

COUNTER_JS
VERIFY_JS
FEES \$ 70.00
CHG_SFILE
SUBMITTED TITLECORE NATIONAL, LLC

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2016-22761
2016 Sep 08 09:59:47 AM
Sheryl J. Douciney
REGISTER OF DEEDS


(Space above the line for recording information)

RECIPROCAL ACCESS AND MAINTENANCE AGREEMENT

THIS RECIPROCAL ACCESS AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into as of September 8, 2016, by and between Avenue G Property Holdings, LLC, an Iowa limited liability company ("AGPH"), and Gretna Properties, LLC, a Nebraska limited liability company ("Gretna Properties"). AGPH and GRETNA PROPERTIES are sometimes referred to individually as a "Party" and collectively as the "Parties".

A. AGPH is the owner of that certain real property which is legally described as Lot 1, Plum Creek Replat 5, an Addition to the City of Gretna, as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 1"), and that certain real property which is legally described as Lot 3, Plum Creek Replat 5, an Addition to the City of Gretna, as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 3"), each as depicted on the Site Plan (defined below);

B. GRETNA PROPERTIES is the owner of that certain real property located in Sarpy County, Nebraska which is legally described as Lot 2, Plum Creek Replat 5, an Addition to the City of Gretna, as surveyed, platted and recorded in Sarpy County, Nebraska and as depicted on the Site Plan ("Lot 2"). Lot 1, Lot 2, and Lot 3 are sometimes herein referred to individually as a "Lot" and collectively as the "Lots";

C. To facilitate ingress and egress to/from Lot 1, AGPH desires to obtain a nonexclusive permanent access easement over and across a portion of Lot 2 and Lot 3;

D. To facilitate ingress and egress to/from Lot 3, AGPH desires to obtain a nonexclusive permanent access easement over and across a portion of Lot 1 and Lot 2; and

E. To facilitate ingress and egress to/from Lot 2, GRETNA PROPERTIES desires to obtain a nonexclusive permanent access easement over and across a portion of Lot 1 and Lot 3.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

Each reference in this Agreement to any of the following terms shall mean:

- 1.1 *Easement Areas.* "Easement Areas" means those portions of the Lots which are subject to easements as shown on the Site Plan.
- 1.2 *Permittees.* "Permittees" means any Persons from time to time entitled to the use and occupancy of a portion of the Lots under a lease, license or other valid interest, together with their respective officers, directors, members, managers, partners, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, and concessionaires insofar as their activities relate to the authorized use and occupancy of the Lots.
- 1.3 *Person or Persons.* "Person" or "Persons" means individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals, or any other forms of business or legal entity.
- 1.4 *Site Plan.* "Site Plan" means that certain site plan attached hereto as Exhibit A and incorporated herein by this reference. No change materially affecting traffic flow, or ingress to and egress from the Lots shall be made to the Site Plan without the written consent of the Lot 3 Owner.
- 1.5 *Owner.* "Owner" means and refers to the record owner, whether one or more persons or entities of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

2. GRANT OF EASEMENTS

- 2.1 GRETNA PROPERTIES hereby grants to the AGPH, as the Owner of Lot 1 and Lot 3, and its Permittees, for the benefit of Lot 1 and Lot 3, a non-exclusive permanent easement for vehicular traffic over, across and through the Easement Areas located on Lot 2 as the same may from time to time be constructed and maintained for such use to facilitate ingress to and egress from the Lots. This easement shall include the right to enter upon the Easements Areas located on Lot 2 for the purposes of repairing, maintaining, removing and/or replacing the improvements located within the Easements Areas located on Lot 2.
- 2.2 AGPH, as the Owner of Lot 1, hereby grants to the Owner of Lot 3 and GRETNA PROPERTIES (as the Owner of Lot 2), and, and their respective Permittees, for the benefit of Lot 2 and Lot 3, a non-exclusive permanent easement for vehicular traffic over, across and through the Easement Areas located on Lot 1 as the same may from time to time be constructed and maintained for such use to facilitate ingress to and egress from the Lots. This easement shall include the right to enter upon the Easements Areas located on

Lot 1 for the purposes of repairing, maintaining, removing and/or replacing the improvements located within the Easements Areas located on Lot 1.

