



1019 177 MISC



17179 92 177-190

THIS PAGE INCLUDED FOR  
INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

M:750KH  
(05/29/92)

EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership, having its principal office at Merchants Plaza, 15th Floor, 115 W. Washington, Indianapolis, Indiana 46204 and CONSTRUCTION DEVELOPERS INCORPORATED, an Arkansas Corporation (hereinafter <sup>collectively</sup> referred to as "Grantor<sup>s</sup>"), for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) in hand paid, the receipt and sufficiency of which is hereby acknowledged and confessed does hereby GRANT, BARGAIN, SELL and CONVEY unto the OMAHA PUBLIC POWER DISTRICT, a Nebraska corporation, its successors and assigns, having a business address at 444 S. 16th Street Mall, Omaha, Nebraska 68102 (hereinafter called "Grantee"), the following easements:

(1) subsurface easements, over, upon, under and across the real estate located in Omaha, Douglas County, Nebraska, and more particularly described and shown in Exhibits "P-1", "MU-11", and "MU-14" attached hereto and incorporated herein by reference:

(hereinafter collectively referred to as "Easement No. 1") for the purpose of laying, installing, constructing, maintaining, repairing, operating, inspecting, altering, replacing and removing subsurface electrical lines, wires and cables; and

(2) surface and subsurface easement over, upon, under and across the real estate located in Omaha, Douglas County, Nebraska, and more particularly described and shown in Exhibits "P-1", "MU-11", and "MU-14" attached hereto and incorporated herein by reference:

(hereinafter collectively referred to as "Easement No. 2") for the purpose of installing, constructing, maintaining, repairing, operating, inspecting, altering, replacing and removing switch gears and transformers, all of the foregoing facilities of which are to be used to serve customers who conduct business on the lands of Grantor and on Grantor's Oak View Mall Shopping Center (hereinafter referred to as

130429

"Shopping Center"). The areas of both Easement No. 1 and Easement No. 2 shall be referred to collectively herein as "Easement Area".

It is understood and agreed that the Easement No. 1 is a subsurface easement solely for the purpose of allowing Grantee to lay, install, construct, maintain, repair, operate, inspect, alter, replace and remove said lines, wires and cables beneath the surface of the Easement Area, except that Grantee shall have the right to excavate and perform necessary work upon the surface of the Easement Area of Easement No. 1 as and when required to install, repair, replace and remove such lines, wires and cables. Grantee shall not erect, install or maintain any lines, pipes, conduits, fixtures, equipment, structures or improvements on the surface of the Easement Area of Easement No. 1. Grantee's lines and conduits shall be buried to such a depth below the surface so as not to interfere with the permissible use of the surface of the Easement Area of Easement No. 1 by Grantor, its successors, assigns or tenants.

Grantee shall have the right to ingress and egress over, upon and across the driveways and roadways located on the surface of the lands owned by Grantor upon and within the boundaries of which the Easement Area is located for purposes of access to the Easement Area. If Grantee damages any such driveways and roadways, it shall, at its sole cost and expense, promptly restore the driveways and roadways to the same condition which existed prior to such damage.

Except upon those surfaces of the Easement Area of Easement No. 2 on which Grantee's switch gears and transformers are located, Grantor may, without the prior written consent of Grantee, (1) landscape the surface of the Easement Area, but will attempt to do so in such a way as to cause a minimum of interference with Grantee's use and enjoyment of the easements herein granted, and (2) pave the surface of the Easement Area with porous asphaltic or other suitable hard surface paving material and use the same for the parking of motor vehicles and for driveways, roadways and sidewalks, and for other purposes which will not materially interfere with Grantee's full use and enjoyment of the easement rights hereby granted.

