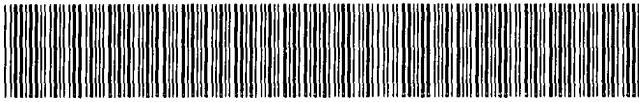


MISC 2014036370



MAY 16 2014 11:35 P 14

*Miss.*  
FEE *88.00* FB *23-06/73.*

*74*  
BKP EXAM *806*

*1*  
IND SCAN PRF

*B*

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
5/16/2014 11:35:28.05



2014036370

THIS PAGE INCLUDED FOR INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

RETURN TO:

*Tom Lund*  
*Public works*  
*City*

CHECK NUMBER

\_\_\_\_\_

**PERMANENT SUBSURFACE SEWER EASEMENT**

When recorded return to:  
City of Omaha, Nebraska

Public Works Department  
General Services Division  
R-O-W Section  
Tom Lund

FOR OFFICE USE ONLY	
Project:	South Interceptor Force Main-North Segment
City Proj. No.	OPW 52223
Tract No.:	1
Address:	508 ConAgra Drive Omaha, NE 68102

*KNOW ALL MEN BY THESE PRESENTS:*

THAT **Omaha Real Estate Investment Partnership II, L.L.C.**, a Delaware limited liability company, hereinafter referred to as GRANTOR, (whether one or more) for and in consideration of the sum of *Thirteen thousand three hundred and 00/100 dollars (\$13,300.00)* and other valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey unto the **City of Omaha, Nebraska**, a Municipal Corporation, hereinafter referred to as GRANTEE, and to its successors and assigns, a **Permanent Subsurface Sewer Easement** hereinafter referred to as "EASEMENT", for the right to initially construct and then inspecting, maintaining, operating and repairing the sewer (either for storm or sanitary purposes), drainage structure, and/or drainage way, and appurtenances thereto known as OPW Project No. 52223 (the "Sewer"), in, through, and under the parcel of land described as follows, to-wit ("Easement Parcel"):

**PERMANENT EASEMENT LEGAL DESCRIPTION**

A permanent easement over that part of Lot 1, CENTRAL PARK EAST REPLAT 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, between the elevations of 933.50 and 903.50, inclusive (elevations referenced to the North American Vertical Datum of 1988) described as follows:

Commencing at a 5/8" rebar at the northeast corner of said Lot 1;  
Thence South 87°36'19" West (bearings referenced to the Nebraska State Plane Coordinate System, NAD83) for 12.88 feet along the north line of said Lot 1 to the TRUE POINT OF BEGINNING;  
Thence along a curve to the left (having a radius of 2985.00 feet and a long chord bearing South 24°38'33" East for 20.47 feet) for an arc length of 20.47 feet;  
Thence South 24°50'20" East for 213.81 feet to the east line of said Lot 1;  
Thence South 20°36'20" East for 319.05 feet along said east line;  
Thence South 20°09'28" East for 79.00 feet along said east line;  
Thence North 24°50'20" West for 610.73 feet;  
Thence along a curve to the right (having a radius of 3015.00 feet and a long chord bearing North 24°31'37" West for 32.82 feet) for an arc length of 32.82 feet to the north line of said Lot 1;  
Thence North 87°36'19" East for 32.34 feet to the Point of Beginning. Contains 13,265.86 s/f.

SEE ATTACHED EXHIBIT-A PAGES 1 AND 2 of 2 - Legal Description and Boundary Exhibit  
SEE ATTACHED EXHIBIT-B SHEET 1 — Typical Section

Which Easement Parcel is located on a certain parcel of land described as follows, to wit ("Property"):

**OWNER'S LEGAL DESCRIPTION**

*Lot 1, in CENTRAL PARK EAST REPLAT 2, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.*

TO HAVE AND TO HOLD unto said GRANTEE, its successors and assigns, together with the right of ingress and egress from the Easement Parcel for the purpose of initially constructing and then inspecting, maintaining, operating, or repairing the Sewer at the will of the GRANTEE. The GRANTOR may, following construction of the Sewer, continue to use the upper regions of the Easement Parcel conveyed hereby for other purposes, subject to the terms of this instrument.

