

**City of Seward, NE**  
**Tuesday, January 19, 2016**  
**Regular Session**

**Item G7**

**CONSIDERATION OF APPROVAL OF LEASE AGREEMENT  
WITH WAKE FAMILY FOR SEWARD COMMUNITY GOLF  
COURSE LAND - City Atty Hoffschneider**

**Staff Contact:**

## LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is entered into as of this 31<sup>st</sup> day of December, 2015, by and between THOMAS H. WAKE, III and JAMES STEPHEN WAKE (hereinafter collectively referred to as “Lessor”), and THE CITY OF SEWARD, NEBRASKA, a Nebraska municipality (hereinafter referred to as “Lessee”).

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Premises. Lessor hereby leases to Lessee the following real property (the “Premises”):

That portion of the Southeast Quarter of the Northeast Quarter (SE¼ NE¼) and the East Half of the Southeast Quarter (E½ S¼) of Section 17, Township 11 North, Range 3 East of the 6th P.M., Seward County, Nebraska owned by Lessor, consisting of approximately 77 acres more or less and currently developed as a golf course and including the area currently used as a driving range.

2. Term. The term of this Lease shall commence on January 1, 2016 and end on December 31, 2022, unless the term shall be terminated or extended as hereinafter provided. After the expiration of the initial Lease term, this Lease shall be automatically renewed for successive one-year terms, commencing on January 1 and expiring on December 31 of each year thereafter. If either Lessor or Lessee wishes to terminate the Lease at the expiration of its initial term or any renewal term, the terminating party shall give the other party written notice of the termination of the Lease on or before January 1 of the year of termination. For instance, to terminate the Lease as of December 31, 2022, notice must be given on or before January 1, 2022.

3. Rental. On or before January 1, 2016, and on or before each January 1 thereafter during the term of the Lease, Lessee shall pay rent in the amount of \$1,950. The annual payments beginning on January 1, 2016, are intended to reimburse Lessor for legal fees and other administrative and oversight costs which have been and will continue to be incurred by Lessor from time to time with regard to the Lease and the Premises.

4. Taxes and Assessments. Lessee shall pay, as additional rent to Lessor, before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the non-payment thereof, all real estate taxes on the Premises. Lessee shall pay directly to the party owed, before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the non-payment thereof, all personal property taxes (if any), assessments, water and sewer charges, charges for public utilities, excises, levies, license and permit fees and other governmental charges, general and special, of any kind and nature whatsoever, which at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or become due and payable out of or in respect of, or become a lien on, the Premises or any part thereof or any appurtenances thereto, any use or occupation tax on the Premises, or such franchises as may be appurtenant to the use of the Premises, this transaction or any document to which Lessee is a party, in which document Lessee created an obligation which it is liable to repay (all such taxes, assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, license and permit fees and other governmental charges being hereinafter referred to as “Impositions,” and any of the same being hereinafter referred to as an “Imposition”).

5. Liability Insurance.

- a. Amount. Lessee shall, at its own cost and expense, provide comprehensive general public liability and property damage insurance, including contractual liability insurance, protecting and indemnifying Lessor as an additional insured and Lessee as named insured, against any and all claims (including all costs and expenses of defending against same) for personal injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of the use thereof) occurring upon, in or about the Premises or any adjoining properties, streets, alleys, passageways, sidewalks, gutters or curbs, in adequate and customary amounts, but in no event less than Three Million Dollars (\$3,000,000) in respect of personal injury, sickness, disease or death resulting from any one occurrence and One Million Dollars (\$1,000,000) in respect of damage or injury to or destruction of property from any one occurrence, with, however (at Lessee's election), a deductibility clause not to exceed Ten Thousand Dollars (\$10,000).
- b. Terms of Insurance. All insurance provided for in this Section 5 shall be effected under valid and enforceable policies issued by insurers of recognized responsibility. Each policy shall provide that it may not be cancelled as to the interest of Lessor, until at least thirty (30) days after receipt by Lessor of written notice thereof. Concurrently with the commencement of the term of this Lease and not less than ten (10) days prior to the expiration dates of expiring policies, a certificate of such insurance shall be delivered to Lessor.

6. Use of Premises. Lessee shall use the Premises exclusively as a golf course facility and for no other purpose. In conjunction with the golf course facility, Lessee shall maintain a clubhouse (on real property owned by Lessee which adjacent to the Premises) and may lease all or a portion of the clubhouse to a third party for purposes of operating a bar and restaurant. Further, in connection with operation of the golf course facility, Lessee may sublease all or a portion of the Premises to the operator of the bar and restaurant solely for the purposes of providing cart beverage service, including the sale of alcoholic beverages, to persons using the golf course. In connection with its use of the Premises as a golf course facility, Lessee agrees to explore opportunities for collaboration with the University of Nebraska-Lincoln in programs designed to enhance golf course management, landscape planning and hospitality services.

