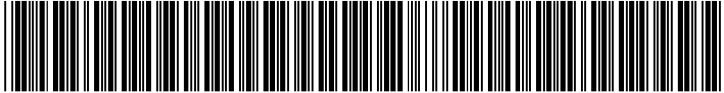




MISC 2014092004



NOV 25 2014 13:56 P 10

Fee amount: 64.00
FB: 35-37063
COMP: AH

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
11/25/2014 13:56:38.00



2014092004

Return to: Andrew R. Biehl, Valentine, O'Toole, McQuillan & Gordon, LLP, 11240 Davenport St., PO Box 540125, Omaha, NE 68154-0125

EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("Agreement") is made and entered into this 18th day of November 2014, by and between THE COUNTY OF DOUGLAS IN THE STATE OF NEBRASKA, ("County"), PHILLIPS REALTY, LLC, a Nebraska limited liability company ("Phillips") (County and Phillips collectively, "Grantor"), and GUNDERSON RAIL SERVICES, LLC, an Oregon limited liability company ("Grantee").

PRELIMINARY STATEMENT

County is the owner of real property legally described as "Lot 12, Stockyards Business Park Addition in the City of Omaha, Douglas County, Nebraska" (the "Phillips Tract"). The Phillips Tract is situated to the east of 30th Street and northeast of Edward Babe Gomez Avenue.

Phillips leases the Phillips Tract from County pursuant to that certain Lease and Agreement dated December 1, 2002, as amended by First Amendment to Lease and Agreement dated May 30, 2013 (the "Lease").

The Lease provides that County is obligated to convey all of its right, title and interest in and to the Phillips Tract to Phillips at the conclusion of the Lease term, at Phillips' option and upon the fulfillment of certain conditions.

The Phillips Tract is encumbered by that Combination Deed of Trust, Security Agreement, and Financing Statement by and among Wells Fargo Bank, as Lender, and The County of Douglas, Nebraska and Phillips as Owner, dated December 1, 2002, as Amended and Restated on May 30, 2013 (the "Wells Fargo DOT").

Grantee is the owner of real property legally described as "Lot 13, Stockyards Business Park Addition to the City of Omaha, Douglas County, Nebraska" (the "Gunderson Tract"). The Gunderson Tract is adjacent to the Phillips Tract to the east.

A portion of the Phillips Tract is currently subject to a temporary easement (the "State Easement") in favor of the State of Nebraska (the "State") pursuant to which the State has constructed and utilizes a driveway connecting Edward Babe Gomez Avenue to the Gunderson Tract via the Phillips Tract.

As a condition of the State Easement, the State is obligated to remove the driveway from the Phillips Tract at the conclusion of the State Easement term.

Grantee desires that the driveway connecting Edward Babe Gomez Avenue to the Gunderson Tract remain in place, and that Grantee be granted exclusive, perpetual Easement (defined below) in and to that portion of the

Phillips Tract described on Exhibit "A" attached hereto (the "Easement Property"), and Grantor has agreed to grant the Easement and has further agreed to waive the State's obligation to remove the driveway at the conclusion of the State Easement term, subject to Grantor's reservation of access to, upon and across the Easement Property as described in Section 6 hereunder and further subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing Preliminary Statement which is incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Grant of Easement.** Subject to the rights reserved by Grantor in Section 6, Grantor hereby grants and conveys unto Grantee and Grantee's Permittees a perpetual, exclusive easement (the "Easement") in and to that portion of the Phillips Tract described on Exhibit A hereto. The Easement shall be used for the purposes set forth in Section 6 hereof. Grantee's Permittees shall mean the owner of the Gunderson Tract and its customers, lessees, contractors, licensees, agents, successors and assigns.

2. **Private Purpose.** Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any portion of the Phillips Tract to the general public or for any public purpose whatsoever, it being the intention that this easement and license will be strictly limited in accordance with its terms, to the private use of Grantor and Grantee and their respective permittees. Grantor or Grantee, upon the prior written consent of the other shall have the right to erect barriers once a year for a period not exceeding 24 hours, to avoid the possibility of dedicating such area for public use or creating prescriptive rights therein.

