

AFTER RECORDING RETURN TO:
Karna R. Gustafson
Landye Bennett Blumstein LLP
1300 SW Fifth Avenue, Suite 3600
Portland, OR 97201



EASEMENT AND MAINTENANCE AGREEMENT

THIS EASEMENT AND MAINTENANCE AGREEMENT (“EMA”) is entered into as of _____, 2020.

RECITALS

Tanager Development, LLC is the developer of that certain project commonly known as “Tanager Community.” KC Development Group LLC (“KCDG”) is the owner of certain real property described on Exhibit A-1. Carlton and Lynda Cadwell (“CL Cadwell”) are the owners of certain real property described on Exhibit A-2. The Cadwell Family Trust (“Trust”) is the owner of certain real property described on Exhibit A-3. Eric and Brianna Cadwell (“EB Cadwell”) are the owners of certain real property described on Exhibit A-4. Tanager Development, LLC (“TDLLC”) is the owner of certain real property described on Exhibit A-5. The real property described on Exhibits A-1, A-2, A-3, A-4 and A-5 are graphically depicted on the map attached hereto as Exhibit C. The Parties to the EMA are KCDG, CL Cadwell, the Trust, EB Cadwell, and TDLLC, hereinafter sometimes referred to individually as a “Party” and collectively as “Parties.”

The Tanager Planned Development is 10 lots and Tract A (open space) described on the plat recorded in the Deschutes County, Oregon deed records on _____[DATE] as Document number _____. Tanager Homeowners’ Association (“HOA”) is the owners’ association for Tanager Planned Development. The Tanager Community includes Tanager Planned Development as well as the additional property described on Exhibit A-1, A-2, A-3, A-4 and A-5.

There are portions of land and improvements in Tanager Community, including roads, parking lots, landscaping, open space, boathouses, a recreation-oriented facility, an entrance monument, community water system, wells, and irrigation and potable water lines that are currently owned by KCDG or the Trust, but which benefit the entire development within the Tanager Community. Certain real property owned by the Parties and benefitted by this EMA will eventually be conveyed to third parties who will become Parties to this EMA. The Parties have agreed to share the costs of maintaining and operating such improvements in exchange for an easement from KCDG and the Trust granting permanent non-exclusive use of such improvements.

The Parties have determined that an Administrator shall carry out the terms of this EMA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Easements.

1.1 Grant of Easements. KCDG and the Trust declare and grant a perpetual, nonexclusive easement (“Easement”) over and across certain real property described on the attached Exhibit B (“Easement Area”) which shall be the burdened property. The benefited real property includes Tanager Planned Development and the additional real property described on the attached Exhibits A-1, A-2, A-3, A-4 and A-5. Each of the benefited lots or parcels of land described herein is hereinafter referred to as a “Parcel.” Any legal parcel resulting from the partition or subdivision of any Parcel shall also constitute a Parcel hereunder. To the extent that such Party controls any portion of the Easement Area, each of the Parties hereby grants to each of the other Parties, for the benefit of their respective Permitted Users, a nonexclusive, perpetual, reciprocal easement over, across, and upon such Easement Area, for the purposes, and subject to the limitations and permitted uses set forth herein.

The Administrator and its duly authorized agents and representatives shall have easements over the entirety of Tanager Community as are necessary to perform its duties hereunder and to construct and perform maintenance and repairs on the community water and irrigation systems and facilities.

1.2 Administrator. The Administrator will have all the rights and obligations to operate, administer, monitor and enforce the terms of this EMA and to adopt policies and procedures implementing said EMA. The Administrator shall have the power to assess the Parties and Parcels for the expenses thereof and the power to fine any Party in violation of this EMA and/or any rules adopted hereunder. The Administrator may charge a fee for the performance of these services which shall be assessed to the Parties in accordance with the allocation set forth in Section 2.3 herein. The initial Administrator shall be KCDG. KCDG, during the time it is designated as the Administrator, may hire an individual or company to perform the duties of the Administrator. Upon the earlier of twenty-five years from the date this EMA is recorded or at such earlier time as KCDG elects in writing to terminate its position as Administrator, the Parties hereto by a majority vote may hire a company or an individual to act as Administrator. Thereafter, the Administrator may be removed and replaced with a majority vote of the Parties in favor. Provided, however, at anytime prior to such termination of KCDG as the Administrator, the Parties hereto may remove and replace KCDG as the Administrator with an eighty percent (80%) vote in favor.

