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Lancaster County, NE Assessor/Register of Deeds Office EASE

Pages: 5

Upon Recording Return to:

Andrew R. Willis

Cline Williams Wright Johnson

& Oldfather, L.L.P.

233 S 13th St, Suite 1900

Lincoln, NE 68508

COMMON EASEMENT COVENANT AND AGREEMENT

This Common Easement Covenant and Agreement ("**Easement Agreement**") is dated this 12 day of January, 2015 by Hobby Town Unlimited, Inc., a Nebraska corporation ("**Declarant**").

RECITALS

- A. Declarant is the owner of the following described undeveloped real property ("**Properties**"):

Lots 2, 3, & 4, Horizon Business Center 14th Addition to the City of Lincoln, Lancaster County, Nebraska,

with each lot referred to herein as Lot 2, Lot 3, and Lot 4 respectively, and the owners of one of the Properties being referred to herein as an "**Owner**" or collectively as "**Owners**".

- B. Declarant desires to place certain obligations and restrictions on the Properties to facilitate development thereof, benefit the Properties, and that shall run with the land and be binding on all future owners thereof.
- C. Declarant desires to create a 30' wide Common Access Easement across the Properties that shall consist of the following areas depicted on the attached and incorporated Exhibit A: (1) that portion of Lot 2 defined as the "Lot 2 Access Drive"; (2) that portion of Lot 3 defined as the "Lot 3 Access Drive", and (3) that portion of Lot 4 defined as the "Lot 4 Access Drive" (collectively, the Lot 2 Access Drive, Lot 3 Access Drive, and Lot 4 Access Drive shall be referred to herein as the "Easement Area").

AGREEMENT

1. **Grant of Easement.** Declarant as Grantor does hereby create and grant to each Owner as Grantee an easement for the purpose of ingress, egress, access and use by the Grantees in common with each other on, over and across the Easement Area, subject to the conditions and restrictions set forth herein. Declarant and each Owner covenants and agrees to use the Easement Area only for the purposes

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permitted herein and in a reasonable manner. Subject to those uses described in Section 6 below, the Owners agree that the easement is non-exclusive and that the Easement Area may be used in common by any Owner, and Owner's agents, employees, customers, guests, and invitees.

2. **Scope and Priority of Easements.** The easements granted herein shall not provide a greater, lesser, or different right of ingress, egress, access or use than provided to each Owner and, for the entire period this Easement Agreement is in effect, the Easement Area and any part thereof shall not be subject to any superior rights of any kind, including without limitation any superior rights to any lien, mortgage, deed of trust, covenant or other encumbrance, except as otherwise provided by Nebraska law.

3. **Construction of Capital Improvements.** Each Owner of a Lot shall construct the access drive, parking facilities and other capital improvements designated on Exhibit A on the Lot no later than the earlier of: (i) the completion of construction of the building to be built on Lot 4; and (ii) June 30, 2016; provided, however, that construction of the Access Road is governed by Section 4 below.

4. **Connection of Right-of-Way.** The Lot 2 Access Drive shall connect with and allow continuous and uninterrupted vehicular travel from the common access easement identified on Exhibit A.

5. **Access Road.** It is not currently contemplated that the access road depicted on Exhibit A between Lot 3 and Lot 4 ("**Access Road**") will be constructed; provided, however, that the Owners of Lot 3 & Lot 4 may in the future agree to proceed with the construction of the Access Road with the cost of constructing and maintaining the Access Road as mutually agreed upon between the Owners of Lot 3 & Lot 4.

6. **Maintenance & Repairs.** The Easement Area shall be maintained in good and clean order and condition. Except as expressly provided herein or agreed upon in writing between the Owners, each Owner shall bear the cost of maintaining its respective portion of the Properties in good repair, such that the Owner of Lot 1 shall be responsible for all costs of maintenance and repair of the Lot 1 Access Drive, the Owner of Lot 2 shall be responsible for all costs of maintenance and repair of the Lot 2 Access Drive, and the Owner of Lot 3 shall be responsible for all costs of maintenance and repair of the Lot 3 Access Drive. The Owners from time to time may agree to jointly share expenses related to maintenance or upkeep costs attributable to the entire Easement Area, including, for instance, snow removal. In such cases, unless otherwise agreed upon between the Owners in writing, such shared costs shall be allocated as follows:

<u>Lot Owned</u>	<u>Cost Share</u>
Lot 2	25%
Lot 3	25%
Lot 4	50%

7. **Uses.** No Owner shall construct any gate or otherwise block or impede traffic on the Easement Area in any way. No Owner shall cause or permit any hazardous materials as defined by federal, state or local law or regulation to be brought upon, stored, used, generated, released into the environment, or disposed of on, in, under, or about the Easement Area without the prior written, unanimous consent of Owners, which consent may be withheld for any reason. Each Owner shall have a continuing right of ingress and egress to use the Easement Area as permitted by this Section.