It is further agreed as follows:

- A. That said Parties (1) acknowledge the Sewer to be constructed within the aforesaid described Easement Parcel, (2) acknowledge that Easement is for utility purposes only and, (3) agree that, notwithstanding anything in this Agreement to the contrary, this Agreement, including without limitation the granting of the Easement, involves no surface rights in or to the Property.
- B. This Easement is also for the benefit of any contractor, agent, employee, or representative of the GRANTEE and any of said construction and work. The term "Grantee Parties" as used in this agreement shall collectively mean GRANTEE'S officers, members, employees, agents, contractors, representatives and invitees.
- C. Notwithstanding anything set forth in this instrument to the contrary, the GRANTOR reserves unto itself, it's successors or assigns all mineral rights and the right to make such use of the land above and below the Easement Parcel and to erect such buildings and make any improvements they deem desirable placed on, over, and across said Easement. These improvements and any plants, trees, grass or shrubbery placed over said improvements shall be maintained by GRANTOR, its heirs, successors or assigns.
- D. **EASEMENT RESTRICTIONS:** Any building or improvements allowed to be constructed above and below the Easement Parcel shall be subject to the following restrictions:
  - 1. Any improvements, including buildings or structures, with deep foundations requiring the penetration of the top surface of the bedrock within the horizontal limits of the Easement Parcel extended vertically to the top surface of the bedrock shall require approval by the GRANTEE including the City of Omaha Public Works Department prior to commencing the work, which approval shall not be unreasonably withheld, conditioned or delayed.
  - 2. All geotechnical investigations requiring the penetration of the top surface of the bedrock within the horizontal limits of the Easement Parcel extended vertically to the top surface of the bedrock shall require approval by the GRANTEE including the City of Omaha Public Works Department prior to commencing the work, which approval shall not be unreasonably withheld, conditioned or delayed.
  - 3. All proposed improvements within the Easement Parcel that exceed the above criteria shall require approval by the GRANTEE including the City of Omaha Public Works Department prior to commencing the work, which approval shall not be unreasonably withheld, conditioned or delayed. Within the mutually agreed upon criteria (including without limitation all improvements which do not require penetration of the top surface of the bedrock within the horizontal limits of the Easement Parcel extended vertically to the top

surface of the bedrock), GRANTOR may construct through the normal GRANTEE permitting processes without special review.

4. Any improvements that are constructed outside the parameters of the design criteria (i.e., improvements which require penetration of the top surface of the bedrock within the horizontal limits of the Easement Parcel extended vertically to the top surface of the bedrock) and have not received prior approval by the GRANTEE shall be removed or corrected by the GRANTOR upon written notification by the GRANTEE.

E. GENERAL ACCESS REQUIREMENTS: The Parties acknowledge the following minimum requirements to access the Easement Parcel for the purposes of the initial construction of the Sewer and inspection, maintenance, operation and repair activities related to said Sewer:

1. The GRANTEE will construct the Sewer substantially in accordance with the plans and specifications therefor described on Exhibit B hereto ("Plans"), in a good and workmanlike manner, lien free, and in compliance with applicable laws, will maintain the Sewer and the Easement Parcel in good and working order and will take good care of the Easement Parcel and the Sewer, and will neither commit nor suffer any active or permissive waste or injury thereof. All activities conducted on the Easement Parcel by or on behalf of the GRANTEE will be in a good and workmanlike manner and in accordance with applicable laws. The GRANTEE shall, at the GRANTEE'S expense, promptly repair any injury or damage to the Easement Parcel or the Property caused by the use, misuse or neglect thereof by the GRANTEE'S, or by the Grantee's Parties or by persons permitted or invited (whether by express or implied invitation) on the Easement Parcel by the GRANTEE, or by Grantee Parties or the GRANTEE moving in or out of the Easement Parcel. Following the initial construction of the Sewer or any Sewer maintenance or operation activities, the GRANTEE shall leave the Easement Parcel in a clean and orderly condition, free of any debris or personal property and rebuild and restore to its condition which existed prior to the exercise of the GRANTEE's rights hereunder using like materials and methods of construction and all damage to improvements caused by GRANTEE exercising its rights of initially constructing and then inspecting, maintaining, operating or repairing the Sewer. The GRANTEE will not, without the GRANTOR'S prior written consent, make permanent alterations, additions or improvements in or about the Easement Parcel or the Property.
2. The GRANTEE agrees that all personal property and equipment brought onto the Easement Parcel by the GRANTEE or the Grantee Parties shall be at their sole risk; and the GRANTOR shall not be liable for theft thereof or any damage thereto, such theft or damage being the sole responsibility of the GRANTEE. Any personal property or equipment left on or about the Easement Parcel following the initial construction of the Sewer or inspection, maintenance or operation activities may be removed by the GRANTOR and the GRANTEE agrees to promptly reimburse the GRANTOR for the cost of such removal.
3. The GRANTEE shall not (either with or without negligence) cause or permit the escape, disposal or release of any biological or chemically active or other hazardous substances and materials on the Easement Parcel or the Property as the result of activities of the GRANTEE or Grantee Parties. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 9601 et seq., and applicable state or local laws and the regulations adopted under these acts. If any such escape, disposal or release occurs in connection with the activities on the Easement Parcel by or on behalf of the GRANTEE, the GRANTEE shall cause such escape, disposal or release to be

remediated at the GRANTEE'S sole cost and expense to the GRANTOR'S satisfaction in the GRANTOR'S sole discretion.

