

CRAIG; JUDY 683 4920

Law Offices

ALLEN AND KIMBELL

GEORGE H. ALLEN
CHARLES D. KIMBELL
PAUL A. GRAZIANO
STEVEN K. MCGUIRE

POST OFFICE BOX 36
317 EAST CARRILLO STREET, SUITE 100
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 963-8611

December 19, 1988

Craig Jennings
5593 West Camino Cielo
Santa Barbara, CA 93105

Dear Craig:

Enclosed please find a Declaration of Covenants and Confirmation of Easements Regarding Private Road which has been revised somewhat to improve clarity and to incorporate the following substantive changes:

1. Both Lusink and Davis may expand their uses to general road uses upon payment of the sum specified Paragraph 1.
2. The road master is authorized to seek contribution from persons not a party to this agreement for their contribution toward road maintenance as would be required under Civil Code Section 845. For emphasis I have quoted that Code section in the document.
3. The initial improvement and continuing maintenance obligations are now clearly specified.

This document is an original and is complete with all exhibits, except the budget which is required by Paragraph 3(c). Once you have completed this item, this document may be executed by all owners before a notary public and returned to me for recording. I would like to check it before it is recorded.

A well-written private road agreement like this greatly enhances the value of the property served by it. As you know it makes these lots financable. Many banks would not finance these properties, since their access rights are not clearly stated. This document cures that problem. It is a balanced and equitable document, and everyone will benefit proportionate to his responsibilities. I certainly hope it is executed and recorded soon.

Yours very truly,

ALLEN & KIMBELL

By

Paul A. Graziano
Charles D. Kimbell

Recording Requested By:

When Recorded Return to:
Charles D. Kimbell
ALLEN and KIMBELL
317 East Carrillo Street, Suite 100
Santa Barbara, California 93101
Telephone: (805) 963-8611

DECLARATION OF COVENANTS AND CONFIRMATION OF EASEMENTS
REGARDING PRIVATE ROAD

THIS DECLARATION OF COVENANTS AND EASEMENTS ("Declaration") is made this ___ day of _____, 1988, by the following persons with reference to the following facts:

A. JOEL E. CARLISLE and JOYCE CARLISLE ("Carlisle") are the owners of that property described in Exhibit "A" and shown as Parcel 11 on the Assessor Parcel Map attached as Exhibit "H" ("Carlisle Property").

B. MARY JANE NELSON and MICHAEL D. GRUA ("Nelson/Grua") are the owners of that property described in Exhibit "B" and shown as Parcel 10 on the Assessor Parcel Map attached as Exhibit "H" ("Nelson/Grua Property").

C. BRENT BIXLER and NANCY BIXLER ("Bixler") are the owners of that property described in Exhibit "C" and shown as Parcel 9 on the Assessor Parcel Map attached as Exhibit "H" ("Bixler Property").

D. CRAIG JOSEPH JENNINGS and JUDY JACOBSON JENNINGS ("Jennings") are the owners of that real property described in Exhibit "D" and shown as Parcel 8 on the Assessor Parcel Map attached as Exhibit "H" ("Jennings Property").

E. KURT D. LUSINK and DIANE M. LUSINK ("Lusink") are the owners of that certain property described in Exhibit "E" and shown as Parcel 19 on the Assessor Parcel Map attached as Exhibit "H" ("Lusink" Property).

F. LYNN P. MORRIS and GEORGIANA VINING ("Morris/Vining") are the owners of the real property described in Exhibit "F" and shown as Parcel 18 on the Assessor Parcel Map attached as Exhibit "H" ("Morris/Vining Property").

G. JOSEPH C. DAVIS and CHARLOTTE DOYLE DAVIS ("Davis") is the owner of the real property described in Exhibit "G" and shown as Parcel 14 on the Assessor Parcel Map attached as Exhibit "H" ("Davis Property").

H. There is an easement 25 feet in width lying 12.5 feet on either side of the common property lines between the Carlisle Property, the Lusink Property, the Nelson/Grua Property, the Morris Property, the Bixler Property, and the Davis Property, ending at the Jennings Property, as shown by the cross-hatched area on the Assessor's Map attached as Exhibit "H" ("Private Road Easement"). Within the Private Road Easement area is a private road which presently provides access to all of the benefited properties ("private road"). The purpose of this document is to confirm the easements for the benefit of all the benefited properties as provided herein and to provide for the repair and maintenance of the private road.

I. Carlisle, Nelson/Grua, Bixler, Jennings, Lusink, Morris/Vining and Davis shall be collectively referred to as "Owners". Their respective properties described above shall be referred to collectively as the "benefited properties".