1.3 Uses.

1.3.1 The scope of the benefits of the Easement includes the right of the members (including families and invitees), agents and employees of each of the Parties (collectively, the “Permitted Users”) to use the Easement Area as described herein.

1.3.2 The portions that are improved as roads may be used for purposes of providing vehicular, pedestrian and bicycle access through Tanager Community to and from the various amenities and components at Tanager Community.

1.3.3 The portions that are improved as bicycle and pedestrian trails may be used for bicycle and pedestrian access;

1.3.4 The portions that are improved as parking lot(s) or otherwise designated for parking may be used for parking purposes. The Administrator may adopt and enforce parking rules for such area.

1.3.5 The portion that is improved with a boat house may be used for such purpose. Provided, however, the Administrator may charge storage fees for the use of the boat house.

1.3.6 The portion of the real property Easement Area improved with the community water and irrigation system shall be used for that purpose, including but not limited to, construction, repair and maintenance of such system. Each Parcel subject to this EMA shall only irrigate according to the irrigation rights appurtenant to said Parcel according to the TID maps. The Administrator shall control the timing and length of irrigation.

1.3.7 The portions of the Easement Area that are improved as recreation-oriented facilities shall be used for passive recreation purposes. Provided however, the south pond may also be used for motorized boating.

1.3.8 KCDG may use the Easement Area for the installation, maintenance, repair and replacement of utility facilities, and may grant utility company easements over the Easement Area. KCDG's rights under this section shall expire when it no longer owns property in Tanager Community.

1.3.9 The use of the Easement Area shall remain subject to such reasonable rules and regulations as the Administrator may promulgate from time to time; provided, however, no rules and regulations or amendments thereto, shall be effective until thirty (30) days after the same have been distributed to the Parties in accordance with Section 6.12 below.

1.4 Restrictions. Each of the Parties shall assure that their respective Permitted Users' use of the Easement shall remain subject to the rights of the owner(s) of the Easement Area and that such use shall not unreasonably interfere with the use of the Easement by the other Permitted Users. As a condition of using the Easement Area, each Permitted User shall not: (i) place any barrier or similar item on the Easement Area; (ii) park vehicles on the roads, unless such parking is expressly permitted; (iii) permit or cause the discharge into or onto the Easement Area of any hazardous material, hazardous substance, hazardous waste, oil, petroleum product, or other contaminant; or (iv) block access to or view of the recreation-oriented facilities.

1.5 Wildfire Mitigation Plan and Wildlife Habitat Management Plan.

1.5.1 The Tanager Community is subject to a Wildfire Mitigation Plan. There are provisions therein relating to the construction of the homes, defensible space of the homes, reduction of ladder fuels, and mowing. All Parties shall adhere to the terms of the Wildfire Mitigation Plan. The Administrator shall be responsible for compliance in the Easement Area. Costs associated with compliance with respect to the Easement Area and enforcement of the plan shall be assessed to the Parties in accordance with the allocations set forth in Section 2.3.

1.5.2 The Tanager Community is subject to a Wildlife Habitat Management Plan which includes the preservation, protection and enhancement of wildlife habitat. The Administrator shall implement the wildlife conservation measures and be responsible for monitoring and enforcing adherence with these measures. The Administrator may hire a professional biologist to conduct an audit of the compliance with the Wildlife Habitat Management Plan. The Administrator is required to meet Deschutes County Code and abide by the land use decision relating to Tanager. Costs of implementing, monitoring and enforcing this plan and hiring of the biologist shall be assessed to the Parties in accordance with the allocations set forth in Section 2.3.

2. Operation, Maintenance, Repair, and Replacement.

2.1 Obligation for Operation, Maintenance, Repair and Replacement. The Administrator shall be responsible for operating, maintaining, repairing and replacing all improvements within the Easement Area and assessing the Parties for the costs thereof pursuant to Section 2.3. The Administrator shall maintain, repair and replace those portions of the community water and irrigation system which are not maintained, repaired and replaced by a third party. The costs for the operation, maintenance, repair and replacement of the community water and irrigation system shall be assessed to the Parties and allocated pursuant to Section 2.3. The Administrator shall maintain all improvements in good condition and repair, including, without limitation, snow removal from roads in the Easement Area. The Administrator may adopt policies concerning the procedure, process and timing of snow removal.

