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FILED SARPY COUNTY NEBRASKA
 INSTRUMENT NUMBER

2013-36047

11/27/2013 1:53:00 PM

Floyd J. Dowling

REGISTER OF DEEDS



AFTER RECORDING, RETURN TO: Andrew Simpson, 220 North 89" Street, Suite 201 Omaha NE 68114
 (Space Above This Line for Recording Data)

ACCESS AND USE AGREEMENT

THIS ACCESS AND USE AGREEMENT ("AGREEMENT") is made this 22 day of October, 2013, by and among The Estates at Prairie Ridge, LLC, a Nebraska Limited Liability Company (hereinafter the "Declarant"), Prairie Ridge Homeowners Association, a Nebraska not for profit corporation (hereinafter the "Association"), and Joe B. Graham and Judy A. Graham, husband and wife, on behalf of themselves and any future owners of the Graham Property (as defined herein) (hereinafter the "Grahams").

RECITALS

WHEREAS, Declarant caused a certain "Declaration of Covenants, Easements and Restrictions for Prairie Ridge Lots 1 Through 52" to be filed on September 29, 2003, as Instrument Number 2003-55454 of the records of the Sarpy County Register of Deeds, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference;

WHEREAS, Declarant caused a certain "First Amendment to Declaration of Covenants, Easements and Restrictions for Prairie Ridge Lots 1 Through 52" to be filed on December 18, 2003, as Instrument Number 2003-73097 of the records of the Sarpy County Register of Deeds, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference (Exhibits A and B are collectively referred to herein as the "Covenants");

WHEREAS, pursuant to the Covenants, the Association has as one of its purposes the operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members, whereby said Common Facilities include but are not limited to dedicated and nondedicated roads within Prairie Ridge subdivision;

WHEREAS, pursuant to the Covenants, the Association may levy dues and assessments against each Lot owner to be committed and expended to accomplish the purposes of the Association as set forth in the Covenants, including but not limited to operation, repair, upkeep and replacement of the dedicated and nondedicated roads within Prairie Ridge subdivision;

WHEREAS, pursuant to a Dedication of Plat of Prairie Ridge, filed September 29, 2003, as Instrument Number 2003-55453 of the records of the Sarpy County Register of Deeds, the roads within Prairie Ridge subdivision ("Roads") were dedicated to the public;

WHEREAS, although the Roads were dedicated to the public, the parties to this Agreement acknowledge that Declarant and the Association have certain responsibilities and rights regarding the Roads pursuant to the Covenants;

WHEREAS, the Grahams own property adjacent to Prairie Ridge subdivision known as Lots 9 and 10, Point Sans Arc, Sarpy County, Nebraska ("Graham Property"), and the Graham Property abuts South 232nd Circle, which is a Road within Prairie Ridge subdivision;

WHEREAS, the Grahams desire to use the Roads within the Prairie Ridge subdivision and desire to access the Roads by means of a driveway constructed on the Graham Property which will connect to South 232nd Circle, all as set forth in detail on Exhibit "C" attached hereto and incorporated herein by this reference ("Graham Access");

WHEREAS, the Grahams have entered into a purchase agreement to purchase Lot 26 of the Prairie Ridge subdivision ("Lot 26") from Declarant; provided, however, the Grahams' purchase of Lot 26 is expressly contingent upon the Graham Property receiving access to the Roads in Prairie Ridge subdivision as contemplated herein;

WHEREAS, the parties acknowledge that the Grahams intend to sell Lot 26 and that the Grahams' right to connect the Graham Property to South 232nd Circle and to use the Roads are independent of, and in no way contingent upon, the Grahams continuing to own Lot 26, or any other Lot, within Prairie Ridge subdivision;

WHEREAS, in consideration of the Grahams purchasing Lot 26 from Declarant, and in further consideration of the Grahams agreeing to pay a one-time fee as set forth herein, plus agreeing to pay dues and assessments which are specifically for the operation, repair, upkeep and replacement of the Roads, to the Association after the date hereof for the Graham Property in the same manner as all other Lot owners within Prairie Ridge subdivision pay dues and assessments which are specifically for the operation, repair, upkeep and replacement of the Roads, to the Association for their Lots pursuant to the Covenants, the Declarant and the Association have agreed to grant and convey to the Grahams, their successors, assigns and all current and future owners of part or all of the Graham Property, the right to connect one (1) driveway from the Graham Property to South 232nd Circle, all as set forth in this Agreement; and

