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GEORGE J. BUCKLEMOZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

PRIVATE ROAD ENCROACHMENT AGREEMENT

THIS AGREEMENT is made this 23rd day of January, 1990, by and between Burlington Northern Railroad Company, a Delaware corporation (hereinafter "Burlington"), and the Omaha Development Foundation, a Nebraska not-for-profit corporation (hereinafter "ODF") and Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska (hereinafter "OPPD").

RECITALS

WHEREAS, ODF with the cooperation and assistance of the City of Omaha (hereinafter "City"), and Douglas County, Nebraska, has been instrumental in the redevelopment of the City's riverfront area, which is defined as being that area between Jones Street to Dodge Street and the Missouri River to Tenth Street in the City; and

WHEREAS, OPPD plans to construct and install a 161 kilovolt underground transmission line, buried to an approximate depth of 42 inches, on property abutting the right of way of Burlington (the "Underground Line"); and

WHEREAS, ODF has obtained for the benefit of OPPD this Agreement, which will permit OPPD to construct, operate, maintain and use a non-exclusive private road encroachment upon and across the property of Burlington, (hereinafter "Road Encroachment"), in the location shown on Exhibit "A", attached hereto, and over and across the property described in Exhibit "B", attached hereto.

NOW THEREFORE, in consideration of the sum of Ten Thousand and No/100ths Dollars ($10,000.00) paid to Burlington by OPPD and the covenants, promises and indemnities contained herein, the parties hereto agree as follows:

1. ROAD ENCROACHMENT. Burlington grants to OPPD the right to construct, operate, maintain and use the Road Encroachment, subject to the terms and conditions set forth herein; and ODF insures that in the redevelopment of City's riverfront area that ODF will not interfere in the rights of OPPD in the Road Encroachment.

2. TERM. This Agreement shall be effective as of the date first herein written, and shall continue in full force and effect until terminated as provided in Paragraph 10.

3. LIMITATION OF RIGHTS GRANTED.

(a) The Road Encroachment herein granted is subject to all outstanding superior rights including but not limited

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to permits, leases and licenses, if any, affecting the Road Encroachment and Burlington shall continue to have the right to utilize the Road Encroachment in its railroad business and shall have the right to grant others the right to use the Road Encroachment; provided, however, that the use of the Road Encroachment by Burlington and such additional users shall not materially interfere with OPPD's use of the Road Encroachment.

(b) The rights granted to OPPD are subject and subordinate to the prior and continuing right and obligation of Burlington to use and maintain its entire railroad right-of-way, and are also subject to the right and power of the Burlington to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communications, fiber optics, wire lines, pipe lines or other facilities upon, along or across any or all parts of said Road Encroachment, any of which may be freely done at any time by the Burlington without liability to OPPD or to any other party for compensation or damages. In the event Burlington exercises any of the rights retained herein, to the extent that OPPD's Road Encroachment is materially impaired then Burlington shall nonetheless provide alternative means of access for OPPD, which access shall permit OPPD to construct, operate, service or maintain its Underground Line without additional access costs to OPPD.

4. ROAD ENCROACHMENT TO BE STRICTLY PRIVATE. It is expressly stipulated that the Road Encroachment is to be strictly a private one to be used by OPPD and Burlington and others with Burlington's permission and is not intended for public use. OPPD, without expense to Burlington, will take any and all necessary action to preserve the private character of the Road Encroachment and prevent its use as a public road.

5. CONSTRUCTION, MAINTENANCE AND USE.

(a) OPPD shall bear the entire cost and expense, furnish all necessary labor and material and perform all grading necessary for the construction, maintenance, repair or renewal of the Road Encroachment, including any and all expense which may be incurred by Burlington in connection therewith for supervision, flagging, inspection, or otherwise. Prior to making any improvements OPPD shall submit plans to Burlington for Burlington's review and consent.

(b) OPPD shall, at its sole expense, perform all maintenance and rehabilitation work needed for the Road Encroachment. All work performed by OPPD on the Road

Encroachment shall be done to the satisfaction of Burlington.

