

EASEMENT, JOINT USE AND MAINTENANCE AGREEMENT

120
#1192-6
Marian Marsh
 This Agreement, made this 10th day of March, 1986, by and between Springhouse Homeowners Association, Inc., a Kentucky corporation, hereinafter referred to as "ASSOCIATION" and The Drees Company, a Kentucky corporation, hereinafter referred to as "DREES".

WHEREAS, the ASSOCIATION is the owner of the common areas and community facilities of Springhouse Subdivision, Section 1, as recorded ^{Group 1192 D} in Plat Book 10, Page 290, of the Campbell County Clerk's Records, hereinafter referred to as "common areas"; and

WHEREAS, the common areas are subject to the terms of a Declaration of Covenants, Conditions and Restrictions of Ownership as recorded in Book 111, Page 15, of the Campbell County Clerk's Records hereinafter referred to as "Townhouse Declaration"; and

WHEREAS, DREES is the developer of Springhouse Subdivision, Section 1; and

WHEREAS, DREES is the owner of the real property described in the attached Exhibit "A" and desires to develop said real estate to facilitate residential Condominium Units; and

WHEREAS, the residential Condominium Units to be constructed shall be of substantially equal value to and compatible with the residential Townhouse Units; and

WHEREAS, the ASSOCIATION believes that by allowing the Condominium Owners to use certain portions of the common areas, it can decrease the cost to the ASSOCIATION of administering and maintaining such common areas; and

WHEREAS, by decreasing the cost to the ASSOCIATION of administering and maintaining such common areas, the ASSOCIATION can promote the welfare of its members; and

WHEREAS, in order to accomplish said objectives, the ASSOCIATION must grant certain easements to DREES and the parties must provide for the joint use and maintenance of such portions of the common areas; and

WHEREAS, the ASSOCIATION and DREES desire to provide for a uniform method of administering and maintaining the shared common areas;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

Article 1. Roadway Easement - Springhouse Drive.

1.1. The ASSOCIATION hereby grants and conveys to DREES, its successors and assigns, a nonexclusive perpetual easement for pedestrian and vehicular access and related roadway purposes, and right of use appurtenant to and for the benefit of the real estate described in the attached Exhibit "A", over and across the real estate described in the attached Exhibit "B". The easement granted hereby shall be for the benefit of, but not restricted solely to, DREES and DREES may grant the benefit of such easement to the purchasers of its Condominium Units to be situated on the real estate described in the attached Exhibit "A", their tenants, visitors, invitees and licensees. At the time DREES conveys title to a Condominium Unit to its purchaser, DREES shall grant such roadway easement to such purchaser and thereafter such easement shall be appurtenant to and shall pass with the title to such Condominium Unit, subject to the provisions of this Agreement. In the event that the roadway situated on the real estate described in the attached Exhibit "B" is relocated, the roadway easement hereby granted shall be deemed to encompass the relocated roadway. This easement is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Article 2. Community Facility Easement.

2.1. The ASSOCIATION hereby grants and conveys to DREES, its successors and assigns, a nonexclusive perpetual right and easement of enjoyment in the ASSOCIATION's Community Facilities situated on the real estate described in the attached Exhibit "C". The right and easement of enjoyment shall be appurtenant to and for the benefit of the real estate described in the attached Exhibit "A". The easement granted hereby shall be for the benefit of, but not restricted solely to, DREES and DREES may grant the benefit of such easement to the purchasers of the Condominium Units to be situated on the real estate described in the attached Exhibit "A", their tenants, visitors, invitees and licensees. At the time DREES conveys title to a Condominium Unit to its purchaser, DREES shall grant such right and easement of enjoyment to such purchaser, and such purchaser shall have the right to use the community facilities as provided in Article 3. Thereafter, such right and easement of enjoyment shall be appurtenant to and shall pass with title to such Condominium Unit, subject to the provisions of Article 3. In the event that the community facilities situated on the real estate described in the attached Exhibit "C" are relocated or additional community facilities are constructed on

the real estate described in the attached Exhibit "C" or the common areas, the community facility easement hereby granted shall be deemed to encompass the relocated or additional community facilities. This easement is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Article 3. Community Facilities.

