

APN: 142-181-08
WHEN RECORDED MAIL TO:
Fairways at Fieldcreek Ranch Homeowners Association, Inc.
c/o Leach Kern Gruchow Anderson Song
5421 Kietzke Lane, Suite 200
Reno, NV 89511

DOC #5438923
03/01/2024 03:11:08 PM
Electronic Recording Requested By
LEACH KERN GRUCHOW ANDERSON SO
Washoe County Recorder
Kalie M. Work
Fee: \$43.00 RPTT: \$0
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The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

DRAINAGE EASEMENT MAINTENANCE AGREEMENT

This Drainage Easement Maintenance Agreement (“Agreement”), dated Jun. 24, 2024 (“Effective Date”), by and between Robert M. & Cheryl L. O’Neill (“Owners”) and Fairways at Fieldcreek Ranch Homeowners Association, Inc., a Nevada nonprofit corporation (“Association”), agree as follows.

RECITALS:

A. Owners are the fee simple owners of the land located in Washoe County, Nevada, which is located at 12825 Silver Wolf Road, Reno, Nevada 89511 and is more particularly described as follows and will be referred to in this Agreement as “Property”:

Lot 57, of FIELDCREEK RANCH UNIT 12A, according to the Map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada, on September 21, 2000, under File No. 2484343, and as Tract Map No. 3876.

B. Owners have constructed and maintained a wrought-iron fence along the property line of the Property’s backyard (“Fence”) which the Association has discovered was constructed on the wrong side of a drainage easement (“Drainage Easement”).

C. The Fairways at Fieldcreek Ranch Declaration of Protective Covenants Fieldcreek Unit 12A and 12B provide in pertinent part:

VIII. EASEMENTS. The recording information for easements and licenses appurtenant to the Development is set forth in [] Exhibit "A" [attached to the CC&Rs]. All lands within the Development are subject to the easements shown on the maps of the Development recorded from time to time with the Washoe County Recorder. Said easements constitute irrevocable licenses over each lot or parcel and the common areas and right of ingress and egress to the extent reasonably necessary to exercise such easements and are reserved to the Declarant and its licensees and where applicable, for the benefit of the Association, the Declarant, its successors and assigns. Declarant reserves to itself and its licensees the right to extend any and all utility lines (water, sewer,

electrical, etc.), roads and other improvements. necessary to complete the entire development as may be necessary to the project as a whole, except that the roads shall not be extended beyond the Development, except for fire and emergency roads as required by the County of Washoe, or any other governmental unit. Declarant reserves the right to use easements through the common elements for the purpose of making improvements within the Development or within real estate which may be added to the Development.

D. The Truckee Meadow Water Authority ("TMWA") has also been granted a right to the Association's easement for, among other things, maintenance of a storm drain, detention basin, and public utilities with the right of access thereto.

E. In order to allow the Fence to remain in its current location, Owners and Association desire to enter into this Agreement for the purpose of defining the respective rights and obligations of each of the parties to this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Maintenance of Drainage Easement. For so long as the Fence remains as currently installed, the Owners shall maintain that portion of the Drainage Easement on their Property, at their sole cost and expense, including, without limitation, the removal of all weeds and debris within the Drainage Easement from time to time. The Association will inspect periodically and if additional maintenance or repairs are necessary shall provide notice to the Owners regarding any necessary remedy. The Owners shall have thirty (30) days to perform the needed maintenance or repairs. If additional time is needed, Owners may submit a request for additional time and the request shall not be unreasonably denied.

2. Remedies. If either party asserts that the other party has failed to comply with any obligation under this Agreement, then a notice shall be sent outlining the alleged deficiency and identify the proposed cure. Notice shall be sent to the Owners to the address of record with the Association and to the Association care of its then management company. The parties will work to reach an amicable resolution of any dispute. If they are unable to resolve the matter, the parties shall have all remedies at law or equity in the event of an alleged default by the other under the provisions of this Agreement.

3. Indemnification and Insurance.

3.1 Indemnity. The Owners, as indemnitor, covenants to Indemnify the Association as Indemnitee, with regard to any and all Claims arising from such Indemnitor's maintenance, repair, or restoration of the Drainage Easement arising or resulting from any event or activity occurring with the Drainage Easement provided, however, indemnity under this Section shall not be required where the claim underlying an Indemnitee's request for indemnity is of a type covered by "all-risk" property damage insurance held by the Owner as required below except to the extent the claim is not fully covered or paid by the insurance company. Indemnify shall mean the obligation of the Owner to indemnify, protect, hold harmless and

defend, from and against all loss, claims, actions, liens, proceedings, liability, damages, cost and/or expense (including Indemnitee's reasonable attorney fees) (collectively, a "Claim") resulting from the death or of injury to any person or the physical or economic damage to or loss of any property arising out of the Indemnitor's duties or conduct specified in this Agreement. Such term shall also include the requirement that the Indemnitee give the Indemnitor notice within thirty (30) days of service of any Failure to give such notice shall invalidate the obligation to provide such indemnity. The Owner shall not be obligated to Indemnify the Association if the Claim underlying the Indemnitee's request for Indemnity (a) was caused solely by the negligence or intentional wrongdoing of the Indemnitee without the negligence of the Indemnitor, (b) was caused by such willful intentional or wanton act or omission of the Indemnitee as shall constitute an "occurrence" excluded from coverage under standard comprehensive public liability and property damage insurance policies as they may exist from time to time, or (c) has been released and waived in accordance with the provisions of this Section.

