

2017-26114

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*Wayne J. Dowling*

REGISTER OF DEEDS

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**DECLARATION OF PERMANENT RECIPROCAL JOINT ACCESS  
EASEMENT AND MAINTENANCE AGREEMENT**

THIS DECLARATION OF PERMANENT RECIPROCAL JOINT ACCESS EASEMENT AND MAINTENANCE AGREEMENT is made as of this 25<sup>th</sup> day of October 2017 (hereinafter referred to as the "Effective Date") by Granite Falls Commercial, LLC, a Nebraska limited liability company ("GFC").

**RECITALS:**

WHEREAS, GFC is the lawful owner of Lot 10, Granite Falls Commercial, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 10"), and Lot 11, Granite Falls Commercial, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 11");

WHEREAS, Lot 10 and Lot 11 are sometimes referred to herein individually as a "Lot" and collectively as the "Lots";

WHEREAS, by virtue of the recording of this Declaration of Permanent Reciprocal Joint Access Easement and Maintenance Agreement (the "Easement Agreement"), the Lots shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Easement Agreement and every grantee of any interest in any said Lots, 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 Lots, 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 subject to the provisions of this Easement Agreement and shall be deemed to have consented to the terms hereof; and

WHEREAS, GFC desires to establish for its own benefit and for the mutual benefit of all future owners, occupants, and mortgagees of the Lots or any portion thereof and their respective officers, directors, members, partners, employees, tenants, agents, contractors, customers, invitees, licensees, vendors, suppliers, subtenants, concessionaires, or fire, rescue and other emergency vehicles (collectively referred to herein as "Permittees"), ingress and egress, over and upon each of the Lots, now or hereafter located upon the Lots or any portion thereof within the easement area depicted on Exhibit A for the purpose of providing pedestrian and vehicular ingress and egress to the Lots (but not parking), and intends that all future owners, occupants and mortgagees and any other persons hereafter acquiring any interest in the Lots shall hold said interest subject to certain rights, easements and privileges in, over and upon the Lots or any portion thereof for the purpose of providing pedestrian and vehicular ingress and egress, to and from the Lots.

NOW, THEREFORE, for and in consideration of One (\$1.00) Dollar, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, GFC does hereby declare as follows:

1. Access Easement.

(a) GFC hereby grants an easement, for the benefit of the Lot 11 owner and its Permittees, for the perpetual non-exclusive right for vehicular and pedestrian ingress and egress, in, over and upon the private access drive now or hereafter constructed and located upon that portion of the Lot 10 as described on Exhibit A attached hereto and hereby made a part hereof, solely for the purpose of providing Permittees pedestrian and vehicular access to the Lots (but not parking).

(b) GFC hereby grants an easement, for the benefit of the Lot 10 owner and its Permittees, for the perpetual non-exclusive right for vehicular and pedestrian ingress and egress, in, over and upon the private access drive now or hereafter constructed and located upon that portion of the Lot 11 as described on Exhibit A attached hereto and hereby made a part hereof, solely for the purpose of providing Permittees pedestrian and vehicular access to the Lots (but not parking).

(c) The easement rights herein granted to any person or entity, or anyone claiming by, through or under them, shall terminate and expire at such time as such person or entity ceases to be an owner, occupant or mortgagee of a Lot or Lots or any portion thereof, as the case may be, and such rights shall thereafter be held by the new owner, occupant or mortgagee, or anyone claiming by, through or under them.

2. Nature of Easements. The foreclosure of any mortgage covering all or a portion of a Lot or Lots shall in no way affect or diminish any easements granted herein, for all such easements shall remain in full force and effect for the benefit of the grantees described herein. The easements hereby created are not public easements, but are permanent, private easements for the use and benefit of the owners, future owners, occupants, mortgagees, and their respective Permittees. GFC expressly disclaims the creation of any rights in or for the benefit of the public generally. It is understood and agreed that the easements shall continue for so long as any Lot remains in existence unless otherwise mutually agreed by the owners of both Lots in writing to be filed of record against both Lots.