3.1. The community facilities situated on the community facility easement consist of a community clubhouse and swimming pool. The community facilities shall be used jointly by the members of the ASSOCIATION and the members of the Condominium's Council of Co-Owners owning the units to be situated on the real estate described in the attached Exhibit "A". The community facilities shall be used by the members of the ASSOCIATION subject to the provisions of this Agreement and the Townhouse Declaration and the community facilities shall be used by the members of the Condominium's Council of Co-Owners subject to the provisions of this Agreement and the Master Deed to be recorded by DREES. The ASSOCIATION shall not be entitled to receive any payment from the members of the Condominium's Council of Co-Owners for their use of the community facilities other than as provided in Article 5. Additionally, the ASSOCIATION shall not sell any annual family memberships to non-members of the ASSOCIATION until DREES shall have completed the development of the real estate described in the attached Exhibit "A". Thereafter, the total annual family memberships, when added to the number of living units in the ASSOCIATION and the number of Condominium Units, shall not exceed the sum of 200.

Article 4. Maintenance.

4.1. The improvements situated on the roadway easement and the community facility easement shall be maintained in good repair and in a condition substantially similar to that of original construction. The decision to perform maintenance or to make repairs shall be made by a majority vote of not less than four (4) members of the Management Committee. The Management Committee shall consist of three (3) members of the ASSOCIATION and three (3) members of the Condominium's Council of Co-Owners. No party, other than DREES, who is a member of both Homeowners Associations, shall be a member of the Management Committee. The term of the members of the Management Committee, together with procedures for their appointment and removal, shall

be determined by the respective Homeowners Associations. Subject to the terms of the respective Declarations, the Management Committee may delegate routine maintenance decisions to one of the respective Homeowners Associations or a professional management company. Nothing in this Agreement shall prohibit the Homeowners Association from having joint meetings in order to carry out the objectives of this Agreement.

Article 5. Assessments.

5.1. On or before April 1, 1986, the Management Committee shall establish a joint interest-bearing escrow account in the name of "Springhouse Homeowners Association, Inc. and Springhouse Council of Co-Owners, Inc." Commencing April 1, 1986, and monthly thereafter, the ASSOCIATION shall pay a monthly maintenance assessment to the escrow account in the amount of \$19.50 for each member of the ASSOCIATION. Additionally, on or before April 1, 1986, the ASSOCIATION shall make an initial maintenance contribution to the escrow account in the amount of One Hundred Dollars (\$100.00). Commencing April 1, 1986, and monthly thereafter, the Condominium's Council of Co-Owners shall pay a monthly maintenance assessment to the escrow account in the amount of \$19.50 for each member of the Condominium's Council of Co-Owners. Additionally, on or before April 1, 1986, the Condominium's Council of Co-Owners shall make an initial maintenance contribution to the escrow account in the amount of One Hundred Dollars (\$100.00). The respective Homeowners Associations shall have the obligation to pay the monthly maintenance assessments whether or not their members or Unit Owners shall use the community facilities or shall have paid such assessment to their respective association.

5.2. The monthly maintenance assessment and the initial maintenance contribution shall be used to create a maintenance fund. The maintenance fund shall be used to create an adequate reserve for future use, for the improvement, expansion and maintenance of the roadway and community facilities, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions, and for the cost of labor, equipment, materials, management and supervision. Subject to the terms of the Townhouse Declaration and Master Deed, the Management Committee may grant a power of attorney for check writing purposes on the escrow account to one of the respective Homeowners Associations or a professional management company.

5.3. The Management Committee shall have the authority to make decisions pertaining to: the assessment of late fees for the nonpayment of the monthly maintenance assessment; the adjustment of the amount of the monthly maintenance assessment; the assessment of a special monthly maintenance assessment; or rules governing the use of the community facilities. All such decisions shall be made by a majority vote of not less than four (4) members of the Management Committee.

Article 6. Condemnation.

6.1. In the event of the condemnation or appropriation of any part of the roadway easement or community facility easement, the proceeds of the appropriation shall be deposited in the escrow account established by the Management Committee. The property appropriated may be restored or rebuilt upon a vote of the majority of the members of the ASSOCIATION and a majority vote of the members of the Condominium's Council of Co-Owners. In the event that a decision is made not to restore or rebuild the property that has been appropriated, the proceeds of the appropriation shall be paid to the ASSOCIATION and the Condominium's Council of Co-Owners according to the following formulas:

$$\frac{\text{Net Appropriation Award}}{\text{Total of Townhouse Units and Condominium Units}} = \text{Payment to Association Per Association Member}$$

$$\frac{\text{Net Appropriation Award}}{\text{Total of Townhouse Units and Condominium Units}} = \text{Payment to Council Per Council Member}$$

The Association shall treat the proceeds so paid to it as proceeds from the condemnation of common areas as provided in the Townhouse Declaration and the Condominium's Council of Co-Owners shall treat the proceeds so paid to it as proceeds from the condemnation of common areas as provided in the Master Deed.