4. The GRANTEE shall immediately discharge and obtain the release of any lien filed against the Easement Parcel or the Property resulting from work performed or alleged to have been performed at the request of the GRANTEE or the Grantee's Parties. Nothing in this Easement Agreement shall be construed as in any way constituting a consent or request by the GRANTOR, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialmen for the performance of any labor or the furnishing of any materials for any specific of general improvements.

The GRANTEE shall not do or permit any act or thing to be done in, on or about the Easement Parcel or the Property that may subject the GRANTOR to any liability or responsibility for injury, damage to persons or property or to any liability by reason on the existence or application of, compliance with or violation of any applicable law (including without limitation any applicable law or regulation relating to the storage, release or remediation of any hazardous substances), and shall exercise such control over the activities of the GRANTEE and the Grantee Parties on the Easement Parcel as to protect the GRANTOR fully against and such liability and responsibility.

5. GRANTEE may inspect, maintain, operate and repair the Sewer as initially constructed within the Easement Parcel. Additional construction or design shall require approval by GRANTOR, which approval shall not be unreasonably withheld, conditioned or delayed.
6. GRANTEE shall cause any trench or excavation made on said Easement Parcel to be refilled in compliance with the applicable GRANTEE Standard Specifications for Public Works Construction (current edition) and shall cause the Easement Parcel to be left in a neat and orderly condition. Further, the GRANTEE shall restore the Easement Parcel to its condition which existed prior to the beginning of the initial construction of the Sewer.
7. GRANTEE and Grantee Parties may remove or cause to be removed all presently existing improvements on the Easement Parcel (other than existing utility lines, which shall be relocated outside of the Easement Parcel as reasonably approved by GRANTOR) as necessary for construction of the Sewer.
8. GRANTEE agrees to indemnify, protect, defend and hold harmless the GRANTOR and its tenants and mortgage lenders, subsidiaries and affiliates and their respective partners, officers, members, employees, vendors and agents from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including reasonable attorneys' fees and court costs) that: (a) result from the occupancy or use of the Easement Parcel by the GRANTEE or the Grantee Parties, (b) result from the negligence or willful misconduct of the GRANTEE or the Grantee Parties, or (c) result from the breach by the GRANTEE of a covenant, obligation, representation, condition or term under this Agreement. The GRANTEE further agrees to reimburse the GRANTOR for any costs or expenses, including, but not limited to, court costs and attorneys' fees, which the GRANTOR may incur in investigating, handling or litigating any action by a governmental authority relating to the GRANTEE'S use of the Easement Parcel. As a material part of the consideration of the GRANTOR for this Easement, the GRANTEE hereby expressly assumes all risk of damage to property or injury to persons from any cause whatsoever, and releases the GRANTOR from and waives, to the fullest extent permitted by law, all claims against the Grantor of every kind relating thereto. With respect to the obligations of the GRANTEE pursuant to the Section, The GRANTEE'S insurance shall be primary and noncontributory with regard to the Easement Parcel and the GRANTEE'S operations. Any

property insurance GRANTEE maintains must permit or include a waiver of subrogation in favor of GRANTOR consistent with the provisions of this Section.

