

MISC Inst. # 2017074333, Pages: 1 of 18 Rec Date: 09/19/2017 09:26:48.137

Fee Received: \$112.00 Electronically Recorded By: MJ

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

AFTER RECORDING PLEASE RETURN TO:

TitleCore National, LLC

Attn: _____

9140 West Dodge Road, Suite 380

Omaha, Nebraska 68114

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") dated September 15, 2017 (the "Effective Date"), is made and entered into by and between LAWNFIELD, LLC, a Nebraska limited liability company ("Lawnfield"), and 7029 OAK STREET, LLC, a Nebraska limited liability company ("7029 Oak"). Lawnfield and 7029 Oak may each be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

- A. Lawnfield is the owner of that certain real estate legally described in Exhibit "A" attached hereto and incorporated by reference herein ("Parcel 1").
- B. 7029 Oak is the owner of that certain real estate legally described in Exhibit "B" attached hereto and incorporated by reference herein ("Parcel 2").
- C. The Parties desire to grant each other certain easements over and across their respective Parcels, all upon the terms and conditions set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated with and made a part of this Agreement, and the covenants and agreements contained herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Access Easement. Lawnfield hereby grants to 7029 Oak, and its successors and assigns, for the benefit of and as an easement appurtenant to Parcel 2, a permanent, perpetual and non-exclusive easement over and across that portion of Parcel 1

legally described in Exhibit "C" attached hereto and incorporated by reference herein (the "Access Easement Area"), for the sole purpose of allowing vehicular and pedestrian access to and from Oak Street by 7029 Oak, its agents, licensees and invitees. In addition to the foregoing easement rights, Lawnfield hereby grants to 7029 Oak, and its successors and assigns, for the benefit of and as an easement appurtenant to Parcel 2, a permanent, perpetual and non-exclusive easement over and across the drive lanes (the "Drive Lanes") located within the parking lot to be constructed on Parcel 1, for the sole purpose of allowing vehicular and pedestrian access to and from the Access Easement Area by 7029 Oak, its agents, licensees and invitees. Lawnfield agrees that the Access Easement Area and Drive Lanes shall remain open and will not be blocked, closed, or altered, except for temporary maintenance of the Access Easement Area as contemplated herein; provided, however, that Lawnfield reserves the right, in its sole and absolute discretion, to reconfigure the Drive Lanes from time to time, and upon any such reconfiguration 7029 Oak shall continue to have the foregoing easement rights over and across the reconfigured Drive Lanes at least equal to the current easement.

Additionally, subject to the further provisions of this paragraph below, Lawnfield hereby grants to 7029 Oak a permanent, perpetual and non-exclusive easement to utilize for a total of twenty (20) days during any calendar year the twenty (20) parking stalls (the "Parking Stalls") located on Parcel 1 and identified by hash-marking in Exhibit "G" attached hereto and incorporated by reference herein. The foregoing right of 7029 Oak to utilize the Parking Stalls is subject to the following limitations: (i) the right of 7029 Oak to utilize the Parking Stalls shall automatically terminate at such time that Parcel 2 is no longer used solely for a Montessori school; (ii) 7029 Oak shall deliver written notice to Lawnfield not less than five (5) days prior to any calendar day during which 7029 Oak desires to utilize the Parking Stalls; and (iii) Lawnfield may, in its reasonable discretion exercised in good faith, reject 7029 Oaks request to utilize the Parking Stalls on any day in order to perform maintenance of the Parking Stalls or utilize the same for Lawnfield's operations due to maintenance of the greater parking lot located on Parcel 1.

2. Temporary Construction Easement. 7029 Oak hereby grants to Lawnfield and its agents, invitees, licensees, contractors and subcontractors an exclusive temporary easement with respect to that portion of Parcel 2 legally described in Exhibit "D" attached hereto (the "Temporary Construction Easement Area") for the purposes of constructing certain parking lot improvements (the "Parking Area") thereon, and (ii) for accessing the Lateral Support Easement Area (as defined below). Said temporary easement shall commence on the Effective Date and shall expire automatically five hundred forty (540) days thereafter.

