

2017-18588

08/03/2017 11:51:48 AM

Floyd J. Dowling

REGISTER OF DEEDS



COUNTER	<u>P</u>	C.E.	<u>P</u>
VERIFY	<u>P</u>	D.E.	<u>P</u>
PROOF	<u>OK</u>		
NETS \$	<u>58.00</u>		
CHECK#	<u>6374</u>		
DISB		CASH	
REFUND		CREDIT	
SHORT		WCR	

RE: Lot 1, Shadow Lake Replat 5, Outlot A, Shadow Lake Replat 5, and Lots 1 and 2, Shadow Lake Replat 7, subdivisions, as surveyed, platted and recorded in Sarpy County, Nebraska.

ROADWAY EASEMENT DECLARATION

SHADOW LAKE DEVELOPMENT, LLC, a Nebraska limited liability company, hereby establishes the following easements, covenants and restrictions:

PRELIMINARY STATEMENT

Shadow Lake Development, LLC, a Nebraska limited liability company ("Declarant"), is the record owner of Lot 1, Shadow Lake Replat 5, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 1, Replat 5") and Outlot A, Shadow Lake Replat 5, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska (Outlot "A"). Alchemy Partners I, LLC, a Nebraska limited liability company ("Alchemy") is the owner of Lots 1 and 2, Shadow Lake Replat 7, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska ("Lots 1 and 2, Replat 7"). Lot 1, Replat 5 and Lots 1 and 2, Replat 7 may be collectively referred to as the "Property" or "Properties" and individually as a "Parcel".

Declarant desires to establish a permanent easement for a private roadway located on Outlot A as pictorially shown on Exhibit "A" attached hereto traversing certain portions of Outlot A for the purpose of providing vehicular and pedestrian access, ingress and egress and passage between the Properties and adjacent public and private drives and streets and 72nd Street, Schram Road and Lakeview Drive (the "Roadway").

TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement, which by this reference is repeated and incorporated in this portion of this Declaration in its entirety, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby establishes the following easements, covenants and restrictions.

After recording, return to:
John Q. Bachman
PANSING HOGAN ERNST & BACHMAN LLP
10250 Regency Circle, Suite 300
Omaha, NE 68114

RJR

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1. Definitions. The terms in this Section 1 shall have the following meanings:

1.1 Owner. The term "Owner" shall mean any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental agency or other business entity now or hereafter holding of record an ownership interest in fee in a portion or all of a Parcel.

1.2 Parcel. The term "Parcel" shall mean or refer to any of the following platted lots: Lot 1, Replat 5 and Lots 1 and 2, Shadow Lake Replat 7, subdivisions, as surveyed, platted and recorded in Sarpy County, Nebraska. The term "Parcels" shall mean all of the platted lots identified in this Subsection 1.2. From time to time reference to one or more of such Parcels will be made in this Declaration by its lot number.

1.3 Permittees. The term "Permittees" shall mean (i) the respective Owners of the Properties and their respective successors, assigns, heirs, and personal representatives; (ii) such Owners' agents, customers, invitees, licensees, employees, servants, and contractors; (iii) such Owners' tenants and subtenants and their respective customers, invitees, employees, servants, licensees, contractors, and agents; and (iv) such Owners' land contract purchasers, mortgagees and beneficiaries under deeds of trust.

1.4 Property. The term "Property" shall mean or refer to any of the following platted lots: Lot 1, Replat 5 and Lots 1 and 2, Shadow Lake Replat 7, subdivisions, as surveyed, platted and recorded in Sarpy County, Nebraska. The term "Properties" shall mean all of the platted lots identified in this Subsection 1.4. From time to time reference to one or more of such Properties will be made in this Declaration by its lot number.