7. Condition of Premises.

- a. Environmental. Lessee shall conduct its operations on the Premises, and Lessee shall keep the Premises, in compliance with any and all federal, state and local laws, ordinances and regulations relating to environmental conditions on, under or about the Premises, including, but not limited to, soil and groundwater conditions. If as a result of an adverse environmental condition caused after Lessee's original occupancy of the Premises, Lessor is subjected to any liability whatsoever, then Lessee will indemnify and hold Lessor harmless against such liability. "Adverse environmental condition" is defined as:
- i. the contamination of the soil, air or water (whether surface water or ground water) of the Premises by hazardous substances or hazardous wastes;
  - ii. the contamination of the soil, air or water (whether surface water or ground water) of any piece of realty adjoining the Premises due to a release of hazardous substances or hazardous wastes upon the Premises; or

- iii. the presence of hazardous substances or hazardous wastes which are stored upon the Premises.

“Liability” is defined as any claim or action (whether civil, criminal or administrative, and whether brought by any governmental entity or nongovernmental entity or person), judgment, settlement, damages, fine, penalty, loss or expense brought against, imposed upon, suffered by or paid by Lessor. Liability shall also include Lessor’s attorneys’ fees, court costs, consultants’ fees, and other litigation-related expenses.

Lessee expressly guarantees that it will assume all costs incurred in:

- (A) investigating the nature and severity of the adverse environmental condition;
  - (B) conducting studies to determine the impact of the adverse environmental condition upon the public health;
  - (C) eliminating the adverse environmental condition;
  - (D) conducting tests following the cleanup in order to determine whether Lessee’s remedial efforts have been successful; and
  - (E) compensating any person, or the estate, heirs or beneficiaries of such person, who suffered injury or death as a result of the adverse environmental condition.
- b. Condition. Lessee accepts the Premises, and all improvements thereon, in their existing condition and state of repair, and covenants that no representations, statements or warranties, express or implied, have been made by or on behalf of Lessor in respect thereto, or in respect to their condition, or the use or occupation that may be made thereof.
  - c. Responsibility to Maintain Condition. Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises. Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises. Lessee shall maintain the Premises in good repair and condition in accordance with standards applicable to golf courses of a similar size and operation in the State of Nebraska.
  - d. Improvements. Lessee shall not erect any permanent improvements on the Premises without the Lessor’s prior written consent.
  - e. Additional Maintenance. Lessee shall mow the land lying immediately south of Country Club Drive that was formerly used as a driving range.
  - 8. Liens.
    - a. Restrictions. Lessee shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the Premises; it being agreed that, should Lessee cause any alterations, rebuildings, replacements, changes, additions, improvements or repairs to be made, or labor

performed or material furnished, neither Lessor nor the Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, but all such alterations, new buildings, replacements, changes, additions, improvements and repairs, and labor and material, including all costs and expenses related thereto, shall be made, furnished, performed and paid at Lessee's expense, and Lessee shall be solely and wholly responsible to contractors, laborers and materialmen furnishing and performing such labor and material.

- b. Notice. Notice is hereby given that Lessor shall not be liable for any labor or materials furnished or to be furnished to Lessee upon credit or otherwise, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the Premises.

9. Paramount Title of Lessor. Nothing contained in this Lease shall authorize Lessee to do or refrain from doing any act which shall in any way encumber the title of Lessor in and to the Premises, nor shall the title, interest or estate of Lessor therein be in any way subject to any claim by way of lien or encumbrance, whether arising by operation of law or by virtue of an express or implied contract by Lessee. Any claim to a lien or encumbrance upon said Premises, arising from any such contrary act or omission of Lessee, shall accrue only against the leasehold estate of Lessee, and shall in all respects be subject and subordinate to this paramount title and right of Lessor in and to the Premises.

10. Covenant of Quiet Enjoyment. Lessor hereby warrants that if Lessee shall pay the rent herein provided for, and perform each and every of the covenants, undertakings and agreements of this Lease to be performed by Lessee, Lessee shall during the lease term freely, peaceably and quietly have and enjoy the Premises without molestation, hindrance, eviction or disturbance by Lessor, or by any other person or persons acting under or through Lessor, but subject always to the terms of this Lease.

