

Recorder Note: Indexed against Lot 13 Shadow Lake Towne Center 05-09-06

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2006-15269

2006 MAY -8 P 3:17

Sharon J. Lawing
REGISTER OF DEEDS

COUNTER _____ C.E. _____
VERIFY _____ D.E. _____
PROOF _____
FEES \$ 30.50
CHECK# _____
CHG 7 Δ CASH _____
REFUND _____ CREDIT _____
SALES _____ NGR _____

RE: Lots 1 to 15 inclusive and Outlots A, B, and C
Shadow Lake Towne Center

DECLARATION FOR INGRESS AND EGRESS

370 LLC, a Nebraska Limited Liability Company, hereby establishes the following easements.

PRELIMINARY STATEMENT

370 LLC, a Nebraska Limited Liability Company, ("Declarant"), is the record owner of Lots 1 to 15 inclusive and Outlots A, B, and C, Shadow Lake Towne Center, a subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded (collectively the "Parcels").

Declarant desires to establish a permanent nonexclusive easement over a certain portion of Lot 13, Shadow Lake Towne Center, a subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded ("Lot 13"), for the purpose of providing vehicular access, ingress, egress, passage and traffic to and from the Parcels and Towne Center Parkway, 73rd Street, 75th Street, and Olson Drive.

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 and covenants.

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

1.1 **Access Drive.** Access Drive shall mean that portion or all of the sixty (60) foot strip of land depicted and legally described on Exhibit A, attached and incorporated herein, which is improved and exists from time to time as a drive or traffic way, including alterations, modifications or adjustments thereof consistent with the terms of this Agreement.

1.2 **Owner.** The term "Owner" shall mean any individual, partnership, joint venture, limited liability company, 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.

RETURN TO:
THOMPSON, DREESSEN & DORNER, INC.
10836 OLD MILL ROAD
OMAHA, NEBRASKA 68154

15269

A

1.3 Parcel. The term "Parcel" shall mean or refer to any of the following platted lots: Lots 1 to 15 inclusive and Outlots A, B, and C, Shadow Lake Towne Center, a subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded and any subsequent administrative subdivision, replat, revision or amendment thereof. The term "Parcels" shall mean all of the platted lots identified in this Subsection 1.3. From time to time reference to one or more of such Parcels may be made in this Declaration by their respective lot numbers.

1.4 Permittees. The term "Permittees" shall mean (i) the Owners of the Parcels 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. Persons engaged in political activities or labor disputes shall not be considered Permittees.

2. Easements and Covenants. The Declarant hereby grants and establishes the following easements and covenants:

2.1 Easement Grant.

A. The Declarant hereby grants to the Permittees of the Parcels a nonexclusive easement upon the Access Drive for vehicular access, ingress, egress, passage and traffic to and from the Parcels and Towne Center Parkway, 73rd Street, 75th Street, and Olson Drive, which easement rights shall be exercised only in connection with the use of the Parcels. Declarant reserves the right to permit parallel parking on either or both sides of the Access Drive.

B. Declarant may, from time to time, at its sole expense, during the term of this Declaration, move, reduce, enlarge or adjust the location, contour, width, and grade of one or more portions or all of the Access Drive. In the event Declarant or its successors and assigns exercises the rights provided in this Subsection B., temporary access to and from Towne Center Parkway, 73rd Street, 75th Street, and Olson Drive shall be provided to the Permittees during the exercise of such rights.

C. In no event shall this Agreement be construed as creating parking or other easements benefiting the Permittees except as specifically granted in this Agreement.

2.2 Use of Access Drive. The Permittees (i) shall use the Access Drive with due regard to the rights of other Permittees; (ii) shall not use the Access Drive in any manner which will impair or impede the rights of other Permittees; (iii) shall not obstruct passage on the Access Drive; and (iv) shall not construct or place any obstacle or other type of barrier or obstruction on the Access Drive. Declarant and the Owner of the portion of Lot 13 on which the Access Drive is located shall have the right to temporarily close the Access Drive for a period not to exceed twenty-four (24) hours in any calendar year, excluding the months of May, June, July, October,

B

November or December, but only such temporary closing if legally necessary to preclude the creation of a prescriptive easement or public dedication of the Access Drive or any portion thereof.