NOW, THEREFORE, owners hereby declare that the property shall be held, sold, and conveyed, subject to the following easements, restrictions covenants and conditions:

1. Easements. By their execution of this Declaration, each of the parties hereby confirm that the portion of the Private Road Easement passing over their property is a valid and existing easement for ingress, egress, private utilities and incidental purposes, for the benefit of each of the other Owners subject to the terms and conditions of this Declaration. To the extent that a grant or conveyance of any rights is necessary to confirm that easement, that grant or conveyance is intended and made by this Declaration. Lusink joins in this Declaration only to confirm the easement, but expressly disclaims any right to use the private road, and all the other Owners expressly excuse Lusink from any obligations whatsoever with respect to improvement, maintenance, repair and replacement of any road improvement within the Private Road Easement. Despite the foregoing, the use by Davis of the private road shall be limited to emergency uses, and all the other owners expressly excuse Davis from any obligations whatsoever with respect to improvement, maintenance, repair, or replacement of any road improvement within the Private Road Easement. The rights of Davis or Lusink to use the private road may be expanded to general ingress and egress, by doing the following:

(a) Tendering to the road master on behalf of all the other owners a sum equal to his share of the depreciated value of the road improvements then existing to compensate for his suspension of maintenance obligations for the period from the date of this Declaration to the date of his tender of the required sum.

(b) Recording of a notice in the office of Official Records referring to this Declaration and certifying that Davis or Lusink wishes to restore his right to full use of the road improvements in the road easement area, and that he has tendered the proper amount to the road maintenance fund. Such notice must be signed by the then-serving road master who shall certify that the sum so deposited is acceptable to him as being in compliance with the requirement of this provision.

2. Road Improvements: Standard of Maintenance. The road improvements shall be maintained by the Owners pursuant to this Declaration. The standard to which the road improvements shall be maintained is as follows:

(a) Until improved pursuant to the provisions of subparagraph (b) below, the road improvements shall be maintained in essentially the condition existing upon the date of this agreement.

(b) If less than all of the Owners decide to improve the private road to a higher standard than that described in subparagraph (a), they may do so at their sole cost and expense, and the standard of maintenance for the portions of the private road so improved, shall thereafter be to the condition existing immediately after such improvements.

3. Maintenance and Improvements: Sharing of Costs: Authority of Road Master

(a) The reasonable costs for maintenance and repair of the private road be shared as follows:

[i] The lineal distance from the westerly end of the private road where it intersects Camino Cielo to the respective driveways of each of the Carlisle, Nelson/Grua, Morris, Bixler and Jennings Properties shall be measured. Upon the execution of this agreement those distances are as follows:

| | |
|---------------|-----------|
| Carlisle | 327 feet |
| Nelson/Grua | 962 feet |
| Morris/Vining | 1140 feet |
| Bixler | 1330 feet |
| Jennings | 1330 feet |

[ii] Each owner's lineal footage shall be divided by the sum of all lineal footage to determine his proportionate share ("share") of the cost of maintenance. Upon the execution of this Declaration, the percentages allocated to each owner are as follows:

| | |
|---------------|--------|
| Carlisle | 6.44% |
| Nelson/Grua | 18.90% |
| Morris/Vining | 22.40% |
| Bixler | 26.13% |
| Jennings | 26.13% |

[iii] If any owner changes the location of his principal access to his property from the private road, or Lusink, or Davis expand their permitted uses to general ingress and egress under Paragraph 1, the foregoing calculations shall be revised accordingly.

(b) The road improvements shall be maintained accordingly to those standards set forth in paragraph 2 above; provided that Owners may agree to a higher standard of maintenance by unanimous written consent.

(c) The Owners shall meet not later than September of each calendar year to formulate a budget for the ensuing calendar year for purposes of allocation of their responsibilities hereunder and to establish rules and regulations for the use of the Private Road. The approval by the owners of four of the benefited properties shall be required to establish a budget under this paragraph. If such approval cannot be obtained, the budget for the then-current year shall be deemed approved for the ensuing year. The initial budget for calendar year 1989 shall be that as set forth on Exhibit "I" attached hereto. The Owners shall thereafter be obligated to contribute their share of the sums required of them as set forth in the budget. At such meeting, the Owners then making full use of the private road, shall elect a "road master," and failing election the road master's duties shall be rotated on an annual basis to the Owners of the properties then actively involved in the use and maintenance of the road under this Declaration, in the following order: Jennings property, Bixler property, Morris/Vining property, Nelson/Grua property, and Carlisle property. The road master shall prepare an accounting and shall present such accounting to each owner on an annual, or periodic basis.