Except upon those surfaces of the Easement Area of Easement No. 2 on which Grantee's switch gears and transformers are located, if the surface of the Easement Area is disturbed by Grantee at any time, and from time to time by the installation, repair, maintenance, removal, replacement or other work in connection with said lines, wires and cables or other facilities of Grantee, Grantee, at its sole cost and expense, shall promptly repair and restore the surface of the Easement Area to the same condition which existed immediately prior to any such disturbance, including, without limitation, any and all necessary repairs and replacement of pavement which may be removed and excavated by Grantee in the course of doing any such work within the Easement Area. Any work done by Grantee upon or within the Easement Area at any time and from time to time shall be done at such time and in such a manner as will cause a minimum of interference with the business being conducted by Grantor, its tenants, successors or assigns, in the Shopping Center and upon its land surrounding and adjoining the Easement Area, but nothing herein contained shall prevent or prohibit the Grantee from performing any of its work during normal and customary business hours. If any such work must be conducted ~~in~~ near any of the buildings located in such Shopping Center or land, Grantee shall give the occupant thereof at least seventy-two (72) hours prior notice of such work.

The Grantee shall, at the request of the Grantor, at any time, and from time to time, remove its lines, wires, cables and other facilities from all or any portion of the Easement Area, and release and quitclaim all or any portion of these easements to the Grantor, provided that the Grantor furnish Grantee a substantially equivalent easement which will permit the continuation of utility service to Grantor on the same terms as herein at another location on Grantor's said land, and provided further such relocation of the lines, wires and cables and other facilities shall be at the sole cost and expense of the Grantor.

The Grantor hereby reserves the right to grant easements to other utilities or services, and to tenants or owners of portions of the

Shopping Center, which easements may traverse, intersect, transect or otherwise lie within or beneath the surface of the Easement Area. Any such subsequent easements traversing, intersecting, transecting or otherwise lying within or beneath the surface of the Easement Area shall comply with applicable federal, state and local laws and regulations and shall not interfere with the continuing use of the easement granted hereunder nor cause any conflict with or violation of the Electrical Code.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, so long as the rights and easements herein granted shall be used by Grantee for the express purposes of laying, installing, constructing, installing, repairing, maintaining, operating, inspecting, altering, replacing and removing the lines, wires, cables, switch gears and transformers of Grantee herein described and permitted above and below the surface of the Easement Area, but subject to all liens, encumbrances, restrictions, prior easements and other matters of record; provided, however, notwithstanding anything to the contrary herein contained, the rights and easements herein granted shall be released and vacated by Grantee upon cessation by Grantor, its successors, assigns and tenants, of the use of its land surrounding and adjoining the easement area as a shopping center.

Grantee shall indemnify, defend and hold harmless the Grantor and its successors and assigns from and against all loss, cost, damage, expense, liability, claims, demands, actions and cause of actions arising out of or resulting from Grantee's use and enjoyment of the easement granted herein and the laying, installation, construction, maintenance, operation, inspection, repairing, alteration, replacement and removing of said lines, wires, cables, switch gears and transformers by Grantee, including, without limitation, any and all claims and actions for personal or bodily injury, including death to any person, and damage to the property of any party or person.

It is agreed that this grant covers all of the agreements between the parties and that no representations or statements, verbal or written, have been made modifying, adding to or changing the terms of this agreement.

IN WITNESS WHEREOF, Grantor and Grantee have executed this conveyance this 21<sup>st</sup> day of May, 1992.

GRANTORS

CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership

BY: CENTER SIMON RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership, General Partner

BY: CS RETAIL DEVELOPERS, INC., an Indiana Corporation, General Partner

By:   
Herbert Simon, President

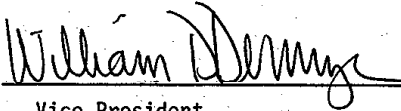
CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas Corporation

By: 

Attest: 

GRANTEE

OMAHA PUBLIC POWER DISTRICT, a Nebraska corporation

BY:   
Vice President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Herbert Simon, President of CS RETAIL DEVELOPERS, INC., an Indiana corporation and general partner of CENTER SIMON RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership and a general partner of CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership, which executed the foregoing instrument for and on behalf of said Limited Partnerships.