3. Initial Construction. Lawnfield shall, at its sole cost and expense, be solely responsible for the initial construction of the Access Easement Area, the Drive Lanes, and the Parking Area, which shall be constructed in substantial conformance with the site plan ("Site Plan") attached hereto as Exhibit "E" and incorporated by reference herein. Lawnfield shall use commercially reasonable efforts to prevent its construction from interfering with the reasonable business operations on 7029 Oak's adjoining property.

4. Maintenance. Following initial construction of the Access Easement Area, the Drive Lanes, and the Parking Area, Lawnfield shall, at its sole cost and expense, maintain the Access Easement Area and Drive Lanes in good repair, which shall include but not be limited to

the resurfacing and restriping of said areas as needed and the removal of snow and ice therefrom. Notwithstanding the foregoing, 7029 Oak shall be solely responsible for any repair of the Access Easement Area and the Drive Lanes arising from the negligence or intentional act of 7029 Oak, its agents, licensees or invitees.

5. Lateral Support Easement. 7029 Oak hereby grants to Lawnfield, and its successors and assigns, for the benefit of and as an easement appurtenant to Parcel 1, a permanent, perpetual and non-exclusive easement over, across and upon that portion of Parcel 2 legally described in Exhibit "F" attached hereto and incorporated by reference herein (the "Lateral Support Easement Area"), for the purposes of depositing thereon dirt, soil, clay and other earthen material (the "Material") and for grading the same, all at Lawnfield's sole cost and expense, in order to provide lateral support to the existing concrete and stone wall (the "Wall") that is partially located on Parcel 1 and partially located on Parcel 2. Lawnfield shall have the right, in its reasonable discretion, to (i) determine the amount and location of the Material to be deposited on the Lateral Support Easement Area, and (ii) grade the same in order to provide for water drainage away from Parcel 1 and Parcel 2 to 70th Street. Thereafter, Lawnfield shall, at its sole cost and expense, plant grass and install other landscaping improvements on the Lateral Support Easement Area, as determined by Lawnfield in its reasonable discretion, and mow and maintain the same. Neither 7029 Oak nor any successor in interest shall, without the prior written consent of Lawnfield, which may be withheld in its reasonable discretion, make any use of the Lateral Support Easement Area that could alter or impair the integrity of the lateral support provided to the Wall and the improvements to be constructed on Parcel 1. Lawnfield may condition its consent to any such use upon 7029 Oak or its successor in interest, as applicable, taking such actions as are necessary, as determined in Lawnfield's reasonable discretion, to maintain the integrity of the lateral support provided to the Wall and the improvements to be constructed on Parcel 1, and all such actions shall be at the sole cost and expense of 7029 Oak or its successor in interest, as applicable.

6. Sign Easement. Subject to the provisions of this Section 6 and 7029 Oak obtaining all necessary governmental approvals and permits, which 7029 Oak shall obtain at its sole cost and expense, Lawnfield hereby grants to 7029 Oak a permanent, perpetual easement on Parcel 1 for the purpose of maintaining a single masonry monument sign advertising 7029 Oak's use of Parcel 2 as a Montessori school (the "Sign"), and the right to ingress and egress to and from Parcel 1 for the purpose of exercising and enjoying the rights and privileges granted in this Section 6. 7029 Oak and its employees, representatives, contractors, successors and assigns shall have the right to ingress and egress by vehicle or otherwise over Parcel 1 at such locations determined in Lawnfield's reasonable discretion for the purpose of installing, maintaining, operating, altering, constructing, removing, repairing and keeping the Sign in proper condition. The operation of the Sign shall include the right to survey, post, illuminate and maintain the Sign, and to modify the Sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by law, and to maintain utility service, power poles or other activities necessary or useful in 7029 Oak's use of the Sign. The Sign shall be located within the northwest corner of Parcel 1 and be visible from 72nd Street at a location determined by Lawnfield in its reasonable discretion. All structures, equipment and materials owned or placed upon Parcel 1 by 7029 Oak or its successor and assigns shall remain the property of 7029 Oak and may be removed by 7029 Oak at any time, and upon such removal 7029 Oak shall repair, at its sole cost and expense, any damage caused to Parcel 1 thereby. Prior