(d) The road master shall be entitled to collect from the Owners such sums as may be owing by such Owners under the budget necessary to maintain the facilities, improvements and insurance coverage and shall arrange for necessary work and services for the required maintenance and pay the expenses thereof from the funds collected from the Owners. The Owners expressly authorize the road master to seek contribution as required by Civil Code Section 845 of other users of the private road who are not parties to this declaration. Civil Code Section 845 provides as follows:

"(a) The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair.

"(b) If the easement is owned by more than one person, or is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or the owners of the parcels of land, as the case may be,

pursuant to the terms of any agreement entered into by the parties for that purpose. If any owner who is a party to the agreement refuses to perform or fails after demand in writing to pay the owner's proportion of the cost, an action for specific performance, or contribution may be brought against that owner in a court of competent jurisdiction by the other owners, either jointly or severally.

"(c) In the absence of an agreement, the cost shall be shared proportionately to the use made of the easement by each owner.

"Any owner of the easement, or any owner of land to which the easement is attached, may apply to any court where the right-of-way is located and that has jurisdiction over the amount in controversy for the appointment of an impartial arbitrator to apportion the cost. The application may be made before, during, or after performance of the maintenance work. If the arbitration award is not accepted by all of the owners, the court may enter a judgment determining the proportionate liability of each owner. The judgment may be enforced as a money judgment by any party against any other party to the action."

(e) If the private road is damaged or destroyed through the act or omission of any owner or his guests, tenants, agents, or employees, whether or not such act or omission is negligent or otherwise culpable, such owner shall forthwith proceed to rebuild, repair, or replace them to as good a condition as formerly existed, without cost to the other owners. The road master may enforce the obligation of the responsible Owner on behalf of the other Owners.

4. Indemnification: Insurance

(a) Indemnity. The owner of each respective property shall release, discharge and agree to indemnify and hold each of the owners of the other properties, their heirs, successors and assigns, harmless from any and all claims or causes of action of any nature whatsoever arising from the use by the indemnifying owner of the Easement Area for the purpose above set forth, except for claims arising from the active negligence of the other owners, their heirs, successors or assigns, and the indemnifying owner shall undertake the defense of each of the other owners against any and all such claims and causes of action.

(b) Public Liability Insurance. Each of the owners shall obtain liability and property damage insurance coverage with respect to any matters for which he has indemnified the other owners pursuant to Section 4(a) above and shall provide proof of such insurance coverage to the road master showing such coverage to be in effect at all times. If any owner fails to comply with the requirements of this subparagraph, the road master may obtain such insurance coverage on behalf of such owner and may include the cost thereof in the budget referred to in paragraph 3(c) and charge the cost thereof against the owner failing to comply. Such policy or policies shall be carried with reputable companies authorized to do business in the State of California in an amount not less than One Hundred Thousand and no/100 Dollars (\$100,000.00) combined single limit and shall name as insured the owner and each party indemnified by such owner pursuant to subparagraph (a).

5. General

(a) The road master or any Owner shall have the right to enforce the provisions of this Declaration by any proceeding at law or in equity or as otherwise provided herein.

(b) The easements, covenants, conditions and restrictions contained herein are for the benefit of the benefitted properties, and as such shall be covenants

appurtenant to and running with each such property and binding on the successive owners thereof.

(c) If a controversy arises in any way connected with this Declaration, the owners shall submit the matter to arbitration under the rules of the American Arbitration Association then in effect. Any decision arising from such procedure may be enforced by a court of competent jurisdiction.

(d) Except as expressly provided herein to the contrary, any modification of this Declaration must be in writing and signed by all the owners.

(e) If any term, covenant, condition or provision of this Declaration is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

(f) If any dispute arises under this Declaration or any other rights and obligations hereunder, and legal action is instituted thereon, the prevailing party shall be entitled to recover his reasonable cost of attorney's fees as determined by the court, or through arbitration.

6. Effective Date. _____, 19____.

IN WITNESS WHEREOF, the foregoing instrument was subscribed the day and year first above written.

Joel E. Carlisle

Joyce Carlisle

Mary Jane Nelson

Michael D. Grua

Brent Bixler

Nancy Bixler

Craig Joseph Jennings

Judy Jacobson Jennings

Kurt D. Lusink

Diane M. Lusink

Lynn P. Morris

Georgiana Vining

Joseph C. Davis

Charlotte Doyle Davis

STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA BARBARA)

On _____, 1988, before me, the undersigned
Notary Public personally appeared _____
_____, personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person(s) whose name(s)
_____ subscribed to the within instrument, and acknowledged that
_____ executed it.

WITNESS my hand and official seal.

Notary's Signature

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