Book 2014 Page 556
Document 2014 556 Type 03 006 Pages 9
Date 3/11/2014 Time 11:20:46AM
Rec Amt $47.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Legal Description on Pages 8 & 9.

Prepared by/Return to: Matthew J. Hektoen, Simmons Perrine Moyer Bergman PLC, 115 Third St. SE, Suite 1200, Cedar Rapids, IA 52401, PHONE (319) 366-7641 FAX (319) 366-1917

Address tax statement to: Lake Delhi Combined Recreational Facility and Water Quality District, 712A 3rd Street, Delhi, IA 52223

BOAT DOCK AND LIFT EASEMENT, ACCESS EASEMENT AND STORAGE EASEMENT AGREEMENT

This Boat Dock Easement, Access Easement and Storage Easement Agreement ("*Agreement*") is made and entered into this 6th day of March, 2014 (the "*Effective Date*"), by and between **Lake Delhi Combined Recreational Facility and Water Quality District**, an entity formed under Iowa Code Chapter 357E ("*Grantor*"), and **Rocky Nook Association, Inc.**, an Iowa non-profit corporation. ("*Grantee*") Grantee and Grantor are collectively referred to as the "*Parties*".

RECITALS

A. Grantor is the titleholder of real estate legally described on **Exhibit "A"**, attached hereto and incorporated herein by reference (the "*Real Estate*").

B. Grantee is the owner of certain real estate locally known as 263rd Street, Delhi, Iowa and legally described on **Exhibit "B"**, attached hereto and incorporated herein by reference (the "*Benefitted Property*").

C. Grantor desires to grant to Grantee certain easements for boat dock and lift purposes, access and storage purposes.

NOW THEREFORE, for the consideration of the mutual covenants made below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **Easements**. Grantee hereby grants, assigns and sets over to Grantor the following easements:

Initials JG SY

(i) A non-exclusive easement for the purpose of constructing, operating, maintaining, repairing, replacing and removing a boat dock and lift system (the "*Boat Dock and Lift System*") in, on and about a portion of the Real Estate to be determined by the Grantor in accordance with the terms of Section 2 of this Agreement, subject to the conditions set forth below (the "*Boat Dock and Lift Easement*"); and

(ii) An non-exclusive easement on a portion of the Real Estate to be determined by the Grantor in accordance with the terms of Section 2 of this Agreement , for the purpose of storage of the Boat Dock and Lift System from October 1st through May 1st of each year (the "*Storage Easement*").

(iii) An non-exclusive easement for pedestrian ingress and egress and right of way access across the Real Estate to transport boating and dock, lift system equipment from 230th Avenue to the Boat Dock and Lift Easement and for the further purpose of access to and from the Storage Easement a portion of the Real Estate to be determined by the Grantor in accordance with the terms of Section 2 of this Agreement (the Boat Dock and Lift Easement, Storage Easement and Access Easement are collectively referred to hereinafter as the "*Easements*").

2. **Siting of Easements.** If and when the "Lake Delhi Dam" is constructed by Grantor, Grantor will identify, with as much particularity as is reasonable under the circumstances, the location of the Easements on the Real Estate.

3. **Nature and Limitations on Use of Easements**. The Easements and Boat Dock and Lift System are for the exclusive use of the members of Grantee and may not be assigned, leased, licensed or otherwise conveyed without the prior express written consent of Grantor. Notwithstanding the foregoing, guests of the members of Grantee may accompany said members across the Access Easement and Boat Dock and Lift Easement as part of said member's use of the same. To the extent that the Grantor grants access and use rights across the Access Easement and / or the Storage Easement, Grantee agrees to share use of said easements. This Easements and the Boat Dock and Lift System is further subject to the any existing easements of record and a boat ramp with a minimum width of fifteen feet (15) to be installed by Grantor in a location determined by Grantor in its sole and absolute discretion.

4. **Duration of Easements**. The duration of the easements set forth above shall be perpetual subject to limitations set forth herein.

5. **Indemnification**. The Grantee shall indemnify and hold the Grantor, its directors, officers, employees, attorneys and agent from and against the aggregate of all expenses (including reasonable attorney and other professional fees and expenses and courts costs), losses, costs, judgment, deficiencies, diminution in value, liabilities and damage arising out of (1) damage to property or injury or loss of life caused by the Grantee in or about the Easements, (2) any breach of a representation, warranty, covenant made by Grantee or any obligation of Grantee set forth herein in or pursuant to this Agreement, and (3) any costs or expenses which are the obligation of the Grantee under this Agreement.