3.2 General Liability Insurance. Throughout the term of this Agreement, Owners shall maintain, or cause to be maintained, in full force and effect with a financially responsible insurance company or companies, comprehensive general liability (including public liability and property damage) insurance covering occurrences, accidents and incidents on the Property that (a) occur during the term of this Agreement (regardless of when the claim is filed), and (b) result in bodily injury, personal injury or death to any person and/or damage or destruction of property.

3.3 Property Insurance. Owners shall maintain an all-risk property damage insurance policy with a financially responsible insurance company on the Property for the full replacement cost of the Drainage Easement including costs of demolition in the event of casualty.

3.4 Blanket Insurance. The Owners may provide the insurance described above in whole or in part through a policy or policies covering other liabilities and covering other locations.

3.5 Mutual Release; Waiver of Subrogation. Each party hereby releases and waives for itself, and to the extent legally possibly for it to do so, on behalf of its insurer, the other party and its respective officers, directors, agents, members, partners, servants and employees from liability for any loss or damage to any or all property located at the Drainage Easement or the Property, which loss or damage covered by "all-risk" property damage insurance required to be maintained under this Section irrespective of any negligence on the part of the Association which may have contributed to or caused such loss or damage.

4. Amendment. This Agreement may be amended by mutual written agreement of the parties to this Agreement, which amendment must be recorded to be effective.

5. Nature of Covenants. The provisions of this Agreement shall be deemed to run with the Property as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to the parties and their assigns, and to all persons

hereafter acquiring or owning any interest in the property; however such interest may be obtained.

6. Termination of Agreement. In the event the Owners wish to remove the Fence and re-install the Fence on the correct side of the Drainage Easement, Owners shall submit an application for review by the Architectural Committee in accordance with the governing documents. Upon written approval by the Architectural Committee, the Fence may be relocated by the Owners and then this Agreement shall terminate and the Owners shall have no obligation for maintenance of the Drainage Easement.

7. General.

7.1 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

7.2 Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision herein contained.

7.3 Attorneys' Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the terms "attorneys' fees" or "costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photocopying, duplicating and other expenses and expert witness fees. The terms "attorneys' fees" or "costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

7.4 Construction. Headings at the beginning of each Section and subsection are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached hereto and incorporated herein by this reference.

7.5 Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of Nevada. The parties hereto expressly agree that

this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Nevada and venue for any action arising from this Agreement must be in Washoe County, Nevada.

7.6 Entire Agreement. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, cancelled or terminated, nor may any obligations hereunder be waived except by written instrument signed by the party to be charged or by its agent duly authorized in writing or any otherwise expressly permitted herein.

7.7 Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purposes whatsoever, and this Agreement shall be strictly construed to and for the purposes expressly stated herein.

7.8 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested to the address shown below, or sent by electronic facsimile and shall be deemed received upon the earlier of: (a) if personally delivered, the date of delivery to the address of the person to receive such notice or (b) if mailed, on the date of posting by the United States Post Office.

To Owner: Robert M. and Cheryl L. O'Neill
14700 Chartreuse Court
Reno, NV 89511

To Association: Fairways at Fieldcreek Ranch Homeowners Association, Inc.
c/o Its Management Company

With a copy to: Leach Kern Gruchow Anderson Song
5421 Kietzke Lane, Suite 200
Reno, NV 89511

Notice of change of address or notice of the address of a successor or assign of the Owners shall be given by written notice in the manner described in this Section, above.

7.9 Time. Time is of the essence in the performance of all obligations of this Agreement.

7.10 Interpretation. The parties hereby acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently. The parties have equal bargaining power and provisions hereof shall be given their plain meaning. In the event of any ambiguity or dispute regarding the interpretation of this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist, or against the drafter.

7.11 Third Party Beneficiary Rights. The provisions of this Agreement are not intended to create, nor shall it in any way be interpreted or construed to create any third party beneficiary rights in any person not a party hereto.

7.12 Successors and Assigns. This Agreement shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

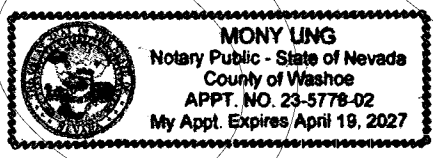
By [Signature]
Robert M. O'Neill

By [Signature]
Cheryl L. O'Neill

STATE OF NEVADA)
)
COUNTY OF WASHOE)

On this 5th day of Jan., 2024, there personally appeared before me, a Notary Public, Robert M. O'Neill, personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that s/he executed the instrument.

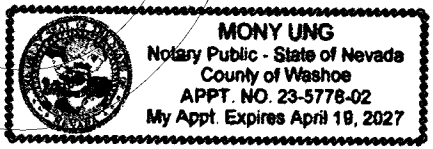
[Signature]
NOTARY PUBLIC



STATE OF NEVADA)
)
COUNTY OF WASHOE)

On this 5th day of Jan, 2024, there personally appeared before me, a Notary Public, Cheryl L. O'Neill, personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that s/he executed the instrument.

[Signature]
NOTARY PUBLIC



LOOSE SIGNATURES AND NOTARY ON NEXT PAGE

FAIRWAYS AT FIELDCREEK RANCH HOMEOWNERS ASSOCIATION, INC.,

By: *Norman F. Kelly*
Norman F. Kelly
Its: PRESIDENT

STATE OF NEVADA)
)
COUNTY OF WASHOE)

On this 22 day of January, 2023, there personally appeared before me, a Notary Public, Norman F. Kelly, personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that s/he executed the instrument.

Sylvia Baldemor
NOTARY PUBLIC