In the event that a decision is made to restore or rebuild the property that has been appropriated and in the event the net appropriation award is insufficient to cover the expenses associated with such restoration or rebuilding the balance shall be paid as provided by the Management Committee.

Article 7. Arbitration.

7.1. If a dispute should arise under this Agreement, or if the Management Committee is unable to reach a majority vote on a matter, the matter shall be submitted to arbitration. Such arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association.

7.2. The parties hereto may agree upon one arbitrator, but in the event they cannot so agree, there shall be three arbitrators, one named by the ASSOCIATION and the other named by the Condominium's Council of Co-Owners and a third to be chosen by the two so named. Should any party refuse or neglect to join in the appointment of the arbitrators, they shall be appointed in accordance with the provisions of Section 12 of the Commercial Arbitration Rules.

7.3. All arbitration hearings conducted hereunder, and all judicial proceedings to enforce any of the provisions hereof, shall take place in Campbell County, Kentucky. The hearing before the arbitrators shall be at the time and place within said county as is selected by the arbitrators. Notice shall be given and the hearing conducted in accordance with the provisions of the Commercial Arbitration Rules. The arbitrators shall hear and determine the matters and shall execute and acknowledge their award in writing and deliver a copy thereof to the Management Committee.

7.4. If there is only one arbitrator, his decision shall be binding and conclusive on the parties. If there are three arbitrators, the decision of any two shall be binding and conclusive. The submission of a matter to the arbitrators and the rendering of their decision shall be a condition precedent to any right of legal action on the matter. A judgment confirming the award of the arbitrators may be rendered by the court having jurisdiction or such court may vacate, modify or correct the award.

7.5. If the arbitrators selected pursuant to Section 7.2 above shall fail to reach an agreement within forty-five (45) days, they shall be discharged, and three new arbitrators shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

7.6. The cost and expenses of arbitration, including the fees of the arbitrators, shall be borne in such proportions as the arbitrators shall determine.

Article 8. Miscellaneous.

8.1. It is expressly agreed that no breach of the provisions 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 any party may have hereunto by reason of any breach of the provisions of this Agreement. The provisions of this Agreement shall be binding upon and effective against any future owners of the real estate described in Exhibits "A", "B" and "C".

8.2. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any roadway or community facility to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns and that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

8.3. Each and all of the covenants contained in this Agreement which meet the criteria as covenants running with the land in the State of Kentucky shall run with the land and are intended to and shall bind each and every person having any fee, leasehold or other interest in the subject real estate as the case may be, at any time and from time to time.

8.4. If any provision of this Agreement, or any portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8.5. This Agreement shall not take effect until it shall have been ratified by the Springhouse Council of Co-Owners, Inc. and a copy of this Agreement noting such ratification shall have been filed with the Campbell County Clerk's records.

8.6. This Agreement shall be construed in accordance with the laws of the State of Kentucky.

8.7. The Article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

8.8. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties by their duly authorized officers, having hereunto set their signature on the day and year first above written.

SPRINGHOUSE HOMEOWNERS ASSOCIATION, INC.

By: Terry P. Sievers Pres
Terry P. Sievers, President

By: Joseph Halpin SEC
Joseph Halpin, Secretary
THE DREES COMPANY

By: Ralph A. Drees
Ralph A. Drees, President

By: Donald R. Misrach
Donald R. Misrach, Secretary

The undersigned hereby ratify and approve this Agreement as of this 21st day of March, 1986.

SPRINGHOUSE COUNCIL OF CO-OWNERS, INC.

By: Terry P. Sievers Pres
Terry P. Sievers, President

By: Joseph Halpin SEC
Joseph Halpin, Secretary
THE DREES COMPANY
(Sole Member of Council and Owner of all units in Condominium)

By: Ralph A. Drees
Ralph A. Drees, President

By: Donald R. Misrach
Donald R. Misrach, Secretary

COMMONWEALTH OF KENTUCKY :
: SS:
COUNTY OF KENTON :

I hereby certify that on the 10th day of March, 1986, before me a Notary Public in and for said County and State aforesaid, personally appeared Terry P. Sievers, President, and Joseph Halpin, Secretary, who executed the foregoing and acknowledged the same to be their act and deed, and the act and deed of Springhouse Homeowners Association, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on the day and year first above written.