8. **Liability.** The sole right granted herein is the right to use the Easement Area for the purposes described herein and each Owner shall be liable to the other Owners for any damage caused by the use of the Easement Area by it or its agents, employees, customers, guests, licensees, invitees, successors or assigns. The Owners further agree that they shall not cause, permit, or allow any use of the Easement Area that will materially interfere with the use or enjoyment of the other Owners' properties abutting the Easement Area. Notwithstanding the foregoing, each Owner waives any and all rights to recover against the other Owner for any loss or damage to such waiving Owner arising from any cause covered by any insurance to the extent of the proceeds received by the waiving Owner.

9. **Insurance.** Each Owner shall be responsible for procuring and maintaining its own general public liability insurance of at least \$1,000,000 in the aggregate and \$100,000 per occurrence on the Properties it owns.

10. **Indemnification.** As a condition to the use of the Easement Area, each Owner ("**Indemnitor**") shall indemnify, defend, and save the other Owners (each an "**Indemnitee**"), their successors and assigns, harmless from and against any and all claims, demands, damages (other than damages from normal and reasonable use), costs and expenses, including reasonable attorneys' fees, arising from the use of the Easement Area by the Indemnitor, its agents, employees, customers, guests, licensees and invitees or from any breach or default on the part of the Indemnitor in the performance of any covenant or agreement on its part to be performed under this Easement, occurring on the Easement Area and the Indemnitor's Property.

11. **Binding Effect.** The easements granted in this Easement Agreement are perpetual and nonexclusive easements. The easements granted in this instrument shall run with the land for the benefit of the real property legally described in the Recitals, including without limitation for the benefit of the titleholders thereto, their invitees, agents, successors and assigns.

12. **Entire Agreement.** This Easement Agreement constitutes the entire agreement between the Owners and any prior understanding or representation of any kind preceding the date of this Easement Agreement shall not be binding on the Owners except to the extent incorporated in this Easement Agreement. This Easement Agreement shall be construed and interpreted in accordance with the laws of the State of Nebraska.

13. **Amendments.** Except as provided in this Agreement, this Easement Agreement shall not be released, terminated, revoked, amended, or modified in any

manner, without the written, unanimous consent of all the Owners, their successors or assigns. Any purported release, termination, revocation, amendment, or modification without such written consent shall be null and void and of no force and effect.

14. **Notices.** All notices required hereunder by any Owner to the other Owner shall be in writing and shall be hand delivered, sent and delivered by first class certified mail, postage prepaid, return receipt requested or for next day delivery by a nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee when delivered, if hand delivered, on the third (3rd) day following the day such notice is deposited with the USPS, or on the first (1st) day after deposit with such overnight courier. In lieu of the foregoing, any notice may be forwarded by email to the other Owner but will be deemed sent and received only if the receiving Owner acknowledges by email to the sender the receipt of such email and the attachments, if any.

This Easement Agreement is effective as of the date first above written ("Effective Date").

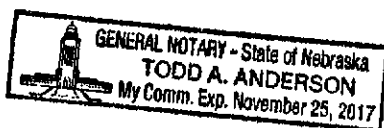
"DECLARANT"

