence shall be well maintained during the periods of construction of the Site Development Work and may not be removed until at least substantial completion of the Site Development Work. In the event that the Common Drive is damaged during the periods of the construction of the Site Development Work, Ironwood shall have the sole responsibility for such damage and shall

promptly repair and/or replace areas of the Common Drive that are damaged, all at the sole cost and expense of Ironwood. During all periods of construction on the 9th Addition Lots, whether Site Development Work or construction of the individual Villas Units, Ironwood and the owner of the 9th Addition Lot under construction shall not use the Public Access Easement Area as a parking or staging area for construction. Further, in the event that the Common Drive is damaged by construction vehicles or contractors during construction of the Villa Units, Ironwood and/or the owner of the 9th Addition Lot being improved shall be responsible for repairs and/or replacement of the damaged area of the Common Drive, at their sole cost and expense.

3. Repair and Maintenance. Each Lot Owner shall be solely responsible for and shall pay all costs and expenses of insuring, maintaining, repairing, reconstructing and replacing that portion of the Common Drive located upon such Lot Owner's Lot in a commercially reasonable manner. The maintenance responsibilities for the Parties hereto shall include, without limitation, the following:

- (a) Maintaining the paved services in a level, smooth and evenly covered condition with the type of surfacing material originally installed or comparable substituted material as shall in all respects be equal in quality, use and durability;
- (b) Providing customary snow plowing, de-icing, sweeping and trash removal services to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) Placing, keeping and repairing and replacing any necessary and appropriate directional signs, markers and lines; and
- (d) Operating, keeping and repairing and replacing where necessary such artificial lighting facilities as shall be reasonably required at all times in conformance with standards and applicable ordinances and governmental requirements.

Notwithstanding anything to the contrary in this Agreement the owners of the Rosasco Unit, the ENG Unit and at least a majority of the individual 9th Addition Lots (or an owner's association representing such Lot Owners) may enter into a joint maintenance agreement or similar arrangement whereby a property manager or the Condo Association is delegated responsibility to maintain, repair, reconstruct and replace the Common Drive and equitably allocate the expenditures for such matters amongst the Lot Owners ("Maintenance Agreement").

At all times during which a Maintenance Agreement is not in effect, if a Lot Owner of one of the Lots ("Notifying Lot Owner") determines, based upon a standard of commercial reasonableness, that all or a portion of the Common Drive located upon another Lot Owner's Lot is in need of maintenance, repair, reconstruction or replacement ("Lot in Question"), the Notifying Lot Owner shall provide a written request to the Lot Owner of the Lot in Question and the Lot Owner of the Lot in Question shall, within thirty (30) days of receipt of notice, commence to complete the work requested and diligently and with reasonable dispatch to take all steps and do all work required

thereafter to complete such work. If the Lot Owner of the Lot in Question fails to commence the work requested within thirty (30) days of receiving the notice, and thereafter diligently pursue its completion, the Notifying Lot Owner may complete the work requested at the cost and expense of the Lot Owner of the Lot in Question.

Any Notifying Lot Owner who has performed maintenance, repair, reconstruction, or replacement on all or any portion of the Common Drive located upon a Lot in Question in accordance with this provision may, within a reasonable time after the completion of such work, submit to the Lot Owner of the Lot in Question a written invoice for such work with supporting documentation of such costs. The Lot Owner of the Lot in Question shall pay all such expenses within thirty (30) days of receipt of the written invoice and supporting documentation. The amount of the written invoice shall be a charge on the Lot in Question and shall be a continuing lien upon the Lot in Question. The amount of the written invoice shall also be the obligation of the Lot Owner of the Lot in Question when the invoice fell due, and shall not pass to his or her successors in title unless expressly assumed by them. Any invoice not paid within thirty (30) days after receipt shall bear interest from the due date at the rate of sixteen percent (16%) per annum or the maximum rate allowed by law, whichever is less. The Notifying Lot Owner who performed the work represented by the invoice, may bring an action at law against the Lot Owner obligated to pay the same, or foreclose the lien against the Lot in Question.

