

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2007-03030

2007 JAN 30 P 3:25 PM

Shirley J. Dowling
REGISTER OF DEEDS

COUNTER 9 G.E. 9
VERIFY 9 D.E. 9
PROOF P
FEES \$ 26.00
CHECK # 228241
CHG. _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

(The above space for use of Register of Deeds.)

DECLARATION OF ACCESS EASEMENT

THIS DECLARATION OF ACCESS EASEMENT (this "Declaration") is made and entered into this 29th day of January, 2007, by Lund Southport 76, L.L.C., a Nebraska limited liability company and Lund Southport 24, L.L.C., a Nebraska limited liability company (hereinafter individually and collectively, "Declarant").

WHEREAS, Declarant is the fee simple owner of certain real estate legally described as Lot 14a, Southport East Replat Eight, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 14a"); and

WHEREAS, Declarant is also the fee simple owner of certain real estate legally described as Lot 15a, Southport East Replat Eight, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 15a"); and

WHEREAS, Declarant desires to establish a permanent twenty-four (24) foot wide vehicular ingress and egress easement over a portion of Lot 14a as legally described and depicted on Exhibit "A" attached hereto and incorporated herein by this reference (the "Easement Area") for the benefit of Lot 15a.

NOW, THEREFORE, in consideration of the mutual agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement. Declarant hereby grants and conveys to Declarant and any successor owners of Lot 15a (hereinafter individually and collectively, the "Lot 15a Owner") and the Lot 15a Owner's employees, agents, contractors, tenants, occupants, invitees and licensees, a non-exclusive easement for vehicular ingress, egress and access to and from Lot 15a (the "Easement") over the Easement Area.

2. Maintenance, Repair, Insurance. Declarant, as the owner of Lot 14a and its successors and assigns (hereinafter individually and collectively, the "Lot 14a Owner"), shall maintain and repair the Easement Area and keep it in good and usable condition, reasonably free and clear of ice and snow, and free of obstructions of every kind. Furthermore, the Lot 14a Owner shall maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury, death or property damage occurring upon the Easement Area in an amount determined by the Lot 14a Owner in its reasonable discretion. If the Lot 14a Owner fails to maintain and repair the Easement Area as herein provided, the Lot 15a Owner may, at its option, after giving the Lot 14a Owner twenty (20) days written notice thereof, perform or have performed such maintenance or repairs to the Easement Area. If the Lot 15a Owner undertakes

R+R
Return to:
Jacqueline A. Pueppke
Baird Holm LLP
1500 Woodmen Tower
Omaha, NE 68102

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such maintenance or repairs due to the failure of the Lot 14a Owner to promptly perform the same, the portion of the costs incurred by the Lot 15a Owner for such maintenance or repairs that are the obligation of the Lot 14a Owner shall be paid by the Lot 14a Owner to the Lot 15a Owner within ten (10) days of the Lot 14a Owner's receipt of notice of the amount of such costs. In the event the Lot 14a Owner fails to pay the Lot 15a Owner for such costs incurred, the Lot 15a Owner may exercise any rights or remedies it may have at law or in equity to collect such costs from the Lot 14a Owner.

3. No Obstruction. The Lot 14a Owner agrees not to obstruct, impede, or interfere with the Lot 15a Owner's use of the Easement Area for the purposes of ingress and egress to and from Lot 15a. In connection with its use of the Easement Area, the Lot 15a Owner agrees not to obstruct, impede, or interfere with the Lot 14a Owner's use of Lot 14a. There shall be no material redesign, alteration or modification of the Easement Area which would adversely affect the use thereof as contemplated in this Agreement or would otherwise interfere with any rights granted in this Agreement, without the prior written approval of the Lot 15a Owner.

4. Binding Effect. The Easement granted herein, the restrictions hereby imposed, and the agreements herein contained shall be easements, restrictions and covenants running with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, including, without limitation, all subsequent owners of Lot 14a and all subsequent owners of Lot 15a, and all persons claiming under any them. Upon any sale of Lot 14a or Lot 15a, the selling party shall have no further liability hereunder other than for claims arising during the selling party's period of ownership.

5. Enforcement. The provisions of this Agreement may be enforced by an action for injunctive relief, as well as by an action for damages. No breach of any provision of this Agreement by any party shall give the other party the right to cancel, rescind or otherwise terminate this Agreement, but this provision shall not be deemed to affect any other rights or remedies which the non-breaching party may have, or claim to have, by reason of the breach.

8. Termination of Easement. The Easement may be terminated only by a written instrument executed by the then fee simple owners of Lot 14a and Lot 15a and shall not terminate due to the common ownership of Lot 14a and Lot 15a.

9. Miscellaneous. This Agreement contains the entire agreement of the parties regarding the Easement. This Agreement shall be construed and governed by the laws of the State of Nebraska. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part thereof.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and date first above written.

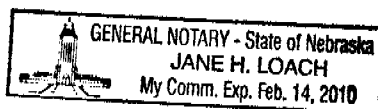
DECLARANT:

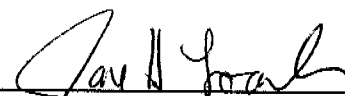
LUND SOUTHPORT 76, L.L.C., a Nebraska limited liability company

By: 
John Lund, Manager

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

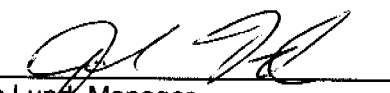
The foregoing instrument was acknowledged before me this 26th day of January, 2007, by John Lund, the manager of Lund Southport 76, L.L.C., a Nebraska limited liability company, on behalf of the company.




Notary Public

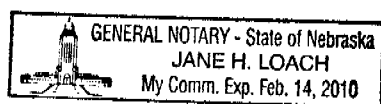
DECLARANT:

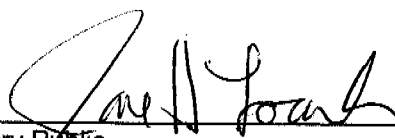
LUND SOUTHPORT 24, L.L.C., a Nebraska limited liability company

By: 
John Lund, Manager

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 26th day of January, 2007, by John Lund, the manager of Lund Southport 24, L.L.C., a Nebraska limited liability company, on behalf of the company.




Notary Public

C

CONSENT OF TRUSTEE AND BENEFICIARY

This Consent of Trustee and Beneficiary is attached to and made part of that certain "Declaration of Access Easement" dated January ____, 2007 (the "Declaration"). In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, Great Western Bank, as Trustee and Beneficiary under that certain Deed of Trust from Lund Southport 76, L.L.C. and Lund Southport 24, L.L.C. to Trustee for the benefit of Beneficiary, which was filed for record in the office of the Register of Deeds of Sarpy County, Nebraska as Instrument #2006-01161 (the "Deed of Trust"), hereby consents to the foregoing Declaration such that the Deed of Trust shall be subject to said Declaration, and that for itself and its successors and assigns, hereby ratifies and consents to the foregoing Declaration and agrees that in the event of foreclosure of the Deed of Trust, it shall not take any action to foreclose or otherwise terminate the foregoing Declaration.

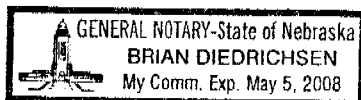
Executed this 29 day of January, 2007.

GREAT WESTERN BANK, a South Dakota banking corporation, as Trustee and Beneficiary

By 
P. Timothy Friesen, Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 29th day of January, 2007, by P. Timothy Friesen, Vice President of Great Western Bank, a South Dakota banking corporation, on behalf of the corporation.




Notary Public

2007-03030 D

