

COUNTER ABU C.E. ABU
VERIFY ABU D.E. ABU
PROOF BD
FEES \$ 104.00
CHECK # 10907
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

Stamped copy given

FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2018-18033

08/03/2018 9:02:56 AM

Cloyd J. Dowling

REGISTER OF DEEDS



Re: Lots 6 and 7, Schewe Farms, Lots 1 and 2, Schewe Farms Replat 1, and Lots 1 and 2, Schewe Farms Replat 3, subdivisions, as surveyed, platted and recorded in Sarpy County, Nebraska.

DECLARATION OF ACCESS EASEMENT AND MAINTENANCE AGREEMENT

THIS DECLARATION OF ACCESS EASEMENT AND MAINTENANCE AGREEMENT ("Declaration") is made this 1 day of August, 2018, by WESTERN SPRINGS LAND CORPORATION, a Nebraska corporation (hereafter "Developer Declarant"), THE VENUE AT WERNER PARK, LLC, a Wyoming limited liability company (hereafter "Grantee Declarant"), and WS 120/370 PROPERTY OWNERS ASSOCIATION, a Nebraska not for profit corporation (hereafter referred to as the "Association"). The Developer Declarant and the Grantee Declarant collectively are referenced herein as the "Declarants."

The Declarants hereby agree and declare that the Declaration of Access Easement that was executed solely by Developer Declarant on March 10, 2016, and was not recorded in the office of the Register of Deeds for Sarpy County, Nebraska, is terminated and null and void.

PRELIMINARY STATEMENT

Developer Declarant is the record owner of Lots 6 and 7, Schewe Farms, and Lots 1 and 2, Schewe Farms Replat 1, subdivisions, as surveyed, platted and recorded in Sarpy County, Nebraska. Grantee Declarant is the record owner of Lots 1 and 2, Schewe Farms Replat 3, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska. The aforementioned lots are individually "Lot 6", "Lot 7", "Lot 1, Replat 1", "Lot 2, Replat 1", "Lot 1, Replat 3" and "Lot 2, Replat 3" and collectively the "Property" or "Properties." The Declarants desire to establish a perpetual nonexclusive easement for access over that portion of the Properties that is located, described and substantially pictorially depicted on the attached Exhibit A, which is hereby incorporated herein by this reference, for the purpose of providing nonexclusive vehicular and pedestrian access, ingress, egress, and passage and traffic among, to and from the Properties and adjacent public and private drives and streets to and including, but not limited to 120th Street (hereafter the "Easement").

R&R After recording, return to:
John Q. Bachman
PANSING HOGAN ERNST & BACHMAN LLP
10250 Regency Circle, Suite 300
Omaha, NE 68114

This Easement supplements and provides the terms and conditions of the access easement identified on the plat of Schewe Farms that is filed in the office of the Register of Deeds of Sarpy County, Nebraska (Instrument No. 2010-09348) and that is referenced on the plat of Schewe Farms Replat 3 that is filed in the office of the Register of Deeds of Sarpy County, Nebraska (Instrument No. 2017-28164).

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 good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarants and the Association hereby grant and establish the following easements, and they further agree to the following covenants and terms regarding the construction of improvements within said easements and the maintenance of said improvements.

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

- 1.1 **Owner.** The term "Owner" shall mean any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental entity or agency or other business entity now or hereafter holding of record an ownership interest in fee in a portion or all of the Property.
- 1.2 **Permittees.** The term "Permittees" shall mean (i) the respective Owners of the Properties and their respective successor, 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, licensees, employees, servants, contractors and agents; (iv) such Owners' land contract purchasers, mortgagees and beneficiaries under deeds of trust; and (v) emergency response vehicles.
- 1.3 **Property.** The term "Property" shall mean or refer to any of the following platted lots: Lots 6 and 7, Schewe Farms, Lots 1 and 2, Schewe Farms Replat 1, and Lots 1 and 2, Schewe Farms Replat 3, subdivisions, as surveyed, platted and recorded in Sarpy County, Nebraska. The term "Properties" shall mean all of the platted lots identified in this Subsection 1.3. From time to time reference to one or more of such Properties will be made in this Declaration by its lot number or by its lot number with replat number.
- 1.4 **Snow Removal.** The term "snow removal" is defined as the job of removing snow and/or ice after a snowfall. The designated snow removal party shall disperse salt, sand and/or other approved chemical de-icer at all Easement entrances and over all road and sidewalk surfaces sufficient to abate the accumulation of snow, ice or sleet as accumulation becomes evident. The designated snow removal party shall also commence plowing and removal operations at any time snow accumulates to a depth of two (2) inches.

