

GINA JIMENEZ
RECORDER 2021-043566
STATE OF INDIANA
LAKE COUNTY 9:03 AM 2021 Jun 21
FILED FOR RECORD

COMMON FACILITIES USE AGREEMENT

This Common Facilities Agreement (hereinafter referred to as the "Agreement") is made this July 10, 2021 day of FRANCISZEK GAL and ANNA GAL and EDWARD GAL and BOZENA GAL (hereinafter collectively called "GAL") and JOSE LUIS JIMENEZ ("Jimenez").

WITNESSETH:

WHEREAS, Jimenez is the owner of certain real property and all improvements located thereon in Lake County, Indiana, as more specifically identified on the attached Exhibit A which is incorporated herein by reference with a common address of 4715 Hohman Avenue, Portage, Indiana 45-02-25-452-002.000-023 (the "North Property"); and

WHEREAS GAL is the owner of certain real property and all improvements located thereon in Lake County, Indiana, as more specifically identified on the attached Exhibit B which is incorporated herein by reference with a common address of 4723 Hohman Avenue, Hammond, Indiana 45-02-25-452-003.000-023 (the "South Property") (collectively, the real estate described in Exhibits A and B are hereinafter referred to as the "Real Estate"); and

WHEREAS, the Real Estate is made up of two buildings, separated by a common party wall (each a "Unit" and the owner(s) from time to time of which shall hereinafter be referred to as "Unit Owner(s)"); and

WHEREAS, the parties hereto desire to establish reciprocal rights and responsibilities of the Unit Owners respecting maintenance, repair and replacement of the party wall, building structure used by or benefiting all Units, in common (collectively "Common Facilities"); and

NOW, THEREFORE, for and in consideration of the premises, covenants and restrictions contained herein the parties hereby enter into this Agreement.

1. Benefited Property and Parties. The owner of the North Property agrees to the terms of this Agreement for the benefit of the owner of the South Property, and the owner of the South Property agrees to the terms of this Agreement for the benefit of the owner of the North Property. The terms and conditions of this Agreement will be binding on all successors, heirs and assigns of the Unit Owners of the Real Estate and will run with the Real Estate.

2. Maintenance, Repair and Replacement of Common Facilities. Each Unit Owner shall maintain, operate, repair and replace its Unit, all parts thereof and all Common Facilities exclusively serving or benefiting such Unit in good order, condition and repair, at its sole cost and expense. In addition, each Unit Owner shall maintain, operate, repair and replace any Common Facilities which serve or benefit such Unit and

NORTHWEST INDIANA TITLE
162 WASHINGTON STREET
LOWELL, IN 46356
219-696-0100

26209

FILED

JUN 18 2021

JOHN E. PETALAS
LAKE COUNTY CLERK

AMOUNT \$ 25
CASH _____ CHARGE _____
CHECK # 4148
OVERAGE _____
COPY _____
NON-COM _____
CLERK _____

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other portions of the Real Estate to the extent such Common Facilities are located on such Unit Owner's Unit. Notwithstanding the foregoing, each Unit Owner shall be entitled to reasonable access to any Common Facilities serving or benefiting its Unit, but located on or about the other Unit for purposes of maintaining, operating, repairing or replacing such Common Facilities to the extent necessary to ensure continued service or benefit to such Unit Owner's Unit.

Each Unit Owner shall share equally in the cost of any such maintenance, repair or replacement of Common Facilities serving or benefiting the Units; provided however, if the need for such maintenance, repair or replacement arises from the negligence or willful act of any Unit Owner or any person under its reasonable control, such Unit Owner shall be solely responsible for the cost of such maintenance, repair or replacement.

