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**SHARED ACCESS DRIVEWAY  
 USE AND MAINTENANCE AGREEMENT**

THIS SHARED ACCESS DRIVEWAY USE AND MAINTENANCE AGREEMENT (this "**Agreement**") is made and entered into this \_\_\_ day of September, 2016, by and between 3 Iron, LLC, a Nebraska limited liability company ("**3 Iron**"), and Gottsch Land Co., a Nebraska corporation ("**Gottsch**").

**RECITALS:**

A. 3 IRON is the owner of the following described real property located in Omaha, Douglas County, Nebraska, to-wit (collectively, the "3 IRON Property"):

Lots 4 and 5, Indian Creek Commercial Plaza, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

B. Gottsch is the owner of the following described real property located in Omaha, Douglas County, Nebraska, to-wit (the "Gottsch Property"):

Lot 6, Indian Creek Commercial Plaza, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

C. It is contemplated that a shared access driveway will be constructed in the location depicted on Exhibit A attached hereto and by this reference made a part hereof (the "**Shared Access Driveway**"). The Shared Access Driveway shall cross a part of the 3 IRON Property and part of the Gottsch Property, in the areas depicted on Exhibit A, and shall be utilized for vehicular and pedestrian ingress/egress by 3 IRON and Gottsch and their respective successors, assigns, tenants, sub-tenants, employees, customers, vendors and other

Return to Investors Realty Inc  
 11301 Davenport St  
 Omaha, NE 68154  
 (Att) Tim Kerrigan

business invitees for ingress, egress and access to the 3 IRON Property and/or Gottsch Property, pursuant to the terms and conditions set forth herein.

D. The parties desire to provide for the joint use and maintenance of such Shared Access Driveway.

NOW, THEREFORE, for an in consideration of the mutual covenants and agreements herein contained, it is agreed as follows:

1. **Common Use.** 3 IRON and Gottsch, for the benefit of themselves and their respective tenants, sub-tenants, employees, customers, vendors, and other invitees, hereby declare that 3 IRON and Gottsch, and their respective tenants, sub-tenants, employees, customers, vendors, and other invitees, shall have the common and shared use of the Shared Access Driveway for the purposes of vehicular and pedestrian ingress/egress and access to/from the Gottsch Property and/or to/from the 3 IRON Property subject to the terms of this Agreement.
2. **Construction and Maintenance.**
  - (a) ***Construction.*** 3 IRON shall be responsible for the initial construction of the Shared Access Driveway in a first class manner which construction shall be consistent in all material respects with the plans/specifications previously provided to and approved in writing by Gottsch. Such construction shall be at 3 IRON's sole cost and expense.
  - (b) ***Initial Maintenance.*** So long as the Gottsch Property is not improved or occupied 3 IRON shall be solely responsible, at 3 IRON's sole cost and expense, for maintaining, repairing and replacing the Shared Access Driveway in a first class manner. In the event that the Gottsch Property is hereafter improved or occupied, then the provisions of Section 2(c) of this Agreement shall control.
  - (c) ***Shared Maintenance.*** Following the completion of building improvements on the Gottsch Property (as evidenced by a certificate of occupancy issued by the City of Omaha), 3 IRON shall continue to maintain, repair, and replace the Shared Access Driveway in a first class manner, and all reasonable costs and expenses associated with the maintenance, repair, and replacement of the Shared Access Driveway shall be shared equally by 3 IRON and Gottsch. Gottsch

shall reimburse 3 IRON for Gottsch's 50% share of any such reasonable costs within thirty (30) days receipt of an invoice therefor from 3 IRON. For the purposes hereof, reasonable costs expenses and maintenance shall include, without limitation, snow removal, striping, sealing, repairs, replacements or substitutions of paving curbing, drainage, or other surfaces, and all other similar items.

3. **Enforcement.**

(a) If either party shall fail to perform the obligations set forth in Section 2 above (the non-performing party hereinafter "Party X", then the other party ("Party Y"), following written notices from Party Y to Party X of such failure and the passage of 15 days following such notice for Party X to cure such failure, Party Y shall have the right to perform such obligations on Party X's behalf, and Party X shall promptly reimburse Party Y upon demand for the reasonable costs and expenses incurred by Party Y in performing such obligations, plus interest at the rate of 10% per annum if Party X fails to reimburse Party Y within 30 days after such demand, which interest shall accrue from the day demand for such reimbursement is made until the amount due to Party Y is paid in full.

(b) In the event that either party defaults under the terms, provisions, of this Agreement, the non-defaulting party shall have all rights and remedies available at law or in equity for the redress of such default, including, but not limited to: (i) and action for damages; (ii) and action for temporary and/or permanent injunction; (iii) and action for specific performance of the terms, conditions and obligations of this Agreement; or (iv) any combination of the foregoing. If any party brings and action, lawsuit, or other legal proceedings against the other party arising out of this Agreement, the prevailing party in such action, lawsuit, or proceeding shall be entitled to recover from the non-prevailing party all reasonable costs and expenses (including, but not limited to, all court costs and reasonable attorney's fees and expenses) incurred in connection with such action, lawsuit, or proceeding.

