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31-13-20



Douglas County Register of Deeds  
Book: 1071 Page: 1802

Receipt #: 413415  
Pages Recorded: 6  
Cashier Initials: TRE

Recording Fee: \$28.00  
Authorized By: Kay Penell

Date Recorded: 1/26/2011 8:57:28 AM



**CROSS ACCESS EASEMENT AND MAINTENANCE AGREEMENT**

This Cross Access Easement and Maintenance Agreement (this "Easement") is entered into this 19<sup>th</sup> day of January, 2011 between May-West, L.C., a Kansas limited liability company, 1921 Quail Run, Lawrence, Kansas 66047 ("Developer") and the Board of County Commissioners of Douglas County, Kansas, 1100 Massachusetts, Lawrence, Kansas 66044 ("County").

**RECITALS**

A. Developer desires to receive approval of a Certificate of Survey to permit Developer to legally use the Cluster Development Certificate of Survey process to subdivide the following described property located in Douglas County, Kansas:

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 13 SOUTH, RANGE 20 EAST OF THE SIXTH PRINCIPAL MERIDIAN NOW DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 00°17'16" WEST ALONG THE WEST LINE OF SAID QUARTER SECTION, 1035.81 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" EAST 1094.77 FEET; THENCE SOUTH 30°23'02" EAST, 320.37 FEET; THENCE SOUTH 21°49'48" WEST, 304.41 FEET; THENCE SOUTH 13°41'33" WEST, 259.12 FEET; THENCE SOUTH 08°28'51" EAST, 131.79 FEET; THENCE NORTH 90°00'00" WEST, 1106.44 FEET TO A POINT ON THE WEST LINE OF SAID QUARTER SECTION; THENCE NORTH 00°17'16" EAST ALONG SAID WEST LINE, 941.06 FEET TO THE POINT OF BEGINNING.

THE ABOVE CONTAINS 25.00 ACRES, MORE OR LESS, ALL IN DOUGLAS COUNTY, KANSAS, SUBJECT TO PUBLIC ROAD RIGHT-OF-WAY AND EASEMENTS OF RECORD.

(the "Cluster Development").

maxi  
Rev. 9/15/2010  
May-West, Lc  
1921 Quail Run  
Lawrence, KS 66047

B. As a condition of final approval of the Certificate of Survey, Developer is required to enter into an agreement to create a Cross Access Easement in the Cluster Development, to allow for ingress and egress to and from the Residential Development Parcels, created in the Cluster Development by the Certificate of Survey, and the adjacent public right-of-way, East 1450 Road/County Road 249.

C. As a condition of approval of the Certificate of Survey, the Easement Tract (defined below) is deemed dedicated to the City of Lawrence, Kansas (the "City"), as a permanent public road right-of-way and street, upon annexation by the City of Lawrence, Kansas and its acceptance of the dedication.

D. As a condition of Certificate of Survey approval, Developer is required to create a Maintenance Agreement for said Cross Access Easement.

### **GRANT OF EASEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and obligations contained herein and other valuable considerations, the sufficiency of which are hereby acknowledged, the Developer agrees as follows:

1. Definitions. Capitalized words shall have the meaning defined in this Agreement. The following capitalized words not otherwise defined in this Agreement shall have the following definitions:

**Certificate of Survey** means the Certificate of Survey of the Cluster Development, approved in accordance with the Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, Kansas, and recorded with the Office of the Douglas County, Kansas Register of Deeds.

**Residential Development Parcel** means that tract or tracts of real estate located within the Cluster Development for which a residence may be constructed prior to annexation to the City of Lawrence, Kansas, as identified in the Certificate of Survey.

**Subdivision Regulations** means the jointly adopted Subdivision Regulations for the City of Lawrence, Kansas and the Unincorporated Areas of Douglas County, Kansas, as amended, or such successor subdivision regulations as are then applicable to the Cluster Development.

