

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA
RESOLUTION APPROVING FIRST AMENDMENT TO REAL ESTATE TRANSFER
AGREEMENT FOR STADIUM SITE

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, this Board had previously approved a Real Estate Transfer Agreement with Schewe Farms, Inc. in connection with the Sarpy County Stadium Project; and,

WHEREAS, it has become necessary to extend the closing date for the transfer of the Stadium Site, and an amendment to the Stadium Transfer Agreement has been proposed for said purpose.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the First Amendment to Real Estate Transfer Agreement with Spence Title Services, Inc. and Schewe Farms, Inc. a copy of which is attached hereto is hereby approved, and the Chair and Clerk are hereby authorized to sign said agreement.

DATED this ____ day of January, 2010.

Moved by _____, seconded by _____, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

Approved as to form:

County Clerk

Deputy County Attorney

**FIRST AMENDMENT TO
REAL ESTATE TRANSFER AGREEMENT**

THIS FIRST AMENDMENT TO REAL ESTATE TRANSFER AGREEMENT ("First Amendment") is made and entered into as of December ____, 2009, by and between COUNTY OF SARPY, a political subdivision of the State of Nebraska ("County"), SCHEWE FARMS, INC., a Nebraska corporation ("Schewe"), and SPENCE TITLE SERVICES, INC., a Nebraska corporation ("Escrow Agent").

RECITALS:

A. Pursuant to that certain Real Estate Transfer Agreement made and entered into as of June 1, 2009 (the "Agreement"), by and between the County, Schewe and Escrow Agent, Schewe agreed to transfer the Stadium Site, as defined in such Agreement, to the County.

B. The parties now desire to extend the Closing Date for transfer of the Stadium Site and to amend the Agreement as more specifically set forth herein.

C. Unless otherwise provided herein, all capitalized words and terms used in this First Amendment shall have the same meanings ascribed to such words and terms as in the Agreement. All references to the Agreement shall mean the Real Estate Transfer Agreement, as amended, whether or not such references shall expressly refer to any such amendments.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Schewe, County and Escrow Agent hereby agree as follows:

1. Section 4.1 (a) of the Agreement is hereby amended, in part, in that the date "January 4, 2010" is deleted and the date "April 1, 2010" is substituted therefor, and any reference in the Agreement to the Closing Date shall mean and refer to April 1, 2010.

2. Except as expressly provided in this First Amendment, all provisions of the Agreement remain in full force and effect and are not modified by this First Amendment, and the parties hereby ratify and confirm each and every provision thereof.

3. This First Amendment constitutes the entire agreement between the parties with respect to the subject matter herein contained and all prior negotiations with respect to the subject matter herein contained are merged into and incorporated in this First Amendment, and all prior documents and correspondence between the parties with respect to the subject matter herein contained (other than the Agreement) are superseded and of no further force or effect.

4. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns under the Agreement.

**[The remainder of this page left intentionally blank –
signature pages follow.]**

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

COUNTY:

COUNTY OF SARPY, a political subdivision of the State of Nebraska

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by _____, _____ of the COUNTY OF SARPY, a political subdivision of the State of Nebraska, on behalf of said political subdivision.

Notary Public

SCHEWE:

SCHEWE FARMS, INC., a Nebraska corporation

By: Margaret K. Langpaul
Margaret K. Langpaul, President

STATE OF IOWA)
) ss.
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this 30th day of December, 2009, by Margaret K. Langpaul, President of SCHEWE FARMS, INC., a Nebraska corporation, on behalf of said corporation.



Chris Langpaul
Notary Public

ESCROW AGENT:

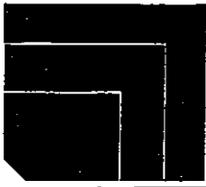
SPENCE TITLE SERVICES, INC., a Nebraska corporation

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by _____, _____ of SPENCE TITLE SERVICES, INC., a Nebraska corporation, on behalf of said corporation.

Notary Public



Pansing
Hogan &
Ernst
&
Bachman LLP

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Omaha, Nebraska 68114-3728
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Ashley E. Sloup

Harry B. Otis (1920-2003)

*Also Admitted In Iowa

E-mail: jbachman@pheblaw.com

December 31, 2009

VIA E-MAIL AND U.S. MAIL

kab@brashearlaw.com

Mr. Kermit A. Brashear
BRASHEAR LLP
North Old Mill
711 North 108th Court
Omaha, NE 68154-1714

Re: Sarpy County, Nebraska/Schewe Farms, Inc.
Real Estate Transfer Agreement

Dear Kermit:

As we discussed, certain of the Schewe Farms, Inc.'s Closing Conditions to that certain Real Estate Transfer Agreement ("Agreement") made and entered into as of June 1, 2009, by and among the County of Sarpy, Schewe Farms, Inc. and Spence Title Services, Inc. are still outstanding. In particular, the conditions of Section 5(a)(iii) have not been met. Final plat approval and completion of the numerous agreements set forth in that particular subsection have not been completed. As a result, Schewe Farms, Inc. is not obligated to proceed with closing as provided in the Agreement.

Schewe Farms, Inc. is willing to extend the Closing Date. However, you have advised that the County Commissioners will not meet until January 12, 2010 and execution of an Agreement amendment to extend the Closing Date is not possible until the Commissioners' meeting. Schewe Farms, Inc. hereby notifies the County of its intent to terminate the Real Estate Transfer Agreement, with such termination to be effective January 13, 2010 since the Conditions to Closing cannot be met as of January 4, 2010. Notwithstanding the foregoing, if the County Commissioners enter into an amendment to the Agreement which extends the Closing Date to a

Mr. Kermit A. Brashear
December 31, 2009
Page 2

mutually acceptable date, Schewe Farms, Inc. agrees that its termination of the Agreement will not be effective.

For that purpose, a First Amendment to the Real Estate Transfer Agreement executed by Schewe Farms, Inc. is enclosed. Provided that the enclosed First Amendment is executed by the County Commissioners at their meeting on January 12, 2010, Schewe Farms, Inc. intends to continue to make good faith efforts to satisfy the Conditions to Closing in order to close the Agreement.

Please contact me if you have questions.

Very truly yours,


John Q. Bachman

JQB/sw
Enclosure

cc: Schewe Farms, Inc

Michael A. Smith
Deputy County Attorney

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REAL ESTATE TRANSFER AGREEMENT**

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signature pages follow.]**

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

COUNTY:

COUNTY OF SARPY, a political subdivision of the State of Nebraska

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by _____, _____ of the COUNTY OF SARPY, a political subdivision of the State of Nebraska, on behalf of said political subdivision.

Notary Public

SCHEWE:

SCHEWE FARMS, INC., a Nebraska corporation

By: Margaret K. Langpaul
Margaret K. Langpaul, President

STATE OF IOWA)
) ss.
COUNTY OF POLK)

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Chris Langpaul
Notary Public

ESCROW AGENT:

SPENCE TITLE SERVICES, INC., a Nebraska corporation

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by _____, _____ of SPENCE TITLE SERVICES, INC., a Nebraska corporation, on behalf of said corporation.

Notary Public



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*Also Admitted In Iowa

E-mail: jbachman@pheblaw.com

December 31, 2009

VIA E-MAIL AND U.S. MAIL

kab@brashearlaw.com

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BRASHEAR LLP
North Old Mill
711 North 108th Court
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cc: Schewe Farms, Inc

Michael A. Smith
Deputy County Attorney