Hobby Town Unlimited, Inc., a Nebraska corporation

By: Bill Groeve
Name: Bill Groeve
Title: Vice President

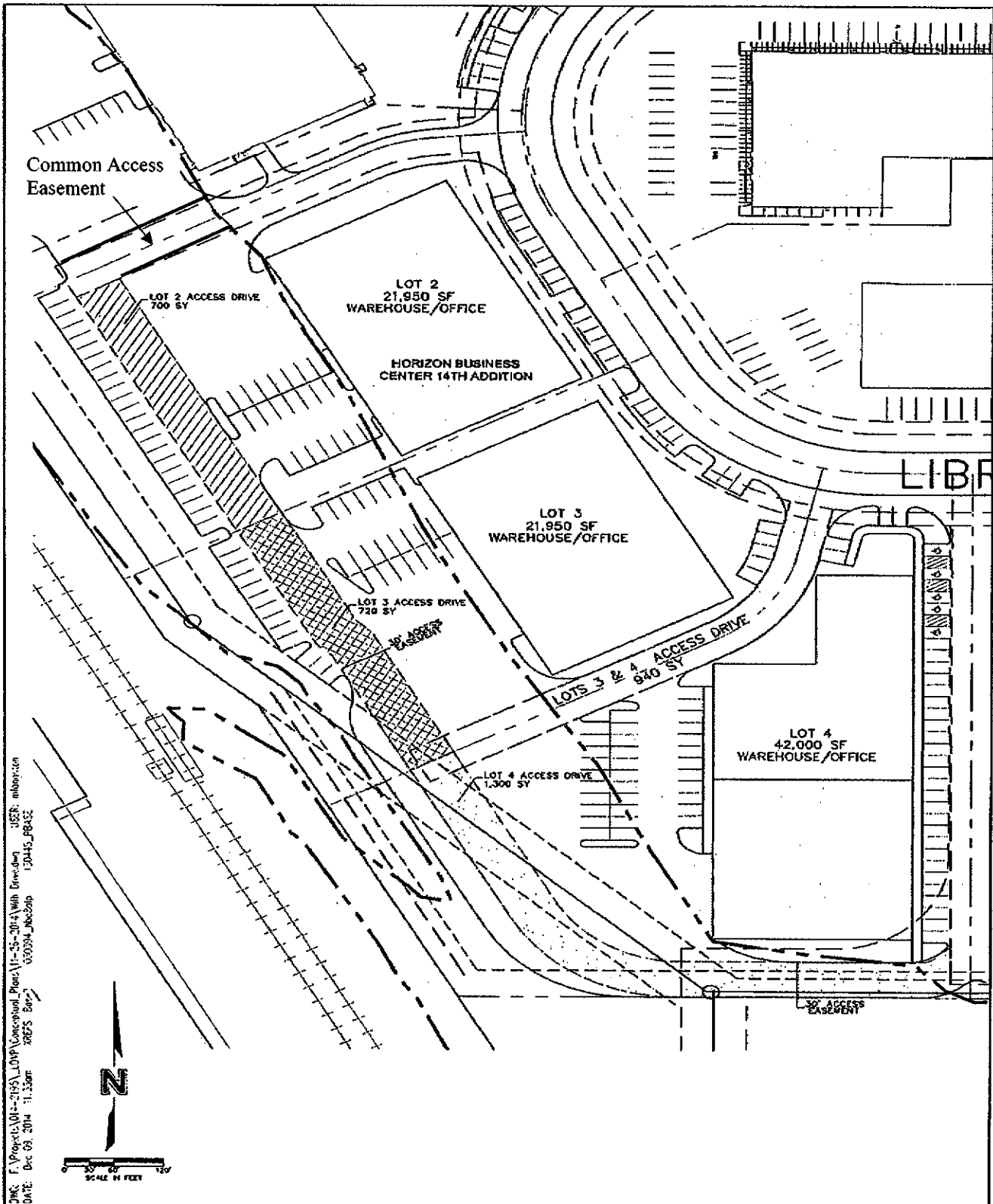
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 12 day of January, 2015, by Bill Groeve, of Hobby Town Unlimited, Inc., a Nebraska corporation, on behalf of the corporation.



Todd A. Anderson
Notary Public

EXHIBIT A Easement Area



JWC: F:\Projects\012-21951\012-21951\14th Addition\14th Addition.dwg 12/03/2014 11:33am
 DATE: Dec 03, 2014 11:33am
 000304_mcl.dwg 12/03/2014 11:33am

PROJECT NO. 0 DRAWN BY: MCL DATE: 12/02/2014	HORIZON BUSINESS CENTER 14TH ADDITION	801 P Street, Suite 200 P.O. Box 84605 Lincoln, NE 68508 TEL: 402.474.8744 FAX: 402.474.5180	EXHIBIT 1
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