to taking any action to construct the Sign 7029 Oak shall, at its sole cost and expense, make any required applications with, and obtain all required permits from, all applicable governmental bodies for the construction and maintenance of the Sign, and copies of all required permits shall be provided to Lawnfield prior to commencement of construction of the Sign. Notwithstanding anything in this Section 6 to the contrary, the size and design of the Sign shall be subject to the prior written approval of Lawnfield, which may be withheld in Lawnfield's reasonable discretion.

7. Default; Remedies. In the event of a default by either Party hereto of any of its obligations under this Agreement, then the non-defaulting Party may deliver written notice thereof to the defaulting Party. Thereafter, in the event that such default continues for thirty (30) days after delivery of such written notice, or for such longer period of time as may be reasonable in the event that the default cannot be cured within such thirty-day period and so long as the defaulting Party has commenced to cure such default within said thirty-day period and thereafter continues to diligently pursue such cure to completion, then (a) the non-defaulting Party shall have any and all remedies available to it under this Agreement and otherwise at law or in equity; and (b) the non-defaulting Party may take such reasonable actions as it deems appropriate to cure such default (including, without limitation, taking the required action on behalf of the defaulting Party) and thereafter recover the cost of such cure from the defaulting Party. In the event of a default or breach of the provisions of this Agreement, the non-defaulting Party shall be entitled to recover from the defaulting Party reasonable costs and attorneys' fees incurred by the non-defaulting Party as a result of such default or breach.

8. Indemnification. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Party") from and against any and all liability, loss, cost or expense, including reasonable attorneys' fees, that the Indemnified Party may suffer or incur as a result of (i) any default by the Indemnify Party under this Agreement; and (ii) any claims pertaining to injury, death or property damage arising out of or related to the negligence or intentional act of the Indemnifying Party or its employees or agents on or about any of the easement areas described in this Agreement.

9. Runs with Land. Except as otherwise expressly provided herein, the rights conveyed herein shall be perpetual and shall run with the land, and shall be binding upon inure to the benefit of the Parties and their respective successors in interest.

10. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any of the easement areas described herein to the general public or for any public purpose whatsoever, it being the intention of the Parties that the rights granted herein shall be strictly limited to and for the private purposes herein expressed.

11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements between the Parties in regard thereto. There are no verbal agreements that can or will modify this Agreement, and no amendment or waiver of any of its terms will be effective unless set forth in a written instrument executed by each Party or its successor in interest.

12. Time of the Essence. Time is of the essence with respect to each and every obligation to be performed under this Agreement.

13. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Nebraska.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original document, and all of which together shall constitute a single instrument.

[SIGNATURE PAGE TO FOLLOW]

EXHIBIT "A"

Legal Description of Parcel 1

Lot 1, Lawnfield Replat 6, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

733272.7

EXHIBIT "B"

Legal Description of Parcel 2

Lot 2, Lawnfield Replat 6, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

733272.7

EXHIBIT "C"

Legal Description of Access Easement Area

(Attached)