3. **Successors Bound.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. It is the intention of the parties that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming under them.

4. **Duration.** The duration of the Easement granted herein (the "Term") shall be perpetual, unless Grantee or Grantee's successor and assigns provides written, recordable notice of its intent to terminate this Agreement, in which event this Agreement and all obligations of Grantee hereunder shall terminate upon Grantee's recordation of any such notice. Grantor may record such notice in the event Grantee fails to do so. In the event that the use of the Easement is abandoned by Grantee, or its successors, then Grantor, or its successors, may terminate the Easement by providing legally sufficient evidence of such abandonment, and following such termination all right and title to the land constituting the Easement shall revert back to the Grantor, or its successor. Abandonment shall be deemed to have occurred if neither Grantee nor any of its affiliates, customers, tenants, subtenants, employees or agents utilize (such use shall be construed broadly to include, but not be limited to, use of the driveway for access between Edward Babe Gomez Avenue and the Gunderson Tract via the Easement Property, and or maintenance and upkeep of the driveway) the Easement Property in any manner for a consecutive period of one (1) year, and, following the expiration of such one (1) year period, do not respond within forty-five (45) days of Grantor's written notice to Grantee, which notice shall assert that non-response will result in termination of the Easement.

5. **Easement Consideration.** Grantor hereby acknowledges the receipt and sufficiency, contemporaneous with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term of this Agreement.

6. **Use of Easement Areas.** The Easement shall be used by Grantee and Grantee's Permittees for ingress and egress between Edward Babe Gomez Avenue and the Gunderson Tract via the Easement Property, as well as to install, construct, maintain, modify, repair and replace the driveway located upon the Easement Property using the same materials equal in quality, appearance, use and durability, that currently exist on the driveway. At all times during the Term of this Agreement and subject to Grantor's reservation of rights, Grantee shall have the

exclusive right to use, and shall have free access to, the Easement Property seven (7) days a week, twenty-four (24) hours per day.

Notwithstanding the foregoing, Grantor reserves the right, for itself and its customers, lessees, contractors, licensees, agents, successors and assigns (the "Grantor's Permittees"), to access and use the Easement Property for vehicular and pedestrian ingress and egress access to and from the Phillips Tract from Edward Babe Gomez Avenue, provided, however, that such use by Grantor shall not in any manner prevent or interfere with access to, and use of, the Easement Property by Grantee or Grantee's Permittees. Except as necessary for maintenance and repair of the Easement Property, neither Grantor nor Grantee, nor their respective permittees, shall permit parking of any vehicles on the Easement Property nor any temporary or permanent obstruction of the Easement Property. Each of the parties agrees to use its best efforts to assure that the Easement Property is kept free of obstruction in order to provide free and unimpeded flow of vehicular traffic over and across the Easement Property.

Grantee shall be solely responsible for the maintenance, repair and replacement and the removal of debris, ice, snow and any hazards from the Easement Property during the Easement Term; provided, however, that if Grantor shall commence business use of the Easement Property, then following written demand from Grantee, Grantor shall thereafter reimburse Grantee for one-half of the cost of maintaining, repairing, and replacing the Easement Property or driveway situated thereon. For this purpose, occasional use by Grantor of the Easement Property shall not be treated as regular business use.

7. **Unqualified Easement.** Except as expressly limited hereby, the Easement granted herein is given together with all rights, hereditaments, and appurtenances belonging to, or incident or appertaining to the above Easement, including, without limitation, easement for support and easement for making repairs.

8. **Grantor Covenants.** Grantor hereby covenants, represents and warrants as follows:

a. That Grantor's interest collectively constitutes fee simple of the Easement, free and clear of all liens and encumbrances except those liens, encumbrances and easements of record. Grantor further represents and warrants that Grantee shall peaceably and quietly hold and enjoy the Easement for the term of this Agreement without any hindrance, molestation or ejection by any party whomsoever, except as may be authorized in any lien or encumbrance currently of record including, but not limited to, the Wells Fargo DOT and the Lease. Phillips warrants and defends all rights, privileges, and easements granted herein to Grantee, its successors and assigns, against Grantor and its successors lawfully claiming or to claim the same, or any part of it, except the Wells Fargo DOT and the Lease. Phillips, for itself and Grantor, agrees to cooperate with Grantee to terminate the State Easement and to waive any obligation thereunder on the part of the State of Nebraska to remove the driveway or any part thereof situated on the Easement Property.