(c) OPPD shall keep gates, if any, affording access to the Road Encroachment closed and locked at all times except during the time of actual passage. OPPD shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of Burlington's railroad tracks or appurtenant facilities or the facility or equipment of others lawfully using Burlington's property.

(d) OPPD shall have the limited right to store construction materials on the Road Encroachment from time to time on a temporary and reasonable basis; provided, such right is subject to the need of Burlington to otherwise use the Road Encroachment for operational purposes in order to permit Burlington to comply with all federal, state and local laws or regulations affecting Burlington. Except as provided above, OPPD shall not use the Road Encroachment for storage purposes.

(e) OPPD shall locate and place warning signs approximately 400 feet apart over the Underground Line. The signs maybe generally described as follows: (1) 3' to 4' in height; (2) 8½" x 11" in dimension; (3) yellow in color with black lettering; and (4) lettering to include an One-Call Number.

6. NOTICE OF COMMENCEMENT OF WORK. In the event of an emergency and the immediate need for OPPD to use the Road Encroachment, OPPD shall provide to Burlington as much notice as is practical under the circumstances. Except for emergency repairs of OPPD's facilities or equipment, OPPD shall notify Burlington at least 24-hours in advance of the commencement of any work upon or entrance onto property of Burlington in connection with the use, construction, maintenance or repair of the Road Encroachment. All such work shall be prosecuted diligently to completion.

7. INDEMNITY. OPPD assumes the risk of and shall indemnify and hold harmless ODF, Burlington, its licensees, and other railroad companies which use the property of Burlington, and their respective directors, officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorney fees, fines, penalties, and expenses of whatsoever nature (hereinafter "Loss") which may result from (1) injury to or death of persons whomsoever (including directors, officers, agents and employees of ODF, Burlington and OPPD, as well as other persons); (2) loss of or damage to the property whatsoever (including damage to property of or in the custody of OPPD and damage to the roadbed, tracks, equipment or other property of or in the custody of Burlington, its licensees, and such other railroad companies); or

(3) violation by OPPD of any federal, state, or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

(a) The construction of the Road Encroachment;

(b) Any work done by OPPD on or in connection with the Road Encroachment;

(c) The use of the Road Encroachment by OPPD, its officers, agents, employees or invitees;

(d) The breach of any covenant or obligation assumed by or imposed on OPPD pursuant to this Agreement or failure of OPPD to promptly and fully do any act or work for which OPPD is responsible pursuant to this Agreement;

except as to Burlington, its licensees, or such other railroad companies, when such Loss is caused by the sole negligence or willful conduct of Burlington, its licensees, or other railroad companies which use the property of Burlington and their respective directors, officers, agents or employees; and except as to ODF when such Loss is caused by the sole negligence or willful conduct of ODF or its director, officers, agents or employees.

In the event of any breach of this agreement by OPPD, Burlington shall not have any right or claim against ODF, its directors, officers, agents or employees as a result of such breach.

8. CLAIMS AND LIENS FOR LABOR AND MATERIAL.

(a) OPPD shall fully pay for all materials joined or affixed to and labor performed upon property of Burlington in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Road Encroachment, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance, request, or on behalf of OPPD. OPPD shall indemnify and hold harmless ODF and Burlington against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) OPPD shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Road Encroachment, to prevent the same from becoming a charge or lien upon property of Burlington and so that the taxes, charges and assessments levied upon or in respect to such property shall

not be increased because of the location, construction, maintenance or use of the Road Encroachment or any improvement, appliance or fixture connected therewith placed upon such property, or on account of OPPD's interest therein. Where such tax, charge or assessment may not be separately made or assessed to OPPD but shall be included in the assessment of the property of Burlington, then OPPD shall pay to Burlington an equitable proportion of such taxes determined by the value of OPPD's personal property located upon the property of Burlington as compared with the entire value of such property.