733272.7

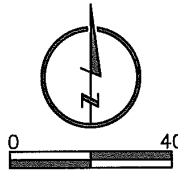
EASEMENT EXHIBIT

LOT 1, LAWNFIELD REPLAT 6

24.00' ACCESS EASEMENT

LEGAL DESCRIPTION

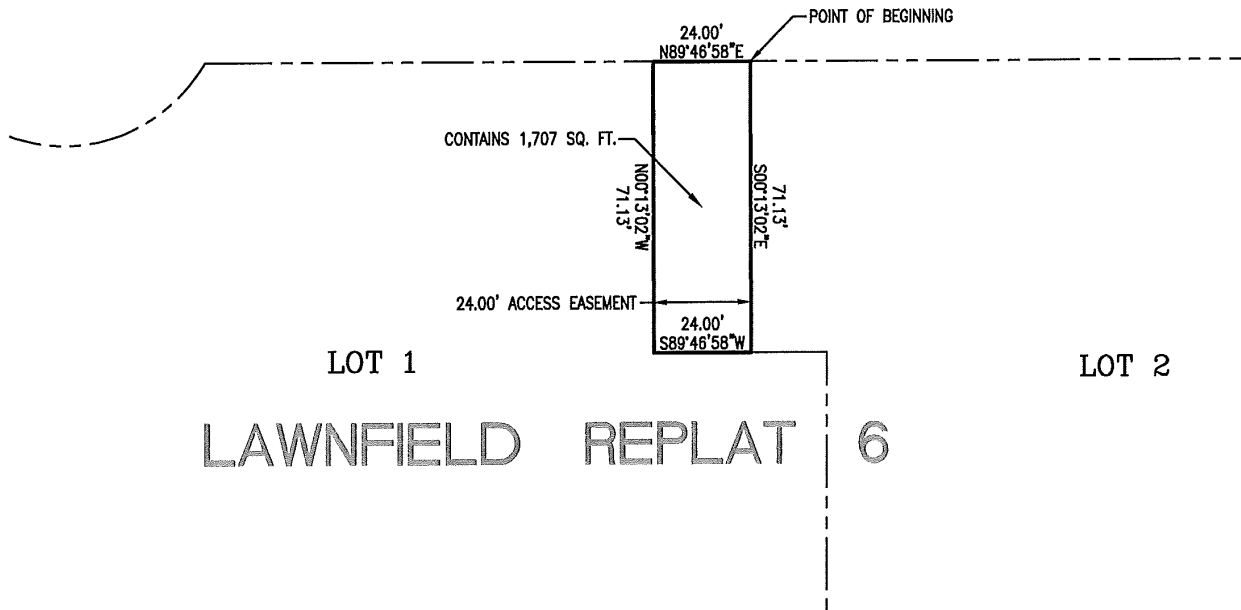
A PERMANENT 24.00 FOOT WIDE ACCESS EASEMENT OVER THAT PART OF LOT 1, LAWNFIELD REPLAT 6, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1, LAWNFIELD REPLAT 6;
THENCE SOUTH 00°13'02" EAST (BEARINGS REFERENCED TO THE FINAL PLAT OF LAWNFIELD REPLAT 6) FOR 71.13 FEET ALONG THE EAST LINE OF SAID LOT 1;
THENCE SOUTH 89°46'58" WEST FOR 24.00 FEET;
THENCE NORTH 00°13'02" WEST FOR 71.13 FEET 24.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID LOT 1 TO THE NORTH LINE OF SAID LOT 1;
THENCE NORTH 89°46'58" EAST FOR 24.00 FEET TO THE POINT OF BEGINNING;
CONTAINS 1,707 SQUARE FEET.



LEGEND

- LOT LINE
- EASEMENT LINE

OAK STREET
60.00' PUBLIC RIGHT OF WAY



LAMP RYNEARSON
& ASSOCIATES

14710 West Dodge Road, Suite 100 402.496.2498 | P
Omaha, Nebraska 68154-2027 402.496.2730 | F
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DRAWN BY EAM	DESIGNED BY	REVIEWED BY JLC	PROJECT - TASK NUMBER 0116163.02-004	DATE 8-8-17	BOOK AND PAGE	REVISIONS
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EXHIBIT "D"

Legal Description of Temporary Construction Easement Area

(Attached)