3. Improvements and Costs and Expenses. The owner of any Lot which commences construction first (hereinafter referred to sometimes as the "Constructing Party") shall be responsible for designing and constructing the private access drive servicing both Lots within the area depicted on Exhibit A at its sole cost and expense. The Constructing Party shall submit the plans and specifications and a detailed budget to the owner of the adjacent Lot (hereinafter referred to sometimes as the "Non-Constructing Party") prior to the commencement of construction. The Non-Constructing Party shall have ten (10) days to review and approve of the plans and specifications and the budget, which approval shall not be unreasonably withheld or delayed. During the course of construction of the private access drive, the Constructing Party of such private access drive shall submit to the Non-Constructing Party of the adjacent Lot a statement of the costs and expenses reasonably incurred by the either the general contractor or supervising engineer engaged by the Constructing Party to construct the private access drive, together with reasonably supporting documentation therefore and lien waivers and releases for all work and materials. The Constructing Party shall cause its general contractor to warrant, as to the owners or occupants of each Lot, that the private access drive is free from defects in design, materials or workmanship for at least one (1) year from the date of completion. Within ten (10) days following receipt of each such statement, the Non-Constructing Party of the adjacent Lot shall pay to the Constructing Party (or, at the Constructing Party's election, to the general contractor engaged by the Constructing Party) their respective share of the actual design and construction costs for the private access drive; provided, however, that such costs shall not exceed the agreed upon share of the total costs set forth in

the previously approved budget for the private access drive design and construction. The payment by the Non-Constructing Party shall be conditioned upon the simultaneous payment by the Constructing Party of its share of the construction costs. The total design and construction costs for the private access drive shall be evenly allocated between the owners of the Lots such that each Lot owner pays 50% of the total costs.

4. Maintenance of the Private Access Drive. At such time as the Constructing Party completes construction of the private access drive, the Constructing Party shall be responsible for the maintenance, repair, and, if necessary (and only with the prior written consent of the Non-Constructing Party) replacement of the materials comprising the private access drive. The maintenance shall include, without limitation, the following:

- (1) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
- (2) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (3) Inspecting, maintaining, repairing and replacing any storm drainage system installed along the private access drive;
- (4) Inspecting, maintaining, repairing and replacing the lighting, if any, installed along the drive; and
- (5) Maintaining, mowing, weeding, thinning, trimming, watering, fertilizing, cultivating and pruning all landscaped areas within the easement area, including any adjacent public right-of-ways, to maintain the same in a neat, well-groomed condition, and replacing as necessary shrubs and other landscaping on a regular basis; dead or dying plants shall be removed and replaced within thirty (30) days, weather permitting; all plants and trees are to be irrigated as often as necessary to maintain healthy growing conditions.

5. Responsibility for Maintenance and Operation of the Private Access Drive. The Constructing Party shall be responsible for all of the costs and expenses associated with the maintenance, repair and/or replacement of the private access drive until such time as the Non-Constructing Party's Lot is developed and improved with a building and related improvements. After such time, the Constructing Party shall periodically submit to the Non-Constructing Party a statement of costs and expenses reasonably incurred after the Non-Constructing Party's Lot is developed and improved with a building and related improvements by the Constructing Party for such maintenance repair and/or approved replacement of the private access drive, together with reasonably supporting documentation therefore. The Non-Constructing Party shall, within thirty (30) days following the receipt of any reasonable written invoice from the Constructing Party for any such maintenance, repair and/or approved replacement, reimburse the Constructing Party based upon its allocated share of the reasonable cost of such maintenance, repair and/or approved replacement in accordance with Section 3, above.

6. Responsibility to Repair Own Parcel. Except with respect to the private drive and related improvements and appurtenances located within the easement area described and depicted on Exhibit "A" attached hereto, each Lot owner shall be responsible for the repair and maintenance of the Lot owned by it and all improvements located on such Lot.