4. **Run With The Land.** The obligations created by this Agreement, and all provisions of this Agreement, shall run with the land and shall be binding upon any owner or tenant from time to time of any portion of the 3 IRON Property and/or the Gottsch Property.

5. **Indemnification.** Each party shall protect, defend, indemnify and hold harmless each other party and their shareholders, directors, officers, service partners, agents, successors and assigns against liability, lawsuits, actions, proceedings, losses, damages, awards, settlements, judgements, claims, costs and expenses of every kind and nature, including, without limitation, reasonable attorney's fees, arising out of the use of the Shared Access Driveway by such party, its employees, agents, contractors, tenants, customers, invitees, successors or assigns, except to the extent cause by the gross negligence or willful misconduct of the other party to this Agreement. This section shall survive any release or termination of this Agreement so as to be applicable to any claim or cause of action arising or accruing before the termination or release of this Agreement.

6. **Insurance.** 3 IRON and Gottsch (commencing upon the commencement of construction of improvements on the Gottsch Property) shall each maintain commercial general liability insurance covering occurrences in the Shared Access Driveway in an amount of not less than \$1 million per occurrence and \$1 million combined limit. Upon the request of another party, each party will provide evidence to the other party that such insurance is in full force and effect.

7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

8. **No Partnership or Joint Venture.** The parties expressly disclaim any intention to create by this Agreement or any acts or omission in connection with the Agreement a partnership for joint venture or other association that would create joint and several liability or otherwise render the parties liable.

9. **Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of 3 IRON, Gottsch, and their respective, successors and assigns.

10. **Amendment and Termination.** Subject to the other provisions hereof, this Agreement may not be amended, modified or terminated except by written consent of: (a) 3 IRON, (b) Gottsch, and (c) the holders of any mortgages of record encumbering any portion of the 3 IRON Property or Gottsch, or their successors or assigns. Further, no modification or amendment shall be effective unless in writing and recorded with the Douglas County, Nebraska Register of Deeds.

11. **Further Assurances.** 3 IRON and Gottsch shall execute such further reasonable documentation as may be necessary to effectuate the purpose of this Agreement.

12. **Governing Law.** This Agreement shall be governed by and constructed in accordance with the laws of the State of Nebraska.

13. **References.** All references in this Agreement to 3 IRON and/or Gottsch shall be deemed to refer to the successors-in-interest of such entities.

14. **Notices.** All notices, consents, approvals or other instruments required or permitted to be given by a party pursuant to this Agreement shall be in writing and given by (a) hand delivery, (b) facsimile, (c) express overnight delivery service, or (d) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) transmission, if delivered by facsimile, (iii) the next business day, if delivered by express overnight delivery service, or (iv) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified, or registered mail, return receipt requested. Notices shall be provided to the parties' addresses (or facsimile numbers, as applicable) to the following addresses, or as any party may otherwise from time to time specify to the other party in a notice delivered in the manner provided above:

Gottsch:           Gottsch Land Co.  
                          20507 Nicholas Circle  
                          Elkhorn, NE 68022

3 Iron:             3 Iron, LLC  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_

“Business day” shall mean any day which is not a weekend or legal holiday in Omaha, Nebraska.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**GOTTSCH**

Gottsch Land Co.,  
a Nebraska corporation

By: [Signature]  
Name: JEFF JACKSON  
Its: VP

**3 IRON**

3 Iron, LLC,  
a Nebraska limited liability company

By: [Signature]  
Name: Chad McMan  
Its: President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

This instrument was acknowledged before me this 7<sup>th</sup> day of September, 2016, by Jeff Jackson known to me to be the President of Gottsch Land Co., a Nebraska corporation, on behalf of such corporation.

[Signature]  
Notary Public  
GENERAL NOTARY-State of Nebraska  
**PAMMY L ZVACEK**  
My Comm. Exp. Dec 14, 2016

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

This instrument was acknowledged before me this 20<sup>th</sup> day of September, 2016, by Chad McMan, known to me to be the President of 3 Iron, LLC, a Nebraska limited liability company, on behalf of such limited liability company.