9. HAZARDOUS MATERIAL.

(a) OPPD shall not cause or permit any Hazardous Material (hereinafter defined) to be brought upon or used in or about the Road Encroachment by OPPD, its agents, employees, contractors, or invitees, without the prior written consent of Burlington, with the exception of polybutene O CS pipe-filling oil to be used in connection with the Underground Line. Burlington shall not withhold its consent as long as OPPD demonstrates to Burlington's satisfaction that such Hazardous Material is necessary or useful to OPPD's business and that it will not be used, kept, or stored on or in the Road Encroachment and will be transported and used in a manner that complies with all laws regulating any such Hazardous Material.

(b) Burlington agrees that any contamination by Hazardous Material of the Road Encroachment or adjoining Burlington right-of-way that may be existing as of the date hereof shall not be the responsibility of OPPD or its directors, officers, employees or contractors, under this Agreement.

(c) If OPPD breaches the obligations stated in subparagraph (a) above, or if the presence of Hazardous Material used or stored by OPPD, its agents, employees contractors, or invitees results in contamination of the Road Encroachment, or the adjoining Burlington right-of-way, then OPPD shall indemnify, defend, and hold ODF and Burlington harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including attorneys' fees, consultant fees and expert fees, which arise during or after the term of this Agreement as a result of such contamination. If the presence of any Hazardous Material on the premises caused or permitted by OPPD results in any contamination of the Road Encroachment or adjoining Burlington right-of-way, OPPD shall promptly take all actions, at its sole expense, as are

necessary to return the Road Encroachment and adjoining Burlington right-of-way to the condition existing prior to such contamination; provided, that Burlington's approval of such action shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Road Encroachment or adjoining Burlington right-of-way. As used herein, the term "Hazardous Material" shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Nebraska or the United States government. The term "Hazardous Material" includes, but shall not be limited to, any material or substance that is now or may in the future be: (1) defined as a "hazardous substance" under the laws of the State of Nebraska or any of its subdivisions; (2) designated as "hazardous substance" under the Federal Water Pollution Control Act (33 U.S.C. ¶1321, as amended); (3) defined as "hazardous waste" pursuant to the Federal Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended); (4) defined as "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601, et seq., as amended); or (5) defined as a "regulated substance" under the Solid Waste Disposal Act (42 U.S.C. §6991 et. seq., as amended).

10. TERMINATION.

(a) If OPPD does not use the Road Encroachment for a continuous period of eighteen (18) months, or if OPPD continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from Burlington to OPPD specifying such default, Burlington may, at is option, terminate this Agreement by written notice given to OPPD.

(b) Notice of default and notice of termination may be served personally upon OPPD or by mailing to the last know address of OPPD. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have arisen prior thereto.

11. REMOVAL OF ROAD ENCROACHMENT AND RESTORATION OF PREMISES.

(a) If this Agreement is terminated pursuant to the terms of Paragraph 10 hereof, at the request of Burlington, OPPD shall at its own expense, remove the Road Encroachment and reasonably restore the premises to the

condition existing prior to OPPD's work on the premises; provided, failure by OPPD to restore the premises within sixty (60) days following such request shall be deemed authorization by OPPD for Burlington to restore the premises at OPPD's expense.

(b) In the event OPPD removed, relocated or disturbed any fence or other property of Burlington in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Road Encroachment, with or without Burlington's consent, OPPD shall, at OPPD's sole expense, restore such fence or other property to the same condition it was in before such fence or other property was removed, relocated or disturbed.

12. ASSIGNMENT. OPPD shall not assign this Agreement, or any interest therein to any purchaser, lessee or to any other person without the written consent of Burlington. If OPPD fails to secure Burlington's consent to any assignment, OPPD will continue to be responsible for obligations and liabilities assumed herein.