7. Lien Rights. In the event any sum of money payable by one party to the other pursuant to any provision of this Easement Agreement is not paid when due, the party seeking payment (the "Requesting Party") shall give the non-paying party (the "Non-Paying Party") written notice of such failure to pay as required herein. In the event the unpaid amount is not paid in full to have Requesting Party within ten (10) days after such notice is given, the Requesting Party shall have the right to record, in the Office of the Register of Deeds for Sarpy County, Nebraska, a notice of lien, which shall set forth the then-delinquent amount owed by the Non-Paying Party (including interest at an annual rate of eighteen percent (18%) per annum (the "Default Rate"), and a legal description of the lot owned by the Non-Paying Party (the "Notice of Lien"). Any Non-Paying Party acknowledges that the its Lot will be subject to a lien claim in favor of the Requesting Party in the event Non-Paying Party fails to pay any sums due under this Easement Agreement. Upon recordation of such Notice of Lien, the then delinquent amount owing by the Non-Paying Party, together with interest thereon at the Default Rate, shall constitute a lien upon the parcel of such Non-Paying Party (the "Lien"), as described in the Notice of Lien. In the event the amount secured by such Lien is not paid in full within ten (10) days after such Notice of Lien has been recorded, the Requesting Party may enforce payment of the amount due, or enforce the Lien against the parcel of the Non-Paying Party, by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, the Requesting Party shall not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under applicable law): (i) bringing an action at law against the Non-Paying Party personally obligated to pay the unpaid sum of money; and/or (ii) foreclosing the Lien against the parcel of the Non-Paying Party in accordance with the then prevailing Nebraska law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency).

8. Self-Help Rights. If either Party (the "Failing Party") fails to observe or perform any of its obligations or duties hereunder, then the non-failing party (the "Non-Failing Party") may give the Failing Party written notice of such failure and Failing Party shall observe or perform the obligation or duty required within thirty (30) days after receiving such notice; provided, however, that if such non-performed or non-observed obligation or duty is one which cannot be performed or observed within said thirty (30) day period and thereafter diligently prosecutes such performance or observance until completion to the reasonable satisfaction of the Non-Failing Party, then Non-Failing Party shall not be entitled to exercise the remedy provided for in the following sentences. Should Failing Party fail to fulfill this obligation or duty within such period, then Non-Failing Party, through its employees or authorized agents, shall have the right and power to enter onto the Failing Party's Lot and perform such obligation or duty without liability to any person for damages for wrongful entry or trespass unless occasioned by the gross negligence or intentional wrongful acts of the Non-Failing Party or its agents. Failing Party shall be liable for one-half (1/2) of the cost of such work and shall promptly reimburse Non-Failing Party for such costs. If Failing Party shall fail to reimburse Non-Failing Party within thirty (30) days after receipt from Non-Failing Party of a written statement describing the work performed and the cost thereof, then Non-Failing Party may enforce payment of the amount due in accordance with Section 7 of this Easement Agreement. Notwithstanding the foregoing, in the event of an emergency, Non-Failing Party may undertake any duties which are reasonably necessary to alleviate said emergency and to stabilize the situation and Failing Party shall reimburse Non-Failing Party for one-half (1/2) of all reasonable sums so expended. Non-Failing Party shall use best efforts to give immediate notice of such emergent circumstances to Failing Party.

9. 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 pedestrian or vehicular traffic through the access easement area on any Lot; provided, however, curb stops and other reasonable traffic controls, including, without limitation, directional barriers and stop signs, as may be necessary to guide and control the orderly flow of traffic may be installed by a party on its respective Lot to the extent such controls do not materially adversely affect the other Lot or party. Notwithstanding the foregoing, a party may install temporary

traffic controls on its respective Lot in the event of any emergency condition.

10. Effect of Covenants. Each Lot owner, 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 Easement Agreement or to which this Easement 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 Lot owners on like manner as though the provisions, terms and restrictions of this Easement Agreement were received and stipulated at length in each and every deed of conveyance.

11. Waiver. No covenant, restriction, condition or provision of this Easement 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.

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

13. Amendment; Modification. This Easement Agreement may be amended by the written consent and mutual agreement of all the record owners of the Lots subject hereto or their successors and assigns. Any such modification or amendment shall be effective when duly recorded in the Office of the Register of Deeds of Sarpy County, Nebraska.

14. Estoppel. A Lot owner shall deliver to the other Lot owner, within ten (10) days after request therefore, a written statement, setting forth that, to the best of such owner's knowledge, the requesting party is not in default, in the performance of any of its obligations under this Easement Agreement or, if in default, setting forth the nature of such default, and such other matters as may be reasonably requested.