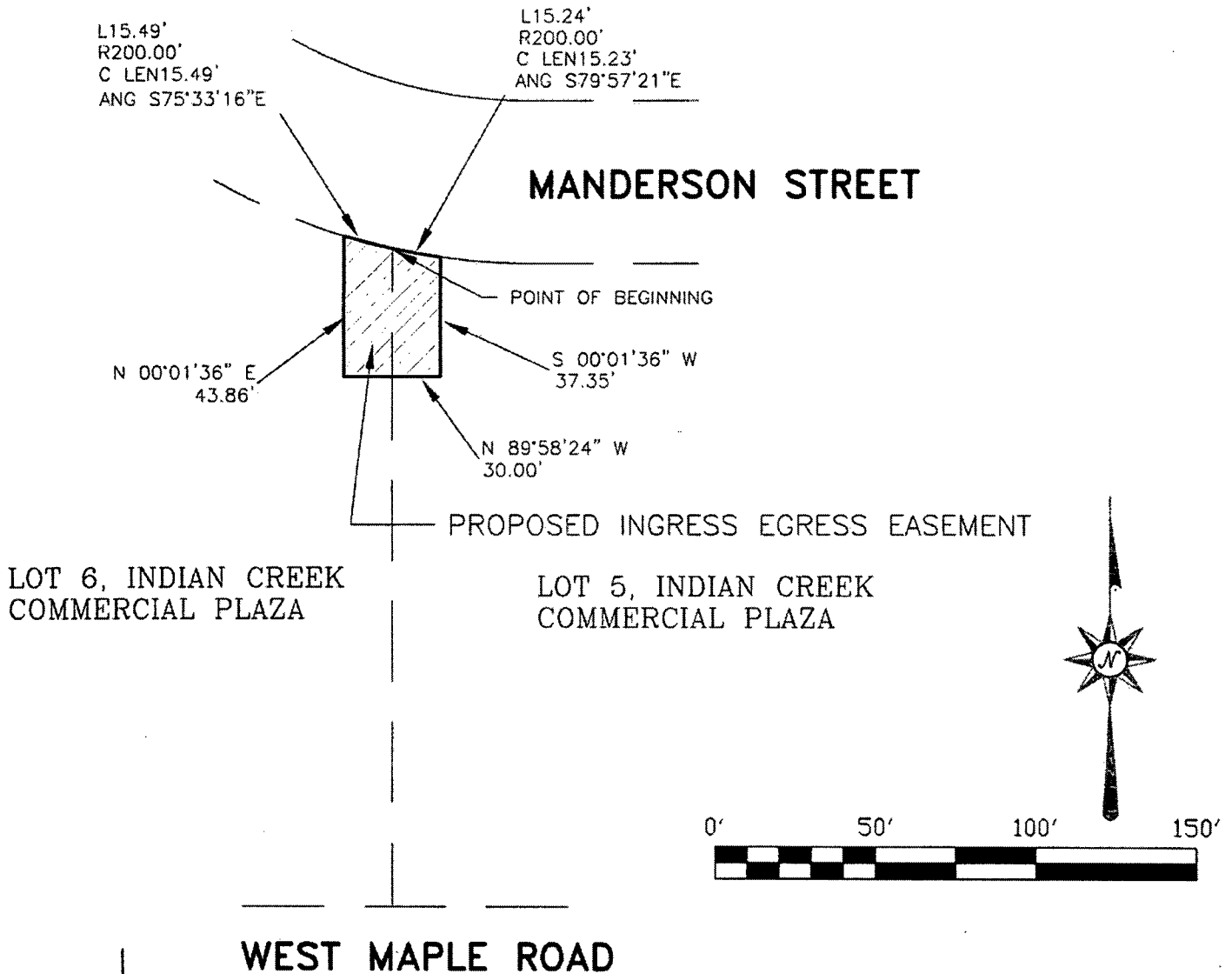
[Signature]  
Notary Public

**ASHLEY KALINOSKY**  
General Notary  
State of Nebraska  
My Commission Expires Dec 3, 2018

# EXHIBIT "A"

## LEGAL DESCRIPTION

A COMMON INGRESS AND EGRESS EASEMENT OVER AND ACROSS PART OF LOTS 5 AND 6, INDIAN CREEK COMMERCIAL PLAZA, AN ADDITION TO THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTH CORNER COMMON TO SAID LOTS 5 AND 6; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 5 ON A 200 FOOT RADIUS CURVE TO THE LEFT WITH A CHORD THAT BEARS S79°57'21"E (AN ASSUMED BEARING RELATIVE TO ALL BEARINGS CONTAINED HEREIN) FOR 15.23 FEET FOR AN ARC DISTANCE OF 15.24 FEET; THENCE S00°01'36"W FOR 37.35 FEET ALONG A LINE THAT IS 15 FEET EAST OF AND PARALLEL TO THE LINE COMMON TO SAID LOTS 5 AND 6; THENCE N89°58'24"W FOR 30.0 FEET; THENCE N00°01'36"E FOR 43.86 FEET ALONG A LINE THAT IS 15.0 FEET WEST OF AND PARALLEL TO THE LINE COMMON TO SAID LOTS 5 AND 6; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 6 ON A 200 FOOT RADIUS CURVE TO THE LEFT HAVING A CHORD THAT BEARS S75°33'16"E FOR 15.49 FEET FOR AN ARC DISTANCE OF 15.49 FEET TO THE POINT OF BEGINNING.



**WEST MAPLE ROAD**

*Tinkham Land Surveying, Inc.*  
 9910 NORTH 48TH STREET, SUITE 208  
 OMAHA, NE 68152-1548  
 TELEPHONE (402) 451-2088

PROJECT NUMBER 160030  
 Date 08-19-16