13. SUCCESSORS AND ASSIGNS. Subject to the Provisions of Paragraph 12 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

ATTEST:

Assistant Secretary

BURLINGTON NORTHERN RAILROAD COMPANY

BY:

Title: DIRECTOR - TITLE SERVICES

ATTEST:

OMAHA DEVELOPMENT FOUNDATION

BY:

Title:

ATTEST:

Assistant Secretary

OMAHA PUBLIC POWER DISTRICT

BY:

Title: President

STATE OF Washington)
) SS:
COUNTY OF King)

The foregoing instrument was acknowledged before me this 23rd day of January, 1990, by J.H. ILKKA, DIRECTOR - TITLE SERVICES, of the Burlington Northern Railroad Company, a corporation organized under the laws of the State of Delaware, on behalf of the corporation.

WITNESS my hand and notarial seal at Seattle, in said county and state the day and year last above written.

ALLEN A. LYNCH NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 1-9-93

Allen A. Lynch
Notary Public

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14th day of JULY, 1989, by Michael C. Wiese Executive Director of the Omaha Development Foundation, a not-for-profit corporation organized under the laws of the State of Nebraska, on behalf of the corporation.

WITNESS my hand and notarial seal at Omaha, in said county and state the day and year last above written.

GENERAL NOTARY-State of Nebraska
STEPHEN G. OLSON
My Comm. Exp. Dec. 29, 1992

Notary Public

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 4th day of August, 1989, by Frederick M. Peterson President, of the Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska, on behalf of the corporation.

WITNESS my hand and notarial seal at Omaha, in said county and state the day and year last above written.

