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FB: 59-05683
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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
07/22/2016 15:08:28.00



2016058643

**DECLARATION OF GRADING, CONSTRUCTION,
INGRESS AND EGRESS, SEWER AND UTILITY EASEMENT**

THIS DECLARATION OF GRADING, CONSTRUCTION, INGRESS AND EGRESS, SEWER AND UTILITY EASEMENT (this "Declaration") is made as of the 22nd day of July, 2016, by ROYCE CANDLEWOOD, LLC, a Nebraska limited liability company ("Royce").

Preliminary Statement

Royce is the owner of certain real property located in Douglas County, Nebraska, legally described as follows (the "Commercial Property"):

Lots 4, and 5, Candlewood Hills, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. (59-05683)

and

Lot 2, Candlewood Hills Replat 2, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. (59-05685)

Royce is the owner of certain real property located in Douglas County, Nebraska, legally described as follows (the "Apartment Property"):

Lot 7, Candlewood Hills, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, (59-05683)

and

Lot 1, Candlewood Hills Replat 2, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. (59-05685)

Royce is the owner of certain real property located in Douglas County, Nebraska legally described as follows (the "Outlot"):

Outlot A1, Candlewood Hills, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. (59-05683)

Return to:
James D. Buser
Pansing Hogan Ernst & Bachman, LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114

Royce is selling the Apartment Property to Park 125 W Dodge, LLC, a Nebraska limited liability company (the "Apartment Developer"). The Apartment Developer will be developing the Apartment Property and as part of such development will be grading and constructing a drive and sewer and utility improvements on and across that part of the Outlot as depicted and legally described on Exhibit "A" attached to this Declaration (the "Easement Area").

Royce has agreed to grant grading, construction, ingress and egress, sewer and utility easements across the Easement Area to and for the benefit of the Apartment Property in accordance with the terms of this Declaration.

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Royce states and declares the following:

ARTICLE I Definitions

1.1 Access Drive. The term "Access Drive" shall mean the Access Drive to be and as constructed on the Easement Area.

1.2 Lot. The term "Lot" shall mean a platted lot that is part of the Commercial Property or Apartment Property. In the event that a Lot is replatted, each replatted lot shall be deemed a Lot.

1.3 Owner. The term "Owner" shall mean the legal owner of fee title to a Lot, as reflected by the records of the Douglas County, Nebraska Register of Deeds. If a platted lot that is part of the Joint Development Property is owned by one or more persons, the person or persons holding at least fifty one percent (51%) of the ownership interest in one of the platted lots that is part of the Joint Development Property shall designate one of the owners to represent all owners of the property in question and such designated person shall be deemed the owner of such property.

1.4 Permittee. The term "Permittee" shall mean the general public and all owners, their tenants or licensees of a Lot, and each of their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors and invitees.

1.5 Person. The term "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust or any other form of business or government entity.

ARTICLE II Easements

2.1 Grading and Construction Easement. Royce hereby grants to the Apartment Developer and the Owners of the Apartment Property and for the benefit of their agents and contractors a temporary grading and construction easement over the Easement Area as reasonably necessary for the construction of the Access Drive, sewers and utilities within the Easement Area, such easement to continue until completion of construction of the Access Drive.

2.2 Ingress and Egress Easement. Royce hereby grants and conveys to the Owner of the Apartment Property for its use and for the use of its Permittees, in common with others entitled to use the same, a nonexclusive perpetual easement for vehicular ingress and egress over and across the paved drives within the Access Drive, as the same may be from time to time be constructed and maintained for such use.

2.3 Sewer and Utility Easement. Royce hereby grants and conveys to the Owner of the Apartment Property for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive perpetual easement to construct, maintain and operate sewers (either for storm or sanitary sewer purposes), utilities, drainage structures and/or drainage way, and appurtenances thereto, in, through and under the Easement Area. This permanent easement is also for the benefit of any contractor, agent, employee or representative of the Owner of the Apartment Property.

ARTICLE III Maintenance and Repair of Access Drive

3.1 Access Drive. The Owner of the Apartment Property shall perform or contract for the performance of maintenance, repair and replacement of the Access Drive as provided in Section 3.2 below.

3.2 Access Drive Maintenance. The maintenance responsibilities for the Access Drive shall include, without limitation, the following:

(a) Maintaining the paved surfaces 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) Removal of all papers, ice and snow, mud and sand, debris, filth and refuse, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary and appropriate parking area directional signs, markers and lines; and

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required and at all times in conformance with standards and applicable ordinances and governmental requirements applicable to the Access Drive.

ARTICLE IV MISCELLANEOUS

4.1 Enforcement. In the event of a breach or threatened breach of this Declaration, only an Owner shall be entitled to institute proceedings for full and adequate relief from consequences of such breach or threatened breach. Such Owner may seek relief in equity or at law in the District Court of Douglas County, Nebraska. Time is of the essence for purposes hereof.

4.2 Perpetual Duration. This Declaration and the covenants, conditions, restrictions and easements shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the parties hereto, and their respective heirs, representatives, lessees, successors and assigns. This Declaration and the easements provided for herein shall be perpetual, provided, however, that this Declaration may be modified, amended or terminated by an instrument signed by the Owners of all of the Lots and recorded with the Douglas County, Nebraska, Register of Deeds.

4.3 No Merger. Notwithstanding the present or future common ownership of the Lots, the rights of Owners of the Lots created under this Declaration shall not now or in the future be deemed to have merged by reason of common ownership of such Lots.