Section 2. Easements and Covenants.

2.1 Easement. Declarants grant a perpetual nonexclusive easement for access over portions of the Properties that do not contain a building or other commercial structures, and more specifically located, described and substantially pictorially depicted on the attached Exhibit A, which is hereby incorporated herein by this reference, for the purpose of providing nonexclusive vehicular and pedestrian access, ingress, egress, and passage and traffic among, to and from the Properties (including, but not limited to, Lots 6 and 7, Schewe Farms, Lots 1 and 2, Schewe Farms Replat 1, and Lots 1 and 2, Schewe Farms Replat 3, subdivisions, as surveyed, platted and recorded in Sarpy County, Nebraska) and adjacent public and private drives and streets to and including, but not limited to 120th Street (hereafter the "Easement"). Declarants and their successors, assigns and Permittees are benefitted parties with respect to this Easement.

2.2 Use of Easement. The Permittees shall have the nonexclusive unrestricted use of the area within the Easement for the purposes set forth herein. In use of the Easement, the Owners of the Properties and their employees, agents, invitees and contractors shall not unreasonably obstruct passage or interfere with or place any obstacles or other type of barrier or obstruction or parking which would block the usage of the Easement by the Permittees.

2.3 Damage; Indemnification. Any damage caused to the Properties as a result of any Permittee's exercise of any rights under the Easement shall be immediately repaired by the Permittee, and the Permittee shall indemnify and hold the Owner of the affected Property and its guests, invitees, employees, agents, and contractors ("Indemnified Parties") harmless from and against any and all liabilities, damages, claims, costs, expenses and reasonable attorney's fees incurred by the Indemnified Parties as a result of Declarants' exercise of the rights granted under this Declaration with respect thereto.

Section 3. The Association. Developer Declarant has incorporated WS 120/370 PROPERTY OWNERS ASSOCIATION, a Nebraska nonprofit corporation (hereinafter referred to as the "Association"), and all costs and expenses relating to the formation of the Association shall be paid solely by the Developer Declarant and allocated to an Owner as set forth below. The Association has as its purpose (a) the maintenance, operation, repair, upkeep, and replacement of the street system within the Easement, and (b) the promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of the Easement. The Association may levy or assess charges, dues and assessments against the Developer Declarant's Properties that are legally described as Lots 6 and 7, Schewe Farms, and Lots 1 and 2, Schewe Farms Replat 1, and Grantee Declarant's Properties that are legally described as Lots 1 and 2, Schewe Farms Replat 3, subdivisions, as surveyed, platted and recorded in Sarpy County, Nebraska. The Association may levy or assess said charges, dues and assessments ("Easement Costs") as set forth below. The Association shall provide to any Owner a copy of any and all invoices, as well as any of the following, prior to the Association levying any dues or assessments against an Owner: (1) documents used by the Association that verify the actual costs of repair, maintenance and operation and insuring, replacement and restoration of street system within the Easement; (2) documents used by the Association or its engineers showing the location of the repairs and costs associated with each location; (3) documents used by the Association that computes an Owner's share of any levies,

assessments or dues; and (4) the Association's assessment schedule showing the assessment of each Owner.

The costs of the repair, maintenance and operation and insuring, replacement and restoration of any and all portions of the east/west area within the Easement as shown on Exhibit A shall be allocated among the Properties as follows:

East/West Access

<u>Lot</u>	<u>Percentage</u>
Lots 1 and 2, Schewe Farms Replat 3	50.0%
Lot 6, Schewe Farms	12.5%
Lot 7, Schewe Farms	12.5%
Lot 1, Schewe Farms Replat 1	12.5%
Lot 2, Schewe Farms Replat 1	12.5%

The costs of the repair, maintenance and operation and insuring, replacement and restoration of any and all portions of the north/south area within the Easement as shown on Exhibit A shall be allocated among the Properties as follows:

North/South Access

<u>Lot</u>	<u>Percentage</u>
Lot 6, Schewe Farms	25.0%
Lot 7, Schewe Farms	25.0%
Lot 1, Schewe Farms Replat 1	25.0%
Lot 2, Schewe Farms Replat 1	25.0%

The Easement Costs shall be payable at the time and in the manner prescribed by the Association.