Notwithstanding the foregoing, to the extent maintenance, repair or replacement of any Common Facilities serving or benefiting more than one Unit, by way of example and not limitation, repair or replacement of the roof, gutters, downspouts, party wall, or building structure, or painting the Units is required and either necessitates all or more than one of the Unit Owners performing or cooperating in the simultaneous performance of such work on each Unit, or the cost of such work exceeds \$2,000.00, then either (a) the affected Unit Owners shall agree upon the work to be performed, when such work is to be performed and who will perform such work, and the cost of such work, in writing, prior to the performance of such work, such agreement not to be unreasonably withheld, or (b) if such Unit Owners cannot agree as provided above, then the Unit Owner desiring the performance of the maintenance, repair or replacement shall be entitled to employ an independent home inspection contractor, who is a member of the American Society of Home Inspectors and is bonded and insured, to inspect the subject Common Facility and report as to whether the desired maintenance, repair or replacement is necessary to maintain the Common Facility in good order, condition and repair. If such inspector reports that the work is necessary as provided above, the Unit Owner may proceed to cause the performance of such maintenance, repair or replacement and the cost thereof, together with the cost of the home inspector, shall be shared equally by all Unit Owners. If such inspector reports that the work is not necessary as provided above, the Unit Owner shall not proceed with such work at that time and shall be solely responsible for the cost of the home inspector.

3. Payment of Common Expenses. The costs for all maintenance, repair and replacement provided in this Agreement shall be the responsibility of the party or parties designated herein. All such costs which are to be shared or for which reimbursement is required, shall be identified by written notice given to the other party, and such share or reimbursement shall be paid by the party responsible therefor within thirty (30) days after the date of such notice. If any sums are not paid within such 30-day period, such delinquent sum shall bear interest at the lesser of ten percent (10%) per annum or the highest rate permitted under applicable law. In addition, the party entitled to payment of such sum (the "Creditor Party") shall be entitled to provide written notice to the other party (the "Debtor Party") and to its mortgagee, specifying the

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amount due, the date it was due, to what work such amount relates and to whom such amount is due. Such notice shall be in recordable form and if such amount is not paid within thirty (30) days of the date of such notice, the Creditor Party shall be entitled to record such notice, whereupon such notice shall constitute a lien against the Debtor Party's ownership interest in the Real Estate subject only to the first mortgage lien of any mortgage given by such Debtor Party to a bonafide, third party mortgagee. The Creditor Party shall be entitled to all remedies available at law, and in equity, to collect any costs or sums due hereunder, including without limitation, attorneys' fees, and shall be entitled to foreclose the lien provided for herein against the Debtor Party's interest in the Real Estate.

4. Insurance. Each Unit Owner shall obtain and maintain fire and casualty insurance on the portion of the Real Estate owned by it and any improvements, fixtures, equipment and personal property located thereon, for their full replacement value. Such insurance shall name all Unit Owners of the remaining portion of the Real Estate and its or their mortgagee, if any, as additional insureds, as their interests may appear, and shall provide that such policy shall not be terminated, cancelled, altered or amended without thirty (30) days prior written notice to such other Unit Owners.

Each such policy shall contain a waiver of subrogation clause or endorsement whereby the insurer waives any right of subrogation against the other Unit Owners respecting fire or casualty damage.

In the event of fire or casualty damage to the Real Estate other than complete destruction of the Units, all damaged improvements shall be reconstructed and repaired to their condition existing prior to such damage by a contractor reasonably acceptable to all Unit Owners and the insurance proceeds shall be applied to such reconstruction and repair. In the event the Units are completely destroyed by fire or other casualty, the parties shall not be obligated to reconstruct or repair the improvements unless otherwise agreed by all parties, and the insurance proceeds shall be disbursed to each Unit Owner or its mortgagee as their interests appear. Complete destruction shall mean substantial damage or destruction to the Units to such an extent that the Units are rendered untenantable.

In the event the improvements located on the Real Estate are to be reconstructed and repaired, but insurance proceeds are not available or are inadequate therefor, the Unit Owner who is uninsured or underinsured or whose insurance proceeds are not available for or are inadequate for reconstruction and repair of the improvements located on such Unit Owner's portion of the Real Estate, as the case may be, shall be personally liable for the cost of such reconstruction and repair of the improvements located on its portion of the Real Estate. Failure to pay such liability shall entitle the other party to all rights and remedies available under Section 5 for non-payment of Common Expenses, in addition to any other right or remedy available at law or in equity.

