DOC #: 609332
01/15/2020 04:43 PM Page: 1 of 9
OFFICIAL RECORD
Requested By:
LKG LTD
Lyon County, NV
Margie Kassebaum, Recorder
Fee: $40.00 RPTT: $0.00
Recorded By: jtowne

APN: 016-361-70 (Dayton Valley Golf Course)

RPTT: $0.00

Recording Requested By and
When Recorded Return to:

Dayton Valley Community Association, Inc.,
c/o LEACH KERN GRUCHOW, et. al.
5421 Kietzke Lane, Ste. 200
Reno, NV 89511

I, the undersigned herby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons per NRS 239B.030

(space above for Recorder's use only)

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LANDSCAPE MAINTENANCE EASEMENT AGREEMENT

This Landscape Maintenance Easement Agreement ("Agreement"), dated for reference purposes only as of December 19, 2019, is entered into by and between DAYTON VALLEY GOLF COURSE, LLC, a Nevada limited liability company ("Owner") and DAYTON VALLEY COMMUNITY ASSOCIATION, INC., a Nevada nonprofit corporation ("Association"), with reference to the following facts and circumstances and upon the terms and conditions set forth herein. This Agreement shall become effective upon recording of the same in the Official Records of Lyon County, Nevada ("Effective Date").

RECITALS:

A. Owner is the fee simple owner of the land located in Lyon County, Nevada, depicted on the site map ("Map") attached hereto as **Exhibit "A",** which is commonly referred to as the Dayton Valley Golf Course, with a common address of 101 Palmer Drive, Dayton, Nevada ("Golf Course Property").

B. The Association desires to obtain a landscaping maintenance easement over portions of the Golf Course Property for the purposes of maintaining, but not the obligation to maintain, portions of the Golf Course Property in the areas highlighted on **Exhibit "A"** ("Landscape Easement Area(s)"). A textual description of the Landscape Easement Areas is part of Exhibit "A".

C. Owner and Association desire to enter into this Agreement for the purposes of defining the respective rights and obligations of each of the parties with respect to the Landscape Easement Area.

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

Easement Areas are part of Exhibit "A". Only the Landscape Maintenance Areas are burdened by the easement granted herein, All other portions of the Dayton Valley Golf Course are not subject to the easement granted herein.

C. Owner and Association desire to enter into this Agreement for the purposes of defining the respective rights and obligations of each of the parties with respect to the Landscape Easement Areas.

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

1. Grant of Easement. Owner hereby grants to Association a non-exclusive easement over, under and across the Landscape Easement Areas for the purpose of removing weeds, debris, trash and maintaining or replacing any landscaping within the Landscape Easement Areas, to the extent the Landscape Easement Areas are not maintained by Owner either now or in the future. Such activities are collectively referred to as "Maintenance Activities" herein. The Association shall have the right to enter upon any of the Landscape Easement Areas for the purposes of performing any Maintenance Activity, in its sole and absolute discretion, but not the obligation to do so. The Association shall not conduct Maintenance Activities or do or perform any act on or about a Landscape Easement Areas which would in any way interfere with or obstruct, as determined by Owner in its sole and absolute discretion, Owner's use or ownership of a Landscape Easement Areas or the use, operation or ownership of the Dayton Valley Golf Course. The Association acknowledges and agrees that Owner shall have the right, in its sole and absolute discretion, to construct or relocate improvements on any Landscape Easement Area during the term hereof.

2. Cost of Maintenance Activities. The Association shall conduct any Maintenance Activity within Landscape Easement Areas, at its sole cost and expense, including (except for acts of nature) the replacement of dead, substantially damaged or unsightly plants or vegetation within the Landscape Easement Areas and the removal of all weeds.

2.1 Acts of Nature. Owner will be solely responsible for the replacement costs of all dead, damaged, or unsightly plants planted by Owner within Landscape Easement Areas should replacement of the same be necessitated by acts of nature, such as lightning, flooding or extreme freeze conditions.

3. Maintenance and Repair Criteria. During the term of this Agreement, the Association may, but is not obligated to, maintain, repair and replace grass, flowers, shrubs, and trees, and cut and dispose of weeds and natural vegetation within any or all Landscape Easement Areas. The Association shall have no obligation or responsibility for additional improvements belonging to Owner within the Landscape Easement Areas. All work performed by the Association shall be completed in a first-class manner consistent with the

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Owner's and the Association's intent to maintain the first-class appearance of properties within the Dayton Valley Community Association and the Dayton Valley Golf Course. The Association may employ or contract with professional landscaping personnel or businesses ("Contractors") to perform any Maintenance Activity including but not limited to any maintenance, repair, replacement, removal or clean-up work. The Association shall perform any Maintenance Activity within usual business hours and at such frequency as it determines to be necessary, in its sole and absolute discretion. Prior to each instance of performing Maintenance Activity, Association or its Contractors shall provide Owner's maintenance supervisor notice of the work to be performed, in order to coordinate Dayton Valley Golf Course maintenance work with Maintenance Activity.