4. Indemnification and Hold Harmless. Each Lot Owner shall be liable to the other Lot Owners for any damage due to the use of the Common Drive by such party, its employees, invitees, agents, successors, or assigns. Each Lot Owner shall indemnify and save harmless the Lot Owner(s) of the remaining Lots from all claims, liens, damages and expenses, including reasonable attorney's fees, arising out of its failure to insure, maintain, repair or replace that portion of the Common Drive located upon such Lot Owner's Lot.

5. Binding. This Agreement shall be binding upon the parties hereto and shall be appurtenant to and run with Lots. Time is of the essence for purposes of this Agreement.

6. Modification. This Agreement shall not be released, terminated, revoked, amended or modified in any manner, without the express written consent of the Rosasco Lot, the ENG Lot and at least six (6) of the 9th Addition Lots.

7. Authority. The undersigned parties hereby covenant that they have the power and authority to enter into this Agreement, and that all necessary corporate action has been taken to approve this Agreement.

8. No Partnership. None of the terms or provisions of this Agreement are intended to create a partnership between or among the Lot Owners and their respective businesses or otherwise, nor shall this Agreement cause them to be considered joint venturers or members of any joint enterprise. Each Lot Owner shall be considered as separate owner and no party shall have the right to act as an agent for the other Lot Owners unless expressly authorized to do so herein or by separate written instrument signed by the Lot Owners to be charged.

9 No Waiver. The failure of any Lot Owner to insist upon strict performance of any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of any rights or remedies which the Lot Owner may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants and conditions. No waiver of any Lot Owner of any default under this Agreement shall be effective or binding upon such Lot Owner unless made in writing by such Lot Owner and no such waiver shall be implied from any omission by the Lot Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed a waiver of any subsequent default or performance of the same provision or any other term or provision in this Agreement.

10. Default and Remedies. In the event of a default of this Agreement by a Lot Owner, any other Lot Owner may seek such remedies as may be available under Nebraska law, including injunctive relief and specific performance. Jurisdiction of any dispute under this Agreement shall rest solely in the State District Court of Lancaster County, Nebraska and Nebraska law shall govern the interpretation and construction of this Agreement.

11. Counterparts. This Agreement may be executed in any number of counterpart originals, each of which, when taken together, shall be deemed to be one and the same instrument.

**[Space Below Intentionally Left Blank –
Signature Page to Follow]**

Nebraska limited liability company

Roger Bumgarner, Member

STATE OF NEBRASKA)

) ss.

COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 20 day of June, 2018 by Roger Bumgarner, as Member of Ironwood Properties, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public



ROSASCO PROPERTIES, LLC, a Nebraska
limited liability company

By: *Sam Manzitto*
Title: *Member*

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7 day of June,
2018 by Sam Manzitto, as Member of Rosasco Properties, LLC, a Nebraska
limited liability company, on behalf of the limited liability company.



Darla R. Servi
Notary Public

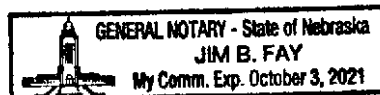
ENG PROPERTIES, LLC, a Nebraska limited liability company

By: E. Gold x

Title: OWNER x

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7 day of June, 2018 by Erich M. Gold, as Owner of ENG Properties, LLC, a Nebraska limited liability company, on behalf of the limited liability company. x



Jim B. Fay
Notary Public

**THOMPSON CREEK BLVD. CONDOMINIUM
REGIME**, an unincorporated association

By: Rosasco Properties, LLC, a Nebraska limited
liability company, Member

By: [Signature]

Title: Member

By: ENG Properties, LLC, a Nebraska limited
liability company, Member

By: [Signature]

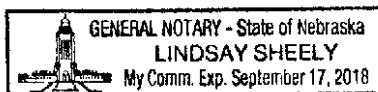
Title: OWNER

X

X

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 11 day of June,
2018 by Samuel J. Manzitto, as member of Rosasco Properties, LLC, a Nebraska
limited liability company, Member of **Thompson Creek Blvd. Condominium Regime**, an
unincorporated association, on behalf of the association.