GENERAL NOTARY-State of Nebraska
STEPHEN G. OLSON
My Comm. Exp. Dec. 29, 1992

Notary Public

permit.sgo

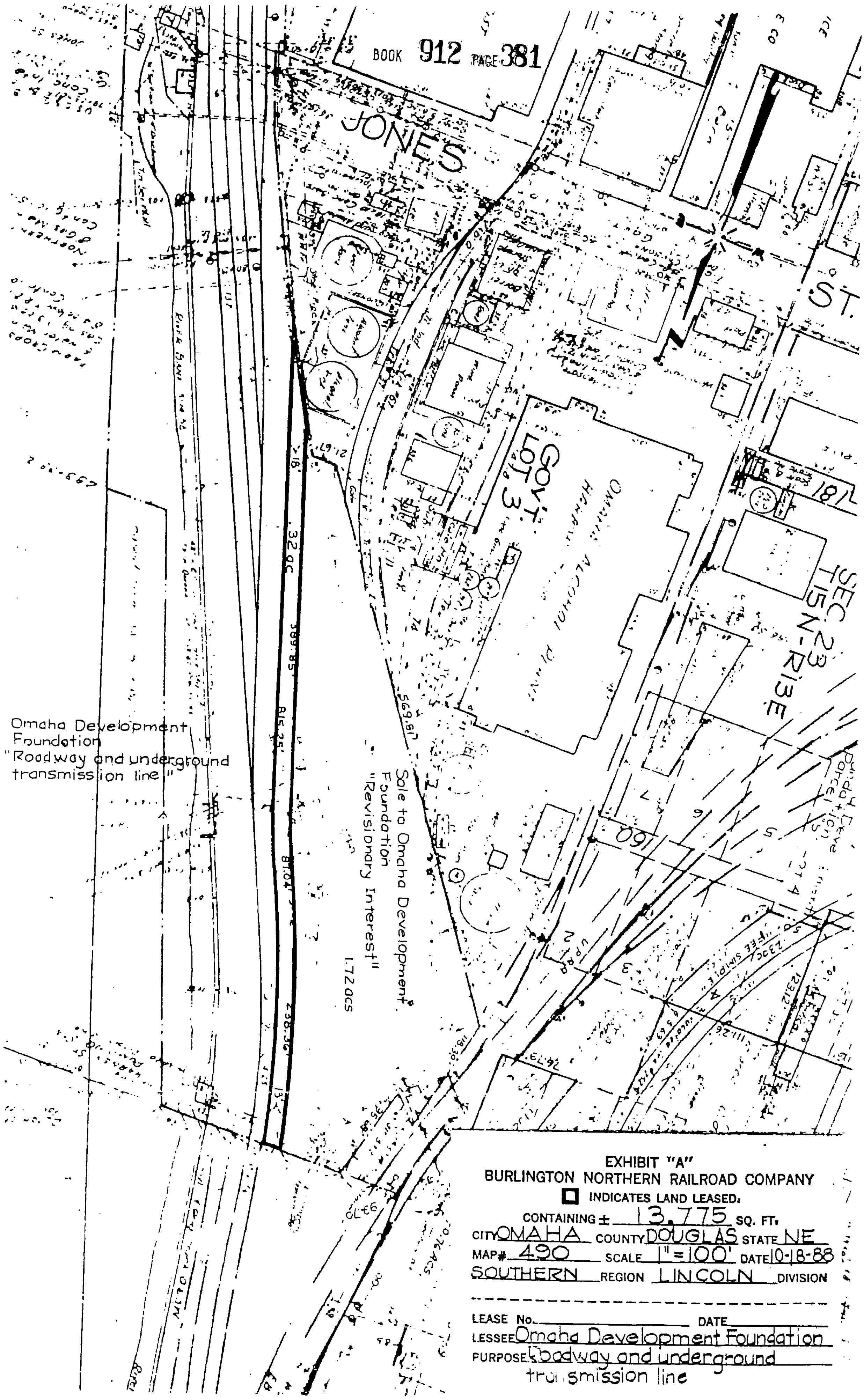


EXHIBIT "A"
BURLINGTON NORTHERN RAILROAD COMPANY
☐ INDICATES LAND LEASED.

CONTAINING ± 13,775 SQ. FT.
CITY OMAHA COUNTY DOUGLAS STATE NE
MAP# 490 SCALE 1" = 100' DATE 10-18-88
SOUTHERN REGION LINCOLN DIVISION

LEASE No.________________ DATE________
LESSEE Omaha Development Foundation
PURPOSE Roadway and underground transmission line

