



MISC Inst. # 2018006816, Pg: 1 of 8 Rec Date: 01/26/2018 08:59:53.760  
Fee Received: \$52.00 By: CC  
Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

[The Space Above is for Recording Data]

**DECLARATION OF PERMANENT ACCESS EASEMENT**  
**(Lot 8, West Dodge Pointe Replat 2)**

THIS DECLARATION OF PERMANENT ACCESS EASEMENT (this "Agreement") is established and made effective as of this \_\_\_\_ day of November, 2017, (hereinafter referred to as the "Effective Date") by TKA Properties, LLP, a Nebraska limited liability partnership ("Declarant").

**RECITALS:**

WHEREAS, Declarant is the lawful owner of the following legally described, to-wit:

Lots 1 and 7, West Dodge Pointe Replat 2, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as the "Burdened Property").

WHEREAS, Declarant is also the lawful owner of the following legally described, to-wit:

Lot 8, West Dodge Pointe Replat 2, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as the "Benefited Property").

WHEREAS, Declarant intends to establish and grant a permanent, non-exclusive easement to provide ingress and egress in, over and across certain portions of the Burdened Property as depicted and legally described on Exhibit "A" attached hereto (hereinafter collectively referred to as the "Access Easement Area") for the benefit of the Benefited Property;

WHEREAS, by virtue of the recording of this Agreement, the Benefited Property and Burdened Property shall be owned, held, transferred, sold, conveyed, used, and occupied and mortgaged or otherwise encumbered subject to the provisions of this Agreement and every grantee of any interest in any said real property, by acceptance of a deed or other conveyance of such interest, and every person or entity owning an interest in any portion of any said real property, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take

City 4

subject to the provisions of this Agreement and shall be deemed to have consented to the terms hereof.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, including the mutual grants and covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Permanent Access Easement. Declarant hereby establishes and grants for itself, and any and all successors in interest to Declarant, their contractors, tenants, sub-tenants, agents, invitees, visitors, successors and assigns (hereinafter referred to as "Permittees"), a non-exclusive permanent access easement (but not parking), in, over, upon and across the Burdened Property to be constructed within the Access Easement Area for the purposes of providing vehicular ingress and egress to the Benefited Property.
2. Nature of Easement. The provisions of this Agreement are not intended and shall not be deemed to constitute a dedication for public use, and the rights and easements granted herein are private and for the benefit only of the persons and entities set forth herein.
3. Improvements and Maintenance. Until such time that Declarant ceases to own the Benefited Property, Declarant, or its successors or assigns shall, at its sole cost and expense, be obligated to maintain, repair and replace the materials comprising the access drive within the Access Easement Area.
4. Restrictions. No barricades, signs, fences, or other dividers will be constructed and nothing will be done to prohibit or discourage the free and uninterrupted flow of vehicular traffic through the access drive within the Access Easement Area.
5. Effect of Covenants. Each party hereto, and its successors and assigns, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Agreement or to which this Agreement is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person or entity having at any time any interest of estate in said property, and shall inure to the benefit of such property owners on like manner as though the provisions, terms and restrictions of this Agreement were received and stipulated at length in each and every deed of conveyance.
6. Waiver. No covenant, restriction, condition or provision of this Agreement shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.
7. Indemnification. Each grantee of the Burdened Property (each a "Grantee") and their successors and assigns shall defend, indemnify and hold harmless Declarant and its successors and assigns and their respective directors, officers, employees, agents, representatives, insurers, servants and affiliates (in this subsection, "Indemnified Parties") from and against any and all suits, losses, demands, damages, claims, liabilities, causes of action, claims for indemnity or contribution, costs and expenses, including, without limitation, liability for bodily injury (including death), property damage, automobile accident liability or environmental liability of any nature whatsoever, including reasonable attorneys' fees and expenses, to the extent such arise out of, are caused or alleged to have been caused by (i) any

action or inaction of Grantee, its successors and assigns or their respective Permittees in connection with or related to, directly or indirectly, the Access Easement Area, this Agreement or any agreements contemplated hereby, or (ii) the negligent acts, negligent omissions or willful misconduct of Grantee or its successors and assigns or their respective Permittees. The provisions of this Section shall survive termination of this Agreement.

8. Estoppel. The parties subject to this Agreement party shall deliver to the other party, within twenty (20) days after request therefore, a written statement, setting forth that, to the best of such party's knowledge, the requesting party is not in default, in the performance of any of its obligations under this Agreement or, if in default, setting forth the nature of such default, and such other matters as may be reasonably requested.

9. Savings Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Agreement herein contained, as the case may be, shall not render the remainder of the Agreement invalid, nor any other part therein contained.

10. Amendment, Modification, Notices.

(a) This Agreement may only be amended by the written consent and agreement of the record owner of the Benefited Property and Burdened Property, or their respective successors and assigns. Any such modification or amendment shall be effective when duly recorded in the office of the Douglas County, Nebraska Register of Deeds.