Initials JG SJ

6. **Maintenance**. Grantee shall have an obligation to repair any damage that may be caused by its use or use by her tenants or invitees of the Easements.

7. **Insurance**.

   (i) The Grantee shall, at its sole cost and expense, obtain and maintain in effect, commencing with the Effective Date and continuing throughout the term of the Easements, insurance policies providing for the following coverage: special form (commonly called "all risk") property insurance against fire, theft, vandalism, malicious mischief, and such additional perils as now are or hereafter may be included in a standard extended coverage endorsement from time to time in general use in the State of Iowa, insuring the Boat Dock and Lift System and all other property of the Grantee located in any of the Easements and the amount of such insurance will be set forth in an "aggregate endorsement" to the policy of such insurance, not less than one hundred percent (100%) of the full replacement value without deduction for depreciation; and

   (ii) Each party shall, at its sole cost and expense, obtain and maintain in effect commencing with the Effective Date and continuing throughout the term of the Easements, insurance policies providing for the following coverage: a commercial general liability policy, naming the other party as an additional insured, protecting against any and all claims for injury to persons or property occurring on or about the Real Estate or Easements and protecting against assumed or contractual liability under this Agreement with respect to the Easements and the operations of Grantee of the Boat Dock and Lift System with such policy to be in the minimum amount of One Million Dollars ($1,000,000.00) per occurrence.

8. **Subrogation**. Each party shall cause its insurance policies to contain either a waiver of any right of subrogation the insurer may acquire against the other party by virtue of payment of any loss under any such insurance.

9. **Department of Natural Resources Compliance**. Grantee represents, warrants and covenants that it shall construct, maintain, repair and operate the Boat Docking System in compliance with all relevant laws, codes, rules and regulations, including, but not limited to, those promulgated by the Iowa Department of Natural Resources. Grantor agrees to cooperate with Grantee for the purpose of applying with the Iowa Department of Natural Resources for a boat dock permit. Grantor makes no representation as to the size and scope of the Boat Dock and Lift System that is suitable for the Boat Dock and Lift Easement. Grantee acknowledges that the size and scope of the Boat Dock and Lift System is governed by applicable Iowa Department of Natural Resources rule and regulations.

10. **Application for Permit**. Grantee shall be responsible for compiling all materials (the "*Application Materials*") necessary to make a successful application with the Iowa Department of Natural Resources for a boat dock. Upon receipt by Grantor of the Application Materials and all necessary application fees, Grantor shall submit the Application Materials to the Iowa Department of Natural Resources. In the event that the Iowa Department of Natural Resources grants a permit for a boat dock spaces containing at least nineteen (19) hoists, Grantee shall reserve for Grantor's use two (2) dock spaces. Grantee shall bear the cost of all permits and any other fines, fees,

Initials JG SJ

penalties or other costs associated with the construction, maintenance, operation, repair or replacement of the Boat Dock and Lift System.

11. **No Construction**. Grantee shall not make any alterations, additions or improvements or install any fixtures in the Easements, except for the Boat Dock and Lift system to be constructed in the Boat Dock and Lift Easement, without Grantor's prior written consent. Grantee shall not allow a mechanic's lien or any other liens to attach to the Easements or any portion of the Real Estate.

12. **Dam Structure**. Grantee shall utilize the Easements so as not to adversely impact the integrity of the Delhi Dam, Spillway and appurtenant structures as determined in the sole and absolute discretion of the Grantor's engineer.

13. **Termination**. This Agreement will terminate and the Easements shall be void and no further effect in the event any of the following occurs:

    (i) Written mutual agreement between the parties expressing the mutual desire of the parties to terminate this Agreement, or

    (ii) Commencement of proceedings by or against Grantee in any court under a bankruptcy act or for the appointment of a trustee or receiver of Grantee's property after the recordation of this Agreement with the Delaware County, Iowa Recorder, which proceedings are not dismissed within thirty (30) days of the filing date.

    (iii) Grantee becoming insolvent, making a transfer in fraud of creditors or an assignment for the benefit of creditors and the assignment is not dismissed within thirty (30) days.

    (iv) Grantee failing to discharge any lien placed on the Real Estate or any other improvements located thereon in violation of Section 10 within twenty (20) days after such lien or encumbrance is filed with the Iowa Secretary of State or other applicable public filing office.