11. Lessor's Right to Perform Lessee's Covenants.

- a. Failure to Pay. If Lessee shall at any time fail to pay any Imposition in accordance with the provisions of Section 4 hereof, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Section 5 hereof, then Lessor, after twenty (20) days' notice to Lessee, and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease, may, but shall be under no obligation to:

- i. pay any Imposition payable by Lessee pursuant to the provisions of Section 4 hereof; or
- ii. take out, pay for and maintain any of the insurance policies provided for in Section 5 hereof; or
- iii. make any other payment on Lessee's part to be made as provided in this Lease.

- b. Additional Rent. All sums so paid by Lessor and all costs and expenses incurred by Lessor in connection with the performance thereof, together with interest thereon at the rate hereinafter specified from the respective dates of Lessor's making of each such payment or incurring of each such cost and expense, shall constitute additional rent payable by Lessee under this Lease and shall be paid by Lessee to Lessor on demand.

12. Subleases and Assignments by Lessee. Except as specifically provided herein, the Premises shall not be partitioned, assigned or subleased by Lessee.

13. Condemnation.

- a. Taking Entire Premises. In the event that at any time during the term of this Lease the whole of the Premises, or such part thereof which shall make the Premises unsuitable for Lessee's use thereof (as reasonably determined by Lessor), shall be taken or condemned by any competent authority for any public or quasipublic use or purpose by the exercise of the power of eminent domain (hereinafter referred to as "condemnation proceedings"), then this Lease shall terminate and expire as of and on the date of such taking.
- b. Partial Taking. If at any time during the term of this Lease only a part of the Premises shall be taken by condemnation proceedings and such taking does not make the Premises unsuitable for Lessee's use thereof (as reasonably determined by Lessor), this Lease shall not terminate and all the covenants, agreements and provisions hereof shall be and remain in full force and effect.
- c. Threat of Condemnation. The Premises or any part thereof shall be deemed to be taken by condemnation proceedings within the meaning of the foregoing provisions, and for foregoing provisions shall be applicable thereto, rule, regulation or proceeding under and in accordance with applicable law by a competent authority but is instead pursuant to a transfer or conveyance to or upon the order of such competent authority pursuant to the mutual consent or agreement of Lessor and Lessee.
- d. Condemnation Awards. All condemnation awards shall be the sole property of Lessor, except any portion of an award which is specifically allocated to Lessee's improvements to the Premises shall be the sole property of Lessee.

14. Surrender.

- a. Title to Buildings and Improvements. Lessee expressly covenants and agrees with Lessor that upon expiration of the term of this Lease, including any extension (if this Lease be extended), by lapse of time or upon the earlier termination of this Lease for any reason whatsoever, the buildings and improvements, and all right, title and interest of Lessee therein, shall be and become the property solely of Lessor, and Lessee shall have no further right, title or interest therein and this Lease shall in such event constitute and effect a conveyance, transfer and assignment of the buildings, without the execution of any further instruments of conveyance, assignment or transfer by or on behalf of Lessee. Notwithstanding the foregoing, Lessee covenants and agrees that it will promptly upon such termination execute such instrument or instruments of assignment, transfer and conveyance of the buildings and improvements as may be reasonably necessary to further evidence and make of record the provisions of this Section, or to confirm by way of further assurance the provisions hereof and the title of Lessor as a result of such termination to the buildings and, improvements.
- b. Entry. Upon the expiration of the term of this Lease, including any extension (if this Lease be extended), by lapse of time or upon the earlier termination of this Lease for any reason whatsoever, Lessee shall and will surrender and deliver up the buildings and the Premises into the possession and use of Lessor immediately, and Lessee hereby acknowledges and agrees that Lessor shall have the right in any event to enter into and upon the Premises and the buildings to take possession thereof, with or without process of law, and the right to expel and remove Lessee, using such force as may be reasonably

necessary, and such entry or possession shall not constitute a trespass or forcible entry or detainer.

- c. Adjustments. At the expiration of this Lease or of any extension (if this Lease be extended) appropriate adjustments shall be made between Lessor and Lessee of all properly adjustable items, to wit, taxes and assessments, rents, fuel, insurance, building supplies and any other items customarily adjusted between parties to a transaction similar to this transaction or between parties to a sale of similar real estate.

