Book 2005 Page 1520
Document 2005 1520 Type 06 006 Pages 6
Date 5/02/2005 Time 4:20 PM
Rec Amt $32.00

DEBORAH L. PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Preparer Information Thomas J. Hanson, 401 East Main Street, Manchester, (563) 927-5920
Individual's Name | Street Address | City | Phone
Thomas J. Hanson, ISBA # 02110

SPACE ABOVE THIS LINE FOR RECORDER

Common Ownership and Maintenance Agreement

This Common Ownership and Maintenance Agreement (the "Agreement") is made and entered into this 2nd day of May, 2005, by and between Maurer Development, L.L.C., an Iowa Limited Liability Company (the "Company") and the owners of Lots One (1) through Ten (10) of Dry Creek Subdivision, A Subdivision of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of Section Thirty Six (36), Township Eighty Nine (89) North, Range Five (5), West of the Fifth P.M. recorded in Book 2005, Page 1482of the records of the Delaware County Recorder (collectively the "Owners" and individually an "Owner").

WHEREAS, the Company is the current owner and developer of Dry Creek Subdivision as described above;

AND WHEREAS, the Company has or will construct a roadway over and across the following described real estate:

> Lots A, B, C, D and E of Dry Creek Subdivision, A Subdivision of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of Section Thirty Six (36), Township Eighty Nine (89) North, Range Five (5), West of the Fifth P.M., Delaware County, Iowa, according to plat recorded in Book 2005, Page 1482 of the records of the Delaware County Recorder.

AND WHEREAS, as each of the Lots One (1) through Ten (10) in Dry Creek Subdivision are sold, the new owner of each such lot shall automatically acquire a one-tenth (1/10th) interest in the outstanding units of membership of the Company and shall be responsible for one-tenth (1/10th) of the liabilities and expenses relating to said roadway;

AND WHEREAS, this agreement shall set forth the terms and agreements regarding the common ownership and shared payment of the liabilities and expenses relating to the roadway.

NOW, THEREFORE, IT IS AGREED between the parties hereto as follows:

1. Common Ownership. Each current and future Owner of Lots One (1) through Ten (10) of Dry Creek Subdivision shall also be required to become the owner of one-tenth (1/10th) of the outstanding units of membership of the Company. Upon transfer of any such lot in Dry Creek Subdivision, the sellers

of such lot shall, simultaneously with such conveyance, also transfer their interest in the Company.

2. Common Maintenance. Each of the Owners of Lots One (1) through Ten (10) of Maurer's Subdivision is responsible for paying a pro-rata share of the liabilities and expenses associated with the road. Such liabilities and expenses shall specifically include, but are not limited to, real estate taxes, special assessments, insurance premiums, care, maintenance, repair and upkeep expenses associated with the roadway, subject to the provisions of paragraph three (3) of this Agreement.

3. Snow Removal. The owner of each Developed Lot within Maurer's Subdivision shall be responsible for a pro-rata share of the cost of snow removal for the roadway. For the purposes of this paragraph, a Developed Lot shall include any lot (1-10) upon which all or a portion of a residence has been constructed. A lot shall be considered a Developed Lot on the later of the date of completion of the construction of a residence on such lot or the date being six (6) months from the commencement of construction of a residence on such lot. Lots which are not "developed" under the terms of this paragraph of the Agreement shall not be responsible for snow removal.

4. Joint Owners. When two (2) or more persons are the joint Owners of any one (1) of the lots described above, then for purposes of this Agreement, such joint Owners of any such lot shall be considered one (1) Owner.

5. Maintenance Committee Membership. The initial and sole member of the Maintenance Committee shall be the Company. At such time as there are four (4) of the above described lots sold by the Company then the new owners of the said four (4) lots, as members of the Company, shall select not more than three (3) members to serve on the Maintenance Committee. Such elected members must each be an Owner of one of the ten (10) lots in Maurer's Subdivision described herein. At the time of such election, the Company shall withdraw as a member of the Maintenance Committee. The members of the Maintenance Committee shall serve for a term of one (1) Year. At the expiration of a term, the Owners shall elect new members of the Maintenance Committee. The decision of a majority of the members of the Maintenance Committee shall be deemed to be the action of the Maintenance Committee.

6. Duties. The Maintenance Committee shall have the following rights, duties and responsibilities:

    a. Providing or arranging for the care and maintenance of the road;

b. Arranging for and acquiring, on behalf of the Owners, any liability or other policies of insurance for the roadway, which the Maintenance Committee deems necessary;

c. Paying all expenses for the roadway in a timely fashion, to the extent that funds are available as provided herein to pay same;

d. Calculating the expected expenses for the roadway for each calendar year and notifying the Owners of same and the payment schedule for each Owner to timely pay such expenses; and

e. Collecting the roadway expenses from the Owners.

7. Liability. The members of the Maintenance Committee shall have no personal liability for the roadway other than their pro-rata share of the roadway expenses as an Owner of a lot in Dry Creek Subdivision.