    (v) Failure by Grantee to comply with the terms of Section 9 of this Agreement and such failure continues and is not cured within one-hundred eighty (180) days after delivery by Grantor of written notification of such failure.

    (vi) Failure by Grantee to comply with any term, provision or covenant of this Agreement other than Section 9 or Section 10 and such failure continues and is not cured within sixty (60) days after delivery by Grantor of written notification of such failure.

    (vii) A conveyance by Grantee of the Benefitted Property to a party other than an owners association formed for a purpose substantially similar to that of Grantee.

    (viii) A subdivision and conveyance of any or all of the Benefitted Property. Notwithstanding the foregoing, in the event Grantee subdivides and conveys a

Initials JG SJ

portion of the Benefitted Property, so long as prior to said conveyance Grantee submits an executed written agreement to Grantor evidencing Grantee's desire to terminate this Agreement as to that portion of the Benefitted Property conveyed, this Agreement shall not terminate as to that portion of the Benefitted Property retained by Grantee.

(ix) Failure by Grantee to keep current all permits with the Iowa Department of Natural Resources necessary to maintain the Boat Dock and Lift System and such failure continues and is not cured within three hundred sixty five (365) days after delivery by Grantor of written notification of such failure.

(x) The Easements are used by Grantee, its successors or assigns for a commercial purpose.

14. **Authority/Complete Agreement**. The undersigned have procured all required approvals to bind the undersigned entity to this Agreement. This Agreement constitutes the complete agreement of the parties in connection with the subject matter hereof.

15. **Notices**. Any and all notices or demands required or permitted to be given hereunder shall be deemed to be properly served and delivered if sent by certified mail, postage prepaid, addressed to the parties as follows:

GRANTOR

Lake Delhi Combined Recreational
Facility and Water Quality District
Attn: Board President
712A 3rd Street
Delhi, Iowa 52223

With a copy to:

Simmons Perrine Moyer Bergman, PLC
Attn: Matthew J. Hektoen
115 3rd Street, SE, STE 1200
Cedar Rapids, Iowa 52401

GRANTEE

Rocky Nook Association, Inc.
Attn: President
P.O. Box 317
Delhi, Iowa 52223

16. **Construction of Terms**. Words and phrases herein, including the acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

Initials _____

17. **Counterparts**. This Agreement may be executed in two counterparts, both of which shall be deemed an original and shall constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last day and year signed below.

GRANTOR	**GRANTEE**
LAKE DELHI COMBINED RECREATIONAL FACILITY AND WATER QUALITY DISTRICT	ROCKY NOOK ASSOCIATION, INC.
By: Steven D Leonard	By: Jennifer Gaiser Jennifer Gaiser, President
Dated: 3/6/2014	**Dated:** 3/6/2014

STATE OF IOWA, LINN COUNTY, SS

This instrument was acknowledged before me on March 6, 2014, by Steve Leonard as President of the Board of Directors of Lake Delhi Combined Recreational Facility and Water Quality District.

Notary Public in and for said State
My Commission Expires: 2/18/16

NOTARIAL SEAL IOWA
MATTHEW J. HEKTOEN
Commission Number 712224
My Commission Expires
February 18, 2016

Initials JG SL

STATE OF IOWA, LINN COUNTY, SS

This instrument was acknowledged before me on the 6th day of March, 2014 by Jennifer Gaiser as President of Rocky Nook Association, Inc.

Notary Public in and for said State
My Commission Expires: 2/18/16

MATTHEW J. HEKTOEN
Commission Number 712224
My Commission Expires
February 18, 2016

Initials JG SJ

Exhibit "A"

The Real Estate

Parcels C and E, Part of the SW ¼ of the NW ¼ of Section 29, T88N, R4W of the Fifth P.M., Delaware County, Iowa according to the plat recorded in Book 7 Plats, Page 43; also that real estate lying generally north of Parcel E, running to the water front of Lake Delhi and then at right angles extending to the middle of Lake Delhi; and also that real estate lying generally North and West of Parcel C, running to the water front of Lake Delhi and then at right angles extending to the middle of Lake Delhi

Initials JG SS

Exhibit B

Parcel 2013-07, being part of the SW ¼-NW ¼ and part of the NW ¼-NW ¼ of Section 29, Township 88 North, Range 4 West of the Fifth P.M., Delaware County, Iowa per plat of survey filed on December 27, 2013 and recorded in Book 2013, page 3975 in the office of the Delaware County Recorder.