2. Easements and Restrictions. The Declarant hereby grants and establishes the following easements and restrictions:

2.1 Roadway and Parking Easement Grant. The Declarant hereby grants to the Permittees of the Properties a nonexclusive perpetual easement over and upon the Roadway for the purpose of providing vehicular and pedestrian access, ingress, egress, passage and traffic between and among the Parcels and the adjacent public and private drives and streets and parking in identified and designated parking spaces. The Roadway, designated parking spaces and Outlot A are pictorially depicted on Exhibit "A" attached to this Declaration. Exhibit "A" identifies seventy-four (74) parking spaces in Outlot A. Access to the twenty-eight (28) parking spaces solely immediately adjacent to Lot 1 Replat 5 for the Permittees of Lots 1 and 2, Replat 7 shall not be permitted between the hours of 8:00 A.M. to 6:00 P.M. The remaining forty-six (46) parking spaces may be utilized without time restrictions.

2.2 Use of Roadway and Parking. Subject to the reasonable rules and regulations adopted for the use of each Parcel by the Owner thereof and approval by the Declarant or its designee in writing, the use of all easements created by this Declaration will be, in each instance, nonexclusive and for the use and benefit of the Permittees to

whom such easements were granted. Each Owner may, at any time and from time to time, remove, exclude and restrain any person from the use, occupancy or enjoyment of any easement hereby created or the area covered thereby for failure to observe the reasonable rules and regulations established as permitted herein.

2.3 Maintenance of Roadway and Outlot A. Except as otherwise specifically provided in this Declaration, the Owner of Lots 1 and 2, Replat 7 will operate, maintain and replace all of the areas of the Roadway and Outlot A in sound structural and operating condition, at the cost and expense of the Owner of Lots 1 and 2, Replat 7. The costs shall be allocated pursuant to Section 2.5. Such repairs, replacements and maintenance shall include, but shall not be limited to:

- (a) construction, maintenance, repair and replacement of the surface and subsurface of the Roadway so as to maintain level, smooth and evenly covered Roadway with the type of materials originally installed or used thereon or such substitutes as will in all material respects be equal to such materials in quality, appearance, use and durability;
- (b) removal from the Roadway of papers, debris, ice, snow, refuse, filth and any hazards to persons using the Roadway, and washing or thoroughly sweeping paved areas as required to keep the area in a clean and orderly condition; and
- (c) maintenance, repair and replacement of any other improvements located on Outlot A.

2.4 Unimpeded Access. Without the prior written consent of the Declarant or its designee, no barricades, fences or other dividers will be constructed between the Parcels and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic throughout the Roadway by the Owner of each Parcel except for curbing reasonably designed and installed to assist traffic control; provided that the Owner of any Parcel will have the right, with the prior written consent of the Declarant or its designee, to erect barriers, once each year for a period not exceeding twenty-four (24) hours, to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein.

2.5 Cost Allocation. The costs of maintaining the Roadway and improvements located within Outlot A shall be as follows:

33 1/3%	-	Lot 1, Replat 5
66 2/3%	-	Lots 1 and 2, Replat 7

The costs of maintaining Outlot A shall also include the real estate taxes levied and assessed against Outlot A. Notwithstanding the foregoing, until such time improvements are constructed and open to the public on Lot 1, Replat 5, the Owner of Lots 1 and 2, Replat 7 shall be solely responsible for the maintenance costs.

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3. Schram Left Turn Lane. Declarant and Alchemy shall each share fifty percent (50%) of the cost of the westbound left turn lane to be constructed on Schram Road for southbound access to the Roadway.

4. Eminent Domain. Nothing herein shall be construed to give a Property Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting another Owner's Property or granting the public or any government any rights in such Property. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of any easement area, the award attributable to such easement area shall be payable only to the Owner thereof, and no claim thereon shall be made by the Permittees of any other Property.

5. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon any Property, such lien shall expressly be subordinate and inferior to the lien of any first mortgage lienholder now or hereafter placed on such Property. Except as set forth in the preceding sentence, however, any holder of a lien on any Property, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

6. Release from Liability. Any person acquiring fee or leasehold title to any of the Properties shall be bound by this Declaration only as to the Property or portion of the Property acquired by such person. In addition, such person shall be bound by this Declaration only with respect to the period for which such person is the fee or leasehold owner of such Property or portion thereof and shall be responsible for all obligations and liabilities which accrue during such period. Although persons may be released under this Section 6, the easements, covenants, and restrictions in this Declaration shall continue to be, as provided herein, benefits to and servitudes upon such Property or Properties, running with the land.

7. Breach. In the event of the breach or threatened breach of this Declaration, any or all of the Owners of the Property adversely affected by such breach or threatened breach shall be entitled to institute proceedings for full and adequate relief from the consequences of such breach or threatened breach. The unsuccessful party in any action shall indemnify the prevailing party from all reasonable attorney's fees and other reasonable costs and expenses incurred by the prevailing party.

No breach of this Declaration will entitle any Owner of the Parcels to cancel, rescind or otherwise terminate this Declaration.

8. Legal Effect. Each of the easements and rights created by this Declaration are appurtenant to each of the Properties and may not be transferred, assigned or encumbered except as an appurtenance to a Property. Each easement or covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of the Properties; (b) creates equitable servitudes on the Properties upon which easements have been granted in favor of other Properties; (c) constitutes a covenant running with the land; (d) binds every Owner now having or hereafter acquiring an interest in a Property; and (e) will inure to the benefit of and be binding

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upon the Owners of the Properties and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust.

Upon the conveyance of all or any part of a Property, the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration and will be deemed to have assumed and agreed to perform each of the obligations of the conveying Owner under this Declaration with respect to the Property or portion thereof conveyed to such grantee accruing during such grantee's period of ownership. Upon recordation of such conveyance with the Register of Deeds of Sarpy County, Nebraska, the conveying Owner will be released from all obligations under this Declaration arising thereafter with respect to the portion of the Parcel so conveyed but will remain responsible for any and all liability which has accrued prior to such recordation and during such conveying Owner's period of ownership.

9. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of Outlot A to the general public or for any public purpose whatsoever, it being the intention of the Declarant and the other Owners that this Declaration will be strictly limited, in accordance with the terms hereof, to the private use of the Permittees of each Property to whom easements have been granted in this Declaration. Except as otherwise specifically provided herein, this Declaration is intended to benefit the Owners and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust and is not intended to constitute any person or entity which are not Permittees of Parcels to whom easements and other rights have been granted in this Declaration a third party beneficiary hereunder or to give any such person or entity any rights hereunder.

10. Duration; Amendment; Termination.

10.1 Duration. Unless otherwise modified, terminated or extended as permitted in this Section 10 or in this Declaration, the easements, rights, obligations, covenants and restrictions contained in this Declaration shall continue for a period of eighty-nine (89) years ("Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, seventy-five percent (75%) of the Owners of all the Properties execute a written instrument of termination, in which event, this Declaration shall expire at the end of the Primary Period or Extension Period then in effect.

10.2 Amendment and Termination. This Declaration or any provision herein contained may not be terminated or amended in any manner without the express written consent of the Declarant or its designee. No amendment, modification, extension or termination of this Declaration will be effective against any mortgagee or beneficiary under a mortgage or deed of trust subsequent to such mortgagee's or beneficiary's acquiring title to a portion or all of a Parcel by foreclosure, unless such mortgagee or beneficiary has so consented in writing. No tenant, licensee or other person having only

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a possessory interest in a Parcel is required to join in the execution of or consent to any action of the Owner of such Parcel taken pursuant to this Declaration.

11. Miscellaneous.

11.1 Notices. All notices, statements, demands, approvals or other communications given pursuant to this Declaration will be in writing and will be delivered in person, by certified or registered mail, postage prepaid, or by recognized courier service to the Owners of the Properties affected at the addresses on file with the office of the Sarpy County Assessor for delivery of ad valorem tax statements relating to their respective Properties. All such notices which are mailed shall be deemed delivered on the third day after postmark unless delivered sooner.