4.4 Survival. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

4.5 Counterparts. This Declaration 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. Executed copies of this Declaration may be delivered between the parties via telecopy or electronic mail.

IN WITNESS WHEREOF, the parties have executed this Declaration to be effective as of the date and year first above written.

ROYCE CANDLEWOOD, LLC, a Nebraska limited liability company

By: LZJ
Lawrence R. James, II, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 11th day of July, 2016, by Lawrence R. James, II, Manager of Royce Candlewood, LLC, a Nebraska limited liability company, on behalf of the company.

Shannon M. Groves
Notary Public

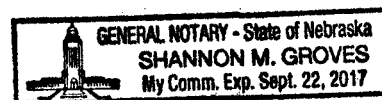
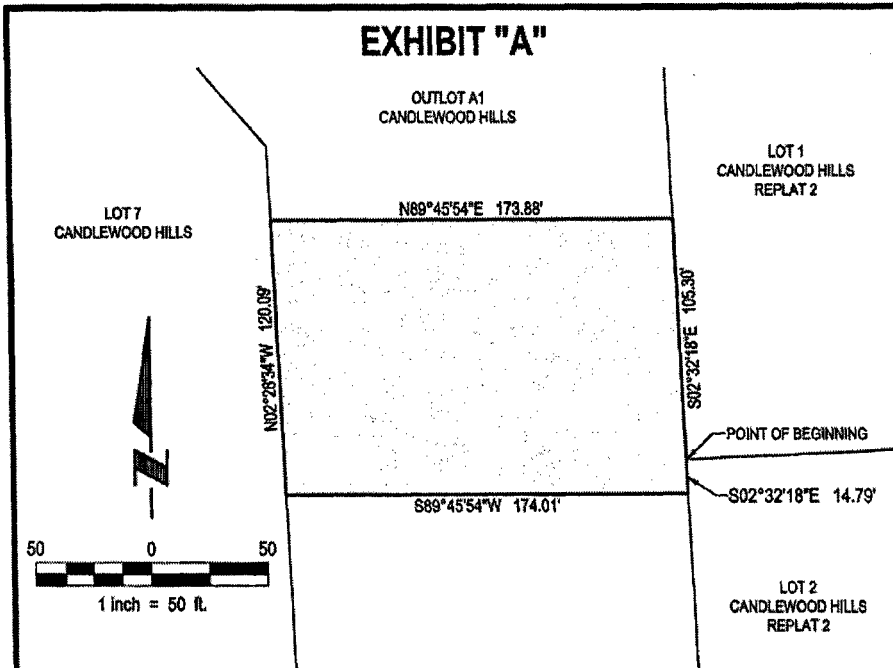


EXHIBIT "A"



LEGAL DESCRIPTION

A TRACT OF LAND BEING PART OF OUTLOT A1, CANDLEWOOD HILLS, A SUBDIVISION LOCATED IN THE SE1/4 OF SECTION 18, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, CANDLEWOOD HILLS REPLAT 2, A SUBDIVISION LOCATED IN SAID SE1/4 OF SECTION 18, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 2, SAID CANDLEWOOD HILLS REPLAT 2, AND ALSO BEING ON THE EASTERLY LINE OF SAID OUTLOT A1, CANDLEWOOD HILLS; THENCE S02°32'18"E (ASSUMED BEARING) ALONG SAID EASTERLY LINE OF OUTLOT A1, CANDLEWOOD HILLS, SAID LINE ALSO BEING THE WESTERLY LINE OF SAID LOT 2, CANDLEWOOD HILLS REPLAT 2, A DISTANCE OF 14.79 FEET; THENCE S89°45'54"W, A DISTANCE OF 174.01 FEET TO A POINT ON THE WESTERLY LINE OF SAID OUTLOT A1, CANDLEWOOD HILLS, SAID LINE ALSO BEING THE EASTERLY LINE OF LOT 7, SAID CANDLEWOOD HILLS; THENCE N02°28'34"W ALONG SAID WESTERLY LINE OF OUTLOT A1, CANDLEWOOD HILLS, SAID LINE ALSO BEING SAID EASTERLY LINE OF LOT 7, CANDLEWOOD HILLS, A DISTANCE OF 120.09 FEET; THENCE N89°45'54"E, A DISTANCE OF 173.88 FEET TO A POINT ON SAID EASTERLY LINE OF OUTLOT A1, CANDLEWOOD HILLS, SAID LINE ALSO BEING THE WESTERLY LINE OF SAID LOT 1, CANDLEWOOD HILLS REPLAT 2; THENCE S02°32'18"E ALONG SAID EASTERLY LINE OF OUTLOT A1, CANDLEWOOD HILLS, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 1, CANDLEWOOD HILLS REPLAT 2, A DISTANCE OF 105.30 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 20,873 SQUARE FEET OR 0.479 ACRES, MORE OR LESS.

 E & A CONSULTING GROUP, INC. Engineering • Planning • Environmental & Field Services 10099 NE Valley Road, Suite 100 • Omaha, NE 68154 Phone: 402.906.4700 • Fax: 402.906.3699	120' PERMANENT GRADING, SANITARY SEWER, CULVERT AND ROAD CROSSING EASEMENT OUTLOT A1, CANDLEWOOD HILLS <small>DOUGLAS COUNTY, NEBRASKA</small>	
	Drawn by: FCE Ckcd by: _____ Job No.: M2015.065.001	Date: 05/17/2018

Frank Elder 5/17/2016 3:22 PM K:\Proposals\2015\065\p011\Drawings\Easements\ESMNT-OUTLOT A1-000.dwg