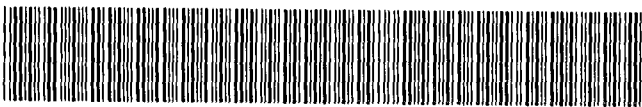


MISC 2014060757



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TEL 88.00 FB see below
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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
8/6/2014 14:55:01.00



2014060757

WEST GRAYHAWK INGRESS, EGRESS AND UTILITY EASEMENT AGREEMENT

THIS WEST GRAYHAWK INGRESS, EGRESS AND UTILITY EASEMENT AGREEMENT (this "Agreement") is made and entered into as of this 16th day of ^{August} ~~July~~, 2014, by and between ROYCE GRAYHAWK, LLC, a Nebraska limited liability company ("Royce"), BSR 148 WEST MAPLE, LLC, a Nebraska limited liability company ("BSR"), and 3506 NORTH 147TH, LLC, a Nebraska limited liability company ("3506 North").

Preliminary Statement

WHEREAS, Royce is the owner of certain real property in Douglas County, Nebraska, legally described as follows (the "Royce Property"):

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

73-42482

WHEREAS, BSR is the owner of certain real property in Douglas County, Nebraska, legally described as follows (the "BSR Property"):

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

73-42481

WHEREAS, 3506 North is the owner of certain real property in Douglas County, Nebraska, legally described as follows (the "3506 North Property"):

Lot 1, West Grayhawk Replat 2, a subdivision as surveyed, platted and recorded
in Douglas County, Nebraska.

73-42482

WHEREAS, Royce is the owner of certain real property in Douglas County, Nebraska, legally described as follows (the "Outlots"):

Outlot 1, West Grayhawk ("Outlot 1"), a subdivision as surveyed, platted and
recorded in Douglas County, Nebraska.

73-42480

WHEREAS, the Royce Property, the BSR Property, the 3506 North Property and the Outlots (collectively, the "WG Properties") are all part of a commercial development originally known as West Grayhawk and situated generally south and west of the intersection of 147th Street and West Maple Road, Douglas County, Nebraska ("the "West Grayhawk Commercial Development");

Upon recording, Return to:
James D. Buser
Pansing Hogan Ernst & Bachman LLP
10250 Regency Circle, Suite 300
Omaha, NE 68114
4826-9624-7065.2

✓ 005887

WHEREAS, the owners of the WG Properties are benefitted and burdened by existing access, ingress and egress and utility easements depicted on Exhibit "A" attached hereto and incorporated herein by this reference (the "Existing Easements"), as created by the following recorded instruments (the "Existing Recorded Instruments"):

1. Plat and Dedication of West Grayhawk, recorded with the Douglas County, Nebraska Register of Deeds on September 20, 2004, as Instrument number 2004-124140.
2. Administrative Subdivision of West Grayhawk Replat 1, recorded with the Douglas County, Nebraska Register of Deeds on April 14, 2005, as Instrument number 2005-042011.
3. Plat and Dedication of West Grayhawk Replat 2, recorded with the Douglas County, Nebraska Register of Deeds on October 9, 2007, as Instrument number 2007-114783.

WHEREAS, while the Existing Easements, as evidenced by the Existing Recorded Instruments, create easements that benefit and burden the WG Properties, the recorded instruments do not identify, describe and allocate the respective WG Properties owners' rights and obligations relating to the ongoing use, maintenance and operation of such Existing Easements;

WHEREAS, Royce is in the process of replatting the Royce Property and intends to develop the Royce Property for commercial purposes (the "Intended Development");

WHEREAS, as replatted, the Royce Property will be known as Lots 1 through 6, inclusive and Outlot A, West Grayhawk Replat 3;

WHEREAS, as part of the Intended Development, there will be constructed on Outlot A West Grayhawk Replat 3 ("Outlot A") an extension of the access drive that runs west from 147th Street along the common boundary of the Royce Property and the 3506 North Property and will connect to Evans Street and 150th Avenue as constructed to the west of the Royce Property, such access drive extension being depicted as Drive Area 1 (the "Drive Extension") on the Site Plan attached hereto as Exhibit "B" (the "Site Plan");

WHEREAS, the Drive Extension will provide further means of ingress and egress to the West Grayhawk Commercial Development and will be of mutual benefit to the owners of the WG Properties;

WHEREAS, Outlot 1 is used for storm water drainage and retention for the West Grayhawk Commercial Development and the owners of the WG Properties desire to provide for the ownership and maintenance of Outlot 1; and

WHEREAS, the respective owners of the WG Properties desire to memorialize certain easements and agreements that will mutually benefit such owners in the operation of their respective properties.