2. Grant of Cross Access Easements. Developer grants and dedicates to County and, upon annexation, the City, and establishes for the benefit of the current and future owners of the Cluster Development, a permanent and perpetual easement and right of way over, through, and across the following described tract of real estate, for vehicular and pedestrian ingress and egress, together with construction, installation, and maintenance of public utilities, to and from the various tracts or parcels of the Cluster Development and County Road East 1450 Road:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 13 SOUTH, RANGE 20 E, EAST OF THE SIXTH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, KANSAS WHICH IS 60 FEET WIDE CENTERED ON A LINE NOW DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 00°17'16" WEST ALONG THE WEST LINE OF SAID QUARTER SECTION 1506.32 FEET; THENCE NORTH 90°00'00" EAST, 5.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" EAST, 665.00 FEET.

THE ABOVE CONTAINING 0.916 ACRES MORE OR LESS, ALL IN DOUGLAS COUNTY, KANSAS.

(the "Easement Tract").

3. No Unreasonable Interference. No building, structure, obstruction, or other improvement shall be constructed, installed, or maintained in or upon the Easement Tract and nothing else shall be done within the Easement Tract that unreasonably interferes with the rights granted and established in this Agreement.

4. Construction, Repair and Maintenance.

A. Construction. Developer agrees to construct at its sole expense, approximately 713 lineal feet of road with a 4" thick aggregate surface within the Easement Tract (the "Road"). The Road shall be constructed within a reasonable time after the signing of this Agreement and final approval of the Certificate of Survey.

B. Repair and Maintenance. Repair and maintenance costs for the Road and associated improvements shall be provided by the owners of the Residential Development Parcels, as provided in the Declaration of Easements, Covenants, Conditions, and Restrictions affecting such Parcels, as recorded in the Office of the Register of Deeds of Douglas County, Kansas. The owner or owners of the Residential Development Parcel shall be responsible for this repair and maintenance until such time as the Easement Tract is accepted as a public road or street for public maintenance by either the County or the City of Lawrence, Kansas.

5. No Termination. No breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such party may have hereunder by reason of any breach of this Agreement. The ownership of the Cluster Development, now or in the future, by a single owner or owners shall not effectuate a merger or otherwise terminate this Agreement.

6. No Limitation of Remedies. Any violation or breach of this Agreement shall be considered a breach of the Certificate of Survey and a violation of the Subdivision Regulations, and the County shall have the authority to enforce this Agreement in any manner permitted by law. The various rights and remedies contained in this Agreement and reserved to the parties, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.

7. Public Dedication. This Agreement shall be deemed a public dedication of the Easement Tract; provided, however, that County's signing of this Agreement shall not be deemed an acceptance of the dedication or and acceptance of any maintenance obligations over the Easement Tract or the Road. Acceptance of the dedication, by either the County or the City, shall not be inferred by must be by written document in accordance with Section 8 of this Agreement.

8. Manner of Acceptance of Public Dedication. Prior to annexation of all or part of the Cluster Development into the City of Lawrence, Kansas, the County may accept the dedication of the Easement Tract as a public road, upon such terms and conditions as it determines appropriate. If dedication of the Easement Tract has not been previously accepted as a public road, then upon annexation of all or part of the Cluster Development into the City, the City may accept the dedication of the Easement Tract upon such terms and conditions as it determines at the time of annexation. Any acceptance of the dedication of the Easement Tract as a public road shall be by a signed agreement specifically referencing this Agreement, authorized by formal action of the governing body the County or City, as the case may be, and recorded with the Office of the Douglas County Register of Deeds.

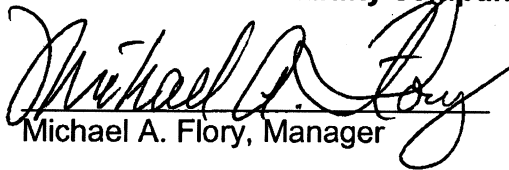
9. Construction of Terms. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. All headings herein are for convenience and shall not be resorted to for interpretation or construction. Any feminine or neuter pronoun shall be substituted for masculine form, or vice versa, and plural shall be substituted for singular where the context may require. No waiver of any provision of this Agreement shall be construed to be a waiver of any preceding or succeeding breach of such provision, or any other provision. This Agreement may be amended or modified only in writing, authorized and executed by the County (or the City of Lawrence, Kansas if the Cluster Development is then within the corporate boundaries of the City of Lawrence) and all owners of all or any part of the Cluster Development, and may not be amended or modified by oral agreements or understandings.