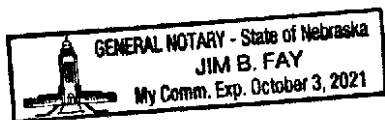


[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7 day of June,
2018 by Enrich M. Hohl, as owner of ENG Properties, LLC, a Nebraska limited
liability company, Member of **Thompson Creek Blvd. Condominium Regime**, an
unincorporated association, on behalf of the association.

X



[Signature]
Notary Public

CONSENT BY BENEFICIARY TO COMMON DRIVE
EASEMENT AND MAINTENANCE AGREEMENT

(Rosasco Unit)

[Lender] hereby consents to the terms of the foregoing Easement Agreement, and hereby acknowledges that the lien of the Deed of Trust held by West Gate Bank, as Trustee and Beneficiary dated February 13, 2004, filed on February 17, 2004, as Instrument No. 2004 009117 in the records of the Lancaster County, Nebraska Register of Deeds, shall be subordinate to the terms of the foregoing Easement Agreement.

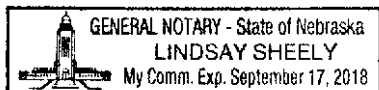
West Gate Bank

By: John F. Amigo

Title: E.V.P.

STATE OF NEBRASKA)
 Lancaster) ss.
COUNTY OF ~~DOUGLAS~~)

The foregoing instrument was acknowledged before me this 11 day of June, 2018, by John F. Amigo, Executive Vice President of West Gate Bank, a Nebraska State Bank, on behalf of the Bank.



Lindsay Sheely
Notary Public

CONSENT BY BENEFICIARY TO COMMON DRIVE
EASEMENT AND MAINTENANCE AGREEMENT

(ENG Unit)

Cornhusker Bank hereby consents to the terms of the foregoing Easement Agreement, and hereby acknowledges that the lien of the following Deeds of Trust held by Cornhusker Bank, as Trustee and Beneficiary, which are filed in the records of the Lancaster County, Nebraska Register of Deeds, shall be subordinate to the terms of the foregoing Easement Agreement:

1. Deed of Trust dated February 1, 2005, filed on February 17, 2005, as Instrument No. 2005008872;
2. Real Estate Deed of Trust dated February 1, 2005, filed on February 17, 2005 as Instrument No. 2005008874;
3. Deed of Trust dated August 5, 2016, filed on August 5, 2016, as Instrument No. 2016031654, as modified by the Modification of Deed of Trust dated August 5, 2016, filed on December 23, 2016, as Instrument No. 2016054341, and the Modification of Deed of Trust dated August 25, 2017, filed on August 28, 2017, as Instrument No. 2017036175; and
4. Deed of Trust dated August 25, 2016, filed on August 29, 2017, as Instrument No. 2017036251.

CORNHUSKER BANK

By: Jim Fay
Title: Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7 day of June, 2018, by Jim Fay, VP of Cornhusker Bank, organized and existing under the laws of the State of Nebraska, on behalf of the bank.



[Signature]
Notary Public

CONSENT BY BENEFICIARY TO COMMON DRIVE
EASEMENT AND MAINTENANCE AGREEMENT

(9th Addition Lots)

West Gate Bank hereby consents to the terms of the foregoing Easement Agreement, and hereby acknowledges that the lien of the Deed of Trust held by West Gate Bank, as Trustee and Beneficiary dated February 20, 2018, filed on February 20, 2018, as Instrument No. 2018006472 in the records of the Lancaster County, Nebraska Register of Deeds, shall be subordinate to the terms of the foregoing Easement Agreement.

WEST GATE BANK

By: 

Title: VP

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 19th day of June, 2018, by Taylor Ashblynn, Vice President of West Gate Bank, a Nebraska state bank, on behalf of the bank.



Shawn A Daily
Notary Public