9. INSURANCE:

- a) The GRANTEE and each of the Grantee's Parties or contractors accessing the Easement Parcel, at its expense, shall maintain in force during the initial construction of the Sewer and any inspection, maintenance and repair operations of the Sewer each of the following at a minimum:
  - i. Commercial General Liability Insurance with minimum limits of \$5,000,000.00 per occurrence (except survey contractor shall have a minimum limit of \$1,000,000). Such insurance shall be on an occurrence basis with respect to the business carried on in or from the Easement Parcel and the GRANTEE's and the Grantee's Parties and Contractors use and occupancy of the Easement Parcel. The insurance required herein shall contain fire and extended coverage legal liability insurance. The GRANTEE and the Grantee's Parties and Contractors may meet the Commercial General Liability Insurance requirement through the umbrella or excess coverage policy.
  - ii. Statutory workers' Compensation Insurance and Employer's Liability Insurance with minimum limits of at least \$500,000/\$500,000/\$500,000 with waiver of subrogation provided to the GRANTOR.
  - iii. Business Auto Liability Insurance which insures against bodily injury and property damage claims arising out of the ownership, maintenance or use of "any auto." A minimum of \$1,000,000 combined single limit shall apply.
- b) Each policy of insurance required to be maintained pursuant to this section shall be placed with insurance companies admitted to do business in the State where the Easement Parcel is located. Each policy of insurance required by subpart (i) above shall name the GRANTOR and such other parties as may be reasonably requested by GRANTOR as an additionally insured. The GRANTEE and each of the Grantee's Parties and Contractors gaining access to the Easement Parcel shall deliver to the GRANTOR certificates of insurance evidencing the policies of insurance required by this section, together with the satisfactory evidence of proof of payment on premiums, prior to accessing the Easement Parcel.

10. The GRANTOR and the GRANTOR's agents shall have the right to enter the Easement Parcel at all times to inspect the Easement Parcel to see that the GRANTEE is complying with all of its obligations hereunder.

F. ENTIRE AGREEMENT — NO WAIVER: That this instrument contains the entire agreement of the parties hereto and no representations, inducements, promises or agreement oral or otherwise, between the parties not embodied herein shall be of any force and effect. The failure of either party to insist in any instance on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, condition of option in any other instance. This instrument cannot be changed or terminated orally, and can be modified only in writing executed by each party hereto.

- G. ATTORNEYS' FEES: In the event that the GRANTOR employs the services of an attorney or attorneys to enforce any of it's right under this instrument to remedy the breach on any covenant of this instrument on the part of the GRANTEE or any of the Grantee Parties, regardless of whether suit be brought, the GRANTEE shall pay the GRANTOR such reasonable fee as shall be charged by the GRANTOR'S attorneys for such services.
- H. GRANTOR for itself and its assigns does confirm with the said GRANTEE and its assigns, including public utility companies and their assigns, that GRANTOR is well seized in fee of the Property and that GRANTOR has the right to grant and convey the Easement in the manner and form aforesaid, and that GRANTOR will, warrant, and defend the Easement to said GRANTEE and its assigns including public utility companies and their assigns against the lawful claims and demands of all persons claiming by, through or under GRANTOR. This Easement Agreement runs with the land.
- I. The GRANTEE reserves the absolute right to terminate this Easement Agreement at any time prior to the payment of the above stated consideration, but in no event later than 60 days after the execution of this Easement Agreement.
- J. AUTHORITY: The person signing the Instrument on behalf of the GRANTEE represents and warrants the he or she has the authority to bind the GRANTEE to this instrument.

[Signature page follows.]

**Lender's Consent to Permanent Subsurface Sewer Easement**

Manufacturers and Traders Trust Company ("Lender") is the beneficiary of a Deed of Trust and Security Agreement encumbering the Property. Lender hereby consents to the terms and conditions of this Permanent Subsurface Sewer Easement as of this 6<sup>th</sup> day of May, 2014 and agrees that its interest in the Property will be subject and subordinate thereto.

**Lender:**

Manufacturers and Traders Trust Company

By: [Signature]  
Name:  Aaron G. McManus   
Its:  Vice President

**Acknowledgement**

STATE OF New York )  
 ) ss  
COUNTY OF Erie )

I, M. Anthony Argenio, a notary public in and for said County, in the State of aforesaid, DO HEREBY CERTIFY THAT Aaron G. McManus, personally known to me to be the Vice President of the Manufacturers and Traders Trust Company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he/she signed and delivered the said instrument on behalf of Lender, as his/her free and voluntary act, and as the authorized and free and voluntary act and deed of Lender, for the uses and purposes therein set forth.

Given, under my hand and notarial seal this 6<sup>th</sup> day of May, 2014.