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

**[Remainder of page left intentionally blank; execution page follows.]**

EXECUTED this 25<sup>th</sup> day of October, 2017.

Granite Falls Commercial, LLC,  
a Nebraska limited liability company

By: [Signature]  
Name: Gerald Torczon  
Title: Manager

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on this 25<sup>th</sup> day of October, 2017,  
by Gerald Torczon, Manager of Granite Falls Commercial,  
LLC, a Nebraska limited liability company, on behalf of the limited liability company.

[Signature]  
Notary Public

State of Nebraska - General Notary  
MARY JAYNE THROENER  
My Commission Expires  
September 27, 2020

**CONSENT OF BENEFICIARY UNDER DEED OF TRUST**

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, Great Western Bank, as Beneficiary, under those certain Deed of Trust recorded Sarpy Co., NE, as Instrument No. 2014-07032 ("Deed of Trust"), respectively, in the Office of the Register of Deeds of Sarpy County, Nebraska, hereby consents to the foregoing Declaration of Permanent Reciprocal Joint Access Easement and Maintenance Agreement (the "Easement") such that the Deed of Trust shall be subject to said Easement, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of the Deed of Trust, it shall not take any action to terminate the foregoing Easement.

Executed this 25<sup>th</sup> day of October, 2017.

BENEFICIARY:

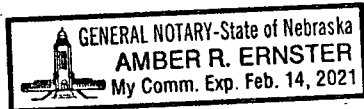
Great Western Bank

By: [Signature]  
Its: Asst. Vice President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

Before me, a Notary Public qualified for said County and State, personally came M. John Stuer, Asst. Vice President of Great Western Bank a bank chartered under the laws of the State of South Dakota, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of said bank.

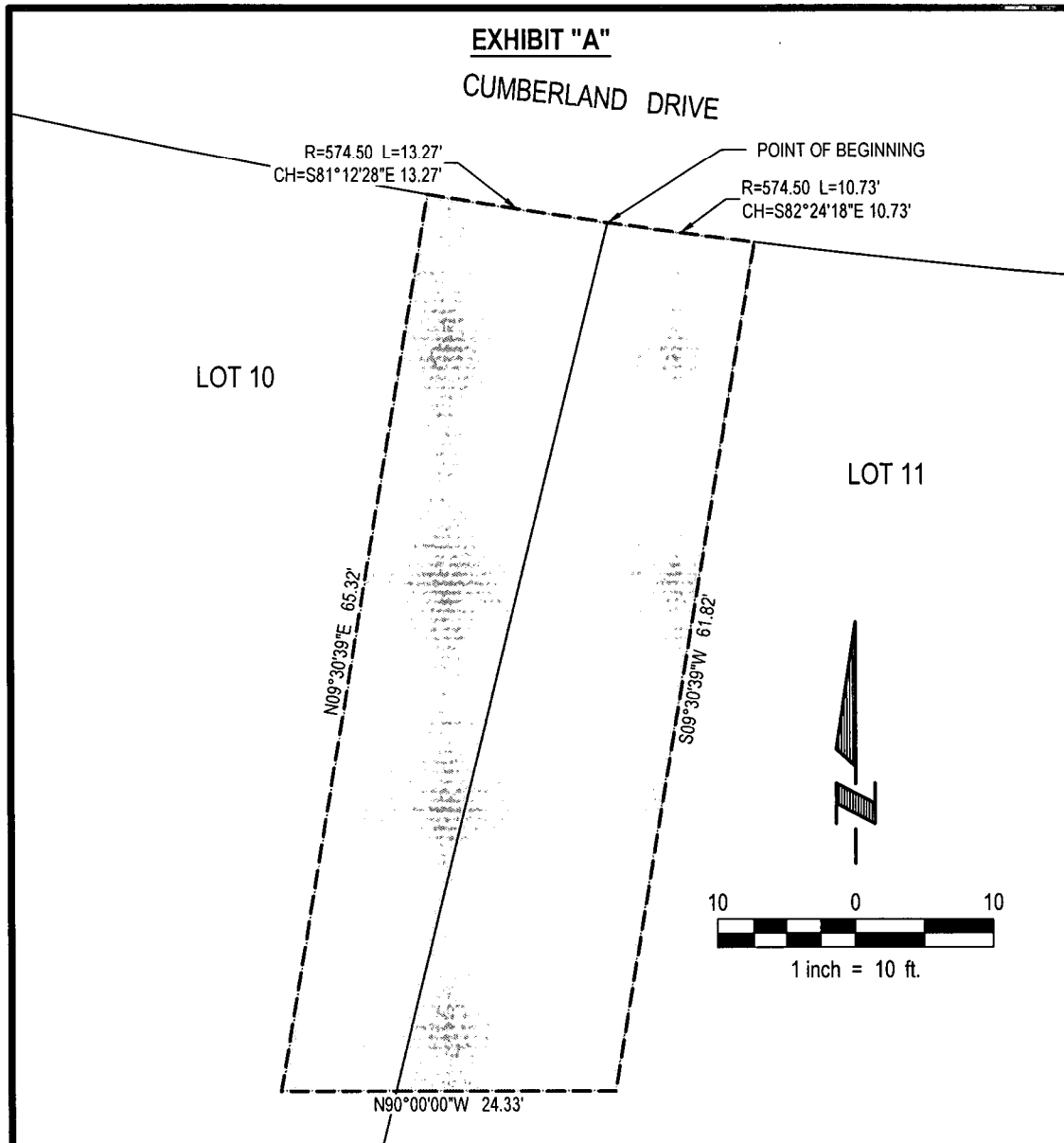
WITNESS my hand and Notary Seal on this 25<sup>th</sup> day of October, 2017.