- 2.3 AGPH, as the Owner of Lot 3, hereby grants to the Owner of Lot 1 and GRETNA PROPERTIES (as the Owner of Lot 2), and their respective Permittees, for the benefit of Lot 2 and Lot 1, a non-exclusive permanent easement for vehicular traffic over, across and through the Easement Areas located on Lot 3 as the same may from time to time be constructed and maintained for such use to facilitate ingress to and egress from the Lots. This easement shall include the right to enter upon the Easements Areas located on Lot 3 for the purposes of repairing, maintaining, removing and/or replacing the improvements located within the Easements Areas located on Lot 3.

3. NO WALLS, FENCES OR BARRIERS

No walls, fences or barriers of any sort or kind shall be constructed or erected on the Lots which shall prevent or impair the access and movement of the Owners and/or the Permittees over and across the Easement Areas, including, without limitation, pedestrians and vehicular traffic between the Lots (within the Easement Areas only); provided, however, curb stops and other reasonable traffic controls, including, without limitation, directional barriers, as may be necessary to guide and control the orderly flow of traffic consistent with the Site Plan, may be installed by an Owner on its respective Lot to the extent such controls do not materially adversely affect the other Lots or Owners. In addition, notwithstanding the foregoing, any Owner may install temporary traffic controls in the event of any emergency condition.

4. MAINTENANCE

Until the earlier of (i) the time that construction commences on Lot 2 or (ii) twelve (12) months from the date hereof (a "Trigger Event"), all maintenance costs (expressly including, but not limited to, mowing, weeding, snow removal and general maintenance) associated with the Easement Areas shall be at the sole cost and expense of the Owner of Lot 1 and the Owner of Lot 3 ("Lot 3 Owner"), which costs shall be divided equally.

At all times during the existence of this Agreement, unless otherwise agreed to by all parties hereto, Lot 3 Owner shall maintain the Easement Areas located on all Lots and Lot 3 Owner shall periodically submit to the other Owners (except as set forth above) a statement of costs and expenses reasonably incurred for maintenance, repair and/or replacement of the improvements within the Easement Areas, together with reasonably supporting documentation therefore. The other Owners shall, within thirty (30) days following the receipt of any reasonable written invoice from Lot 3 Owner for any such maintenance, repair and/or approved replacement, reimburse Lot 3 Owner based upon its allocated share of the reasonable cost of such maintenance, repair and/or approved replacement. Said costs may also include an administration fee to be paid to Lot 3 Owner of ten percent (10%) of the total annual costs associated with the maintenance, repair or replacement of the Easement Areas.

Following a Trigger Event, all maintenance costs associated with the Easement Areas shall be allocated between the Owners of the Lots as follows, which percentages are based on the percentage of acres of each Lots that is subject to this Agreement to the total acres of all of the Lots:

Lot 1: 0.851 acres/3.357 Acres = 25.35%

Lot 2: 1.148 acres/3.357 Acres = 34.20%

Lot 3: 1.358 acres/3.357 Acres = 40.45%

The Parties understand, acknowledge and agree that the right to utilize the Easement Areas, the maintenance of the Easement Areas, and the costs associated therewith, are also subject to that certain Frontage Road Easement agreement dated February 10, 2004 and recorded with the Sarpy County Register of Deeds on February 11, 2004 as Instrument No. 2004-04593.