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

The following defined terms shall have the means ascribed to them for purpose of this Agreement as follows:

1.1. Association. The term "Association" shall mean West Grayhawk Owners Association, a Nebraska non-profit corporation.

1.2. Drive Area. The term "Drive Areas" shall mean collectively Drive Area 1, Drive Area 2, Drive Area 3 and Drive Area 4, as depicted on the Site Plan.

1.3. Lot. The term "Lot" shall mean a platted lot that is part of the WG Properties, but excluding the Outlots.

1.4. Owner. The term "Owner" shall mean the legal owner of fee title to a Lot or Outlot, as reflected by the records of the Douglas County, Nebraska Register of Deeds. If one of the platted Lots that is part of the WG Properties is owned by one or more Persons, the Person or Persons holding at least Fifty-One percent (51%) of the ownership interests in such platted Lots that is part of the WG Properties shall designate one of the owners to represent all owners of the Lot in question and such designated person shall be deemed the owner of such Lot.

1.5. Permittee. The term "Permittee" shall mean all owners, their tenants or licensees of a Lot, and each of their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors and invitees.

1.6. Person. The term "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust or any other form of business or government entity.

ARTICLE II EASEMENTS

2.1. Existing Easements. Subject to the terms of this Agreement, the parties to this Agreement hereby ratify and confirm the existence of the Existing Easements as provided for in the Existing Recorded Instruments. The parties to this Agreement agree, for themselves and their respective successors and assigns, that upon construction of the drives as substantially shown on the Site Plan, any improvement or reconstruction of such drives shall be substantially within the Drive Areas depicted on the Site Plan, and agree and acknowledge that in no event shall Drive Area 2 ever be extended further than to the southern boundary line of said Drive Area 2 as depicted on the Site Plan without the express written consent of the then Owner of the 3506 North Property, which may be granted or withheld in the sole and absolute discretion of such Owner. Furthermore, Royce agrees that it shall not construct Drive Area 2 in a manner that will permanently interfere with, encroach upon or impede the use of the currently constructed parking spaces on the north side of the 3506 North Property building (together with any replacement parking spaces in such area, the "3506 North Parking Spaces"), it being understood that there shall be a period of time during construction that the parking on the north side of the building will not be available. Each of the parties to this Agreement, for itself and its successors and assigns, agrees that it shall never assert, and hereby releases, any claim or argument that pursuant to any Existing Recorded Instrument such party has the right to interfere with, require the removal of or impede the use of the 3506 North Parking Spaces, or otherwise use the 3506 North Parking Spaces for any purpose.

2.2. Construction Easement. Royce and its agents and contractors will construct the Drive Areas as provided in Section 3.1 of this Agreement, and BSR and 3506 North hereby grant to Royce and its agents and contractors, a temporary easement over and upon the BSR Property and 3506 North Property as reasonably necessary for the construction of the Drive Areas as contemplated by Section 3.1 of this Agreement, such easement to continue until completion of such construction. Notwithstanding the foregoing, in no event will the temporary construction easement on the 3506 North Property in connection with the construction of Drive Area 2 extend for more than sixty (60) days from the date of commencement of any work thereon on the 3506 North Property, such date of commencement to be evidenced by written notice to the Owner of the 3506 North Property prior to commencing such work, it being acknowledged and agreed that Royce will take reasonable efforts to minimize disruption of access to or parking on the 3506 North Property during construction, it being understood that there shall be a period of time during construction that the parking on the north side of the building will not be available.