[Signature]  
Notary Public

**EXHIBIT A  
EASEMENT AREA**





**LEGAL DESCRIPTION**

AN ACCESS EASEMENT BEING LOCATED IN PART OF LOTS 10 AND 11, GRANITE FALLS COMMERCIAL, A SUBDIVISION LOCATED IN PART OF THE SW1/4 OF THE SE1/4 AND PART OF THE SE1/4 OF THE SE1/4 OF SECTION 29, AND TOGETHER WITH PART OF THE SW1/4 OF THE SW1/4 OF SECTION 29, ALL LOCATED IN TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 11, GRANITE FALLS COMMERCIAL, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT 10, GRANITE FALLS COMMERCIAL, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF CUMBERLAND DRIVE; THENCE SOUTHEASTERLY ALONG THE NORTHERLY LINE OF SAID LOT 11, GRANITE FALLS COMMERCIAL, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF CUMBERLAND DRIVE ON A CURVE TO THE LEFT WITH A RADIUS OF 574.50 FEET, A DISTANCE OF 10.73 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S82°24'18"E (ASSUMED BEARING), A DISTANCE OF 10.73 FEET; THENCE S09°30'39"W, A DISTANCE OF 61.82 FEET; THENCE N90°00'00"W, A DISTANCE OF 24.33 FEET; THENCE N09°30'39"E, A DISTANCE OF 65.32 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 10, GRANITE FALLS COMMERCIAL, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF CUMBERLAND DRIVE; THENCE SOUTHEASTERLY ALONG SAID NORTHERLY LINE OF LOT 10, GRANITE FALLS COMMERCIAL, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF CUMBERLAND DRIVE ON A CURVE TO THE LEFT WITH A RADIUS OF 574.50 FEET, A DISTANCE OF 13.27 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S81°12'28"E, A DISTANCE OF 13.27 FEET TO THE POINT OF BEGINNING.

SAID ACCESS EASEMENT CONTAINS 1,524 SQUARE FEET OR 0.035 ACRES, MORE OR LESS.

 <b>E &amp; A CONSULTING GROUP, INC.</b> <small>Engineering Answers</small>	<b>E &amp; A CONSULTING GROUP, INC.</b> Engineering • Planning • Environmental & Field Services <small>10909 Mill Valley Road, Suite 100 • Omaha, NE 68154 Phone: 402.895.4700 • Fax: 402.895.3599</small>	<b>ACCESS EASEMENT</b> <b>LOT 10 AND 11</b> <b>GRANITE FALLS COMMERCIAL</b> <small>SARPY COUNTY, NEBRASKA</small>	
	Drawn by: RLS   Chkd by: _____   Date: 09/21/2017		
	Job No.: 2004.225.007		