WHEREAS, the parties desire to set forth their respective rights and obligations in connection with the Graham Access and the Grahams' use of the Roads within Prairie Ridge subdivision.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and agreements of the parties contained herein, the parties agree as follows:

1. Access and Use of Roads. Declarant and the Association hereby authorize, agree and convey to the Grahams, their successors, assigns and all current and any future

owners of part or all of the Graham Property the right, privilege, authority and easement to connect one (1) driveway from the Graham Property to South 232nd Circle in the location as set forth on Exhibit C and the right, privilege, authority and easement to ingress and egress on or over the Roads in the Prairie Ridge subdivision from said Graham Access. Such right, privilege, authority and easement for one (1) Graham Access from the Graham Property to the Roads shall be appurtenant to and run with the Graham Property.

2. One-Time Fee. As partial consideration for Declarant and the Association entering into this Agreement, the Grahams shall pay contemporaneously with the execution of this Agreement, a one-time fee in the amount of \$1,500.00 to the Association whereby said fee shall (i) reimburse the Association for its costs and expenses in entering into this Agreement and (ii) fulfill the Graham's obligations for any dues and assessments which would be due and owing to the Association for the remainder of fiscal year 2013 with regard to the Graham Property.

3. Payment of Association Assessments and Dues for Roads Only. Grahams, their successors, their assigns and all current and future owners of the Graham Property shall pay dues and assessments for the operation, repair, upkeep and replacement of the Roads to the Association for the Graham Property in the same manner as all other Lot owners within Prairie Ridge subdivision pay any and all dues and assessments for the operation, repair, upkeep and replacement of the Roads that are levied by the Association against all other Lots within Prairie Ridge subdivision pursuant to the Covenants; provided, however, that the owner(s) of the Graham Property shall only pay dues and assessments for the operation, repair, upkeep and replacement of the Roads for the Graham Property in the same amount that would be levied against one Lot as if the Graham Property were the equivalent of one Lot and provided that the owner(s) of the Graham Property's obligation to pay dues and assessments to the Association is expressly limited to any dues and assessments levied by the Association for the operation, repair, upkeep and replacement of the Roads, the owner(s) of the Graham Property shall not have any obligation to pay for any dues and assessments levied by the Association for any other matter or purpose; notwithstanding the above, for as long as the Association remains responsible for the operation, repair, upkeep and replacement of the Roads the owners of the Graham Property acknowledge and agree that they shall pay at a minimum a \$200.00 per year assessment for the operation repair, upkeep and replacement of the Roads. Provided further that the owner(s) of the Graham Property shall not be deemed a Member of the Association and shall have no voting rights with regard to the Association or the Roads. In the event that the Grahams, their successors, assigns and all current and future owners of the Graham Property ever abandon the Graham Access connected to South 232nd Circle as set forth on Exhibit C, then the Grahams, their successors and assigns shall no longer have any obligation to pay any dues or assessments to the Association for the Graham Property except for any such dues accruing prior to such abandonment; provided, however, any such abandonment of the Graham Access must be evidenced by the Graham Access being physically blocked or otherwise made inaccessible to South 232nd Circle. Unless and until such time as the Graham Access is physically blocked or otherwise made inaccessible to South 232nd Circle, the Graham Access shall not be considered abandoned and the Grahams, their successors, assigns and all current and future owners of the Graham Property shall continue to pay any dues and assessments levied by the Association on the Graham Property.

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4. Access and Use Rights Independent of Graham Ownership of Lot 26 in Prairie Ridge. Subject to their initial purchase of Lot 26, the rights granted to the Grahams herein with regard to the Graham Property are expressly independent of, and not in any way contingent upon, the Grahams, their successors, assigns, and all current or future owners of the Graham Property continuing to own Lot 26 or any other Lot within Prairie Ridge subdivision. By entering into this Agreement, the Grahams, on behalf of themselves and their successors, assigns and all current and future owners of the Graham Property hereby acknowledge and agree that Lot 26 of the Prairie Ridge subdivision shall be subject to all matters set forth in the Covenants notwithstanding whether or not the Graham Property is, becomes or remains subject to such Covenants.