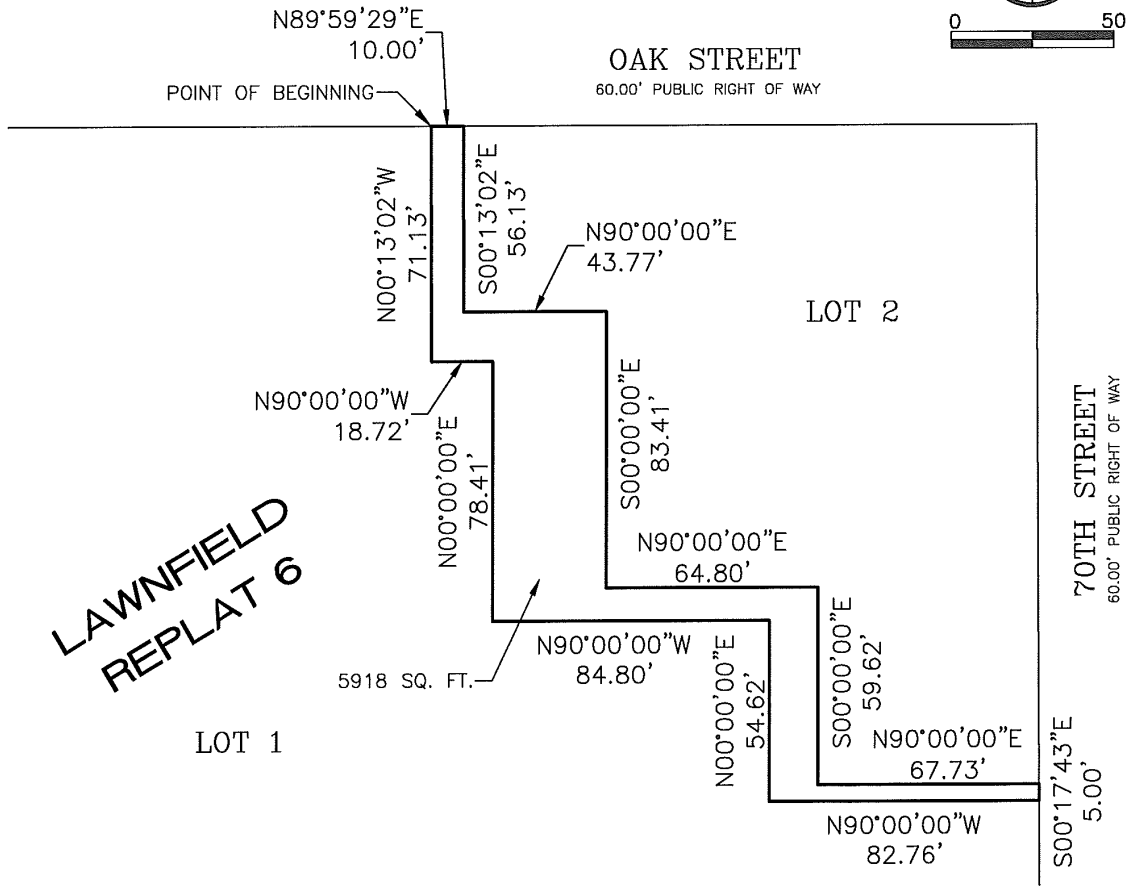
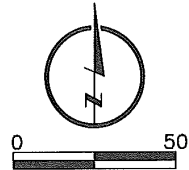
733272.7

EASEMENT EXHIBIT

LEGAL DESCRIPTION

A TEMPORARY EASEMENT FOR CONSTRUCTION OVER PART OF LOT 2, LAWNFIELD REPLAT 6, A SUBDIVISION AS SURVEYED, PLATTED, AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

- BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2;
 - THENCE NORTH 89°59'29" EAST (BEARINGS REFERENCED TO THE FINAL PLAT OF LAWNFIELD REPLAT 6) FOR 10.00 FEET ON THE NORTH LINE OF SAID LOT 2, ALSO BEING THE SOUTH RIGHT OF WAY LINE OF OAK STREET;
 - THENCE SOUTH 00°13'02" EAST FOR 56.13 FEET;
 - THENCE NORTH 90°00'00" EAST FOR 43.77 FEET;
 - THENCE SOUTH 00°00'00" EAST FOR 83.41 FEET;
 - THENCE NORTH 90°00'00" EAST FOR 64.80 FEET;
 - THENCE SOUTH 00°00'00" EAST FOR 59.62 FEET;
 - THENCE NORTH 90°00'00" EAST FOR 67.73 FEET TO THE EAST LINE OF SAID LOT 2, ALSO BEING THE WEST RIGHT OF WAY LINE OF 70TH STREET;
 - THENCE SOUTH 00°17'43" EAST FOR 5.00 FEET ON SAID EAST LINE TO THE SOUTH LINE OF SAID LOT 2;
 - THENCE NORTH 90°00'00" WEST FOR 82.76 FEET ON SAID SOUTH LINE TO THE WEST LINE OF SAID LOT 2;
 - THENCE ON SAID WEST LINE FOR THE FOLLOWING FIVE (5) COURSES:
 1. THENCE NORTH 00°00'00" EAST FOR 54.62 FEET;
 2. THENCE NORTH 90°00'00" WEST FOR 84.80 FEET;
 3. THENCE NORTH 00°00'00" EAST FOR 78.41 FEET;
 4. THENCE NORTH 90°00'00" WEST FOR 18.72 FEET;
 5. THENCE NORTH 00°13'02" WEST FOR 71.13 FEET TO THE POINT OF BEGINNING.
- CONTAINS 5918 SQUARE FEET.



**LAMP RYNEARSON
& ASSOCIATES**

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 Omaha, Nebraska 68154-2027 402.496.2730 | F
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DRAWN BY	DESIGNED BY	REVIEWED BY	PROJECT - TASK NUMBER	DATE	BOOK AND PAGE	REVISIONS
RER		JLC	0116163	9/7/17		

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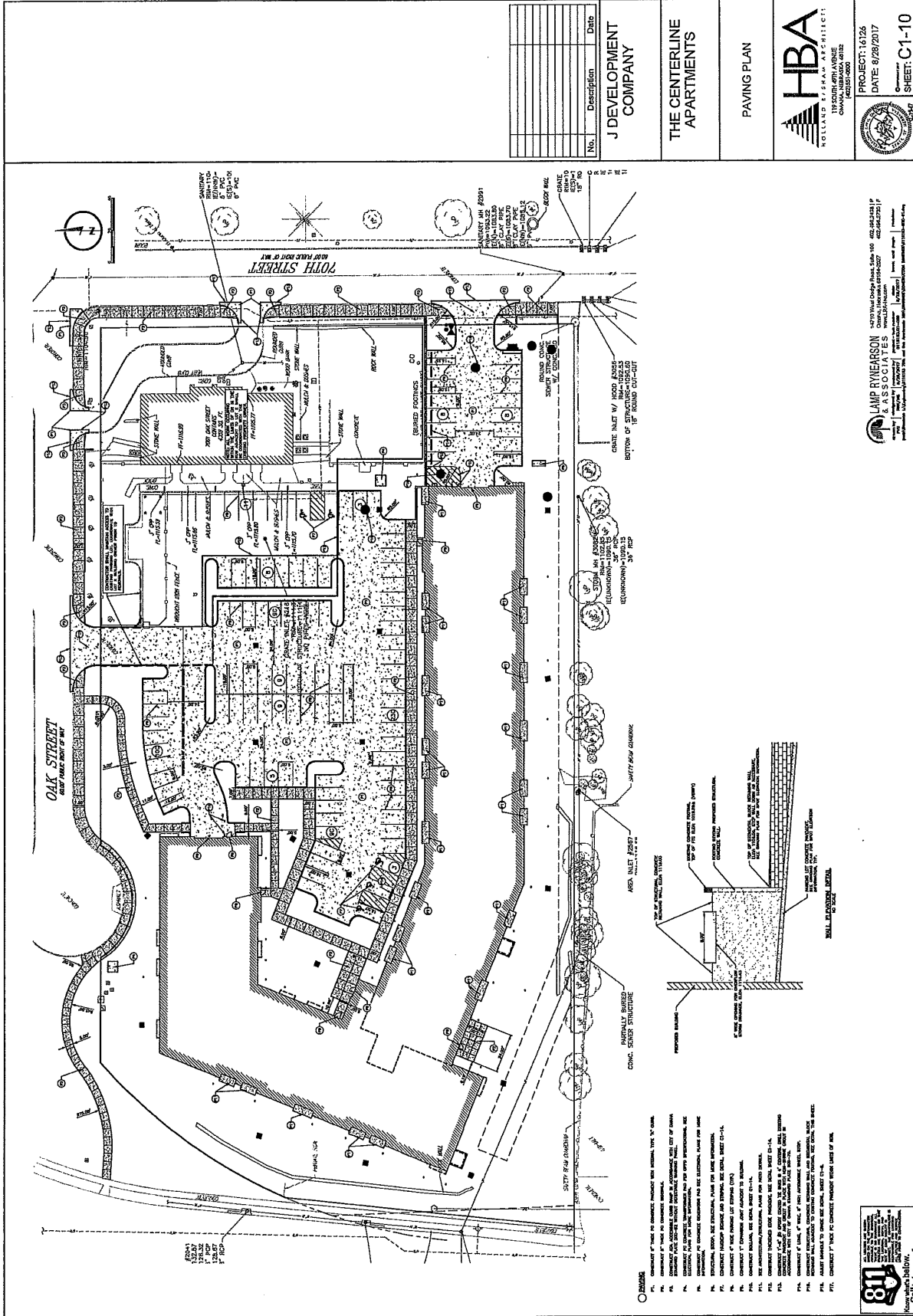
Inst. # 2017074333, Pages: 13 of 18