10. Severability. In case any one or more of the provisions of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

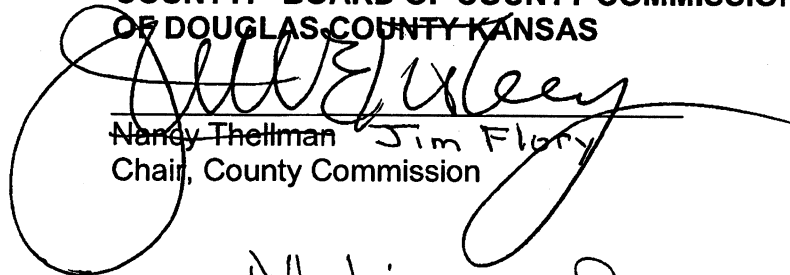
11. Covenants Running With the Land. This Agreement and the easements granted, dedicated, and established hereby shall at all times be perpetual and construed appurtenant to the land and a covenant running with the land and shall be binding upon the owner or owners of all or part of the Easement Tract and all parties claiming by, through, or under them, and shall be for the benefit of and limitations upon all future owners of the Cluster Development, provided, however, that upon acceptance of the dedication of the Easement Tract by a governmental entity, whether the County or the City, the Easement Tract shall become a public right of way, for the benefit of all members of the public; provided further, however, that the rights, duties, and obligations of each owner as set forth herein shall cease with the termination of his or its ownership, except for the duties and obligations arising during the period of his or its ownership.

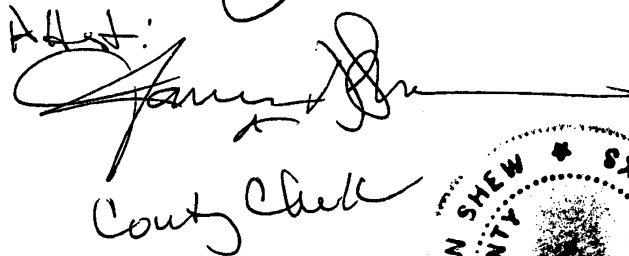
**IN WITNESS WHEREOF**, Developer and County have executed this Easement as of the year and date first above stated.

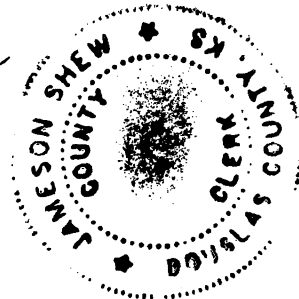
**DEVELOPER: MAY-WEST, L.C.**  
a Kansas limited liability company

  
Michael A. Flory, Manager

**COUNTY: BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY KANSAS**

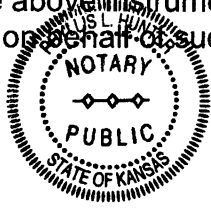
  
Nancy Thellman  
Chair, County Commission

Adopt:  
  
County Clerk



STATE OF KANSAS )  
 )ss:  
COUNTY OF DOUGLAS )

On this 29th day of December, 2010, before a, a Notary Public in and for the County of Douglas, personally appeared Michael A. Flory, Manager of May-West, L.C., a Kansas limited liability company, to me known to be the same person who signed and is described in the above instrument and acknowledged the same to be such person's free act and deed on behalf of such limited liability company.



MY COMMISSION EXPIRES:  
March 19, 2011

*[Signature]*  
\_\_\_\_\_  
Notary Public

My Commission expires: 3-19-11

STATE OF KANSAS )  
 )  
COUNTY OF DOUGLAS )

ss.

On this 19th day of January, 2011, before a Notary Public in and for the Board of County Commissioners of the County of Douglas, personally appeared *Jrm Flory* ~~Nancy Thellman~~, Chairperson of the Board, on behalf of the County, to me known to be the same person who signed and is described in the above instrument and acknowledged the same to be her free act and deed.



*[Signature]*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 1/6/2013