



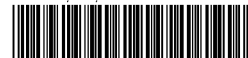
MISC 2016058645



JUL 22 2016 15:08 P 5

Fee amount: 34.00
FB: 59-05683
COMP: SB

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



2016058645

TEMPORARY FILL AND GRADING EASEMENT AGREEMENT

This Temporary Fill and Grading Easement Agreement (this "Easement Agreement") is made as of the 22nd day of July, 2016, by and between **PARK 125 WDODGE, LLC**, a Nebraska limited liability company (the "Grantor"), and **ROYCE CANDLEWOOD, LLC**, a Nebraska limited liability company (the "Grantee").

Preliminary Statement

Grantor is the owner of certain real property situated in Douglas County, Nebraska, as legally described on Exhibit "A" attached hereto (the "Grantor Property").

Grantee is the owner of certain real property situated in Douglas County, Nebraska, as depicted and legally described on Exhibit "B" attached hereto (the "Grantee Property").

Grantee purchased the Grantee Property from Grantor and as contemplated by the Sale and Purchase Agreement dated December 12, 2014, Grantee and Grantor have entered into a Site Development Agreement dated July 22, 2016 (the "Site Development Agreement"), pursuant to which Grantor and Grantee have memorialized their understandings pertaining to the construction of certain improvements to the "Joint Development Property" set forth in the Site Development Agreement.

Grantee desires to secure a temporary grading easement to grade and fill on and across the Grantor Property in accordance with the grading plan prepared by Olsson & Associates, Inc. dated July 16, 2016, and identified as Project # 012-1773 (the "Grading Plan").

NOW, THEREFORE, in consideration of the foregoing Preliminary Statement, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Subject to Section 2 below, Grantor hereby grants and conveys to Grantee and its agents and contractors, a temporary easement over and through the Grantor Property for the purpose of coming upon for grading and to place fill materials on and over the Grantor Property as contemplated by the Grading Plan (the "Grading Easement") and in accordance with the Site Development Agreement. The Grading Easement described above shall commence immediately upon the execution of this Easement Agreement and continue until the earlier of (i) Grantee's final

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

completion of site grading work on Grantor's Property as provided in the Grading Plan; or (ii) May 1, 2016.

2. Prior to commencing any grading activities on the Grantor Property, Grantee shall provide Grantor with evidence of insurance as provided in the Site Development Agreement.

3. Grantee shall indemnify and hold Grantor harmless from and against any and all loss, claims, liabilities, expenses or damages of any nature whatsoever that may arise as a result of Grantee's undertaking the grading activities permitted herein on the Grantor Property, such indemnification and hold harmless to include reasonable attorney fees and court costs involved in any matters relating thereto. The indemnification and hold harmless obligations set forth in this Section 3 shall survive the expiration or termination of the term of this Easement Agreement.

4. Grantor and Grantee have agree that the Grading Plan may be modified and amended as such Grading Plan impacts and affects the Grantor Property as provided in the Site Development Agreement.

5. Grantor acknowledges that the Grading Easement and all rights granted to Grantee herein are granted in consideration of the covenants and agreements set forth in the Site Development Agreement, and that such consideration constitutes full payment for such Grading Easements and rights.

6. Grantor covenants and agrees that it is the owner in fee of the Grantor Property and that it has the right to convey the Grading Easement granted herein; and that Grantor will warrant and defend the title to said Grading Easement against the lawful claims and demands of all persons whomsoever.

7. The Grading Easement granted herein shall run with the land, inure to the benefit of, and be binding upon the Grantor and Grantee, the owners of the Grantor Property and Grantee Property, and each of their respective heirs, personal representatives, successors and assigns.

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

IN WITNESS WHEREOF, the parties have executed this Agreement 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

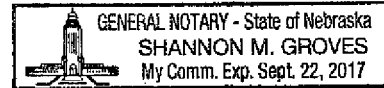
PARK 125 WDODGE, LLC, a Nebraska limited liability company

By: *Patrick G. McNeil*
Patrick G. McNeil, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 21st 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



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 21st day of July, 2016, by Patrick G. McNeil, Manager of Park 125 WDodge, LLC, a Nebraska limited liability company, on behalf of the Company.

Shannon M. Groves
Notary Public

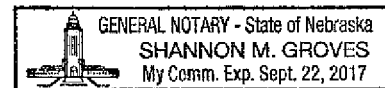


EXHIBIT "A"
Grantor Property

(59-05683)

Lot 7, Candlewood Hills, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska and Lot 1 Candlewood Hills Replat 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

(59-05685)

EXHIBIT "B"
Grantee Property

(59-05683)

Lots 4 and 5 and Outlot A1, Candlewood Hills, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, and Lot 2, Candlewood Hills Replat 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

(59-05685)