EXHIBIT "E"

Site Plan

(Attached)

733272.7



HBA
 HOLLAND EISSAM ARCHITECTS
 10000 W. 120th St.
 Overland Park, KS 66209
 (913) 666-0000

PROJECT: 16126
 DATE: 8/28/2017
 SHEET: C1-10

LAMP RYMERSON & ASSOCIATES
 14750 W. 120th St., Suite 100
 Overland Park, KS 66209
 (913) 666-0000
 www.lamprymer.com

DATE: 8/28/2017
 SHEET: C1-10

J DEVELOPMENT COMPANY
 THE CENTERLINE APARTMENTS
 PAVING PLAN

THE CENTERLINE APARTMENTS

PAVING PLAN

HBA
 HOLLAND EISSAM ARCHITECTS
 10000 W. 120th St.
 Overland Park, KS 66209
 (913) 666-0000

LAMP RYMERSON & ASSOCIATES
 14750 W. 120th St., Suite 100
 Overland Park, KS 66209
 (913) 666-0000
 www.lamprymer.com

J DEVELOPMENT COMPANY
 THE CENTERLINE APARTMENTS
 PAVING PLAN

EXHIBIT "F"

Legal Description of Lateral Support Easement Area

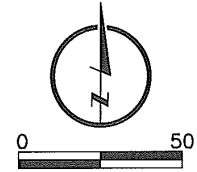
(Attached)