15. Defaults and Remedies Therefor.

- a. Event of Default. The occurrence of any one or more of the following events shall constitute an “event of default” hereunder:

- i. If Lessee shall default in the payment of any rent required hereunder to be paid by Lessee, or any part thereof, when the same falls due under the provisions hereof and such default shall continue for thirty (30) days after written notice thereof to Lessee; or
- ii. If Lessee shall default in the payment as herein provided of any tax charges, Impositions or other sums required hereunder to be paid by Lessee, and such default shall continue for thirty (30) days after written notice thereof to Lessee; or
- iii. If Lessee shall default in the performance of any other covenant, promise or agreement on the part of Lessee contained herein and such default shall continue for thirty (30) days after notice thereof in writing by Lessor to Lessee, or if such default or condition which gives rise thereto cannot with due diligence and good faith be cured within such thirty (30) day period, if Lessee shall not in good faith and within the period of thirty (30) days commence upon the curing of such default and pursue the curing of same continuously and diligently and in good faith to the end that the same shall be cured within such minimum period in excess of thirty (30) days as may be reasonably necessary to cure such default through pursuing such curing promptly, diligently, continuously and in good faith; or
- iv. If Lessee shall be adjudged bankrupt; or if Lessee shall file or admit the jurisdiction of the court and material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the federal bankruptcy laws as now or hereafter amended, or Lessee shall institute any proceedings for any relief of Lessee under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition or extension; or if Lessee shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Lessee or any of the property of Lessee; or if decree or order appointing a receiver of the property of Lessee shall be made and such decree or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of entry of granting thereof.

- b. Remedies. Upon the occurrence of any event of default, Lessor may at its option exercise any one or more or any combination of any one or more of the following remedies:

- i. Lessor may at any time during the continuance of such event of default terminate this Lease and declare the term hereof ended by giving Lessee notice of such termination, stating the date upon which such termination shall take effect, which date shall not be earlier than thirty (30) days from the date of giving such notice, whereupon this Lease and the term thereof shall expire and terminate on the date specified in such notice and Lessor shall thereupon have the right without further notice and either with or without process of law to re-enter the Premises and the buildings and to remove and put out Lessee and to repossess the Premises and the buildings;
  - ii. Lessor may enforce the provisions of this Lease and may enforce and protect the rights of Lessor hereunder by suit or suits in equity or at law for the specific performance of any covenant or agreement herein contained or for the enforcement of any other appropriate legal or equitable remedy; and
  - iii. Lessor shall be entitled to recover from Lessee all the rentals and other sums payable by Lessee or for which Lessee may be obligated for the period up to and including the termination date, and all costs and expenses, including court costs and attorneys' fees incurred by Lessor in the enforcement of its rights and remedies hereunder, and any other damages which Lessor shall have sustained by reason of the breach of any of the covenants.
- c. Cumulative Remedies. The specified remedies to which Lessor may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Lessor may be lawfully entitled in case of any breach or threatened breach by Lessee of any provision of this Lease. The failure of Lessor to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or option.

16. Notices. All notices, demands and requests which may or are required to be given by either party shall be in writing, sent by United States registered or certified mail, postage prepaid, addressed to the party's current mailing address.

17. Miscellaneous.

- a. Entire Agreement. This Lease contains all the agreements, representations and conditions made by and between the parties hereto. No provision of this Lease shall be changed orally or waived, modified, discharged or amended except by a writing duly signed by the party to be charged therewith.
- b. Headings. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.
- c. Relationship of Parties. The relationship between the parties hereto is that of Lessor and Lessee. Any suggestions arising out of anything herein contained that the relationship between the parties is that of master and servant, or principal and agent, or of a partnership or joint venture, or that Lessor is in any way liable for the debts, obligations or liabilities of Lessee, is hereby expressly negated.



- d. Invalid Terms. If any term or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and be enforced to the fullest extent permitted by law.
- e. Binding Effect. All the covenants, agreements, stipulations, provisions, conditions and obligations herein expressed and set forth shall extend to, bind and inure to the benefit of, as the case may require, the heirs, executors, administrators, successors and assigns of Lessor and Lessee respectively as fully as if such words were written whenever reference to Lessor and Lessee occur in this Lease. This Agreement may not be assigned by Lessee without Lessor's prior written consent.
- f. Interest. Whenever interest is provided in this Lease to be paid, unless otherwise specifically provided, such interest shall be calculated at the rate of eight (8) percent per annum.
- g. Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of natural disaster, restrictive governmental law or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

IN WITNESS WHEREOF, Lessor and Lessee have respectively set their names hereunto as of the day and year first above written.

**LESSORS:**

\_\_\_\_\_  
 Thomas H. Wake, III,  
 by James S. Wake, Power of Attorney

\_\_\_\_\_  
 James Stephen Wake

**LESSEE:**

THE CITY OF SEWARD, NEBRASKA

By: \_\_\_\_\_  
 Its Mayor

**ATTEST:**

\_\_\_\_\_  
 City Clerk

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF SEWARD     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by James S. Wake, individually and as power of attorney for Thomas H. Wake, III.

(S E A L)

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

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF SEWARD     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by Joshua Eickmeier, Mayor of the City of Seward, Nebraska, on behalf of the City.

(S E A L)

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

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