



(The above space for use of Register of Deeds)

Upon recording, return to:

Amy L. Lawrenson  
Baird Holm LLP  
1700 Farnam Street, Suite 1500  
Omaha, NE 68102

**ACCESS EASEMENT AGREEMENT**

**THIS ACCESS EASEMENT AGREEMENT** (this "Agreement") is entered into by and between **West Farm RE, LLC**, a Nebraska limited liability company ("Grantor"), and **Hugo Steakhouse, LLC**, a Nebraska limited liability company ("Grantee"), to be effective as of May \_\_\_\_\_, 2019 ("Effective Date"). Grantor and Grantee are collectively referred to in this Agreement as the "Parties" and each individually as a "Party."

**RECITALS:**

**WHEREAS**, Grantor owns that certain real property legally described as follows (the "Burdened Parcel"):

**LOT 1 H&H WESTROADS, A SUBDIVISION TO THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA**

**WHEREAS**, Grantee owns that certain real property directly adjacent to the Burdened Property and legally described as follows ("Benefited Parcel"):

**LOT 2 H&H WESTROADS, A SUBDIVISION TO THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA**

**WHEREAS**, Grantee desires the permanent non-exclusive right of ingress and egress on, over, and across that certain portion of the Burdened Parcel as legally described in Exhibit "A", attached hereto and incorporated herein ("Easement Area"), and as generally depicted in Exhibit "B", attached hereto and incorporated herein; and

**WHEREAS**, Grantor desires to grant to Grantee a non-exclusive access easement for ingress and egress on, over, and across the Easement Area, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

*A 5-8-19*

1. **Easement.** Subject to the terms and conditions of this Agreement, Grantor hereby grants to Grantee, for the use by Grantee and by Grantee's successors, assigns, tenants, employees, contractors, agents, representatives, guests, and invitees (collectively, the "Benefited Parties"), a non-exclusive perpetual right of access on, over, and across the Easement Area for the purpose of reasonable ingress and egress by all modes of transportation to the Benefited Parcel (collectively, the "Easement"). Grantor may, at its election, establish reasonable rules and regulations in connection with the Benefited Parties' use of the Easement Area provided Grantor provides Grantee advance written notice of any such rules and regulations and provided such rules and regulations do not unreasonably conflict with or impair the ability of the Benefited Parties to exercise their rights under the Easement and are applied evenly to all users of the Easement Area.

2. **Modifications.** The Parties acknowledge and agree that Grantor intends to sell and/or lease the Burdened Parcel and that a prospective purchaser or tenant of the Burdened Parcel (the "Future Owner/Tenant") may require reasonable modifications to the Easement Area so as to reasonably accommodate the Future Owner/Tenant's use of, or operations on, the Burdened Parcel. Grantee shall not unreasonably withhold, condition, or delay its consent to any reasonable modifications to the Easement Area, provided such modifications do not unreasonably impair access to the Benefited Parcel. Upon agreement between Grantee and the Future Owner/Tenant, the Parties shall amend this Agreement to reflect the agreed upon modifications to the Easement Area. By way of clarification as to the reasonable expectations of the Parties with regard to potential modifications, the Parties recognize that Future Owner/Tenant or Grantor, as the case may be, may determine that the highest and best use of the Burdened Parcel for access and other purposes will involve the terracing of portions of the current Easement Area and as such, the Easement Area may need to be changed to reflect changes in the contour of the Burdened Parcel which may create potential additional areas where access may be utilized which may also involve the restriction or elimination of portions of the access areas presently called out in this Agreement.

3. **Reservation of Right.** Grantor hereby reserves unto itself, and to any successor owner or owners of the Burdened Parcel, the right to utilize the Easement Area for such purposes as Grantor sees fit in its sole discretion. Notwithstanding the foregoing, Grantor agrees that it shall not make any use of the Easement Area in any manner that would unreasonably conflict with or impair the ability of the Benefited Parties to exercise their rights under the Easement.