M. Anthony Argenio  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

[SEAL]

M. ANTHONY ARGENIO  
Lic. #01AR6028414  
Notary Public-State of New York  
Qualified in Erie County  
My Commission Expires JUNE 22, 2015

**NOTARIAL SEAL  
REGISTER OF DEEDS**





APPROVED AS TO FORM: [Signature]  
ASSISTANT CITY ATTORNEY

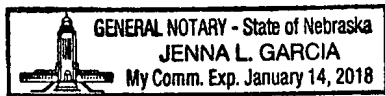
STATE OF NEBRASKA )

COUNTY OF DOUGLAS)

On this 15<sup>th</sup> day of May, 2014, before me, a Notary Public in and for said County, personally came Jean Stothert, Mayor of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as Mayor and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:



[Signature]  
NOTARY PUBLIC

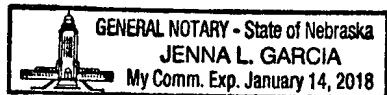
STATE OF NEBRASKA )

COUNTY OF DOUGLAS)

On this 15<sup>th</sup> day of May, 2014, before me, a Notary Public in and for said County, personally came Buster Brown, City Clerk of the City of Omaha to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as City Clerk and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:



[Signature]  
NOTARY PUBLIC

# Exhibit "A"

**OWNER'S LEGAL DESCRIPTION**

Lot 1, in CENTRAL PARK EAST REPLAT 2, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

**PERMANENT EASEMENT LEGAL DESCRIPTION**

A permanent easement over that part of Lot 1, CENTRAL PARK EAST REPLAT 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, between the elevations of 933.50 and 903.50, inclusive (elevations referenced to the North American Vertical Datum of 1988) described as follows:

Commencing at a 5/8" rebar at the northeast corner of said Lot 1;

Thence South 87°36'19" West (bearings referenced to the Nebraska State Plane Coordinate System, NAD83) for 12.88 feet along the north line of said Lot 1 to the TRUE POINT OF BEGINNING;

Thence along a curve to the left (having a radius of 2985.00 feet and a long chord bearing South 24°38'33" East for 20.47 feet) for an arc length of 20.47 feet;

Thence South 24°50'20" East for 213.81 feet to the east line of said Lot 1;

Thence South 20°36'20" East for 319.05 feet along said east line;

Thence South 20°09'28" East for 79.00 feet along said east line;

Thence North 24°50'20" West for 610.73 feet;

Thence along a curve to the right (having a radius of 3015.00 feet and a long chord bearing North 24°31'37" West for 32.82 feet) for an arc length of 32.82 feet to the north line of said Lot 1;

Thence North 87°36'19" East for 32.34 feet to the Point of Beginning.

Contains 13,265.86 square feet.

## CITY OF OMAHA Public Works Department

**Owner(s):** OMAHA REAL ESTATE INVESTMENT PARTNERSHIP II, L.L.C., a Delaware limited liability company

**Address:** 508 ConAgra Drive  
Omaha, NE 68102



Land Acquisition = \_\_\_\_\_ NA S.F.



Permanent Easement = 13,265.86 S.F.



Temporary Easement = \_\_\_\_\_ NA S.F.