WITNESS my hand and notarial seal this 21st May, 1992.

DARLENE E. GARVEY, Notary Public  
County of Residence: Johnson  
My Commission Expires: Jan. 18, 1994

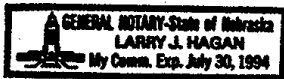
Darlene E. Garvey  
Notary Public



STATE OF NEBRASKA )  
 ) SS:  
COUNTY OF DOUGLAS )

Before me, a Notary Public in and for said County and State, personally appeared William D. Dermver and \_\_\_\_\_ to me personally known as the Vice President and \_\_\_\_\_ of OMAHA PUBLIC POWER DISTRICT, a Nebraska corporation, who executed the foregoing instrument for and on behalf of said Company by authority of its Board of Directors.

WITNESS my hand and notarial seal this 26th day of June, 1992.



Larry J. Hagan  
Notary Public

~~This document was prepared by:  
Rebonna Hansen, Esq.  
Melvin Simon & Associates, Inc.  
P.O. Box 7033  
Indianapolis, Indiana 46207~~

~~After recording this document shall be returned to:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

with a copy to:  
Rebonna Hansen, Esq.  
Melvin Simon & Associates, Inc.  
P.O. Box 7033  
Indianapolis, Indiana 46207

STATE OF ARKANSAS )  
COUNTY OF *Pulaski* ) SS:

On this 21 day of May, 1992, before me, the undersigned, a Notary Public in and for said State and County of *Jefferson*, personally came James F. Dawson, Jr., to me personally known to be the Vice President of CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas Corporation, and the identical person whose name is affixed to the foregoing instrument, and he acknowledged the execution of this instrument to be his voluntary act and deed as an individual and as such officer and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal this 21 day of May, 1992.



Marie Whiteaker  
Notary Public  
*My Commission expires: 1-15-2002*

This document was prepared by:  
Rebonna Hansen, Esq.  
Melvin Simon & Associates, Inc.  
P.O. Box 7033  
Indianapolis, Indiana 46207

After recording this document shall be returned to:  
Martin J. Behn, Esq.  
Graenberger Krauss & Tenenbaum  
180 N. LaSalle Street, Suite 2700  
Chicago IL 60601

with a copy to:  
Rebonna Hansen, Esq.  
Melvin Simon & Associates, Inc.  
P.O. Box 7033  
Indianapolis, Indiana 46207



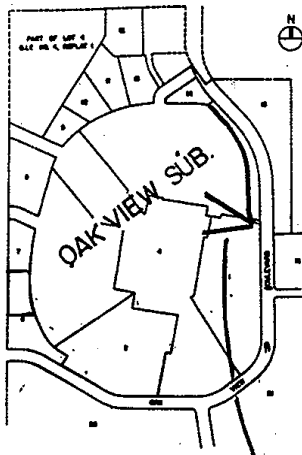
LEGAL DESCRIPTION  
PERMANENT POWER LINE EASEMENT  
OAK VIEW MALL

An easement for power line purposes located in part of Lots 1, 4, and 5, Oak View, a subdivision located in the West-half (W1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska and more particularly described as follows:

Commencing at the northeasterly lot corner of said Lot 1; thence N81°16'21"W (assumed bearing), 15.23 feet along the northerly lot line of said Lot 1 to the true Point of Beginning; thence, S1°19'52"E, 43.78 feet; thence S80°45'51"W, 333.70 feet; thence N8°45'29"E, 21.03 feet; thence N80°45'51"E, 312.87 feet; thence N65°28'10"W, 312.76 feet; thence N8°42'31"E, 20.79; thence S65°28'10"E, 309.08 feet; thence N20°57'12"W, 72.57 feet; thence N1°19'52"W, 183.69 feet to a point of curvature; thence northwesterly on a curve to the left, said curve having a radius of 494.00 feet, a long chord of 347.74 feet bearing N21°56'18"W and an arc length of 355.35 feet to a point tangency; thence N42°32'44"W, 64.27 feet; thence N41°59'47"W, 125.31 feet to the southerly most lot corner of Lot 14, said Oak View; thence N47°27'16"E, 29.80 feet along the southeasterly lot line of said Lot 14; thence S42°32'44"E, 20.00 feet; thence S8°59'38"E, 18.34 feet; thence S41°59'47"E, 90.02 feet; thence S42°32'44"E, 64.27 feet to a point of curvature; thence southeasterly on a curve to the right, said curve having a radius of 514.00 feet, a long chord of 361.81 feet bearing S21°56'18"E, and an arc length of 369.73 feet to a point of tangency; thence S1°19'52"E, 180.23 feet; thence S20°57'12"E, 62.54 feet; thence S1°19'52"E, 9.04 feet to the Point of Beginning; containing an area of 0.680 acres more or less.