4. **Repair and Maintenance.** Grantor and Grantee shall be equally responsible for the expense related to the reasonable repair and maintenance of the Easement Area; provided, however, each party shall be solely responsible any repairs and maintenance necessary as a result of the gross negligence or willful misconduct of its respective employees, tenants, agents, guests, invitees, contractors, subcontractors, representatives, guests, and invitees. Grantor shall be responsible for making all reasonably necessary repairs and maintenance of the Easement Area and, upon making the same, shall invoice Grantee for its fifty percent (50%) share of such repairs and maintenance and Grantee shall reimburse Grantor for the same within thirty (30) days of such invoice. Should Grantor fail to reasonably maintain or repair the Easement Area as set forth above, then Grantee may provide Grantor with written notice of such failure and, should Grantor fail to cure the same within thirty (30) days of Grantor's receipt of notice, then Grantee may perform such reasonable repair or maintenance and Grantor shall reimburse Grantor for its fifty percent (50%) share of the same within thirty (30) days of Grantee's demand. Likewise, should the gross negligence or intentional misconduct of the Benefited Parties cause the need for repairs or maintenance and Grantee fails to repair the same, then, following thirty (30) days written notice from Grantor to Grantee, Grantor may make such repairs and Grantee shall reimburse Grantor within thirty (30) days of Grantee's demand for any costs or expenses incurred by Grantor. Grantor shall provide reasonable advance notice to Grantee of any repairs or maintenance of the Easement Area (except where necessary to respond to an emergency) and shall exercise commercially reasonable good faith efforts not to unreasonably interfere with or impair the Benefited Parties use of the Easement with any such repair or maintenance activities.

5. **Taxes.** Grantor shall be exclusively responsible for any real property taxes for the Burdened Parcel and Easement Area and shall indemnify Grantee for the same, and Grantee shall be

exclusively responsible for any real property taxes for the Benefited Parcel and shall indemnify Grantor for the same.

6. **Indemnity.** Except to the extent arising from the negligence or willful misconduct of Grantor or Grantor's Parties, Grantee shall indemnify and hold Grantor harmless from and against any and all claims or suits for damages, liability, loss, expenses, causes of action, and judgments (including, but not limited to, reasonable attorneys' fees and legal expenses in connection with defending against any such action, suit, or claim) arising from injury to or death of any person or loss of or damage to property arising out of the Benefited Parties' use of the Easement Area or exercise of the Easement rights granted under this Agreement.

7. **Representations.** Grantor represents and warrants that it owns the Burdened Parcel in fee simple, subject to easements, covenants, and restrictions of record. Grantor further represents that it will not unreasonably obstruct, impede, or interfere with the vehicular ingress and egress on the Easement Area. Grantor and Grantee each represent that the individual executing this Agreement has been duly authorized to enter into this Agreement.

8. **Enforcement.** The provisions of this Agreement may be enforced by an action for injunctive relief, as well as by all other available remedies at law or in equity. No breach of any provision of this Agreement by any party shall give the other party the right to cancel, rescind, or otherwise terminate this Agreement, but this provision shall not be deemed to affect any other rights or remedies which the non-breaching party may have, or claim to have, by reason of the breach.

9. **Binding Effect.** The Easement granted hereunder and all provisions of this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto, and may not be terminated without the written consent of Grantee (or its successors or assigns, as the case may be).

10. **Miscellaneous.** This Agreement contains the entire agreement of the Parties regarding the subject matter of this Agreement. This Agreement shall be construed and governed by the laws of the State of Nebraska. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part thereof. The Recitals' provisions of this Agreement are incorporated herein by this reference. If any provision of this Agreement is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Agreement is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal, and enforceable, then such provision shall be deemed to be written and shall be construed and enforced as so limited. This Agreement may be executed in one or more counterparts, all of which taken together shall be one original. Recitals of this Agreement are incorporated herein by this reference.

**[Signatures follow]**

*MA 5-8-19*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth in their respective notary blocks below.

GRANTOR:

West Farm RE LLC, a Nebraska limited liability company

By: [Signature]  
Steven M. Hinchcliff, Manager

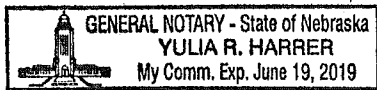
GRANTEE:

Hugo Steakhouse, LLC, a Nebraska limited liability company

By: \_\_\_\_\_  
J. Joe Ricketts, President

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me this 8th day of May 2019, by Steven M. Hinchcliff in his capacity as Manager of **West Farm RE LLC**, a Nebraska limited liability company, on behalf of the company.