**Project No.:** OPW 52223

**Project Name:** South Interceptor Force Main – North Segment

**Tract No.** 1

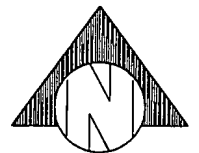
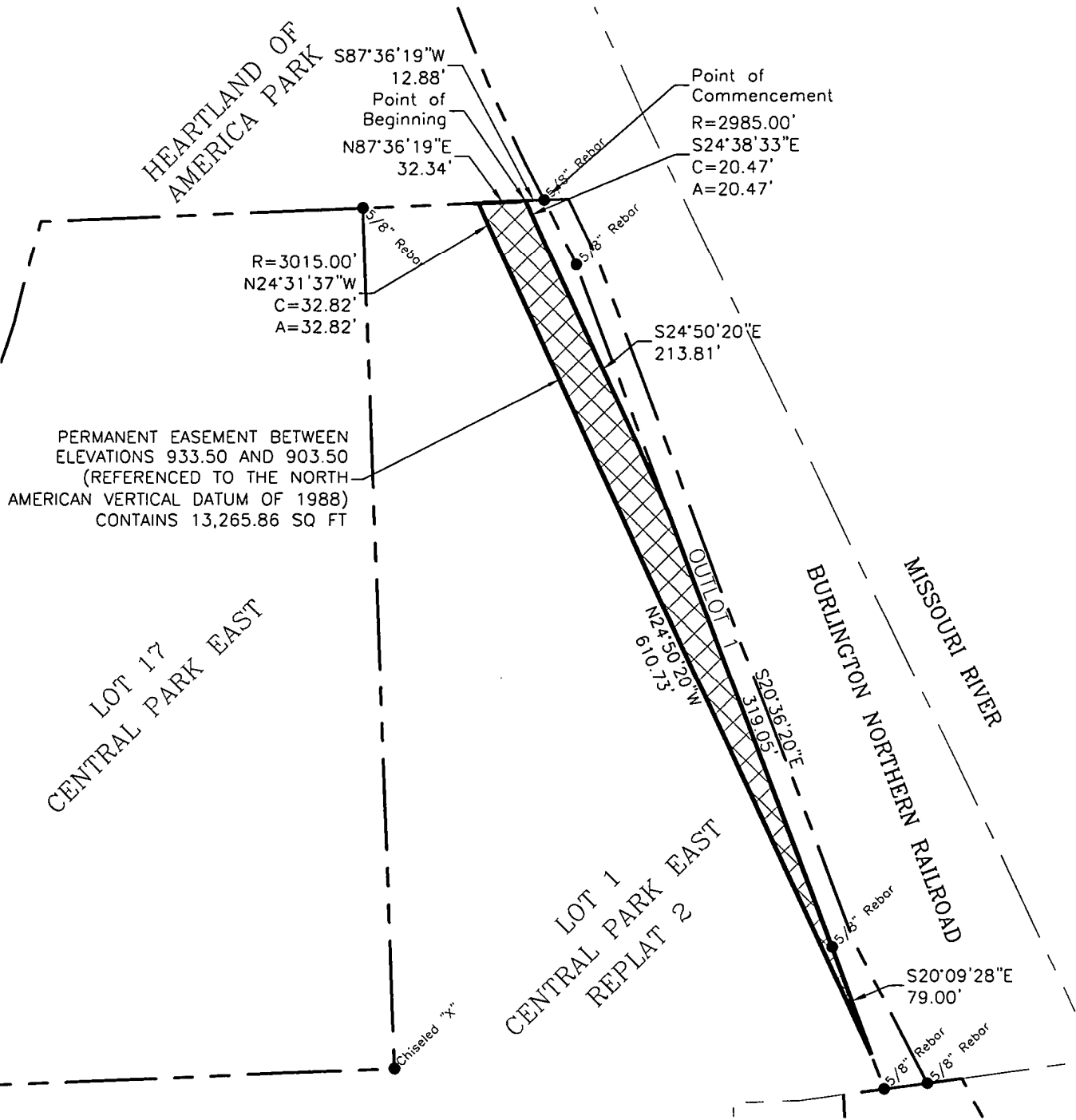
**Date Prepared:** July 24, 2013

**Revision Date(s):** Sept. 16, 2013

Page 1 of 2

# EXHIBIT "A"

PAGE 2 OF 2



SCALE: 1"=100'

## CITY OF OMAHA - PUBLIC WORKS DEPARTMENT

 PERMANENT EASEMENT: 13,265.86 S.F.