4. Liability Insurance. The Association shall ensure that all Contractors have liability and workman's compensation insurance and Association's liability insurance covers Owner for claims arising from Association's use of the easement granted herein, including naming Owner as an additional insured on its liability insurance policy.

5. Irrigation. Subject to Owner's discretion to relocate or remove landscaping, Owner is responsible to provide sufficient irrigation to support existing landscaping within Landscape Easement Areas, if any, to include maintenance and repair of irrigation lines, replacement of any landscaping due to acts of nature or due to no fault of the Association.

6. Limitation on Use of Landscape Easement Areas by Others. Use of all Landscape Easement Areas shall be limited to the purposes set forth in this Agreement. In general, the Landscape Easement Areas are not a playable part of the Dayton Valley Golf Course and consist in large part of rocky areas adjacent to streets.

7. Duration. This Landscape Easement Agreement shall continue for a term of one year and shall be extended for successive one-year terms unless either party serves written notice of its intent to terminate this Agreement. The Association may terminate this Agreement as to any or all Landscape Easement Areas at any time without cause and without liability to Owner by serving thirty (30) days prior written notice to Owner. Owner may terminate this Agreement for cause as to any or all Landscape Easement Areas by serving thirty (30) days prior written notice to the Association. Termination for cause shall mean that the Association shall have performed a Maintenance Activity in such a manner as to interfere with Owner's use of Landscape Easement Areas, Owner's maintenance of any improvements located thereon, or the use, operation or ownership of the Dayton Valley Golf Course. Owner may terminate this Agreement for cause upon delivery of the notice pursuant to Subsection 9.9 hereof.

8. Amendment. This Agreement may be amended by mutual written agreement of the parties to this Agreement.

9. General.

9.1 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.

9.2 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.

9.3 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.

9.4 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. 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.

9.5 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 Lyon County, Nevada.

9.6 Days of Week. If any date for performance herein falls on a Saturday, Sunday or federal holiday, the time for such performance shall be extended to 5:00 p.m. on the next business day.

9.7 Entire Agreement. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof

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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 as otherwise expressly permitted herein.

9.8 Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Landscape Easement Area 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.

9.9 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 or email 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; (b) if mailed, on the date of posting by the United States Post Office; or (c) if given by electronic facsimile or email, when received by the other party.

To Owner:
Dayton Valley Golf Course, LLC.
c/o Thomas P. Duncan, Manager
101 Palmer Dr.
Dayton, NV 89403
Email: tduncan49@me.com

With a Copy to:
Jim Kepler, General Manager
Dayton Valley Golf Course
101 Palmer Dr.
Dayton, NV 89403
Email: jimkepler@dgmgolf.net

To Association:
Dayton Valley Community Association, Inc.
c/o Camco Homeowners Association Management
Attn: Katie Miller
704 W. Nye Lane, Ste 101
Carson City, NV 89703
Email: katie.miller@camconevada.com

With a Copy to:
Gayle A. Kern, Esq.
Leach Kern Gruchow Anderson Song
5421 Kietzke Lane, Suite 200
Reno, NV 89511
Email: gkern@lkglawfirm.com

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Notice of change of address shall be given by written notice in the manner described in this Section, above.

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

9.11 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.

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

9.13 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.

DAYTON VALLEY GOLF COURSE LLC, a Nevada limited liability company

By: _____
Thomas P. Duncan, its Manager

DAYTON VALLEY COMMUNITY ASSOCIATION, INC., a Nevada nonprofit corporation

By: _____
Dennis Drury, its President

By: Eugene Coulis
_____, its Secretary

[LOOSE NOTARIES ON FOLLOWING PAGE]

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This instrument was acknowledged before me on November 25, 2019, by THOMAS P. DUNCAN, Manager of the Dayton Valley Golf Course, LLC.

TINA FORD
Notary Public-State of Nevada
APPT. NO. 02-76393-2
My Appt. Expires 06-08-2022

Tina Ford
NOTARY PUBLIC

STATE OF NEVADA)
) ss.
COUNTY OF Carson)

This instrument was acknowledged before me on December 19, 2019, by DENNIS DRURY, President of the Board of Directors of Dayton Valley Community Association, Inc.

LARA R. GARRELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 05-99561-2 - Expires September 05, 2021

Lara
NOTARY PUBLIC

STATE OF NEVADA)
) ss.
COUNTY OF Carson)

This instrument was acknowledged before me on December 19, 2019, by Eugene Cowles, Secretary of the Board of Directors of Dayton Valley Community Association, Inc.