Each Unit Owner shall be solely responsible for loss or damage to the contents of its Unit, however caused (including without limitation, all floor, ceiling and wall

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coverings and fixtures, light fixtures, appliances and betterments and all personal property located thereon), and for any injury or damage occurring on or about its Unit, however caused.

5. Alterations, Additions and Improvements. No Unit Owner shall (a) make any alterations, additions or improvements to or which would materially affect the exterior of any Unit or any Common Facilities or which would impair any utility service or access to any Unit; (b) make any alteration, addition or improvement which would affect the safety or structural integrity of any improvements or Common Facilities, or (c) change the exterior color of its Unit or of any Common Facilities, in each instance, without the prior written consent of all other Unit Owners, such consent not to be unreasonably withheld.

6. Modification. This Agreement may be terminated, modified, or amended by a writing signed by all the then owners of the Real Estate, and no agreement or consent of any other persons shall be necessary for such termination, modification or amendment; provided, however, that in the event a mortgage lien exists on the Real Estate, consent of the mortgage lender shall be obtained prior to said modification, termination or amendment, which consent may not be unreasonably withheld.

7. Successors and Assigns. This Declaration shall be binding on the Benefited Parties and their respective successors and assigns and shall be appurtenant to, run with and bind the Real Estate.

8. Notices. All notices required or permitted to be given under this Declaration shall be deemed to have been given two (2) days after such notice is deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, to the Declarant at the address specified below:

If to Unit Owner of North Property:

If to Unit Owner of South Property:

and, upon the sale of the Real Estate or any portion thereto to any Unit Owner, to such Unit Owner at the address of its Unit. Any party hereto may change the notice address herein provided by giving written notice of such change to all other persons or entities entitled to notice hereunder. Each Unit Owner shall be entitled, by written notice given as required hereunder, to require that any notice required or permitted to be served under this Agreement be also given in the same manner to any mortgagee of all or any portion of the Real Estate.

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9. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.

10. Construction. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

11. Severability. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration shall not impair or affect in any manner the validity, enforceability or affect the rest of this Declaration.

EXECUTED as of the date first written above.

Owner of North Property:

Jose L Jimenez

Jose Luis Jimenez

Owner of South Property:

F Gal
FRANCISZEK GAL

ANNA GAL
ANNA GAL

Edward Gal
EDWARD GAL

BOZENA GAL
BOZENA GAL

STATE OF INDIANA)

) SS:

COUNTY OF LAKE)

Before me, a Notary Public in and for said County and State, personally appeared Jose Luis Jimenez, Franciszek Gal, Ana Gal, Edward Gal and Bozena Gal, each known to me and each of whom acknowledged execution of the foregoing "Common Facilities Use Agreement" as their free and voluntary acts for the purposes set forth therein.

WITNESS my hand and Notarial Seal this 10th day of June, 2021.

My Commission Expires



RICHARD A. ZUNICA
Commission Number 656363
My Commission Expires 08/31/22
County of Residence Port

Notary Public

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW." Marco A. Molina

Prepared by: Marco A. Molina, PO BOX 1017, East Chicago, IN 46312
(219) 384-4711

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EXHIBIT A
LEGAL DESCRIPTION
NORTH PROPERTY

Lots 18-23, Block 2 in Redivision of Hoffman's First Addition to the City of Hammond,
as per plat thereof, recorded in Plat Book 1, Page 100 in the Office of the Recorder of
Lake County, Indiana (the "North Real Estate")

Property of Lake County Recorder

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EXHIBIT B
LEGAL DESCRIPTION
SOUTH PROPERTY

Lots 9,10,13, 14 and 17, Block 2 in Redivision of Hoffman's First Addition to the City of Hammond, as per plat thereof, recorded in Plat Book 1, Page 100 in the Office of the Recorder of Lake County, Indiana (the "South Real Estate")

Property of Lake County Recorder