2.2 Costs and Assessment. The Parties shall share responsibility for the costs of the repairs, maintenance, replacement and operations (including reasonable reserves) described in Section 2.1 based upon the allocation described in Section 2.3. The obligation to pay shall be a personal obligation of each Party as well as a lien against each Parcel to the extent such assessment is unpaid. The Administrator may record a claim of lien in the official deed records of Deschutes County, Oregon. The Parties recognize that current ownership of the property within Tanager Community is likely to change and in addition, the development within Tanager Community is likely to change over time. The Parties hereby covenant on behalf of themselves and their successors and assigns to pay such share of costs under this EMA as may be allocated to them by the Administrator from time to time in accordance with the terms of Section 2.3.

2.3 Cost Allocation Formula. The cost shall be divided equally among all the Parcels subject to this EMA. The Parties acknowledge that the percentage of the total they are

responsible for may change over time as real property subject to this EMA is conveyed, added, subdivided, partitioned or developed and as Parcel boundaries change and/or new Parcels are created.

Notwithstanding the allocation set forth herein, any cost directly benefiting or caused by only one or more Party may be allocated exclusively to that Party or Parties.

2.4 Payment of Proportionate Share of Maintenance Cost. At least annually, the Administrator shall provide each Party with a good faith estimate of the operating expenses projected to be incurred and reserved in connection with the obligations to be performed under Section 2.1. The Administrator shall use reasonable efforts to provide such estimate for each calendar year by the preceding December 1. The Administrator shall bill each Party in advance for its share of such costs, at the Administrator's election, either monthly or quarterly. Each Party shall pay its share of such costs to the Administrator within thirty (30) days of receipt of a bill for the same.

2.5 Damage by One Party's Permitted User(s). Notwithstanding anything to the contrary in Sections 2.1 through 2.3, if damage to the Easement Area beyond ordinary wear and tear is directly attributable to a Party or that Party's Permitted User(s), then that Party shall, at the Administrator's option, either (i) repair such damage as soon as reasonably practicable, but in no event later than thirty (30) days after the date the damage occurred, at such Party's sole expense and without a right of reimbursement; or (ii) reimburse the Administrator for the cost of such repair within thirty (30) days of written request for the same.

2.6 Interest on Delinquent Payment of Allocated Cost. In the event a Party fails to timely pay any amounts due hereunder, within fifteen (15) days after written demand for payment, the amount not paid shall bear interest at the rate of twelve percent (12%) per annum (or the highest rate permitted under applicable law, if lower) from the date of such written demand.

3. Easement Area Modifications; Additional Beneficiaries.

3.1 Additional Easement Area and/or Beneficiary. Subject to applicable land use approval from Deschutes County, within twenty-five (25) years from the date this EMA is recorded, KCDG shall have the right to unilaterally amend this EMA one or more times to add additional real property and/or improvement to the Easement Area and/or to add additional property as a beneficiary of the Easement granted hereunder; provided, however, KCDG shall bear all costs and expenses related to the initial development of improvements on any portion of the Easement Area. If KCDG elects to so amend this EMA one or more times, it shall do so in each case by executing and recording a written instrument in the official deed records of Deschutes County, Oregon. Such amendment shall not require signature or consent of any of the other Parties hereto. Upon the addition of additional real property and/or improvements to the Easement Area, such real property and improvements shall immediately become subject to all the terms and conditions hereof. Upon the addition of any property as a beneficiary of the Easement, the owner of such property shall be subject to assessment for its share of costs hereunder and KCDG shall reallocate costs in accordance with Section 2.3.

3.2 Right to Relocate Easement Area. KCDG or the Administrator shall have the right at any time, and as many times as it deems necessary, to amend and/or relocate the easements granted under this EMA to another location on the property owned by the KCDG or another Party that consents in writing. Such Party shall record an addendum to this EMA that describes the new Easement Area and/or the property removed from the Easement Area. Such addendum shall not require the consent or signature of the other Parties hereto. Upon recordation of such addendum, the Easement shall terminate with respect to the property no longer described as being within the Easement Area.

4. Partition or Subdivision of a Parcel; Successor Party. Any legal parcel resulting from the partition or subdivision of any Parcel shall also constitute a Parcel hereunder. This EMA and the Easement shall run with the land as to the Parcel(s) benefited and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this EMA shall bind, burden, and benefit the Parties and their respective successors, assigns, lessees, mortgagees, and beneficiaries under any deeds of trust with respect to all Parcels. To the extent a Party hereunder sells or assigns any portion, such selling or assigning Party shall thereafter have no further rights or obligations hereunder with respect to such Parcel except to the extent the same arises prior to the date of sale or assignment.