Joseph M. Meunik
Notary Public
Kenton County

My Commission Expires:

My Commission Expires
June 11, 1989

COMMONWEALTH OF KENTUCKY :
: SS:
COUNTY OF KENTON :

I hereby certify that on the 10th day of March, 1986, before me a Notary Public in and for said County and State aforesaid, personally appeared Ralph A. Drees, President and Donald R. Misrach, Secretary who executed the foregoing and acknowledged the same to be their act and deed, and the act and deed of The Drees Company.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on the day and year first above written.

Joseph M. Meunik
Notary Public
Kenton County

My Commission Expires:

My Commission Expires
June 11, 1989

COMMONWEALTH OF KENTUCKY :
: SS:
COUNTY OF KENTON :

I hereby certify that on the 21st day of March, 1986, before me a Notary Public in and for said County and State aforesaid, personally appeared Terry P. Sievers, President, and Joseph Halpin, Secretary, who executed the foregoing and acknowledged the same to be their act and deed and the act and deed of Springhouse Council of Co-Owners, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on the day and year first above written.

Joseph M. Meunik
Notary Public
Kenton County

My Commission Expires:

My Commission Expires
June 11, 1989

COMMONWEALTH OF KENTUCKY :
: SS:
COUNTY OF KENTON :

I hereby certify that on the 21st day of March, 1986, before me a Notary Public in and for said County and State aforesaid, personally appeared Ralph A. Drees, President and Donald R. Misrach, Secretary who executed the foregoing and acknowledged the same to be their act and deed, and the act and deed of The Drees Company as sole member of the Springhouse Council of Co-Owners, Inc. and owner of all units in the Springhouse Condominium.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on the day and year first above written.

Donald R. Misrach
Notary Public
Kenton County

My Commission Expires:

**My Commission Expires
June 11, 1989**

COMMONWEALTH OF KENTUCKY :
: SS:
COUNTY OF CAMPBELL :

I, Robert J. Kling, Clerk of the County Court for the aforesaid, do hereby certify that this instrument of writing from Springhouse Homeowners Association, Inc. to The Drees Company was this day presented to me in my office, certified as above, and this day left for record at _____, _____.M.

Whereupon, the same, the foregoing Certificate and this Certificate were duly recorded in my office.

Given my hand this ____ day of _____, 1986.

Robert J. Kling, Clerk

By: _____ D.C.

This instrument prepared by:

ARONOFF, ROSEN & STOCKDALE
Attorneys at Law
1400 First National Bank Center
425 Walnut Street
Cincinnati, Ohio 45202

By: *Irving H. Rosen*
Irving H. Rosen

JAMES H. VIOX, III, P.E.
KY. REG. NO. 6880
KY. LAND SURVEYOR NO. 797

WILLIAM R. VIOX, P.E.
KY. REG. NO. 9209
KY. LAND SURVEYOR NO. 1781

DESCRIPTION

EXHIBIT A

(A 23.07 Acre Tract)

A parcel of land lying on the northwesterly side of Bunning Lane in Cold Spring, Campbell County, Kentucky and being more particularly described as follows:

BEGINNING at a point in the centerline of Bunning Lane, said point also being S 44-10-06 E - 30.53 feet from the most southeasterly corner of Lot 2, Coldstream Subdivision, Section 1, and running thence:

N 44-10-06 W, a distance of 1153.25 feet, to a point, thence
N 50-32-18 E, a distance of 272.49 feet, to a point, thence
N 48-34-20 E, a distance of 240.92 feet, to a point, thence
S 46-11-13 E, a distance of 618.88 feet, to a point, thence
S 46-00 E, a distance of 124 feet, to a point, thence
N 77-52-37 E, a distance of 880.77 feet, to a point, thence
S 40-53 E, a distance of 50 feet, to a point, thence
N 77-52-37 E, a distance of 150 feet, to a point, thence
S 42-14 E, a distance of 172.20 feet, to a point, thence
S 47-46 W, a distance of 150 feet, to a point, thence
S 42-14 E, a distance of 50 feet, to a point, thence
S 47-46 W, a distance of 120 feet, to a point, thence
N 42-14 W, a distance of 49.23 feet, to a point, thence
S 56-00-17 W, a distance of 160.3 feet, to a point, thence
S 80-32-11 W, a distance of 587.70 feet, to a point, thence
S 6-45-21 E, a distance of 265.71 feet, to a point, thence
S 80-51 W, along the centerline of Bunning Lane, a distance of 403.90 feet, to the place of beginning, and containing 23.07 acres more or less.

