2014-84

14/000366

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA
RESOLUTION AUTHORIZING AGREEMENT FOR PAYMENT IN-LIEU OF TAXES FOR LOT 3, SCHEWE FARMS

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 20012), 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 2012), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County of Sarpy is authorized to purchase and hold the real and personal estate necessary for the use of the county pursuant to Neb. Rev. Stat. §23-104(1) (Reissue 2012); and,

WHEREAS, Neb. Rev. Stat. §23-2901 to 2905(Reissue 2012), confers the power to counties, for the benefits of its citizens, to acquire facilities for social, athletic, and recreational purposes; and,

WHEREAS, Sarpy County, to facilitate the use of Werner Park Stadium, purchased the parcel known as Lot 3, Schewe Farms in Sarpy County, Nebraska, said real estate to be used for vehicle parking, among other things; and,

WHEREAS, as a condition of said purchase, Sarpy County agreed to enter into an agreement with Sanitary and Improvement District No. 290 of Sarpy County, Nebraska (hereinafter "District") to pay real estate taxes that would be owed to District but for County's exemption from taxation; and,

WHEREAS an Agreement has been proposed to meet the requirement of a payment to District in-lieu of taxes.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that the attached Agreement with Sanitary and Improvement District No. 290 of Sarpy County Nebraska for in-lieu of tax payments is hereby approved, and that the Chair and Clerk are hereby authorized to sign the same.

The above and foregoing Resolution was duly approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on this 11th day of ~~February~~ March, 2014.

Chairman, Sarpy County Board

Sarpy County Clerk

DEBRA J. HOUGHTALING, COUNTY CLERK SEAL SARPY COUNTY, NEBRASKA

Return to: John Q. Bachman, Pansing Hogan Ernst & Bachman LLP, 10250 Regency Circle, Suite 300, Omaha, NE 68114

AGREEMENT

THIS AGREEMENT ("Agreement") made and entered into this 11th day of ~~January~~ March, 2014, by and between **SCHEWE FARMS, INC.**, a Nebraska corporation ("SFI"); **SANITARY AND IMPROVEMENT DISTRICT NO. 290 OF SARPY COUNTY, NEBRASKA**, a Nebraska political subdivision ("SID 290"); and **THE COUNTY OF SARPY COUNTY, NEBRASKA**, a Nebraska political subdivision ("Sarpy County").

PRELIMINARY STATEMENT

SFI is the primary and original owner of a certain real estate project in the vicinity of 126th and Highway 370 platted as the Schewe Farms subdivision, and more commonly known as the Pennant Place development. The Schewe Farms plat includes Lot 3, Schewe Farms. SFI and Western Springs Land Corporation, a Nebraska corporation ("Western Springs"), as owners of real property in SID 290, have formed SID 290 under the laws of the State of Nebraska for purposes of constructing and installing in the Schewe Farms subdivision certain public improvements. The SID 290 public improvements have been completed, special assessments have been levied, and the construction of the public improvements benefits the owner of Lot 3, Schewe Farms. SID 290 has issued warrants to pay for the public improvements and in the future will be issuing bonds to retire the warrants. The source of revenue for the payment of the SID 290 warrants and bonds are the ad valorem property taxes and special assessments that will be collected from the owners of property within the Schewe Farms plat and subdivision.

Sarpy County has constructed a baseball park stadium on Lot 1, Schewe Farms, commonly known as Werner Park, of which the Omaha Storm Chasers are primary occupants. Sarpy County has entered into a Purchase Agreement with SFI for the purchase of Lot 3, Schewe Farms (the "Property"), and intends to use, develop and improve the Property for parking for the benefit of Werner Park. Pursuant to Nebraska state law, Sarpy County is not subject to the payment of ad valorem real estate taxes on property which it owns, including, but not limited to, the Property.

SFI, as the primary and original owner of the Schewe Farms subdivision, has an interest in assuring that there are sufficient tax revenues generated from the Property to pay a proportionate share of the costs of the financing for the issuance by SID 290 of its warrants and bonds. SID 290 has a financial interest in assuring that it will have sufficient tax revenues to pay the warrants and bonds that it has issued and will be issuing in the future to pay for existing and any additional public improvements benefiting the Schewe Farms subdivision. SFI would not have agreed to sell the Property to Sarpy County without first obtaining this Agreement from Sarpy County to make certain payments in lieu of taxes annually to SID 290 and to participate in a property owners association for the purpose of promoting the health, safety, recreation, welfare and enjoyment of the property owners within the Schewe Farms plat and subdivision. SFI, as well as SID 290, is relying upon the agreement of Sarpy County to make certain annual payments in lieu of taxes as an inducement to Schewe Farms to sell and convey the Property to Sarpy County.