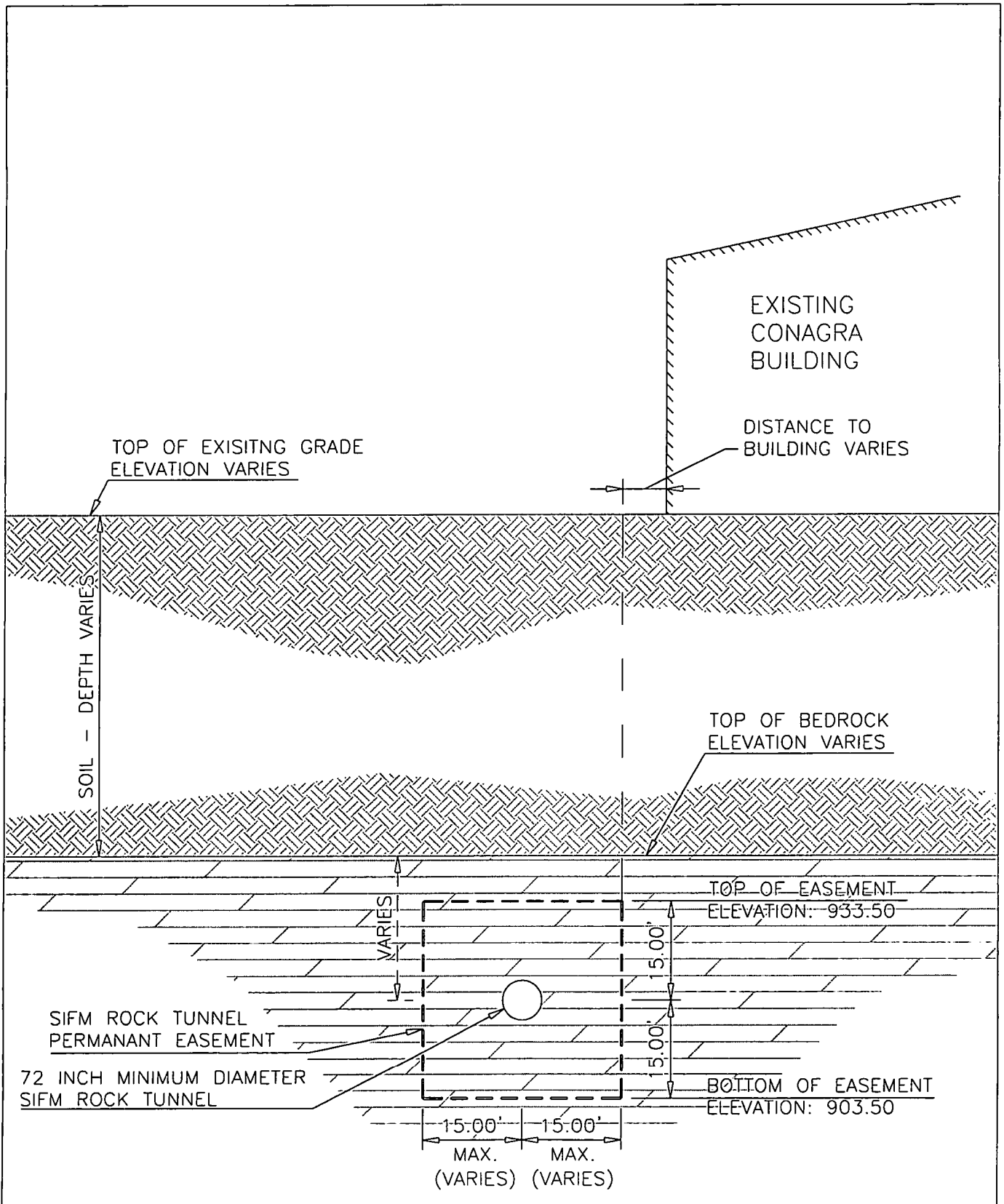
TRACT NO.: 1

PROJECT NO.: OPW52223


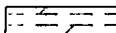
PREPARE DATE: 7/24/2013

REVISION DATE: 9/16/2013

C:\pwworking\loma\0983917\OPW-52223-ROW\_Conagra.dwg, 9/13/2013 3:37:09 PM, sovenden



**LEGEND**

- ROCK TUNNEL PERMANENT EASEMENT ENVELOPE BOUNDARY
-  SOIL
-  BEDROCK



OPW-52223 SOUTH INTERCEPTOR FORCE MAIN  
**SIFM ROCK TUNNEL ACROSS CONAGRA PROPERTY**  
**72 INCH MINIMUM DIAMETER ROCK TUNNEL**  
**PERMANENT EASEMENT**  
**TYPICAL SECTION**  
**EXHIBIT B**