Developer Declarant shall notify the City of Papillion, Nebraska, in writing of the contact person for notices related to maintenance within thirty (30) days after execution of this Declaration. Developer Declarant hereby represents to Grantee Declarant that it has incorporated the Association prior to the Association's execution of this Declaration.

Section 4. Construction; Maintenance.

4.1 **Construction.** Developer Declarant hereby agrees and covenants that it shall cause the initial construction of the improvements within the area of the Easement at the Developer Declarant's sole cost and expense, within 90 days after a Notice to Proceed with Construction has been sent by the Grantee Declarant to the Developer Declarant. Developer Declarant hereby agrees and covenants with Grantee Declarant that the plans for said construction shall be presented by Developer Declarant to Grantee Declarant prior to commencement of construction of the street improvements within the Easement, and that Grantee Declarant must approve said plans prior to commencement of construction, with said approval not being unreasonably withheld. Developer Declarant hereby agrees and covenants that the streets constructed in the Easement shall be improved with appropriate thickness asphaltic or concrete pavement and

associated concrete curb and gutters creating a two-lane drive lane in the north to south direction and a three-lane driving lane in the east to west direction.

4.2 **Maintenance.** The Association shall undertake the repair, maintenance and operation and insuring, replacement and restoration of any and all portions of the area within the Easement in a good and clean condition and repair consistent with the overall quality of a first-class commercial/multifamily property in Papillion, Nebraska. If any part of the area within the Easement shall become in disrepair or non-operational, the Association shall promptly remedy the same at the Association's sole cost and expense. In the event the Association fails to perform any of the provisions of this Declaration, either of the Declarants or any Owner of a Property will have the right, without being obligated to do, to enter upon the Property and improvements of the Association and perform the obligations of the Association hereunder; provided, however, that written notice of such intention specifying the nature of the alleged default and specifying the actions to be performed has been given to the Association not less than thirty (30) days prior to the commencement of such action or without notice if such default is of an emergency nature. During such thirty (30) day period, the Association will have the right to perform or commence performance of action appropriate to remedy such default, and provided such action is diligently carried out to completion, the right of the Declarants or any Owner of a Property to perform such obligations of the Association will terminate without prejudice to correct further defaults. If either of the Declarants or any Owner of a Property elects to perform the action to have been performed by the Association, on completion of such action, or from time to time, if the action is of a continuing nature, an itemized statement of the reasonable costs thereof will be submitted to the Association and the amount thereof will be immediately due and payable by the Association, which amount will bear interest at the rate of sixteen percent (16%) per annum from the date such costs are incurred to the date reimbursement is made by the Association.

4.3 **Right to Compel Maintenance.** Declarants, their successors and assigns, hereby grant to the City of Papillion, its successors and assigns (hereinafter referred to as "City") the right to compel maintenance of the lighting, sidewalks, landscaping, parking, utilities, and pavement within the Easement defined in Section 2.1 and depicted on the attached Exhibit A. City, its successors and assigns, shall provide written notice of maintenance requests ("Notice of Maintenance Request") to the Association via certified mail. The Association shall have thirty (30) days following receipt of notice to perform the required maintenance. If the maintenance is not performed by the establish deadline, the maintenance may be performed by the City, its successors and assigns, at the cost of the Association. If the maintenance is performed by the City, the Declarants, and their successors and assigns, grant the City the right to charge the maintenance cost to the Association.

Section 5. **No Dedication.** Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Property to the general public or for any public purpose whatsoever, it being the intention of the Declarants that this Declaration will be strictly limited, in accordance with the terms hereof, to the private use of the Permittees of each Property to whom easements have been granted in this Declaration. Except as otherwise specifically provided herein, this Declaration is intended to benefit the Owners and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust, and is not intended to cause any persons or entities which are not Permittees of the Properties to whom easements or other rights have been granted in this Declaration to be a third party beneficiary hereunder or to give any such person or entity any rights hereunder.