3/10/86

**VIOX & VIOX, P.S.C.**

CONSULTING ENGINEERS & SURVEYORS

488 ERLANGER ROAD
ERLANGER, KENTUCKY 41018
PHONE: (606) 727 - 3293JAMES H. VIOX, III, P.E.
KY. REG. NO. 6880
KY. LAND SURVEYOR NO. 797WILLIAM R. VIOX, P.E.
KY. REG. NO. 9209
KY. LAND SURVEYOR NO. 1781

DESCRIPTION

EXHIBIT E

(A 25 Foot Access Drive)

A parcel of land lying on the northwesterly side of Bunning Lane in Cold Spring, Campbell County, Kentucky and being more particularly described as follows:

BEGINNING at a point in the northwesterly right-of-way line of Bunning Lane, said point also being S 56-51-52 W - 129.73 feet and S 74-52-43 W - 86.40 feet from the most southeasterly corner of Springhouse Phase A, and running thence:

Northwestwardly, along a curve toward the west, a chord bearing of N 40-13-45 W, a chord distance of 57.69 feet, an arc distance of 59.87 feet, to a point, thence N 67-08-17 W, a distance of 202.85 feet, to a point, thence Northwestwardly, along a curve toward the west, a chord bearing of N 79-22-28 W, a chord distance of 78.43 feet, an arc distance of 79.03 feet, to a point, thence N 5-29-05 W, a distance of 14.27 feet, to a point, thence S 80-32-11 W, a distance of 25.06 feet, to a point, thence S 5-29-05 E, a distance of 12.53 feet, to a point, thence Southwestwardly, a chord bearing of S 80-35-28 W, a chord and arc distance of 0.34 feet, to a point, thence S 80-32-11 W, a distance of 361.54 feet, to a point, thence S 8-45-21 E, a distance of 25.03 feet, to a point, thence N 80-32-11 E, a distance of 362.72 feet, to a point, thence Southeastwardly, along a curve toward the south, a chord bearing of S 83-18-03 E, a chord distance of 89.09 feet, an arc distance of 90.28 feet, to a point, thence S 67-08-17 E, a distance of 202.85 feet, to a point, thence Southeastwardly, along a curve toward the south, a chord bearing of S 39-38-52 E, a chord distance of 35.76 feet, an arc distance of 37.17 feet, to a point, thence N 74-52-43 E, a distance of 25.02 feet, to the place of beginning.

JAMES H. VIOX, III, P.E.
 KY. REG. NO. 6880
 KY. LAND SURVEYOR NO. 797

WILLIAM R. VIOX, P.E.
 KY. REG. NO. 9209
 KY. LAND SURVEYOR NO. 1781

DESCRIPTION

EXHIBIT C

(Community Center Area)

A parcel of land lying on the northwesterly side of Bunning Lane in Cold Spring, Campbell County, Kentucky and being more particularly described as follows:

BEGINNING at a point in the northwesterly right-of-way line of Bunning Lane, said point also being S 56-51-52 W - 129.73 feet and S 74-52-43 W - 111.42 feet from the most southeasterly corner of Springhouse Phase A, and running thence:

S 74-52-43 W, along the northwesterly right-of-way line of Bunning Lane, a distance of 227.76 feet, to a point, thence N 15-07-17 W, a distance of 184.68 feet, to a point, thence Southeastwardly, along a curve toward the south, a chord bearing of S 77-52-47 E, a chord distance of 59.65 feet, an arc distance of 60 feet, to a point, thence S 67-08-17 E, a distance of 202.85 feet, to a point, thence Southeastwardly, along a curve toward the south, a chord bearing of S 39-38-52 E, a chord distance of 35.76 feet, an arc distance of 37.17 feet, to the place of beginning, and containing 0.57 acres more or less.

3/10/86

STATE OF KENTUCKY
 CAMPBELL COUNTY

I, GERALD BENSON, Clerk of the county in and for the county and state aforesaid, do hereby certify that the foregoing instrument of writing was on the 21 day of March, 1986 at 11:28 A.M. lodged in my office for record whereupon the same, the foregoing and this certificate have been duly recorded in my office.

Given under my hand this 21 day of March, 1986.

GERALD BENSON, Clerk
 BY Dobson Schwedler D.C.

Mail:
 The Press Co.
 Env. 211 Grandview Dr.
 East Mitchell, Ky
 41017

JACK SNODGRASS
Campbell County Clerk
Land Records Department
1098 Monmouth Street
Newport, Kentucky 41071