5. INDEMNITY

Each Party ("Indemnifying Party") for itself and its successors and assigns hereby agrees to defend, indemnify and hold harmless the other party ("Indemnified Party"), its successors and assigns and their respective directors, officers, members, employees, invitees, agents, representatives and affiliates from and against any and all claims, obligations, liabilities, losses, damages, including punitive damages, causes of action, suits, demands, claims for indemnity or contribution, penalties, judgments, costs and expenses, including reasonable attorneys' fees and expenses, of every kind and nature whatsoever, including, without limitation, liability for bodily injury, including death, property damage, automobile accident liability or environmental liability, at any time existing or asserted, to the extent such arise out of, are caused or alleged to have been caused by any action or inaction of the Indemnifying Party, its successors and assigns or their respective directors, officers, members, employees, invitees, agents, representatives and affiliates in connection with or related to, directly or indirectly, the use of the Easement Areas pursuant to this Agreement, unless such claims, obligations, liabilities, losses, damages, including punitive damages, causes of action, suits, demands, claims for indemnity or contribution, penalties, judgments, costs and expenses of every kind and nature whatsoever, without regard to the form of action, are hereinafter suffered or incurred by the Indemnified Party or its directors, officers, members, employees, invitees, agents, representatives and affiliates, and such arise out of, directly or indirectly, (i) the gross negligence or willful misconduct of the Indemnified Party, its successors and assigns or their respective directors, officers, members, employees, invitees, agents, representatives and affiliates, or (ii) the Indemnified Party's operation or use of real property located adjacent to the Easement Areas that is owned by the Indemnified Party, its successors and assigns, in which case such Indemnified Party, its successors and assigns shall indemnify, defend, save and hold harmless the Indemnifying Party and its directors, officers, members, employees, invitees, agents, representatives and affiliates. The provisions of this subsection shall survive termination of this Agreement.

6. TRAFFIC

6.1 No Owner shall do anything which would change the pattern of traffic flow for the Lots from that shown on the Site Plan. No Owner shall make changes to the

Easement Areas on its respective Lot without the approval of the other Owners, except that each Owner hereby reserves the right, from time to time, without obtaining the consent or approval of any other Owners, to make at its own expense any minor/insignificant change, modification or alteration in its portion of the Easement Areas, provided that:

- (a) the accessibility of such Easement Areas for pedestrian and vehicular traffic (as it relates to the remainder of the Lots) is not unreasonably restricted or hindered and all vehicular traffic lanes shall remain generally as shown on the Site Plan;
- (b) no governmental rule, ordinance, or regulation shall be violated as a result of such action, and such action shall not result in any other Owner being in violation of any governmental rule, ordinance or regulation;
- (c) no change shall be made in the access points between Easement Areas and the public streets; provided, however, that additional access points may be created with the approval of the other Parties, such approval not to be unreasonably withheld; and
- (d) at least thirty (30) days prior to making any such change, modifications, or alteration, the Owner desiring to do such work shall deliver to each other Owners copies of the plans therefore.

6.2 Notwithstanding anything contained herein to the contrary, any change to the access points or the major driveways from that which is shown on the Site Plan must be approved by the Lot 3 Owner.

7. INTENTIONALLY DELETED

8. COVENANTS RUN WITH THE LAND.

The easements granted and reserved hereunder and all provisions of this Agreement, including the benefits and burdens, shall run with the land and be binding upon and inure to the benefit of the Lots, the Owners, and their respective successors and assigns. Upon any sale of a Lot by any Owner hereto, or by any successor or assign of either of them, the selling party shall have no further liability hereunder other than for claims arising during the selling party's period of ownership.

9. MISCELLANEOUS PROVISIONS

9.1 *No Waiver.* The failure of any Owner to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said Owner may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of

any of the terms, covenants, conditions or agreements contained herein by the same.

9.2 *Remedies Cumulative.* In addition to the remedies set forth in this Agreement, each Owner shall be entitled to enforce this Agreement and shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any Owner shall exclude any other remedy herein or by law provided, but each shall be cumulative.

9.3 *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

9.4 *Injunctive Relief.* In the event of any violation or threatened violation by an Owner, the other Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right to an injunction shall be in addition to all other remedies set forth in this Agreement or provided by law.

9.5 *Modification and Termination.* This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of each of the Owners, and then only by written instrument duly executed and acknowledged by each such Owner and recorded with the Sarpy County Register of Deeds.