3. **Eminent Domain.** Nothing herein shall be construed to give an 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 Parcel or granted the public or any governmental entity any rights in such Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of an 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 Owner or Permittees of any other Parcel.

4. **Breach.** The breach of this Declaration will not entitle any Owner of a Parcel to cancel, rescind or otherwise terminate this Declaration.

5. **Legal Effect.** Each of the easements and rights created by this Declaration are appurtenant to each of the Parcels and may not be transferred, assigned or encumbered except as an appurtenance to a Parcel. For the purpose of each such easement and right, the Benefited Parcel will constitute the dominant estate and the Burdened Parcel will constitute the servient estate. Each easement or covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of the Parcels to which easements have been granted in this Declaration; (b) creates an equitable servitude on the Access Drive upon which easements have been granted in favor of the Parcels; (c) constitutes a covenant running with the land; (d) binds every owner now having or hereafter acquiring an interest in a Parcel; and (e) will inure to the benefit of and be binding upon the owners of the Parcels and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust.

Upon the conveyance of all or any part of a Parcel, the grantee, by accepting such conveyance, as evidenced by the recordation of the deed of conveyance to such Parcel, 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. Upon recordation of such conveyance with the Register of Deeds of Sarpy County, Nebraska, the conveying owner will be released from any obligation under this Declaration arising thereafter with respect to the portion of the Parcel so conveyed but will remain responsible for any liability, if any, which has accrued prior to such recordation.

6. **No Dedication.** Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Parcel to the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited, in accordance with the terms hereof, to the private use of the Permittees of each Parcel to whom easements have been granted in this Declaration.

C

7. **Duration; Amendment; Termination.**

7.1 **Duration.** Unless otherwise modified, terminated or extended as permitted in this Section 8 or in this Declaration, the easements, rights, obligations and covenants contained in this Declaration shall continue in perpetuity.

7.2 **Amendment and Termination.** Except as otherwise provided in this Declaration, this Declaration and any provision herein contained may be terminated, extended or amended only with the express written consent of the Owner of the Access Drive and the Declarant. No tenant, licensee or other person having only a possessory interest in a Parcel is required to join in the execution of or consent to any action of the Owner of any Parcel taken pursuant to this Declaration.

8. **Miscellaneous.**

8.1 **Notices.** All notices, statements, demands, approvals and 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 a national courier service to the Owners of the Parcels affected at the addresses on file with the office of the Sarpy County Assessor for delivery of ad valorem property tax statements relating to their respective Parcels. All such notices which are mailed shall be deemed delivered on the third day after postmark. All such notices delivered by a national courier service shall be deemed delivered the next regular business day following the date of deposit with such service.

8.2 **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 of such default. 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 provisions.

8.3 **No Partnership.** Nothing contained in this Declaration and any action by the Owner of a Parcel will not be deemed or construed by an Owner or 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 Parcels.

8.4 **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 be valid and enforceable to the fullest extent permitted by law.

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

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

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

Dated as of ^{May}~~April~~ 2, 2006

370 LLC, a Nebraska Limited Liability Company

By: RED Papillion, LLC, a Missouri Limited Liability Company, Its Manager

By: E & R Holdings, LLC, an Arizona Limited Liability Company, Its Manager

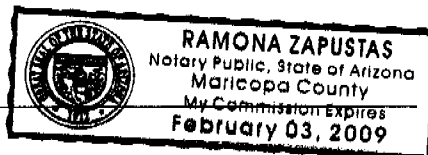
By: Michael L. Ebert
Michael L. Ebert, Manager

^{Arizona}
STATE OF ~~NEBRASKA~~)
^{Maricopa} ss.:
COUNTY OF ~~DOUGLAS~~)