b. During the term of this Agreement, and except as provided in Section 9(c) hereunder, all real property taxes and all other fees and assessments attributable to the Phillips Tract shall be paid on or before the due date, and Grantee hereby agrees to pay any increase in real property taxes levied against the Phillips Tract which are directly attributable to Grantee's use of the Easement (but not, however, taxes attributable to periods prior to the date of this Agreement such as roll-back or greenbelt assessments) if Grantor furnishes proof of such increase to Grantee. If any taxes affecting the Easement Property are not paid when due, Grantee shall have the right, but not the obligation, to pay such taxes and demand reimbursement therefor from Grantor, which reimbursement Grantor shall make within ten (10) days of such demand by Grantee, and for which Grantee reserves all rights to collect by such reimbursement by any lawful means.

c. Grantor shall not cause the area comprising the Easement Property to be legally or otherwise subdivided from any master tract of which it is a part; provided, however, that Grantor may cause the area comprising the Easement Property to be separately assessed for tax purposes, in which case Grantee shall pay all real estate taxes associated with such tract which accrue from an after the date of this Agreement, notwithstanding any terms to the contrary contained in Section 9(b) hereinabove.

d. Grantor shall not grant any easement that would adversely affect Grantee's use of the Easement.

e. Grantor agrees to indemnify, defend and hold harmless Grantee and its officers, directors, shareholders, agents and attorneys for, from and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor, or any of them, of any representation, warranty or covenant of Grantor, or any of them, contained herein or in any agreement executed in connection herewith.

9. **Grantee Covenants.** Grantee, for itself, and its respective heirs, assigns and successors, hereby covenants, represents and warrants to protect, defend, hold harmless and indemnify Grantor from and against all claims, losses, damage or liability arising from any negligent act or omission of Grantee, including all costs, claims, expenses (including reasonable attorney's fees and court costs), penalties, liens and liability incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof. Grantee shall at all times maintain liability insurance in amounts acceptable to Grantor and naming Grantor as an additional insured with respect to the Easement Property.

10. **Non-Disturbance.** During the term of this Agreement, Grantor will not improve or grant any other easement upon the Easement Property if such improvement or interest would interfere with Grantee's use of the Easement. Nothing in this Section 10 shall restrict or impair Grantor from selling, mortgaging, leasing, licensing or otherwise encumbering the Phillips Tract.

11. **Utilities.** If it should become necessary to relocate any utility lines serving the Phillips Tract to the Easement Property, Grantor hereby agrees to reimburse Grantee for any damage to the Easement Property by such utility relocation.

12. **Notices.** All notices required to be given by any of the provisions of this Agreement, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate party at the address set forth below (or at such other address designated in writing pursuant to the terms hereof).

To Grantee:

Kevin Maughn
Greenbrier Companies
1 Centerpointe Dr., Ste. 200
Lake Oswego, OR 97035-8612

Copy to:

Andrew R. Biehl
Walentine, O'Toole, McQuillan & Gordon, LLP
P.O. Box 540125
11240 Davenport St.
Omaha, NE 68154-0125
(402) 330-6300
abiehl@womglaw.com

To Grantor:

George Kubat
Phillips Realty, LLC
4949 S. 30th St.
Omaha, NE 68107

Copy to:

Matthew T. Payne
Pansing, Hogan, Ernst & Bachman, LLP
10250 Regency Cir., Ste. #300
Omaha, NE 68114
(402) 397-5500
mpayne@pheblaw.com

13. **Force Majeure.** The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

14. **Recording.** This Agreement shall be recorded.

15. **Miscellaneous.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State of Nebraska.

16. **Captions and Headings.** The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction, or meaning of any provisions of or the scope or intent of this Agreement.

17. **Cumulative Remedies.** Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies or benefits allowed by law or equity to Grantee.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be in an original but all of which taken together shall constitute one and the same agreement.