(b) Wherever in this Agreement the consent or approval of an owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

(c) Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of Declarant are as follows:

Declarant: TKA Properties, LLP  
17950 Burt Street  
Omaha, NE 68118

11. Title. Declarant confirms that Declarant is seized in fee of the Burdened Property, which includes the Access Easement Area and that it has the right to grant and convey the easement and rights granted herein, and that it will warrant and defend such easement and rights against the lawful claims and demands of all persons.

12. Counterparts. This Easement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

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13. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of Nebraska.

*[Remainder of page left intentionally blank – signature page follow]*

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IN WITNESS WHEREOF, Declarant has caused the authorized execution hereof, the day and year first above written.

**DECLARANT:**

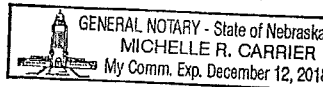
**TKA PROPERTIES, LLP**, a Nebraska limited liability partnership,

By: Angela M. Quinn  
Name: Angela M. Quinn  
Its: Authorized Signatory

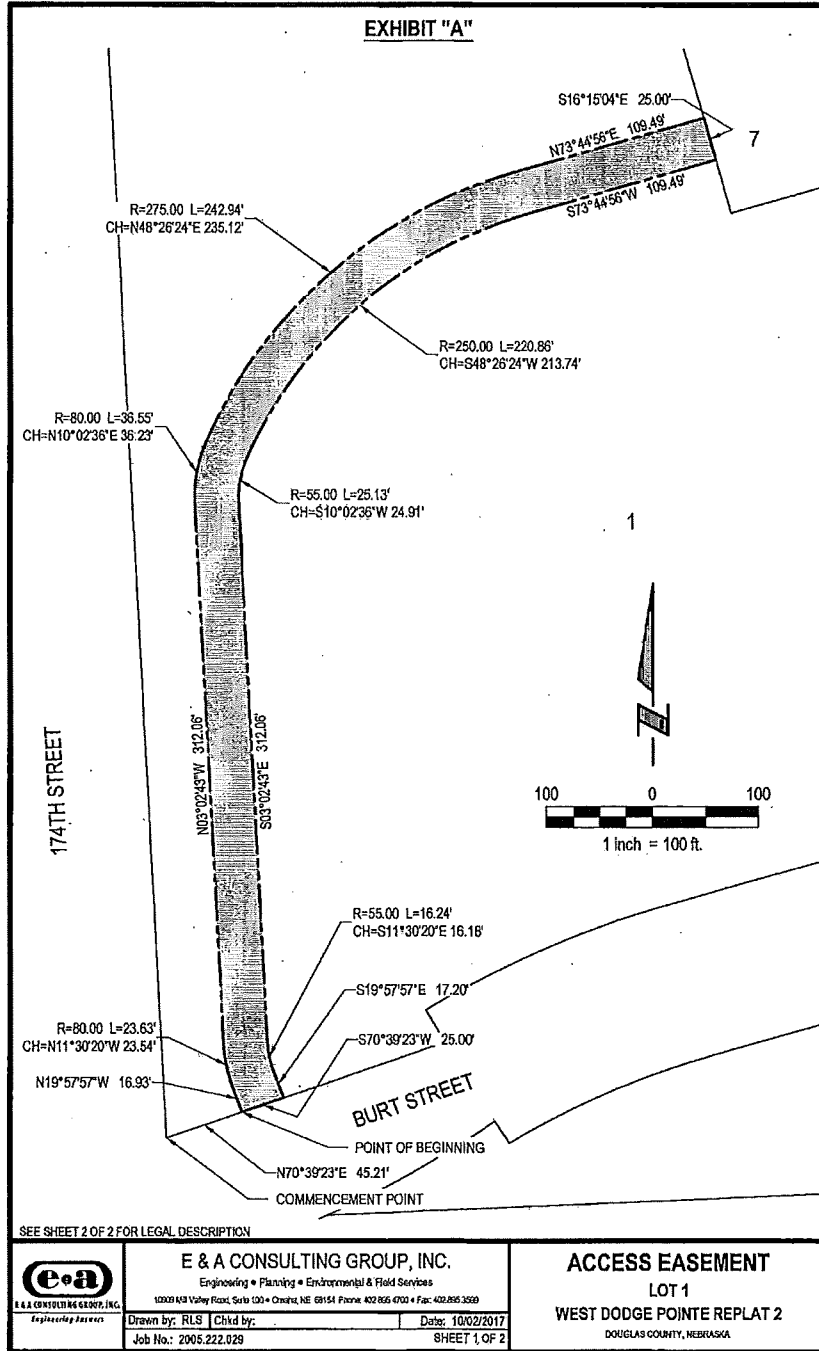
STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The above and foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2017, by Angela M. Quinn, known to me to be the Authorized Signatory of TKA Properties, LLP, a Nebraska limited liability partnership, on behalf of said limited liability partnership.