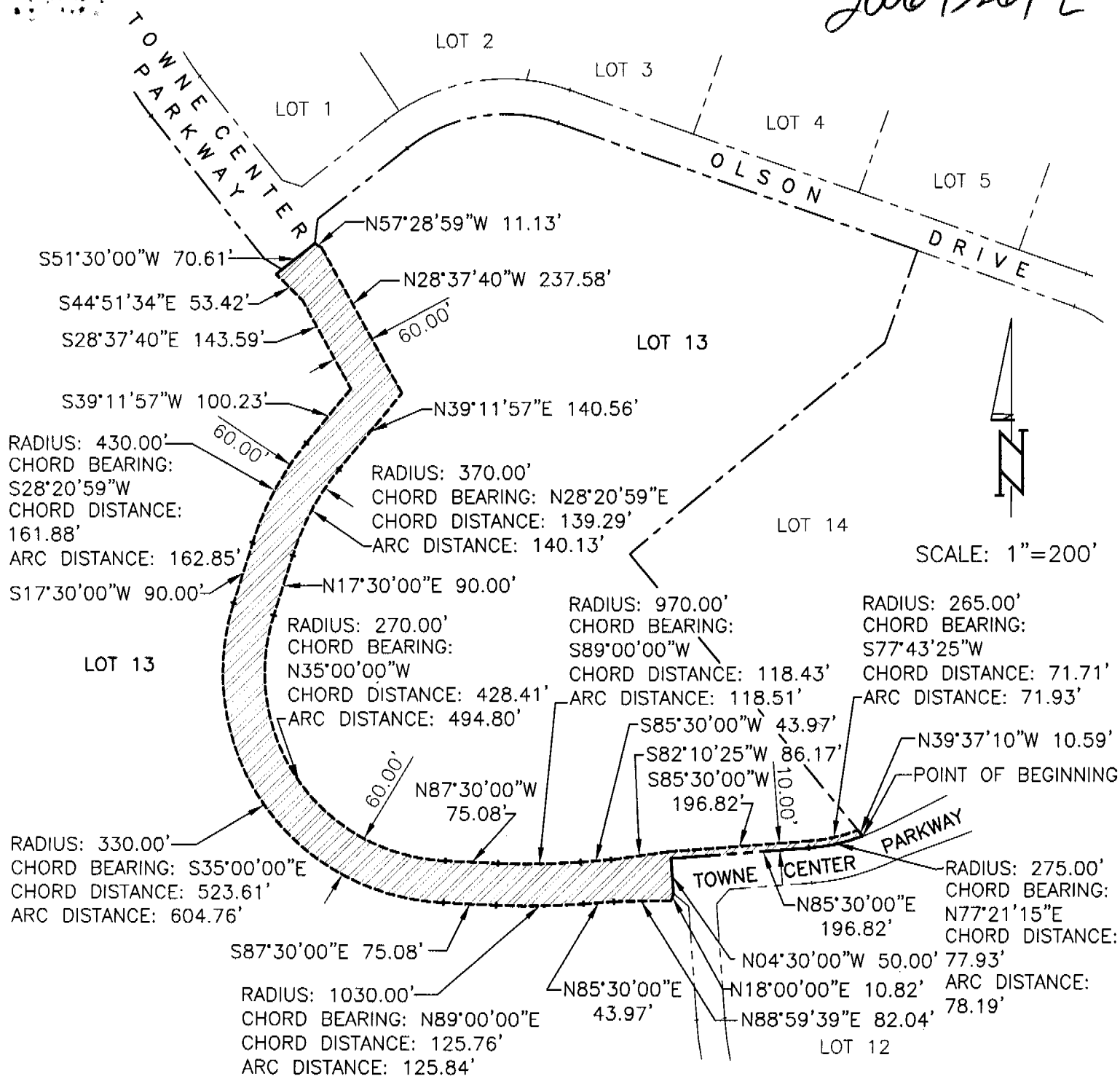
Now on this ^{May}~~April~~ 2 day of ~~April~~, 2006, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, Manager of E & R Holdings, LLC, an Arizona Limited Liability Company, which entity is the Manager of RED Papillion LLC, a Missouri Limited Liability Company, which entity is the Manager of 370 LLC, a Nebraska Limited Liability Company, who is personally known to me to be the same person who executed in such capacity the within instrument on behalf of said entity and who duly acknowledged the execution of the same to be the act and deed of said entity.