19. **Severability.** If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, make the sale of the Easement herein either void or voidable, Grantor agrees that upon the written request of Grantee, the grant of the Easement shall convert to a ground lease between Grantor, as lessor, and Grantee, as lessee (with the Easement Property being the leased premises therein) for uses consistent with those set forth in Section 6 hereof, and containing other terms and conditions acceptable to both parties.

20. **Attorneys Fees.** [Intentionally deleted].

21. **Entire Understanding and Amendment.** This Agreement, and the closing documents executed in connection therewith, constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement and signed by each of the parties hereto.

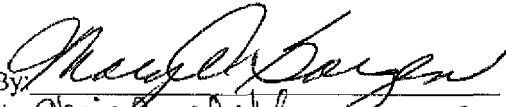
22. **Further Acts.** Grantor shall cooperate with Grantee in executing any documents necessary or desirable to protect Grantee's rights under the Agreement or Grantee's use of the Easements and to take such action as Grantee may reasonably require to effect the intent of this Agreement.

23. **Removal of Improvements.** Grantee shall be under no obligation to remove all or any part of the driveway located upon the Easement Property at the termination of the Easement, but shall remove all other personal property located thereon within 120 days of the termination of the Easement.

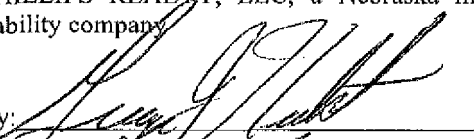
IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year set forth below.

GRANTOR:

COUNTY OF DOUGLAS, NEBRASKA

By: 
Its: Chairman, Board of Commissioners

PHILLIPS REALTY, LLC, a Nebraska limited liability company

By: 
Its: General Manager

APPROVED AS TO FORM:


Deputy County Attorney

GRANTEE:

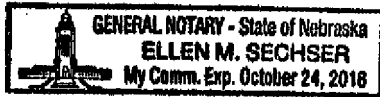
GUNDERSON RAIL SERVICES, LLC an Oregon limited liability company

By: 
Its: SVP

STATE OF NEBRASKA)
)ss.
COUNTY OF Douglas)

On this 10th day of November, 2014, before me, a notary public in and for said county, personally (name) Mary Ann Bargeson, (title) County Board Chair of COUNTY OF DOUGLAS, NEBRASKA, known to me to be the identical person who signed the foregoing EASEMENT AGREEMENT and acknowledged execution thereof to be his voluntary act and deed, and the voluntary act and deed of said county.

WITNESS my hand and notarial seal on this the day and year last above written.
(SEAL)

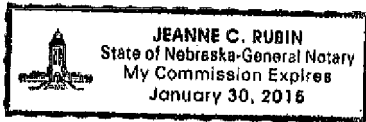


[Signature]
Notary Public
My commission expires 10-24-2018

STATE OF NEBRASKA)
)ss.
COUNTY OF Douglas)

On this 12 day of November, 2014, before me, a notary public in and for said county, personally (name) George J. Kubat, (title) Operating Partner of PHILLIPS REALTY, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing EASEMENT AGREEMENT and acknowledged execution thereof to be his voluntary act and deed, and the voluntary act and deed of said company.

WITNESS my hand and notarial seal on this the day and year last above written.
(SEAL)

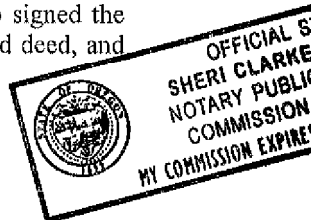


[Signature]
Notary Public
My commission expires January 30, 2015

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On this ___ day of _____, 2014, before me, a notary public in and for said county, personally (name) _____, (title) _____ of GUNDERSON RAIL SERVICES, LLC, an Oregon limited liability company, known to me to be the identical person who signed the foregoing EASEMENT AGREEMENT and acknowledged execution thereof to be his voluntary act and deed, and the voluntary act and deed of said company.