11.2 Waiver of Default. No waiver of any default by any Owner will be implied from the failure by any other Owner to take any action in respect to such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Declaration will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Declaration are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner might otherwise have by virtue of a default under this Declaration; and the exercise of any right or remedy by any Owner will not impair such Owner's standing to exercise any other right or remedy.

11.3 No Partnership. Nothing contained in this Declaration and no action by the Owner of a Property will be deemed or construed by any Owner or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Owners of any of the Properties.

11.4 Severability. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

11.5 Governing Law. This Declaration will be construed in accordance with the laws of the State of Nebraska.

11.6 Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect or limit the interpretation or construction of the provisions herein contained.

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11.7 Time. Except as otherwise provided in this Declaration, time is of the essence.

11.8 Estoppel Certificate. The Owner of any Parcel shall, from time to time upon not less than twenty (20) days written notice from any other Owner, execute and deliver to such other Owner a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or if modified, indicating the modifications, and stating whether or not, to the best of its knowledge, any Owner is in default under the Declaration and if so, specifying such default.

11.9 Notice of Default to Mortgage. Any Owner serving notice of default under this Declaration shall provide written notice of such default in the manner permitted in this Declaration to any holder of any mortgage or beneficiary under any mortgage or deed of trust covering the Property of the Owner allegedly in default provided such holder or beneficiary shall have provided the Owner responsible for serving such notice of default a written notice informing it of the existence of such mortgage or deed of trust and the address to which notices of default are to be sent.

11.10 Merger. This Declaration and the easements and rights created herein shall not be subject to the Doctrine of Merger.

11.11 Binding Effect. The provisions of this Declaration will be binding on the Owners of the Properties and their respective successors, assigns, heirs, personal representatives, mortgagees, and beneficiaries under deeds of trust to the extent herein provided.

11.12 Declarant's Consent. In the event Declarant does not respond to Owner's written requests for approvals or consents of Declarant as required by this Declaration, within thirty (30) days of the effective date of delivery to Declarant of such Owner's written request, such request shall be deemed approved.

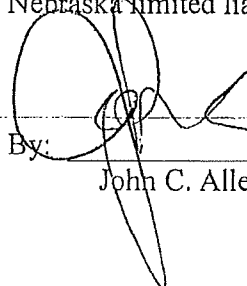
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SIGNATURES APPEAR ON THE FOLLOWING PAGE**

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Dated: August 2, 2017.

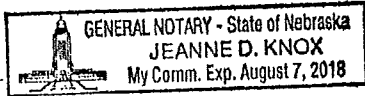
DECLARANT:

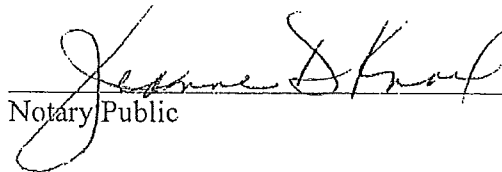
SHADOW LAKE DEVELOPMENT, LLC, a
Nebraska limited liability company


By: _____
John C. Allen, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 2nd day of August, 2017,
by John C. Allen, Manager of Shadow Lake Development, LLC, a Nebraska limited liability
company, on behalf of the company.

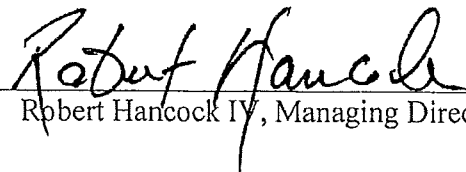



Notary Public

Approval and Consent:

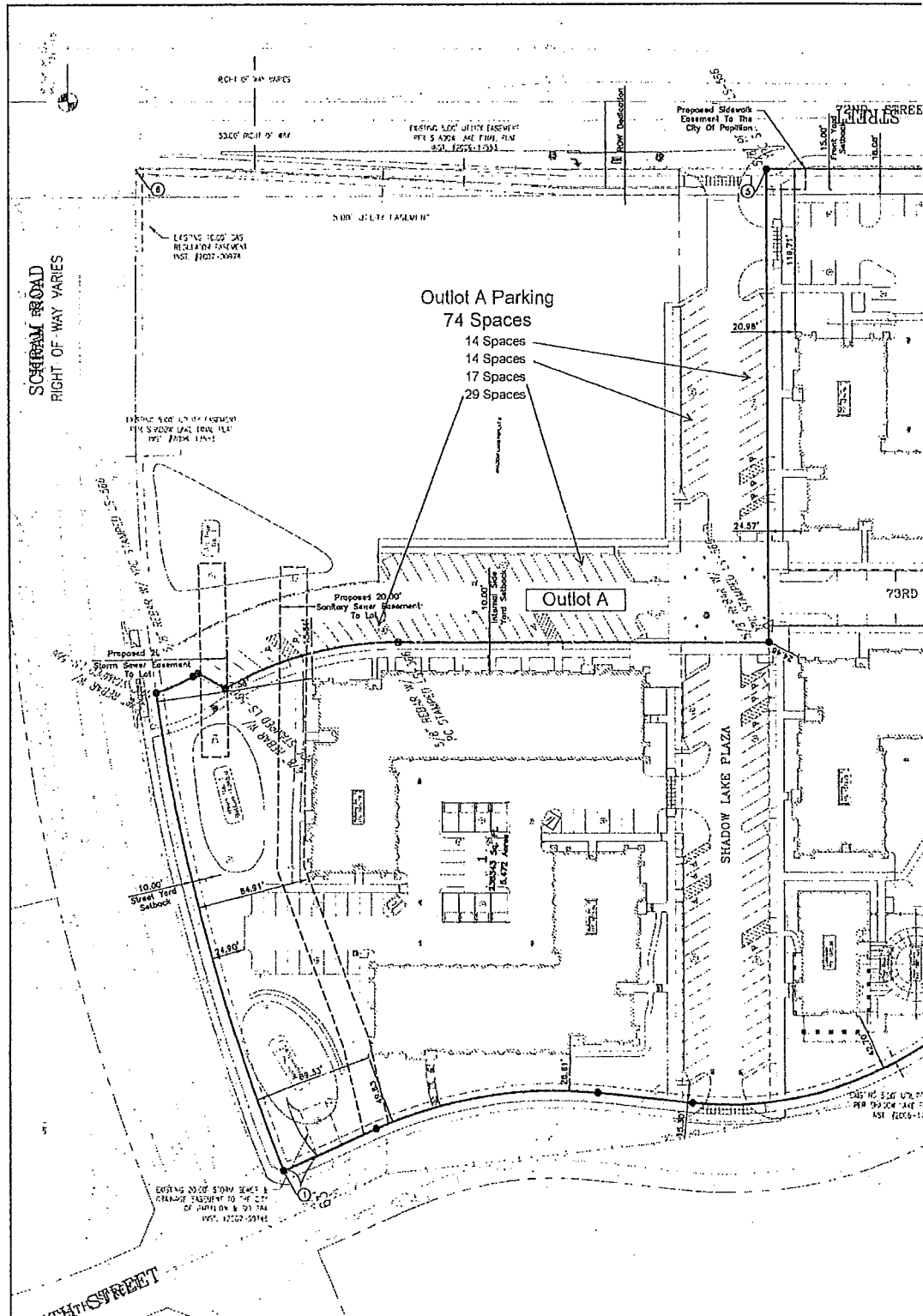
ALCHEMY PARTNERS I, LLC,
a Nebraska limited liability company

By: Robert Hancock & Co.,
a Nebraska corporation, its Manager

By: 
Robert Hancock IV, Managing Director

2017-18588 H

EXHIBIT "A"



1-10-2017 10:00 AM 10:00 AM 10:00 AM 10:00 AM