# EXHIBIT P-1

BOOK 1019 PAGE 185



LOCATION MAP

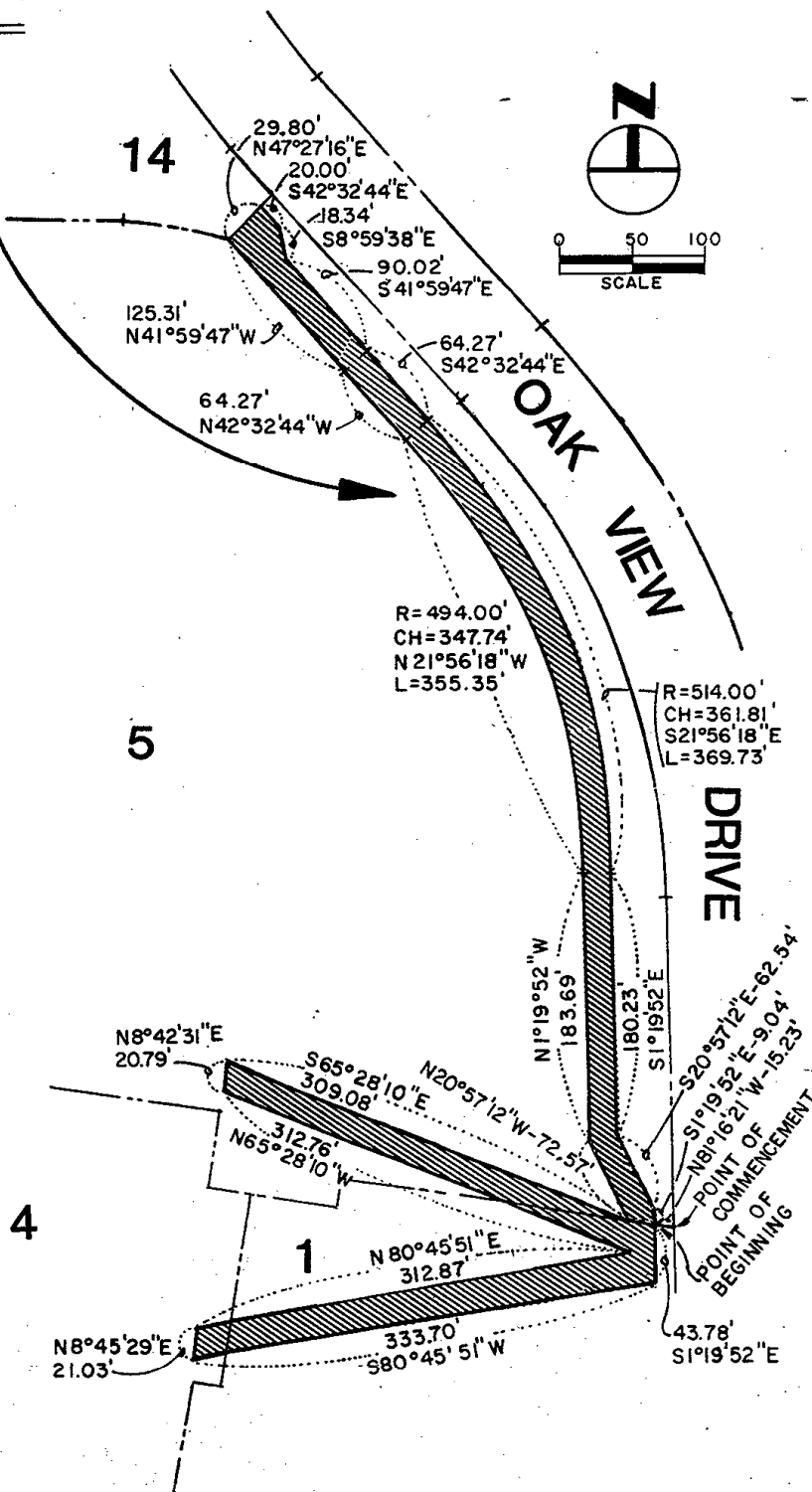


PLATE 1/2	DATE 5-1-92	TITLE POWER LINE EASEMENT	 <b>KIRKHAM, MICHAEL AND ASSOCIATES</b> ARCHITECTS ENGINEERS PLANNERS
	K.M.A. NO. B910334	PROJECT OAK VIEW SUB.	

UTILITY EASEMENT FOR  
METROPOLITAN UTILITIES DISTRICT  
OMAHA PUBLIC POWER DISTRICT  
U.S. WEST COMMUNICATION  
COX CABLE OMAHA, INC.

## LEGAL DESCRIPTION OF PERMANENT UTILITY EASEMENT:

A tract of land being part of Lots 1, 2, 4, 5, 6, and 14 in Oak View, a Subdivision located in the West half (W1/2) of Section 36, Township 15 North, Range 11 East, 6th P.M., Douglas County, Nebraska and more particularly described as follows:

A 15 foot wide strip of land located along the Westerly and Northerly right-of-way (R.O.W.) line of Oak View Drive and a line parallel to and 15 feet perpendicular distance right of said right-of-way line extended or shortened to intersect lot lines, said Westerly and Northerly right-of-way line of Oak View Drive being described as follows: Beginning at the most Northerly corner of Lot 5 of said Oak View Subdivision; thence Southeasterly on a curve to the left with a radius of 650.76 feet, a chord of 79.14 feet bearing S26°18'26"E, (assumed bearing), and an arc length of 79.20 feet to a point of tangency; thence S29°47'37"E, a distance of 57.64 feet; thence Southeasterly on a tangent curve to the left with a radius of 340.00 feet, a chord of 75.52 feet bearing S36°10'10"E and an arc length of 75.67 feet; thence S42°32'44"E, a distance 240.99 feet; thence Southeasterly on a tangent curve to the right with a radius of 550.00 feet, a chord of 387.15 feet bearing S21°56'18"E and an arc length of 395.63 feet; thence S01°19'52"E, a distance 996.15 feet; thence Southwesterly on a tangent curve to the right with a radius of 310.00 feet, a chord of 267.34 feet bearing S24°12'44"W and an arc length of 276.41 feet; thence S49°45'20"W, a distance of 133.41 feet; thence Southwesterly on a tangent curve to the right with a radius of 280.00 feet, a chord of 192.65 feet bearing S69°52'40"W and an arc length of 196.67 feet; thence Due West, a distance of 458.89 feet; thence Northwesterly on a tangent curve to the right with a radius of 260.00 feet, a chord of 141.54 feet bearing N74°12'19"W and an arc length of 143.34 feet; thence N58°24'38"W, a distance of 315.67 feet; to the point of termination, being the most Southerly lot corner of said Lot 6; containing 1.226 acres more or less.