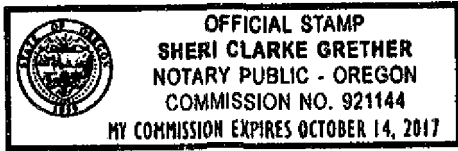
WITNESS my hand and notarial seal on this the day and year last above written.
(SEAL)



Notary Public
My commission expires _____

STATE OF OREGON)
) ss.
COUNTY OF CLACKAMAS)

On this 7th day of November, 2014, before me personally appeared Martin R. Baker, to me personally known to be the person whose name is subscribed to the attached Easement Agreement among The County of Douglas in the State of Nebraska, Phillips Realty, LLC and Gunderson Rail Services LLC relating to real property described as the "Phillips Tract", and said that he is a Senior Vice President of Gunderson Rail Services LLC and that he executed the attached instrument on behalf of said company, and he acknowledged that the execution of the said instrument was his free act and deed.



Sheri Clarke Grether
Notary Public for Oregon
My commission expires: October 14, 2017

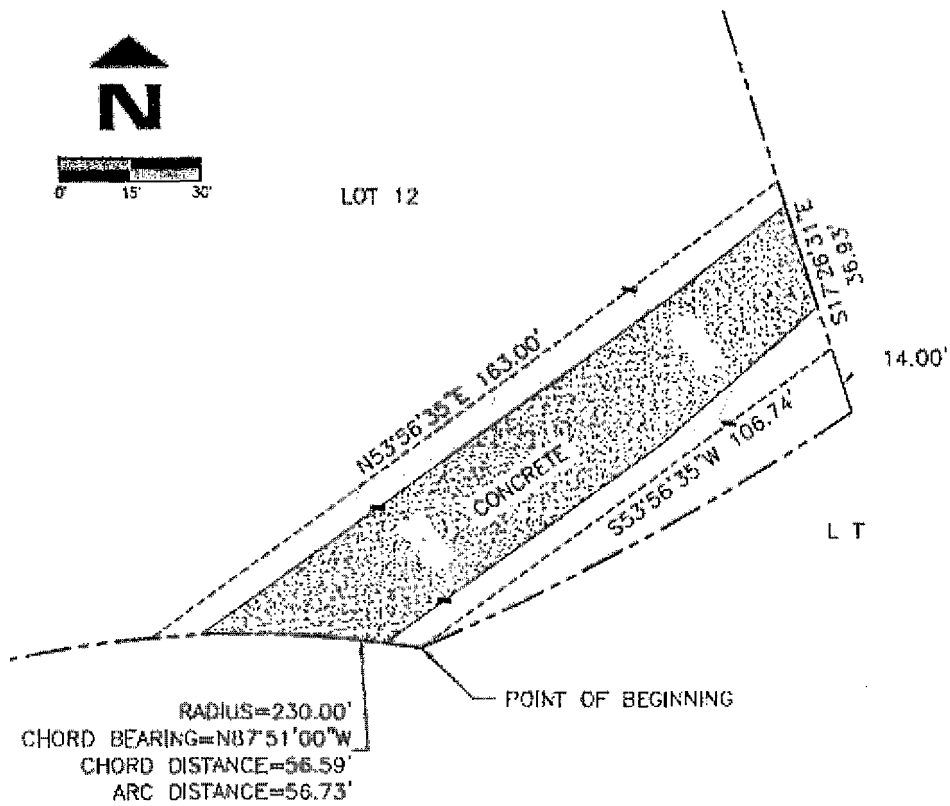


EXHIBIT A

That part of Lot 12, Stockyards Business Park, a subdivision in Douglas County, Nebraska, described as follows:

Beginning at a South Corner of said Lot 12, thence northwesterly on the South line of said Lot 12 on a 230.00 foot radius curve to the left, chord bearing N 87° 51' 00" W (assumed bearing), chord distance 56.59 feet an arc distance of 56.73 feet; thence N 53° 56' 35" E 163.00 feet to the East line of said Lot 12; thence S 17° 26' 31" E 36.93 feet on the East line of said Lot 12 to a point 14.00 feet from the southeast corner of said Lot 12; thence S 53° 56' 35" W 106.74 feet to the point of beginning.

Containing 4,654 square feet, more or less.



AERIAL VIEW