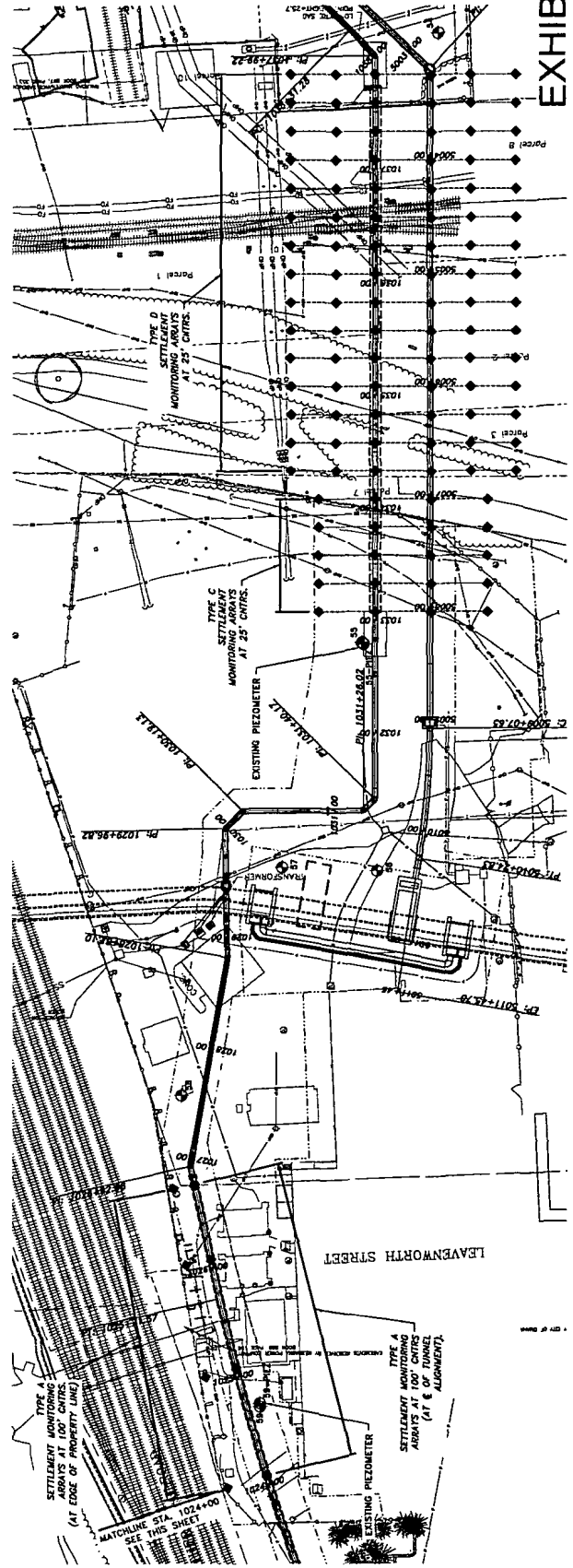
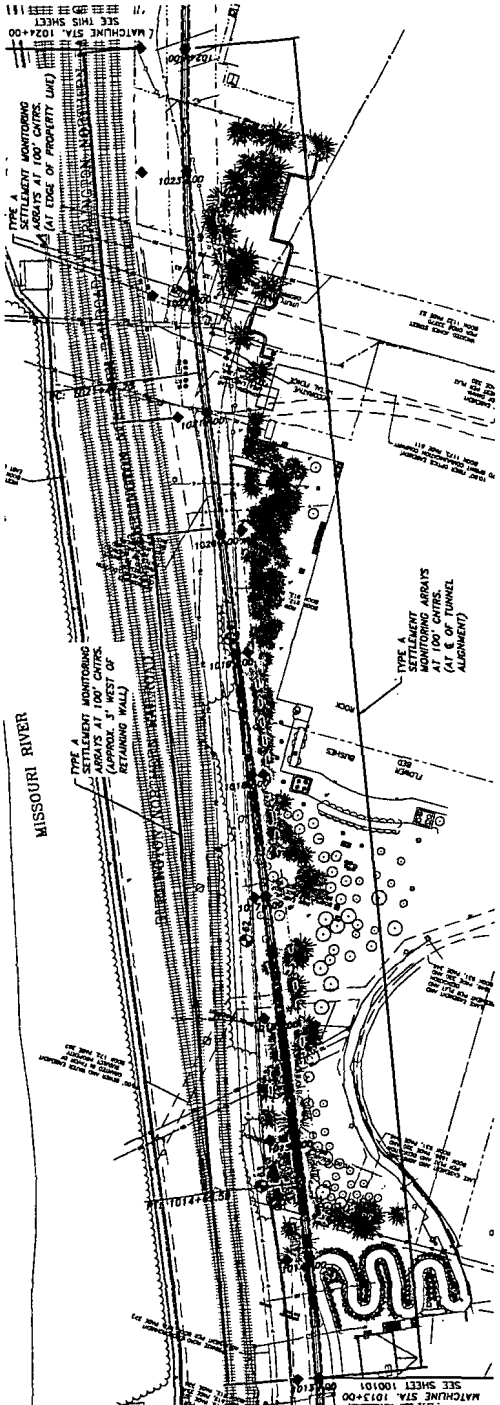
SEPTEMBER 12, 2013	FILENAME SCALE	CONSTRUCTION LOCATIONS NOT TO SCALE	SHEET <b>1</b>
--------------------	-------------------	--	-------------------



GRAPHIC SCALE: FEET  
0 10 20 30 40 50 60 70 80 90 100

**NOTE:**

1. SETTLEMENT MONITORING POINTS AND ARRAYS SHOWN ARE ONLY FOR GENERAL MONITORING OF TUNNELS. ADDITIONAL INSTRUMENTATION AND MONITORING REQUIREMENTS ARE REQUIRED BY SPECIFICATIONS.



This document was originally issued and revised by M&A on 11/16/2013. This media should not be considered a certified document.