Together with the following adjacent strip of land described as follows: Beginning at the said most Southerly lot corner of Lot 6; thence N58°24'38"W, 114.55 feet along the said Northerly (R.O.W.) line of Oak View Drive; thence Northwesterly along the said Northerly (R.O.W.) line of Oak View Drive on a tangent curve to the left, with a radius of 340.00 feet, a chord of 100.05 feet bearing N66°52'16"W, and an arc length of 100.41 feet; thence N55°03'58"E, 19.40 feet; thence Southeasterly on a tangent curve to the right with a radius of 355.00 feet, a chord of 92.01 feet, bearing S65°51'22"E and an arc length of 92.27 feet; thence

LAC:910334-1d6

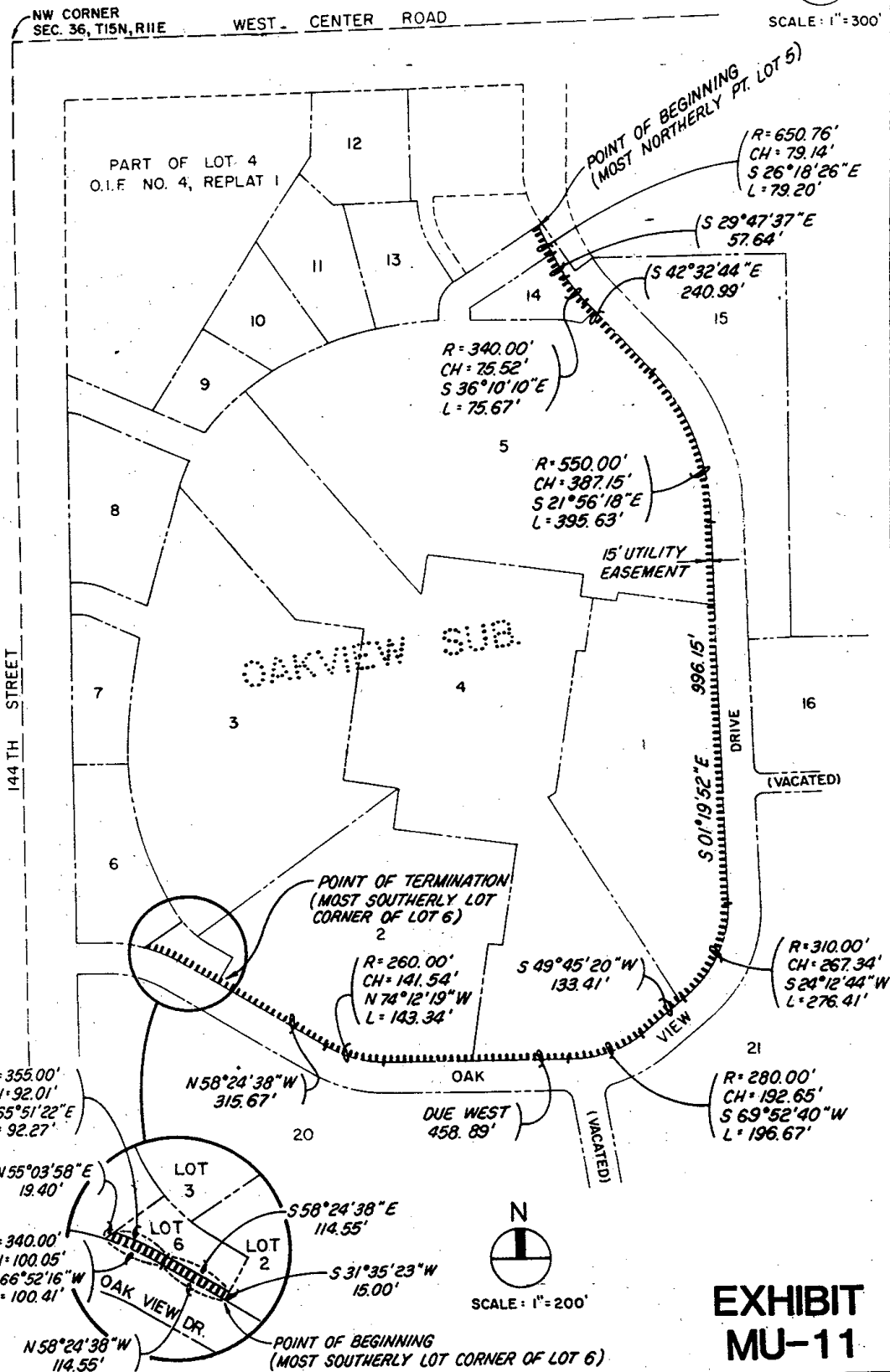
B910334

S58°24'38"E, 114.55 feet to the Easterly lot line of said Lot 6;  
thence S31°35'23"W, 15.00 feet along the said Easterly lot line  