[Signature]  
Notary Public

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of May 2019, by J. Joe Ricketts, in his capacity as President of **Hugo Steakhouse, LLC**, a Nebraska limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

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**West Farm RE LLC**, a Nebraska limited liability company

By: \_\_\_\_\_  
Steven M. Hinchcliff, Manager

**GRANTEE:**

**Hugo Steakhouse, LLC**, a Nebraska limited liability company

By: \_\_\_\_\_  
J. Joe Ricketts, President

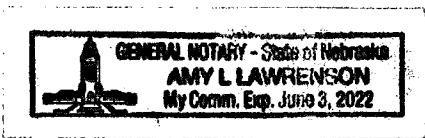
STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

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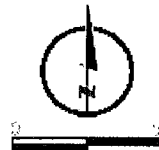
EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

EASEMENT EXHIBIT

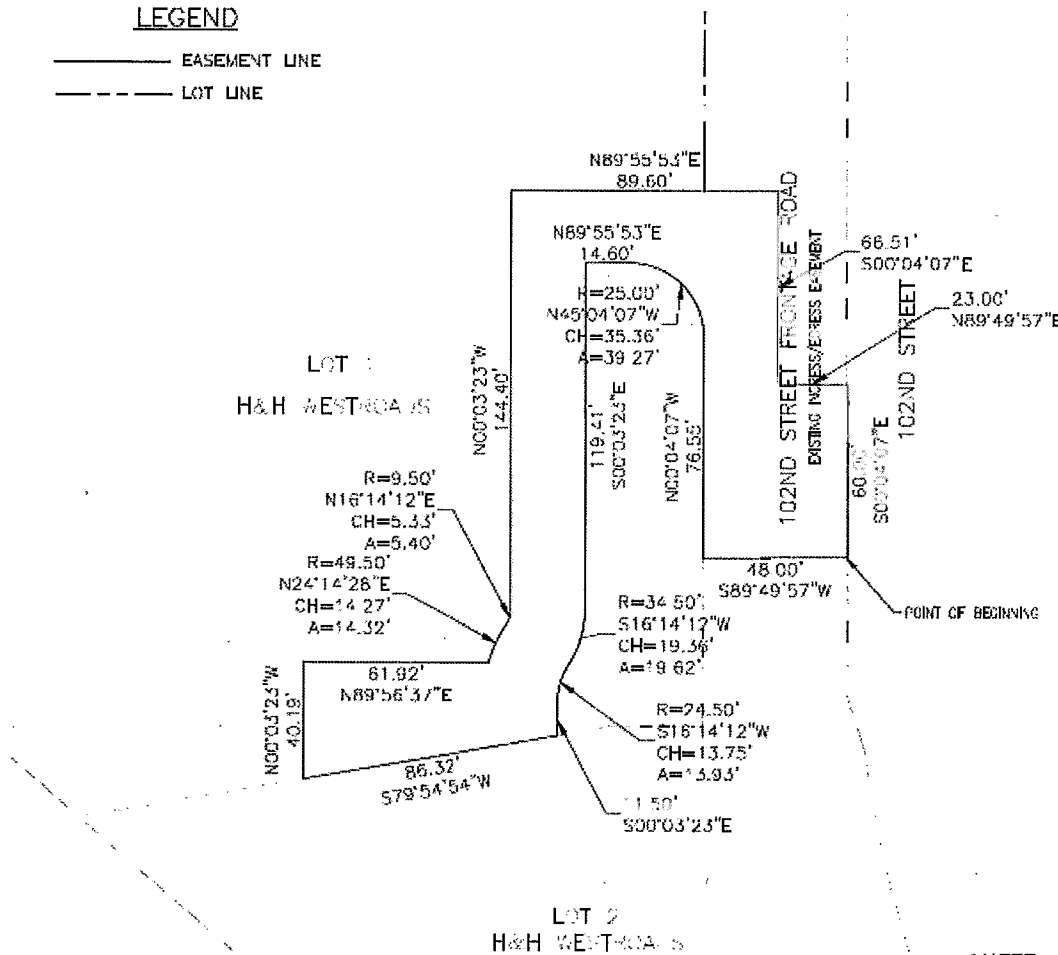
LEGAL DESCRIPTION

A PERMANENT INGRESS-EGRESS EASEMENT OVER PART OF LOT 1, H&H WESTROADS, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: (SEE ATTACHED SHEET FOR COMPLETE LEGAL DESCRIPTION)