Michelle R. Carrier  
Notary Public  
Commission Expires: 12/12/18



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**EXHIBIT "A"**


**LEGAL DESCRIPTION**

AN ACCESS EASEMENT BEING LOCATED IN PART OF ~~LOT 1, WEST DODGE POINTE REPLAT 2, A SUBDIVISION~~ LOCATED IN PART OF THE SE<sup>1</sup>/<sub>4</sub> OF THE SE<sup>1</sup>/<sub>4</sub>, PART OF THE SW<sup>1</sup>/<sub>4</sub> OF THE SE<sup>1</sup>/<sub>4</sub> AND PART OF THE NW<sup>1</sup>/<sub>4</sub> OF THE SE<sup>1</sup>/<sub>4</sub>, LOCATED IN SECTION 16, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1, WEST DODGE POINTE REPLAT 2, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF BURT STREET AND THE EAST RIGHT-OF-WAY LINE OF NORTH 174TH STREET; THENCE N70°39'23"E (ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID LOT 1, WEST DODGE POINTE REPLAT 2, SAID LINE ALSO BEING SAID NORTH RIGHT-OF-WAY LINE OF BURT STREET, A DISTANCE OF 45.21 FEET TO THE POINT OF BEGINNING; THENCE N19°57'57"W, A DISTANCE OF 16.93 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 80.00 FEET, A DISTANCE OF 23.63 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N11°30'20"W, A DISTANCE OF 23.54 FEET; THENCE N03°02'43"W, A DISTANCE OF 312.06 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 80.00 FEET, A DISTANCE OF 36.55 FEET; SAID CURVE HAVING LONG CHORD WHICH BEARS N10°02'30"E, A DISTANCE OF 36.23 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 275.00 FEET, A DISTANCE OF 242.94 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N48°26'24"E, A DISTANCE OF 235.12 FEET; THENCE N73°44'58"E, A DISTANCE OF 109.49 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1, WEST DODGE POINTE REPLAT 2, SAID LINE ALSO BEING THE WEST LINE OF LOT 7, SAID WEST DODGE POINTE REPLAT 2; THENCE S16°15'04"E ALONG SAID EAST LINE OF LOT 1, WEST DODGE POINTE REPLAT 2, SAID LINE ALSO BEING SAID WEST LINE OF LOT 7, WEST DODGE POINTE REPLAT 2, A DISTANCE OF 25.00 FEET; THENCE S73°44'56"W, A DISTANCE OF 109.49 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 260.00 FEET, A DISTANCE OF 220.86 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S48°28'24"W, A DISTANCE OF 213.74 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 55.00 FEET, A DISTANCE OF 25.13 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S10°02'36"W, A DISTANCE OF 24.91 FEET; THENCE S03°02'43"E, A DISTANCE OF 312.06 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 55.00 FEET, A DISTANCE OF 16.24 FEET; SAID CURVE HAVING A LONG CHORD WHICH BEARS S11°30'20"E, A DISTANCE OF 16.18 FEET; THENCE S19°57'57"E, A DISTANCE OF 17.20 FEET TO A POINT ON SAID SOUTH LINE OF LOT 1, WEST DODGE POINTE REPLAT 2, SAID LINE ALSO BEING SAID NORTH RIGHT-OF-WAY LINE OF BURT STREET; THENCE S70°39'23"W ALONG SAID SOUTH LINE OF LOT 1, WEST DODGE POINTE REPLAT 2, SAID LINE ALSO BEING SAID NORTH RIGHT-OF-WAY LINE OF BURT STREET, A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 18,032 SQUARE FEET OR 0.414 ACRES, MORE OR LESS.

SEE SHEET 1 OF 2 FOR DRAWING

 <small>E &amp; A CONSULTING GROUP, INC. Engineering Services</small>	<b>E &amp; A CONSULTING GROUP, INC.</b> <small>Engineering • Planning • Environmental &amp; Field Services</small> <small>1999 N Valley Road, Suite 100 • Omaha, NE 68154 Phone 402.856.4700 • Fax: 402.856.3550</small>		<b>ACCESS EASEMENT</b> LOT 1 <b>WEST DODGE POINTE REPLAT 2</b> <small>DOUGLAS COUNTY, NEBRASKA</small>
	<small>Drawn by: RLS   Chkd by:</small> <small>Job No.: 2005.222.029</small>	<small>Date: 10/02/2017</small> <small>SHEET 2 OF 2</small>	

Eric Schaben 10/02/2017 3:23 PM K:\Projects\2005\222\p29\env\Easements\ESMT-ACCESS LOT 1-000.dwg

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