9.6 *Notice.*

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of Sarpy County. All notices to AGPH and GRETNA PROPERTIES shall be sent to the personal and address set forth below:

AGPH: Avenue G Property Holdings, LLC
Attn: Jeff Garvey

**GRETNA
PROPERTIES:** Runza® Drive Inns of America, Inc.
Attn: Donald Everett, Jr., President
P.O. Box 6042
Lincoln, NE 68506

The Person and address to which notices are to be given may be changed at any time by any party upon written notice to other parties. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt; (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section; or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery; (B) the date of the postmark on the return receipt; or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

9.7 *Waiver.* The failure of any Owner hereto to insist upon strict performance of any term or provision contained herein shall not be deemed a waiver of any rights or remedies that said Owner may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms or provisions contained herein by such Owner.

9.8 *Attorneys' Fees.* In the event that any Owner initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on appeal).

9.9 *Severability.* If any term or provisions of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9.10 *Not a Partnership.* The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any other similar relationship between the Parties. Each Party shall be considered a separate party and no party shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

9.11 *Third Party Beneficiary Rights.* This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any Person not a party hereto unless otherwise expressly provided herein.

- 9.12 *Captions and Headings.* The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.
- 9.13 *Interpretation.* Whenever the context requires in construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar importance) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
- 9.14 *Limitation on Liability.* Except as specifically provided below, there shall be no corporate or personal liability of Persons who constitute either party hereof hereunder, including but not limited to officers, directors, employees or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Agreement. In the event of a default of any Owner hereunder, the Owner seeking recovery from the defaulting Owner shall look solely to the interests of the defaulting Owner in its respective Lot for the satisfaction of each and every remedy of the nondefaulting party, provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Owner to pursue equitable relief in connection with this Agreement, including a proceeding for a temporary restraining order, preliminary injunction, permanent injunction or specific performance.
- 9.15 *Lienholder Protection.* This Agreement, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Owner and its respective Lot(s), shall be superior and senior to any lien placed upon such Lot, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the line of any mortgage or deed of trust made in good faith and for value, but all the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Agreement shall be binding upon effective against any Person (including, but not limited to, any mortgagee or beneficiary under a deed of trust) who acquires title to such Lot or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

[Remainder of Page Left Intentionally Blank; Execution Page Follows.]

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

Avenue G Property Holdings, LLC,
an Iowa limited liability company,

By: Western Iowa Dental Group, P.C., a
Nebraska professional corporation

By: [Signature]
Name: Jeffrey Garvey
Its: President

Gretna Properties, LLC,
a Nebraska limited liability company,

By: [Signature]
Its: Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

This instrument was acknowledged before me this 7 day of September, 2016, by Jeffrey Garvey, known to me to be the President of Western Iowa Dental Group, P.C., a Nebraska professional corporation, the sole member of Avenue G Property Holdings, LLC, an Iowa limited liability company.



[Signature]
Notary Public
Print Name: JANET J. CLARK

STATE OF NEBRASKA)
) ss.
COUNTY OF Lincoln)

This instrument was acknowledged before me this 6th day of September, 2016, by Donald Everett Jr., known to me to be the manager of Gretna Properties, LLC, a Nebraska limited liability company.