LEGEND

- EASEMENT LINE
- - - - - LOT LINE



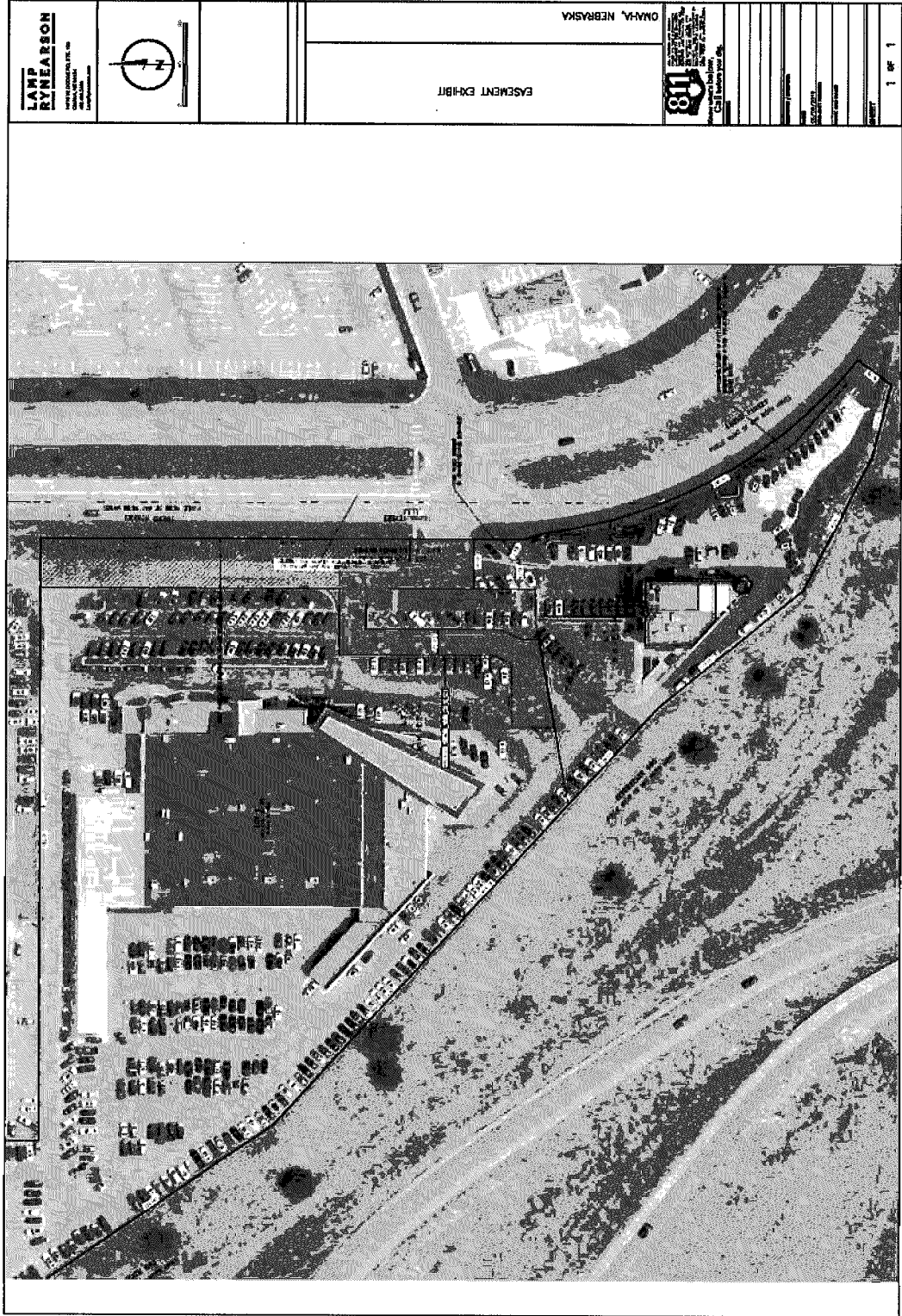
SHEET 1 OF 2


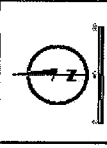

<p><b>LAMP RYNEARSON</b></p> <p>347 10th Avenue Rd, Ste. 100 Omaha, NE 68154 402.456.2488 LampRynearson.com</p>	<p>DESIGNER / DRAFTER TLC-EH ENGINEER</p>	<p>EASEMENT EXHIBIT</p>
	<p>PROJECT NUMBER 011824-01-115</p>	
<p>DATE 5-2-2019</p>		
<p>SURFACE LOCATION</p>		
<p>BOOK AND PAGE</p>		

*Handwritten signature and date: [Signature] 5-8-19*

EXHIBIT "B"  
DEPICTION OF EASEMENT AREA

 = Easement Area



		OMAHA, NEBRASKA		EASEMENT EXHIBIT
				1 OF 1

*Ms 5-8-19*