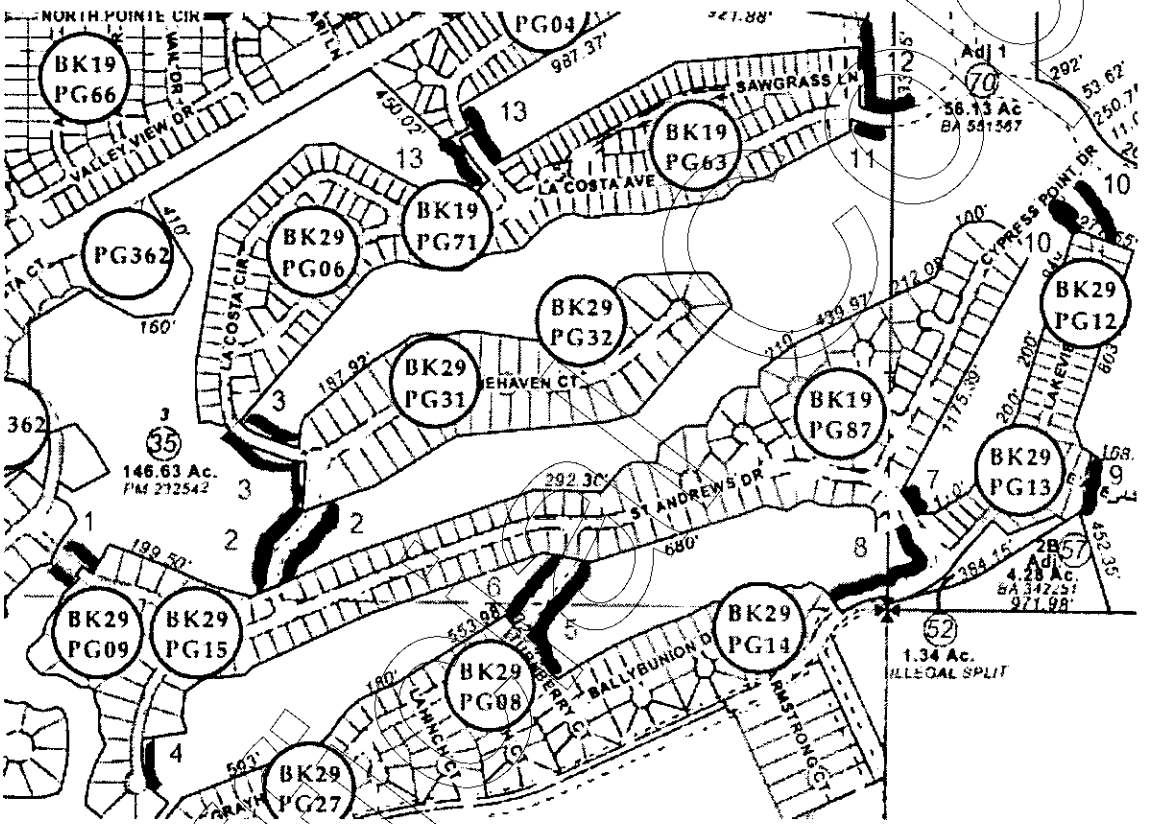
LARA R. GARRELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 05-99561-2 - Expires September 05, 2021

Lara
NOTARY PUBLIC

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Exhibit "A" to Landscape Easement Agreement

Site Map of Golf Course Property
With Landscape Easement Areas Highlighted.



[Textual Descriptions of Landscape Easement Areas contained on following page.]

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1. On both sides of St Andrews Dr near the intersection of Bayhill Circle where the pond on one side and the cart path on the other side cause small un-buildable lots. The nearest home is 401 Kingsbarn Ct.

2. The rocky areas along Stonehaven Court from the intersection with St Andrews Dr to the first traffic circle.

3. The rocky areas along the fire access road between La Costa and the first traffic circle on Stonehaven Court.

4. The rocky area between the golf course at the 13th green and Carnoustie Court adjacent to 214 Carnoustie Court.

5. The rocky area along Gray Hawk Drive behind the 11th green and around the corner at Gray Hawk Drive and Turnberry Court along Turnberry Court. This rocky area begins at the rear of 639 St Andrews Dr and ends at the rear of 800 Ballybunion Drive.

6. The rocky area along Gray Hawk Drive before the 12th tee which begins at the rear of 643 St Andrews Dr and ends at the mailboxes at the intersection of Gray Hawk Drive with Turnberry Court. This area is across the street from area 5 above.

7. The rocky areas between the golf course and St Andrews Dr between Cypress Point Drive and Lakeview Drive.

8. The large area along Lakeview Drive adjacent to the 11th tee that runs from the intersection of St Andrews Dr and Lakeview Drive to the rear of the homes on Ballybunion Drive.

9. The un-buildable lots at the end of Moore Ave on both sides are to be kept clear for a maximum of 10 feet from existing fences to provide a firebreak.

10. The large rocky areas on both sides of Lakeview Drive at the intersection with Cypress Point Drive.

11. The rocky area along Palmer Drive adjacent to the mailbox location next to 201 La Costa Ave at the intersection of Palmer Drive and La Costa Ave and Royal Troon Drive.

12. The area with evergreens along Palmer Drive and Royal Troon Drive behind the 2nd green at the intersection of Palmer Drive, La Costa Ave and Royal Troon Drive.

13. The rocky areas on both sides of Royal Troon Drive behind the #3 green and adjacent to 342 Royal Troon Drive.

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