8. Rules. The Maintenance Committee shall have the authority to institute rules which will be binding upon all Owners, which rules shall be for the purpose of promoting the harmonious utilization of the roadway and to ensure the maintenance of the roadway.

9. Enforcement. In the event an Owner fails to pay their pro-rata share of the roadway expenses, the Maintenance Committee shall have the right and power to collect from such Owner the amount of such roadway expenses owed, including initiating legal proceedings necessary to collect such amounts. In the event that legal proceedings are required to enforce the provisions of this Agreement, the Maintenance Committee shall also be entitled to collect from the defaulting Owner, all costs and expenses incurred by the Maintenance Committee to enforce the terms of this Agreement, including reasonable attorney fees, plus reasonable compensation for the members of the Maintenance Committee with regard to the enforcement of this Agreement. The Maintenance Committee shall have the authority to place a lien on any lot for which roadway expenses are due and owing, and the Owner of such lot shall be personally liable for all roadway expenses assessed against the lot, along with such legal expenses as may be incurred by the Maintenance Committee as a result of such lien.

   Upon demand, the Maintenance Committee shall furnish to any Owner or mortgagee, a certificate showing the unpaid roadway expenses against any lot or lots. The Maintenance Committee may, in its discretion, subordinate in writing, for limited periods of time, the liens for roadway expenses against any lot or lots for the benefit or better security of a mortgage.

10. Uncollectible Roadway Expenses. In the event that the Maintenance Committee has determined that the roadway expenses owed by an Owner are uncollectible, for any reason whatsoever, then all of the then current Owners of lots in Dry Creek Subdivision shall be assessed, according to their pro-rata share, for additional roadway expenses to make up for any shortage resulting from such uncollectible roadway expenses.

11. Addendum. Before a deed or other title transfer title document is issued to, and before any right, title or interest whatsoever vests in, a purchaser of one of the herein described lots in Dry Creek Subdivision, such purchaser shall execute and deliver to the Maintenance Committee an Addendum to this Agreement in substantially the following form with appropriate insertions:

Addendum

Pursuant to the Common Ownership and Maintenance Agreement (the "Agreement") dated the _____ day of _____, 2005, by and between Maurer Development, L.L.C., an Iowa Limited Liability Company, and all Owners of Lots One (1) through Ten (10) in Dry Creek Subdivision, now and in the future, the undersigned, now the owner of Lot _____ in Dry Creek Subdivision, does hereby become a party to the Agreement and entitled to the rights and subject to the obligations set forth in the Agreement with the same force and effect as though such owner had executed the Agreement as a signatory party thereto. The undersigned owner acknowledges that such owner has read the Agreement and is familiar with, understands and agrees to be bound by its terms.

Dated this _____ day of _____, 20_____.

_____
Owner

However, that a new Owner does not sign such Addendum does not result in such new Owner not being bound by the terms and conditions of this Agreement.

12. Covenant. This Agreement shall constitute a covenant running with the land and shall be binding upon and for the benefit of the parties hereto and the present and future Owners of the herein described lots in Dry Creek Subdivision, and their heirs, administrators, executors, successors, and assigns.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matters hereof.

14. Amendments. No amendments, waiver, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by the parties or by their duly authorized agents. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

16. Construction. It is the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other would render the provision valid, then the provision shall have the meaning which renders it valid. It is agreed that the parties have participated in the preparation of this Agreement. It is agreed that if any provision of this Agreement shall be found by any court of competent jurisdiction to be unclear and ambiguous, that the rule of contract construction that any such provision be construed against the party who prepared the instrument shall not apply.

17. Severability. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable, and if, for any reason, a court finds that any provision of this Agreement is invalid, illegal or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written and shall be construed and enforced as so limited.

IN WITNESS WHEREOF the parties hereby sign this Agreement as of the date first above written.

Company:
Maurer Development, L.L.C.

By: _____
Curt Maurer - Manager

Owner:

By: _____
Curt Maurer

By: _____
Mary Maurer

STATE OF IOWA, COUNTY OF DELAWARE, ss:

On this 2nd day of May, 2005, before me, a Notary Public in and for the State of Iowa, personally appeared Curt Maurer, to me personally known, who being by me duly sworn did say that that person is Manager of said Limited Liability Company, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of the said Limited Liability Company by authority of its managers and the said Curt Maurer acknowledged the execution of said instrument to be the voluntary act and deed of said Limited Liability Company by it voluntarily executed.

NOTARIAL SEAL IOWA
TRACY L. FONCK
COMMISSION # 223445
MY COMMISSION EXPIRES
7-8-05

Tracy L Fonck
Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF DELAWARE, ss:

On this 2nd day of May, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Curt Maurer and Mary Maurer, husband and wife, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

NOTARIAL SEAL IOWA
TRACY L. FONCK
COMMISSION # 223445
MY COMMISSION EXPIRES
7-8-05

Tracy L Fonck
Notary Public in and for the State of Iowa