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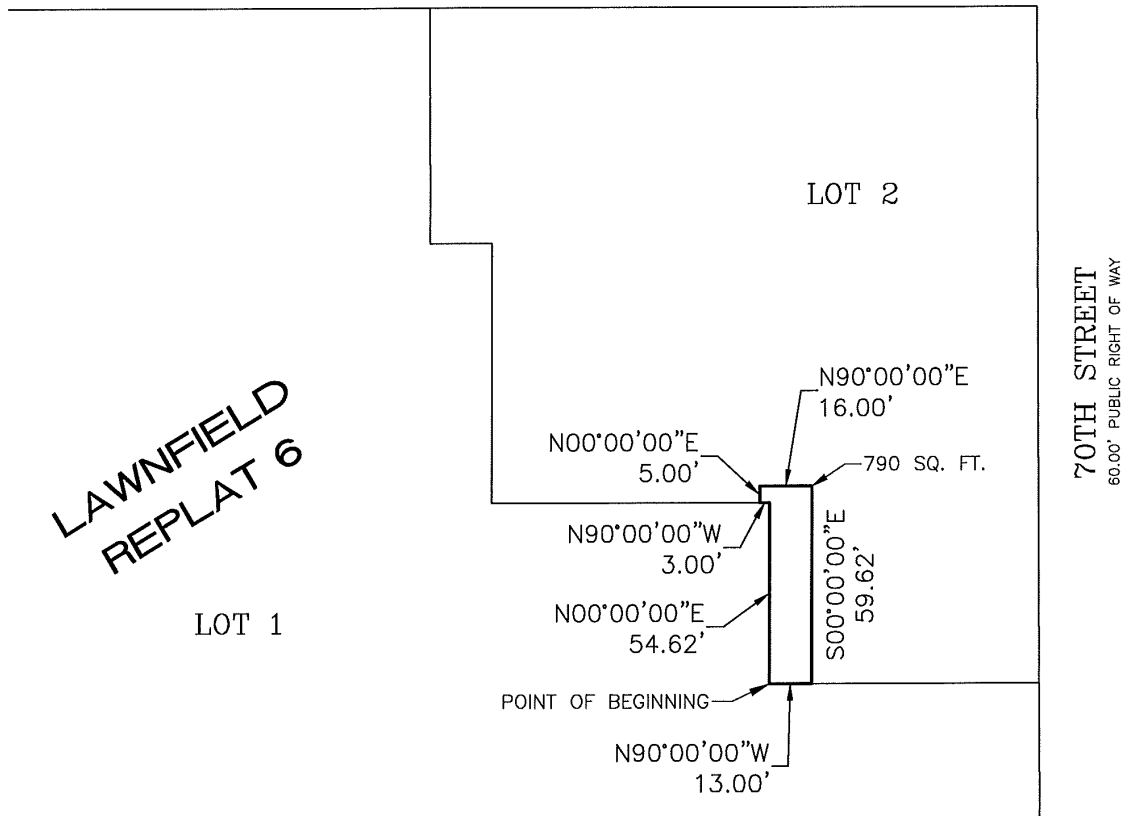
EASEMENT EXHIBIT

LEGAL DESCRIPTION

A PERMANENT EASEMENT OVER PART OF LOT 2, LAWNFIELD REPLAT 6, A SUBDIVISION AS SURVEYED, PLATTED, AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:
 BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2;
 THENCE NORTH 00°00'00" EAST (BEARINGS REFERENCED TO THE FINAL PLAT OF LAWNFIELD REPLAT 6) FOR 54.62 FEET ON THE WEST LINE OF SAID LOT 2;
 THENCE NORTH 90°00'00" WEST FOR 3.00 FEET CONTINUING ON SAID WEST LINE;
 THENCE NORTH 00°00'00" EAST FOR 5.00 FEET;
 THENCE NORTH 90°00'00" EAST FOR 16.00 FEET;
 THENCE SOUTH 00°00'00" EAST FOR 59.62 FEET TO THE SOUTH LINE OF SAID LOT 2;
 THENCE NORTH 90°00'00" WEST FOR 13.00 FEET TO THE POINT OF BEGINNING.
 CONTAINS 790 SQUARE FEET.



OAK STREET
 60.00' PUBLIC RIGHT OF WAY



LAMP RYNEARSON
 & ASSOCIATES

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 Omaha, Nebraska 68154-2027 402.496.2730 | F
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RER		JLC	0116163	9/8/17		

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EXHIBIT "G"

Depiction of Parking Stalls

(Attached)

733272.7