5. Creation of Master Association. The Parties hereto may form a Master Association for the purpose of administering this EMA and any other matters delegated to it by the Parties. The Administrator may assign its rights and obligations under this EMA to the Master Association pursuant to Section 6.9 herein. Once said rights and obligations are assigned to the Master Association, the Administrator shall have no further obligation or rights hereunder except to the extent the same arose prior to the date of the assignment and except as a Party hereto. Further, the Administrator may not rescind or withdraw such assignment without the approval of the majority of the Parties hereto. The Master Association shall then have all the rights and obligations as the Administrator hereunder, including the authority and power to assess the Parties for the costs outlined in Sections 2.1 through 2.6 hereof. The assessments hereunder shall be a personal obligation of such Party and a lien against the Parcel. The Master Association will have the right to its attorneys' fees set forth in Section 6.8 hereof.

6. General Provisions.

6.1 Voting. Parties shall be entitled to one (1) vote for each Parcel owned with respect to all matters upon which Parties are entitled to vote.

6.2 Termination of Easement. This EMA or the Easement may be terminated only by a written instrument signed by all the Parties hereto and duly recorded in the official deed records of Deschutes County, Oregon.

6.3 Easements to Run with Land; Binding Effect. This EMA and the Easement shall run with the land as to the Parcel(s) benefited and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this EMA shall bind, burden, and benefit the Parties and their respective successors, assigns, lessees, mortgagees, and beneficiaries under any deeds of trust with respect to all Parcels. To the extent a Party hereunder sells or assigns any portion of a Parcel, such selling or assigning Party

shall thereafter have no further rights or obligations hereunder with respect to such Parcel except to the extent the same arises prior to the date of sale or assignment.

6.4 Conformance with Governmental Requirements. All uses of the Easement Area shall be in conformance with governmental requirements.

6.5 Condemnation. In the event that all or any part of the Easement Area is taken by condemnation or power of eminent domain, or is conveyed under bona fide threat of condemnation, and such taking renders the applicable Easement Area unusable for its intended uses, then this EMA shall terminate as to the part of the Easement Area taken, conveyed or rendered unusable. If such taking does not render all of the Easement Area unusable, the obligations of the Parties shall abate to the extent of the taking, but this EMA shall otherwise remain in full force and effect. Proceeds from any condemnation shall belong exclusively to the Administrator.

6.6 Recording. This EMA shall be recorded in the official records of Deschutes County, Oregon.

6.7 Waiver. Failure of a Party hereunder at any time to require performance of any provision of this EMA shall not limit that Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this EMA constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

6.8 Attorneys' Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this EMA or to interpret or enforce any rights hereunder, the prevailing Party shall be entitled to recover its attorneys', paralegals', accountants', and other experts' fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

6.9 Assignment. The Administrator shall have the right to assign its maintenance, operations, rights and related obligations under this EMA to any third party of its choosing; provided, however, such assignee agrees in writing to assume such obligations. From and after the date of such assignment, the Administrator shall have no further obligations hereunder except as a Party hereunder and to the extent the obligation arose prior to the date of such assignment.

6.10 Amendment. Except as otherwise specifically provided herein, this EMA may not be modified or amended except by a majority vote of the Parties in favor.

6.11 Governing Law. This EMA shall be governed by and construed in accordance with the laws of the state of Oregon.

6.12 Notices. All notices and other communications to a Party provided for herein shall be in writing and shall be sent with postage or delivery charges prepaid (a) to the physical address of such Party (or such other address as such Party may hereafter designate by notice to the other Parties), or (b) by facsimile to the last known facsimile number of the Party

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By: _____
Eric Cadwell, Manager

On this ____ day of _____, 2020, personally appeared before me the above-named Eric Cadwell, as the Manager of KC Development Group, LLC, an Oregon limited liability company, and that said instrument was signed in behalf of said company by authority of its members; and acknowledged said instrument to be its voluntary act and deed.

THE CADWELL FAMILY TRUST

STATE OF OREGON)
) ss.
County of _____)

Notary Public for Oregon

STATE OF OREGON)
) ss.
County of _____)

Notary Public for Oregon

Notary Public for Oregon

Notary Public for Oregon

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Notary Public for Oregon

EXHIBIT A-1
KCDG Property

EXHIBIT A-2
Carlton and Lynda Property

Exhibit A-3
Cadwell Family Trust Property

Exhibit A-4
Eric and Brianna Cadwell Property

Exhibit A-5
Tanager Development, LLC Property

EXHIBIT B
Easement Area

EXHIBIT C

Map of Entire Project