Any and all damage to the 3506 North Property caused by Royce or its agents or contractors resulting from construction of Drive Area 2 shall be repaired at Royce's sole cost, risk and expense. Upon termination of this temporary easement, to the extent practicable, the construction area shall be returned to the same or better condition than existed prior to Royce's use thereof, to the extent any change in condition has been caused by Royce or its agents or contractors. If such repairs are not made by Royce upon termination and following reasonable written notice to Royce of the claimed damage in sufficient detail with the right of access of Royce to repair the same, the Owner may undertake the repairs and Royce shall be liable to such Owner for any reasonable expenses incurred.

2.3. Ingress and Egress Easement. Each Owner hereby grants and conveys to each other Owner for its use and for the use of its Permittees, in common with others entitled to use the same, a nonexclusive perpetual easement for pedestrian and vehicular ingress and egress over and across the paved drives within the Drive Areas situated on their respective Lots, as the same may be from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations as well as any other applicable provisions contained in this Agreement:

a. Each Owner further reserves the right to close off the portion of the Drive Area on their Lot for such reasonable period of time as may be legally necessary, in the opinion of the Owner's counsel, to prevent the acquisition of prescriptive rights by any one; provided, however, that prior to closing off any portion of the Drive Area, as herein provided, such Owner shall give written notice to each other Owner of its intention to do so, and shall attempt to coordinate such closing with each other party so that no unreasonable interference with the passage of vehicles shall occur;

b. Each Owner reserves the right at any time from time to time to reasonably exclude and restrain any person who is not a Permittee from using the Drive Area on its Lot;

c. Each Owner shall take reasonable efforts to ensure that its Permittees shall not park on the Drive Area except in designated parking areas while shopping or transacting business on the Lots, provided that no Owner has a duty to actively and continuously monitor where Permittees are parking;

d. Each Owner shall take reasonable efforts to prevent their Permittees from parking on the Drive Areas of the Lots of other Owners, provided that no Owner has a duty to actively and continuously monitor where Permittees are parking; and

e. No fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular traffic between the Lots shall be erected or permitted within or across the Drive Area, exclusive of the limited curbing and other forms of traffic control.

2.4. Maintenance Easement. Each Owner hereby grants to the Association a non-exclusive perpetual easement to access those portions of the Drive Areas situated on their respective Lots as necessary for the Association to provide maintenance of the Drive Areas as contemplated by Article III of this Agreement.

2.5. Utilities. The Owners of the Lots shall cooperate in the granting of appropriate and proper temporary and perpetual easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the West Grayhawk Commercial Development. The Owners of the Lots shall use their best efforts to cause the installation of such utility and service lines prior to the paving of the Drive Areas. No such storm drains, utilities or services of an Owner required on its Lot shall be installed within a building area on any other Lot.

2.6. Drainage Easement. Royce hereby reserves unto the Royce Property and grants and conveys to each other Lot, a non-exclusive perpetual easement to use Outlot 1 for storm water drainage, detention and treatment. It is agreed that Royce will transfer ownership of Outlot 1 to the Association following recording of this Agreement and formation of the Association for no consideration other than this Agreement, and that Outlot 1 shall thereafter be utilized for the mutual benefit of the WG Properties.

ARTICLE III CONSTRUCTION, MAINTENANCE AND REPAIR

3.1. Drive Area Construction. Royce shall initially construct Drive Area 1 substantially as depicted on the Development Plan at its sole cost and expense. Royce shall relocate and reconstruct part of Drive Area 2 from its existing location to the location that is substantially as depicted on the Site Plan. Upon completion of such reconstruction, the Owner of the 3506 North Property shall pay Royce the sum of \$20,000.00 as its sole and complete contribution for such reconstruction. Royce shall initially construct Drive Area 4 substantially as depicted on the Site Plan. Upon completion of such construction, the Owner of the BRS Property shall pay Royce the sum of

\$7,800.00 as its contribution for such construction. All other costs and expenses associated with the initial construction of the Drive Areas shall be paid solely by Royce. The Association shall have no obligation to pay, contribute to or reimburse Royce for any of the costs or expenses of initial construction of the Drive Areas. Upon completion of the construction of the Drive Areas, the Association shall maintain Drive Area 1, Drive Area 2, Drive Area 3 and Drive Area 4. Royce shall be solely responsible for all costs and expenses of initially installing all directional signs, markers, lines and artificial lighting.