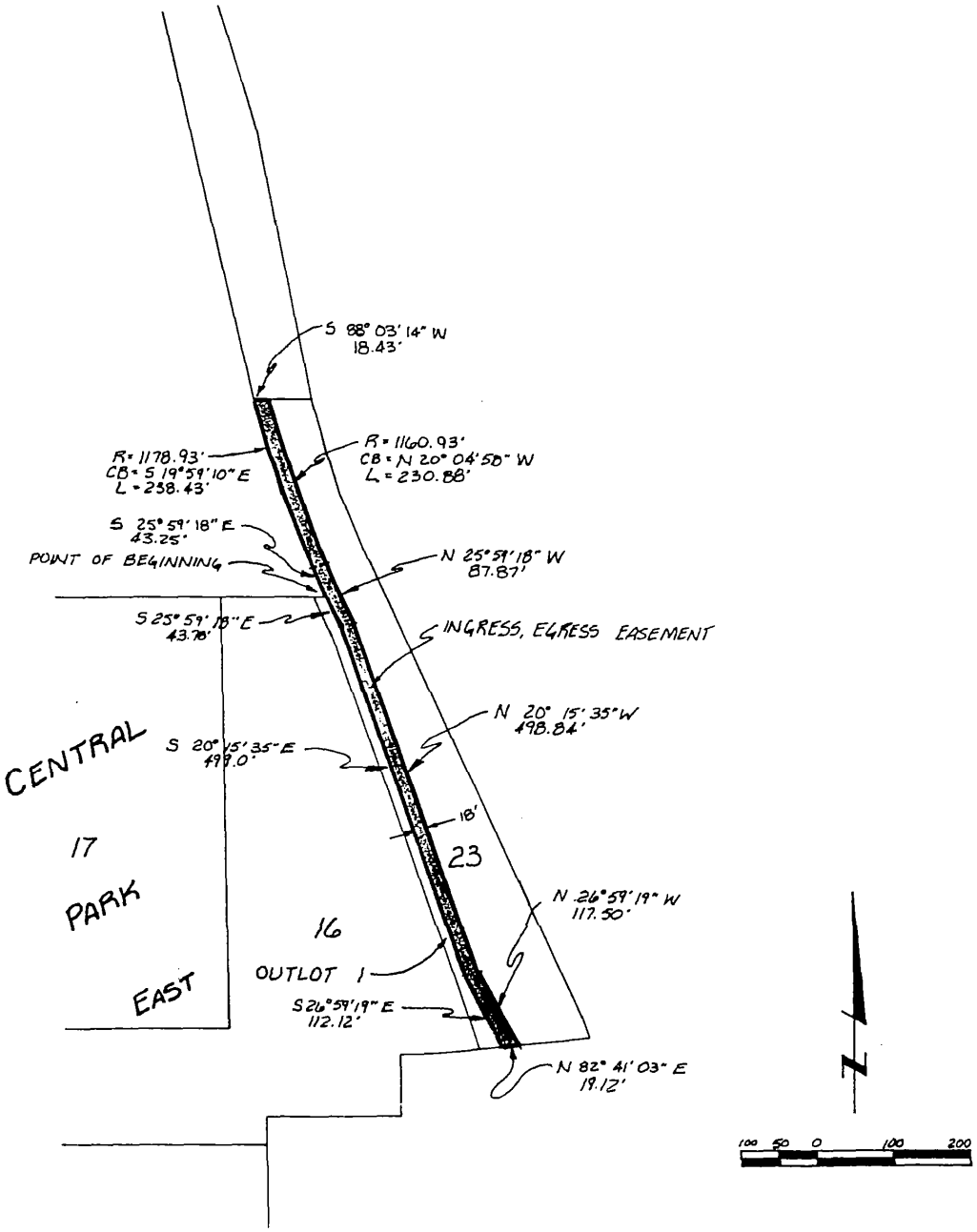
EXHIBIT B

BOOK 912 PAGE 382

LEGAL DESCRIPTION:

An ingress, egress easement, eighteen feet in width over that part of Government Lot 3 in the Northeast ¼ of the Southwest ¼ of Section 23, Township 15 North, Range 13 East of the 6th P.M., Douglas County, Nebraska, described as follows:

(See Attached Sheet for Complete Legal Description)



Book_____ Page_____ Date 8-2-88 Job Number 87061-5853

lamp, rynearson & associates, inc.
architects engineers surveyors planners
14747 california street omaha, nebraska 68154 402·498·2498

LEGAL DESCRIPTION:

An ingress, egress easement, 18.0 feet in width over that part of Government Lot 3 in the NE¼SW¼ of Section 23, T15N, R13E of the 6th P.M., Douglas County, Nebraska, described as follows:

Beginning at the Northeast corner of Outlot 1, CENTRAL PARK EAST, a replatting of part of the Original City of Omaha; thence S25°59'18"E (bearings based on the Nebraska State Plane System, South Zone) for 43.78 feet along the Easterly line of said Outlot 1; thence S20°15'35"E for 499.00 feet along the Easterly line of said Outlot 1; thence S26°59'19"E for 112.12 feet to the Southeast corner of said Outlot 1; thence N82°41'03"E for 19.12 feet; thence N26°59'19"W for 117.50 feet; thence N20°15'35"W for 498.84 feet; thence N25°59'18"W for 87.87 feet; thence along a curve to the right (having a radius of 1160.93 feet and a long chord bearing N20°04'58"W for 230.50 feet) for an arc distance of 230.88 feet to the North line of said Government Lot 3; thence S88°03'14"W for 18.43 feet along said North line; thence along a curve to the left (having a radius of 1178.93 feet and a long chord bearing S19°59'10"E for 238.02 feet) for an arc distance of 238.43 feet; thence S25°59'18"E for 43.25 feet to the Point of Beginning. Contains 16,845 square feet.

Lamp, Rynearson & Associates, Inc.
August 2, 1989
Job No. 87061-5853

Revised 1-19-90 by BNRR Co.