Sarpy County, in consideration of SFI selling and conveying the Property to Sarpy County, has agreed to enter into this Agreement for the benefit of SFI and SID 290 to make annual payments in lieu of ad valorem real estate taxes to SID 290 and the property owners association dues and assessments, all upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the foregoing Preliminary Statement which is made a part hereof and included herein by reference and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Payment in Lieu of Taxes**. The Property is located within the boundaries of SID 290. Sarpy County will benefit from the construction of the public improvements currently constructed and to be constructed in the future to benefit the Property and the Schewe Farms subdivision. Sarpy County's ownership of the Property will be exempt from the payment of real estate taxes. Commencing April 1, 2014, and continuing on April 1 of each year thereafter, Sarpy County obligates itself contractually to pay SID 290 an "Annual In-Lieu Payment" with respect to real estate taxes which otherwise would be owing to SID 290. The Annual In-Lieu Payment shall be SID 290's then current tax rate, which currently is $.88 per $100.00 of assessed valuation, based on a valuation of $525,000.00 for the Property until such time as Sarpy County completes its parking improvements to the Property, then at which time the Property valuation shall be increased to $1,150,000.00 for the next tax year and thereafter.

2. **Annexation by the City of Papillion**. Upon final annexation of the Property by the City of Papillion, the Annual In-Lieu Payment coming due hereunder after the date of annexation shall terminate and no longer be payable by Sarpy County.

3. **Property Owners Association**. SFI shall cause the incorporation of a Nebraska not-for-profit corporation (the "Association") that has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the property owners within the Schewe Farms plat and subdivision, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of the common facilities for the

general use, benefit and enjoyment of the Association's members. Common facilities may include playgrounds and parks; dedicated and non-dedicated roads, paths, ways, entry areas and green and landscape areas; trees and shrubbery; and signs and entrances for Schewe Farms. Common facilities may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property, or on property dedicated to a sanitary and improvement district;

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any common facilities, provided, always that such rules are uniformly applicable to all members of the Association. The rules and regulations may permit or restrict use of the common facilities by the members of the Association, their families, their guests, and/or by other persons who may be required to pay a fee or other charge in connection with the use or enjoyment of any common facility; and

(c) The exercise, promotion, enhancement and protection of the privileges and interests of residents of Schewe Farms; and the protection and maintenance of the residential character of Schewe Farms.

Sarpy County agrees to negotiate in good faith all appropriate documents with respect to the formation, purposes and responsibilities of the Association, which may include, but not be limited to, the imposition of uniform dues and assessments for the acquisition, construction, reconstruction, repair, painting, maintenance, improvement or replacement of any common facility, including fixtures and personal property related thereto, and related facilities.

4. **Notices.** Any and all notices to be given under this Agreement shall be in writing. and given by certified mail, return receipt requested, or by national overnight courier (e.g., Federal Express, UPS, etc.) and, in the case of courier service, shall be effective as of the date of delivery to the intended recipient as shown on the courier's records, and in the case of mail, shall be effective three (3) days (excluding weekends and holidays) after mailing. Notices shall be addressed as shown below or to such other address as may be specified from time to time in writing by any of the parties to this Agreement:

To SFI:	Schewe Farms, Inc. Attention: Margaret K. Langpaul, President 1753 South 49th Street West Des Moines, IA 50265
With copy to:	Mr. Roger Langpaul 360 Real Estate Services, Inc. 1350 NW 138th Street, Suite 450 Clive, IA 50325
With copy to:	PANSING HOGAN ERNST & BACHMAN LLP Attention: John Q. Bachman

10250 Regency Circle, Suite 300
Omaha, NE 68114

To SID 290: Sanitary and Improvement District No. 290
of Sarpy County, Nebraska
Attention: Chairman and Clerk
c/o Pansing Hogan Ernst & Bachman LLP
10250 Regency Circle, Suite 300
Omaha, NE 68114

To Sarpy County: The County of Sarpy County. Nebraska
Attention: Michael A. Smith, Deputy County Attorney
Sarpy County Attorney's Office
1210 Golden Gate Drive
Papillion, NE 68046

5. **Miscellaneous**.