of Lot 6 to the Point of Beginning containing 0.0726 acres more  
or less. Total of both areas equal 1.298 acres more or less.

..... 15' WIDE UTILITY EASEMENT



SCALE: 1" = 300'



SCALE: 1" = 200'

**EXHIBIT  
MU-11**

PLATE 1/2	DATE 2-21-92 K.M.A. NO. B910334	TITLE MULTI-USE EASEMENT PROJECT OAK VIEW SUBDIVISION
--------------	--	--

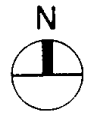
**K&M** KIRKHAM, ARCHITECTS  
MICHAEL, ENGINEERS  
AND ASSOCIATES PLANNERS

## LEGAL DESCRIPTION

PERMANENT MULTI-USE UTILITY EASEMENT FOR  
METROPOLITAN UTILITIES DISTRICT  
OMAHA PUBLIC POWER DISTRICT  
U.S. WEST COMMUNICATIONS  
OAK VIEW

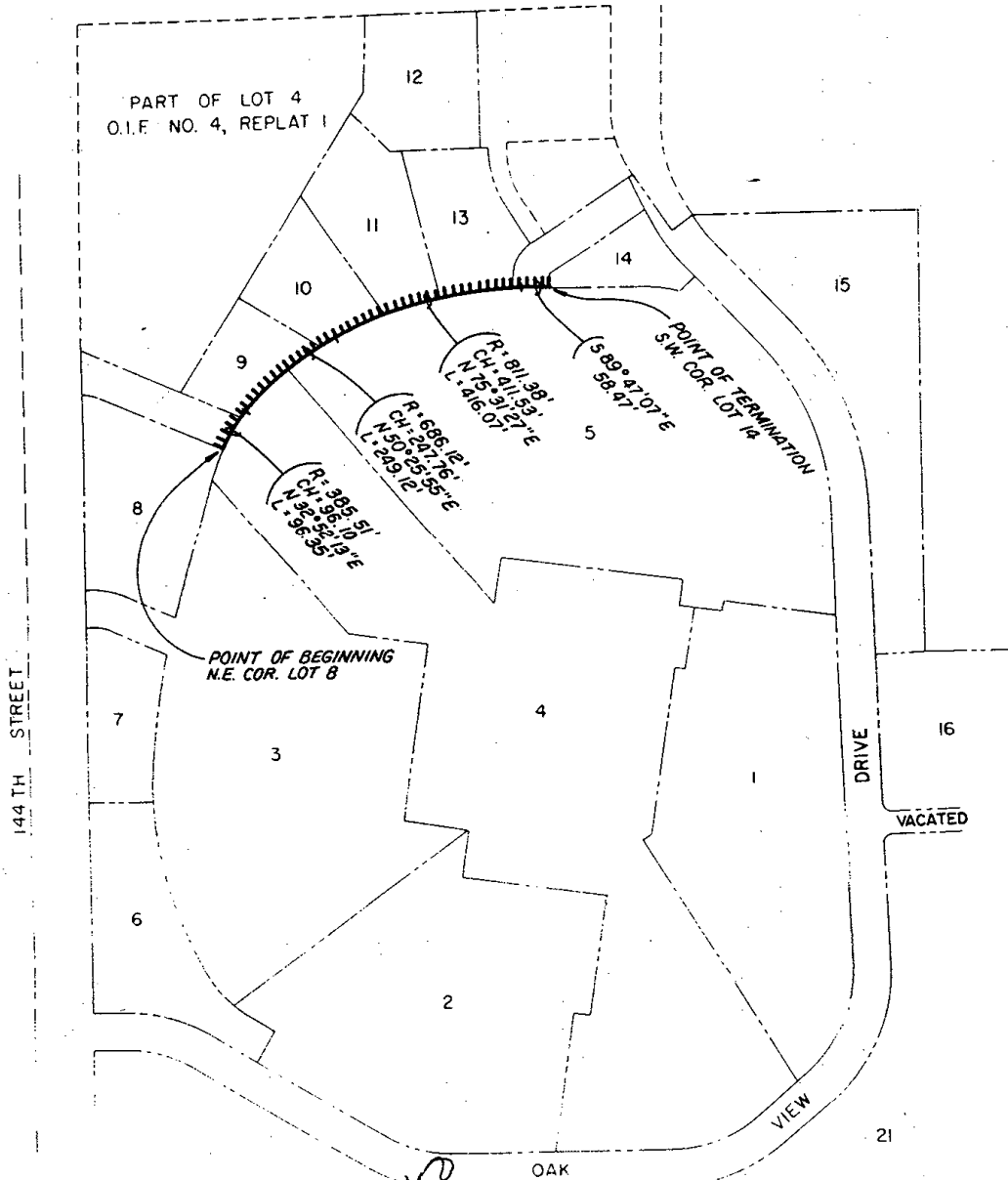
An easement tract being part of Lots 4, 5, 9 thru 11 and 13, in Oak View, a Subdivision located in the West half (W1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska and more particularly described as follows:

A 25 foot strip of land lying within said Lots 4, 5, 9 thru 11 and 13, being "LEFT" of parallel, adjacent and extended or shortened to intersecting lot lines, to the following described line: Beginning at the Northeast corner of Lot 8, said Oak View Subdivision; thence Northeasterly on curve to the right, said curve having a radius of 385.51 feet, a long chord of 96.10 feet bearing N32°52'13"E and a arc length of 96.35 feet to a point of compound curvature; thence Northeasterly along the Southeasterly lot line of said Lots 9 and 10, on a curve to the right, said curve having a radius of 686.12 feet, a long chord of 247.76 feet bearing N50°25'55"E and an arc length of 249.12 feet to a point of compound curvature; thence Northeasterly along the Southeasterly lot line of said Lots 10, 11 and 13 and an Easterly continuation of such line of said Oak View Subdivision, on a curve to the right, said curve having a radius of 811.38 feet, a long chord of 411.53 feet bearing N75°31'27"E, and an arc length of 416.07 feet to a point of tangency; thence S89°47'07"E along the Westerly extension of the Southerly line of Lot 14, a distance of 58.47 feet to the Point of Termination; said point being the Southwest corner of said Lot 14; The total area of the tract is 0.479 acres, more or less.



SCALE 1"=300'

WEST CENTER ROAD



misc # 07179


BK 1019 N C/O 749 FEE 20  
 PG 177 N DEL MC  
 OF MISC COMP 10 F/B 61-28670

LEGEND 61-28224

..... 25' WIDE UTILITY EASEMENT

RECEIVED  
 JUL 1 3 08 PM '92  
 GEORGE J. BIGLEWICZ  
 REGISTER OF DEEDS  
 DOUGLAS COUNTY, NE

EXHIBIT MU-14

PLATE 1/2	DATE 2-26-92 K.M.A. NO. B910334	TITLE MULTI-USE EASEMENT PROJECT OAK VIEW SUBDIVISION	 KIRKHAM, ARCHITECTS MICHAEL ENGINEERS AND ASSOCIATES PLANNERS
--------------	--	--	--