Section 6. **Duration; Amendment; Termination.**

6.1 **Duration.** Unless otherwise modified, terminated or extended as permitted in this Section 6 or in this Declaration, the easements, rights, obligations and covenants contained in this Declaration shall continue in perpetuity unless terminated by the Owners of the Properties.

6.2 **Amendment and Termination.** This Declaration or any provision herein contained may not be terminated or amended in any manner without the express written consent of both of the Declarants or the unanimous consent of the Owners of the Properties at such time as Developer Declarant is not the Owner of a Property. Further, Section 3 may not be terminated or amended in any manner without the express written consent of City. No tenant, licensee or other person having only a possessory interest in the Property is required to join in the execution of or consent to any action of the Owner of such Property taken pursuant to this Declaration. Finally, Section 3 may not be terminated or amended in any manner without the express written consent of the Owners of Lots 1 and 2, Replat 3.

Section 7. **Notices.** All notices, statements, demands, approvals or 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 recognized courier service to the Owners of the Properties affected at the addresses on file with the office of the Sarpy County Assessor for delivery of ad valorem tax statements relating to the respective Properties. All such notices that are mailed shall be deemed to be delivered on the third day after postmark unless delivered sooner.

Section 8. **Miscellaneous.**

8.1 **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 to such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. 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 provision. The consent to or approval of any action or request by any Owner will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Declaration are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner might otherwise have by virtue of a default under this Declaration; and the exercise of any right or remedy by any Owner will not impair such Owner's standing to exercise any other right or remedy.

8.2 **No Partnership.** Nothing contained in this Declaration and no action by the Owner of a Property will be deemed or construed by any Owner or by 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 Properties.

8.3 **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 not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

8.4 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.

8.5 Governing Law. This Declaration will be construed in accordance with the laws of the State of Nebraska. The provisions of this Declaration will be binding upon Declarants and their successors and assigns.

8.6 Runs with the Land. This Declaration shall run with land until terminated in accordance with the provisions herein.

DATED: August 1, 2018.

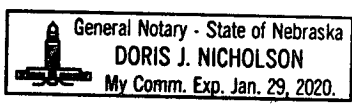
DEVELOPER DECLARANT:

WESTERN SPRINGS LAND CORPORATION, a
Nebraska corporation

By: Gerald L. Torczon
Gerald L. Torczon, President

STATE OF NEBRASKA)
) ss
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 1 day of August, 2018, by GERALD L. TORCZON, President of WESTERN SPRINGS LAND CORPORATION, a Nebraska corporation, on behalf of the corporation.



Doris J. Nicholson
Notary Public

DATED: 7-24-18, 2018.

GRANTEE DECLARANT:

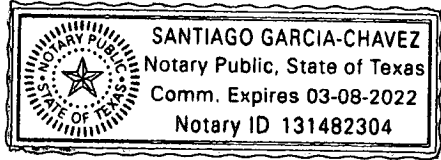
THE VENUE AT WERNER PARK, LLC,
a Wyoming limited liability company

By: [Signature]
Name: Corbin Graham
Title: Partner / Manager

STATE OF TEXAS)
) ss
COUNTY OF Travis)

The foregoing instrument was acknowledged before me this 24 day of July, 2018, by Corbin Graham, Manager of THE VENUE AT WERNER PARK, LLC, a Wyoming limited liability company, on behalf of the company.

Santiago Garcia-Chavez
Notary Public



DATED: August 1, 2018.

ASSOCIATION:

WS 120/370 PROPERTY OWNERS ASSOCIATION,
a Nebraska nonprofit corporation

By: *Gerald L. Torczon*
Gerald L. Torczon, President

STATE OF NEBRASKA)
) ss
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 1 day of August, 2018, by GERALD L. TORCZON, President of WS 120/370 PROPERTY OWNERS ASSOCIATION, a Nebraska nonprofit corporation, on behalf of the corporation.

Doris J. Nicholson
Notary Public

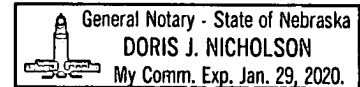
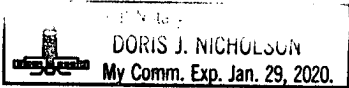


EXHIBIT "A"