(a) *Choice of Law.* This Agreement shall be governed by the laws of the State of Nebraska, without regard to principles of conflict of laws.

(b) *Binding Effect.* This Agreement shall be recorded with the Register of Deeds of Sarpy County, Nebraska, and shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The obligations of Sarpy County under this Agreement shall be deemed covenants running with the land and shall bind the Property, and every owner acquiring an interest in the Property, in perpetuity. Sarpy County acknowledges that the execution and delivery of this Agreement was a material inducement to and consideration for SFI's conveyance of the Property to Sarpy County.

(c) *Paragraph Headings.* The paragraph headings used herein are for convenience only and do not constitute a part of this Agreement.

(d) *No Waiver of Noncompliance.* No failure of any party to this Agreement to exercise any power or right granted under this Agreement, or to insist upon strict compliance by any other party of any obligation under this Agreement, and no custom or practice of any party with regard to the terms of performance hereof, shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of this Agreement.

(e) *Entire Agreement.* This Agreement contains the entire Agreement of the parties to this Agreement and no representations, inducements, promises or agreements, whether oral or otherwise, between such parties not embodied in this Agreement or specifically incorporated into this Agreement by reference shall be of any force or effect.

This Agreement may not be amended or modified without the express written consent of all parties hereto and their respective successors and assigns.

(f) *Severability of Clauses.* Each clause or term of this Agreement is severable from the entire Agreement, and if any clause or term is declared invalid, the remaining clauses or terms shall remain in effect.

(g) *Counterparts.* This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

SCHEWE FARMS, INC., a Nebraska corporation

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

SANITARY AND IMPROVEMENT DISTRICT NO. 290 OF SARPY COUNTY, NEBRASKA, a Nebraska political subdivision

By: Gerald L. Torczon
Gerald L. Torczon, Chairman

ATTEST:

Roger W. Lanpaul
Roger W. Lanpaul, Clerk

THE COUNTY OF SARPY COUNTY, NEBRASKA,
a Nebraska political subdivision

By: _____ 3-11-14
Chairman, Sarpy County Board of Commissioners

DEBRA J. HOUGHTALING, COUNTY CLERK
SEAL
SARPY COUNTY, NEBRASKA

ATTEST:

_____
Sarpy County Clerk

APPROVED AS TO FORM:

_____
Deputy Sarpy County Attorney

STATE OF Missouri)
) ss.:
COUNTY OF Camden)

On this 11th day of ~~February~~ March, 2014, before me, a Notary Public, personally came **MARGARET K. LANGPAUL**, President of **SCHEWE FARMS, INC.**, a Nebraska corporation, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the execution thereof to be her voluntary act and deed and the voluntary act and deed of the corporation.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY SEAL
BECKY DISTLER
My Commission Expires
December 30, 2015
Miller County
Commission #11[illegible]

_____
Notary Public

STATE OF NEBRASKA)
) ss.:
COUNTY OF SARPY)

On this 31st day of ~~February~~ March, 2014, before me, a Notary Public, personally came **GERALD L. TORCZON** and **ROGER W. LANGPAUL**, Chairman and Clerk, respectively, of **SANITARY AND IMPROVEMENT DISTRICT NO. 290 OF SARPY COUNTY, NEBRASKA**, a Nebraska political subdivision, to me personally known to be the identical persons whose names are affixed to the above and foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of the District.

WITNESS my hand and Notarial Seal the date last aforesaid.

GENERAL NOTARY - State of Nebraska
KAREN T. RODIS
My Comm. Exp. Oct. 30, 2014

Notary Public

STATE OF NEBRASKA)
) ss.:
COUNTY OF SARPY)

On this 11th day of ~~February~~ March, 2014, before me, a Notary Public, personally came Jim Thompson and Deb Houghtaling, Chairman of the Board of Commissioners, and the County Clerk, respectively, of **THE COUNTY OF SARPY COUNTY, NEBRASKA**, a Nebraska political subdivision, to me personally known to be the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed as the Chairman of the Board of Commissioners and the County Clerk, respectively, of said County.

WITNESS my hand and Notarial Seal the date last aforesaid.

GENERAL NOTARY - State of Nebraska
CHRISTINE ANNE VANCE
My Comm. Exp. May 7, 2014

Christine Anne Vance
Notary Public