[Signature]
Notary Public
Print Name: Sherri L. Garcia

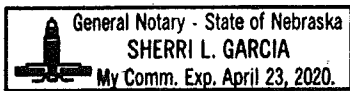


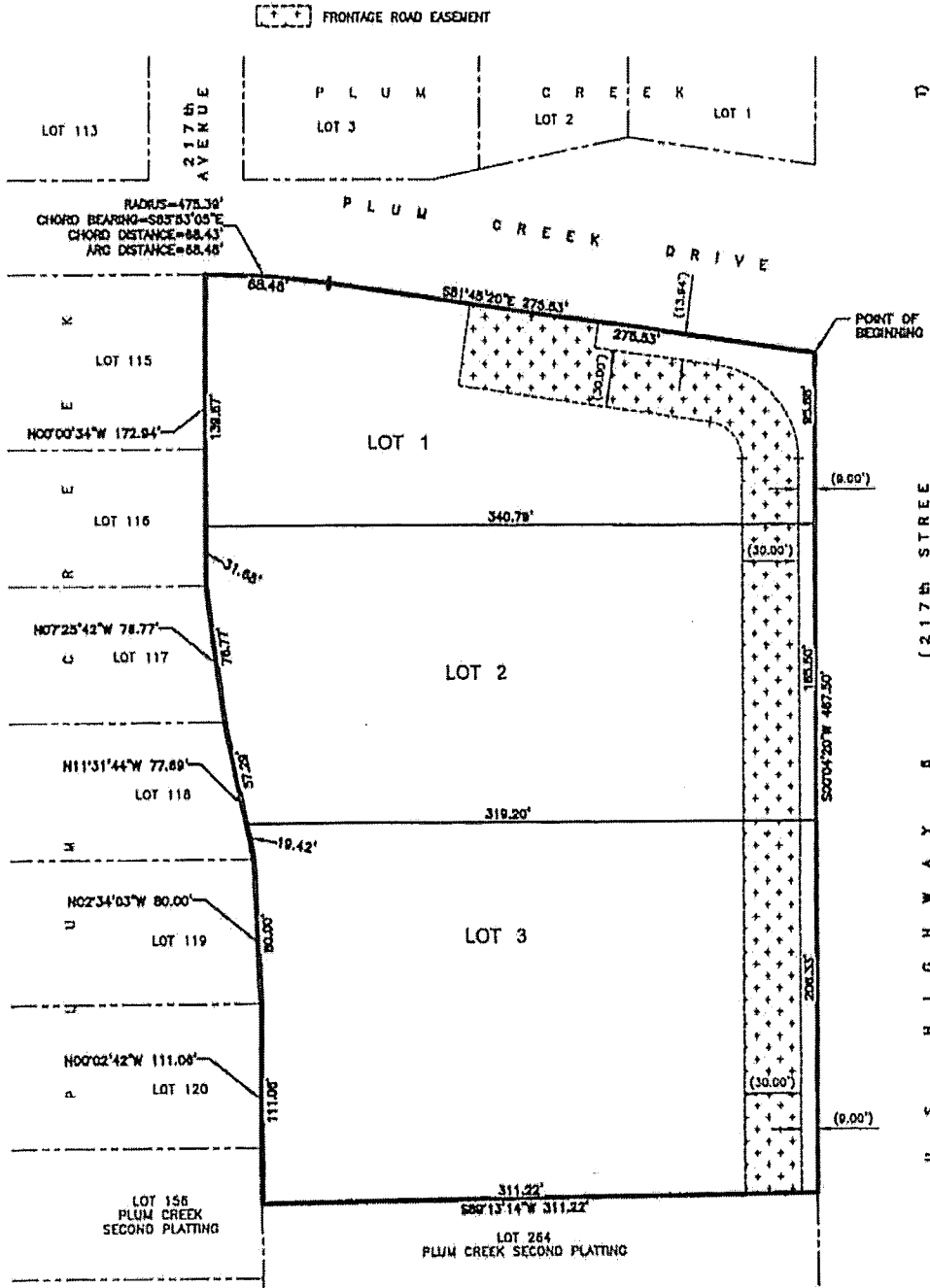
Exhibit "A"
Site Plan

(To be attached)

PLUM CREEK REPLAT 5 LOTS 1, 2 AND 3

NOTES:

1. THERE WILL BE NO DIRECT VEHICULAR ACCESS TO HIGHWAY 8 FROM LOTS 1, 2 AND 3.
2. DIMENSIONS AND ANGLES IN PARENTHESES PERTAIN TO EASEMENTS ONLY.
3. ALL ANGLES ARE 90°00'00" UNLESS NOTED.
4. ACCESS TO THE FRONTAGE ROAD FROM LOT 1 IS LIMITED TO ONE 25.00 FOOT WIDE DRIVE NEAR THE SOUTHEASTERLY CORNER OF THE LOT AT LOCATION SHOWN HEREON.



Job Number: 1349-16-2(EXA)
 thompson, dreessen & dorner, inc.
 10836 Old Mill Rd
 Omaha, NE 68154
 p.402.330.8860 f.402.330.5866
 td2co.com

Date: AUGUST 23, 2016
 Drawn By: RJR
 Reviewed By: JDW
 Revision Date:

EXHIBIT "A"

AVENUE G PROPERTY HOLDINGS, LLC

Book
Page