5. Adoption of Covenants. By entering into this Agreement, the Grahams, on behalf of themselves and their successors, assigns and all current and future owners of the Graham Property, hereby acknowledge and agree that the Graham Property shall be subject to the following provisions of the Covenants (as may be subsequently amended by the Association, its Members and/or the Declarant):

a. Article II shall apply to the Graham Property only insofar as (i) Section 3 shall allow the Association to exercise power and control over any future amendment of this Agreement; (ii) Section 5 shall allow the Association to fix, levy and charge the owner(s) of the Graham Property with dues and assessments as provided for herein for the operation, repair, upkeep and replacement of the Roads only, as if the Graham Property were a Lot within the Prairie Ridge subdivision; (iii) the Graham Property shall be subject to liens being placed on the Graham Property by the Association in the event that the owner(s) of the Graham Property fail to pay any dues and assessments applicable to the Graham Property; and (iv) Section 14 shall apply with regard to interest accruing on any installment of dues or assessments owed by the owner(s) of the Graham Property which remains unpaid when due.

b. Article III, Section 3 of the Covenants shall apply to the Graham Property in the same manner as any Lot, only to the extent that the Graham Property shall only remain subject to the specific Covenant sections as referenced herein until such time as either (i) the owners of the Lots in the Prairie Ridge subdivision otherwise remove such Covenants from the Lots or (ii) the owner(s) of the Graham Property abandons the Graham Access as allowed in Section 3 above.

c. By entering into this Agreement, the Grahams, on behalf of themselves, their successors, assigns and all current and future owners of the Graham Property, hereby acknowledge and agree that obtaining the Graham Access in accordance with the terms of this Agreement is fair and adequate consideration in exchange for (i) paying any dues and assessments for the operation, repair, upkeep and replacement of the Roads only as set forth in this Agreement and the specific Covenants sections referenced herein and (ii) not allowing the Grahams, their successors, assigns and all current and future owner(s) of the Graham Property to participate as a Member of the Association. The Grahams, on behalf of themselves and their successors, assigns and all current and future owners of the Graham Property, further acknowledge and agree that their rights to utilize the Graham Access are separate and apart from having any vote or

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voice in the operation of the Association, the Prairie Ridge subdivision and/or the use of the Lots. In the event that the Grahams, their successors, assigns and any current or future owners of the Graham Property ever determine that it is unjust for him/her/them not to have voting rights in the Association, such owner(s) may abandon the Graham Access in accordance with Section 3 above, thereby removing the Graham Property from the obligations and restrictions of the Association and the Covenants as set forth herein; provided, however, subject to any fees or dues which accrued prior to such abandonment.

6. Graham Property Not Subject to Other Covenants. Except as specifically set forth herein, this Agreement shall not be construed in any way to subject the Graham Property to any other provisions or restrictions of the Covenants.

7. Modification. No modification or amendment to this Agreement shall be valid unless it is reduced to writing and signed by all parties; provided, however, in the event that the Declarant loses its rights to alter the Covenants in accordance with the terms of the Covenants, then after such time Declarant shall not be a necessary party to amend this Agreement.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon any party except to the extent incorporated herein.

9. Non-Waiver. The failure of any party to insist upon strict compliance with any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

10. Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the Declarant, the Association, the Grahams and each of their respective successors and assigns.

11. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. Authority. The Declarant, Association and each of the Grahams warrant and represent that they each have full power and authority to execute and enter into this Agreement which is not in violation of, or contrary to, any contract, agreement, covenant, rule, regulation, resolution, law or ordinance by which he/she/it is bound.

[The remainder of this page intentionally left blank; signature page follows.]

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IN WITNESS WHEREOF, said undersigned parties have caused this Access and Use Easement to be duly executed the day and year first above written.

Estates at Prairie Ridge, LLC,
a Nebraska limited liability company

By: [Signature]
Curt Hofer, Manager



Prairie Ridge Homeowners Association,
a Nebraska not for profit corporation

By: [Signature]
Rick McGonigal, President



[Signature]
Joe B. Graham

[Signature]
Judy A. Graham



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 23rd day of October, 2013, by Curt Hofer, Manager of Estates at Prairie Ridge LLC, a Nebraska limited liability company on behalf of the limited liability company.

Christina A. Reinig
Notary Public



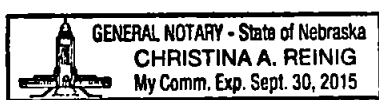
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)



The foregoing instrument was acknowledged before me this 22nd day of October, 2013, by Rick McCon, President of Prairie Ridge Homeowners Association, a Nebraska not for profit corporation on behalf of the corporation.

Christina A. Reinig
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)



The foregoing instrument was acknowledged before me this 22nd day of October, 2013, by Joe B. Graham and Judy A. Graham, husband and wife, to me known to be the same persons whose name appears above.

Christina A. Reinig
Notary Public