Ramona Zapustas
Notary Public

My Commission Expires: _____



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LEGAL DESCRIPTION

THAT PART OF LOT 13, SHADOW LAKE TOWNE CENTER, A SUBDIVISION IN SARPY COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SW CORNER OF LOT 14, SAID SHADOW LAKE TOWNE CENTER; THENCE N39°37'10"W (ASSUMED BEARING) 10.59 FEET ON THE WEST LINE OF SAID LOT 14; THENCE SOUTHWESTERLY ON A LINE 10.00 FEET NORTH OF AND CONCENTRIC WITH AN EAST LINE OF SAID LOT 13 ON A NON-TANGENT 265.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING S77°43'25"W, CHORD DISTANCE 71.71 FEET, AN ARC DISTANCE OF 71.93 FEET; THENCE S85°30'00"W 196.82 FEET ON A LINE 10.00 FEET NORTH OF AND PARALLEL WITH AN EAST LINE OF SAID LOT 13; THENCE S82°10'25"W 86.17 FEET; THENCE S85°30'00"W 43.97 FEET; THENCE SOUTHWESTERLY ON A 970.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING S89°00'00"W, CHORD DISTANCE 118.43 FEET, AN ARC DISTANCE OF 118.51 FEET; THENCE N87°30'00"W 75.08 FEET; THENCE NORTHWESTERLY ON A 270.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N35°00'00"W, CHORD DISTANCE 428.41 FEET, AN ARC DISTANCE OF 494.80 FEET; THENCE N17°30'00"E 90.00 FEET; THENCE NORTHEASTERLY ON A 370.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N28°20'59"E, CHORD DISTANCE 139.29 FEET, AN ARC DISTANCE OF 140.13 FEET; THENCE N39°11'57"E 140.56 FEET; THENCE N28°37'40"W 237.58 FEET; THENCE N57°28'59"W 11.13 FEET TO THE NORTH LINE OF SAID LOT 13; THENCE S51°30'00"W 70.61 FEET ON THE NORTH LINE OF SAID LOT 13 AND ITS WESTERLY EXTENSION; THENCE S44°51'34"E 53.42 FEET; THENCE S28°37'40"E 143.59 FEET; THENCE S39°11'57"W 100.23 FEET; THENCE SOUTHWESTERLY ON A 430.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING S28°20'59"W, CHORD DISTANCE 161.88 FEET, AN ARC DISTANCE OF 162.85 FEET; THENCE S17°30'00"W 90.00 FEET; THENCE SOUTHEASTERLY ON A 330.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING S35°00'00"E, CHORD DISTANCE 523.61 FEET, AN ARC DISTANCE OF 604.76 FEET; THENCE S87°30'00"E 75.08 FEET; THENCE NORTHEASTERLY ON A 1030.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N89°00'00"E, CHORD DISTANCE 125.76 FEET, AN ARC DISTANCE OF 125.84 FEET; THENCE N85°30'00"E 43.97 FEET; THENCE N88°59'39"E 82.04 FEET; THENCE N18°00'00"E 10.82 FEET TO THE EAST LINE OF SAID LOT 13; THENCE N04°30'00"W 50.00 FEET ON THE EAST LINE OF SAID LOT 13; THENCE N85°30'00"E 196.82 FEET ON THE EAST LINE OF SAID LOT 13; THENCE NORTHEASTERLY ON THE EAST LINE OF SAID LOT 13 ON A 275.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N77°21'15"E, CHORD DISTANCE 77.93 FEET, AN ARC DISTANCE OF 78.19 FEET TO THE POINT OF BEGINNING.