3.2. Maintenance. The maintenance responsibilities for the Drive Areas shall include, without limitation, the following:

- a. Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or comparable substituted material as shall in all respects be equal in quality, use, and durability;
- b. Removal of all papers, ice and snow, mud and sand, debris, filth and refuse, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- c. Placing, keeping in repair and replacing any necessary and appropriate parking area directional signs, markers and lines;
- d. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required and at all times in conformance with standards and applicable ordinances and governmental requirements.

3.3. Outlot Maintenance. The Outlots shall be maintained in good condition and repair by the Association, to include mowing, weed control, minimal landscaping and other maintenance as necessary and appropriate to meet applicable governmental standards for storm water retention and treatment.

ARTICLE IV THE ASSOCIATION

4.1. Rights and Authority. The Association shall have the authority to perform all of its duties and obligations and exercise its rights under this Agreement and to undertake any or all of the following:

- a. The Association shall perform the duties and obligations assigned to the Association under Article III of this Agreement.
- b. The Association shall have the power and authority to fix, assess and collect the charges and assessments contemplated in this Agreement.
- c. The Association shall have all powers and authority necessary or appropriate to collect sums due to the Association, and to settle or compromise any claims or rights of the Association.
- d. The Association may expend funds of the Association and to pay for insurance covering loss or damage to any improvements to the Outlots, and covering liability of the Association and its Members and Board of Directors resulting from the activities of the Association.
- e. The Association may grant licenses or easements over the Outlot; provided always that such licenses and easements are in the best interest of all Owners and do not increase any costs to the Association.
- f. The Association may deposit, invest and reinvest funds of the Association in bank or savings and loan accounts, securities, money market funds, certificates of deposit or the like.

g. The Association shall have and may exercise all powers conferred upon nonprofit corporations under the Nebraska Nonprofit Corporation Act, as necessary or appropriate to accomplish the purposes and administrate the affairs of the Association.

4.2. Members. The Owners of the Lots will be the Members of the Association as a benefit or burden running with and charged upon the ownership of each such Lot. Each Lot shall have the same number of Member Votes as the percentage of the acreage of its Lot bears to the total acreage of all Lots. The initial Lot acreages (reflective of the replatting of the Royce Property), Member Votes and Percentages are as follows:

<u>Lot</u>	<u>Acreage</u>	<u>Member Votes</u>	<u>Percentages</u>
Lot 1, Replat 1	1.54	838	8.38%
Lot 1, Replat 2	2.37	1,290	12.90%
Lot 1, Replat 3	8.87	4,829	48.29%
Lot 2, Replat 3	0.50	272	2.72%
Lot 3, Replat 3	1.40	762	7.62%
Lot 4, Replat 3	0.96	523	5.23%
Lot 5, Replat 3	1.08	588	5.88%
Lot 6, Replat 3	1.65	898	8.98%
TOTAL	18.37	10,000	100%

The foregoing Acreages, Member Votes and Percentages shall be revised in respect of any recorded Lot subdivision without amendment of this Agreement by reallocating the Acreage, Member Votes and Percentages assigned to the subdivided Lot proportionately according to the acreage(s) of the subdivided Lots.

4.3. Assessments and Other Charges. For each fiscal year, the Board of Directors of the Association shall adopt and fix in reasonably itemized detail an annual budget for the then anticipated fiscal affairs and general operations for the Association for that year (including reasonable reserves), including but not limited to, maintenance of the Drive Areas and Outlot, and shall levy and collect assessments for each Lot, to bear a share equal to that percentage set forth in Section 4.2 above of the total annual budget for the forthcoming year. The assessments provided for herein shall commence as to all Lots upon formation of the Association and completion of construction of the Drive Areas. The Board of Directors shall have the power to make additional assessments if the annual assessments are insufficient to cover the actual Association costs.

4.4. Due Date. Any installment of Assessments which is not paid within thirty (30) days following delivery of notice of Assessment shall be delinquent. Delinquent Assessments shall bear interest from the date when delinquent at the rate of fourteen percent (14%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the property, or pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, cost and reasonable attorney fees incurred by the Association with respect to such action. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to any mortgagee who cures such a delinquency, all of its rights with respect to such lien and the right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

4.5. Lien of Assessment. All Assessments, together with interest thereon, costs and reasonable attorney fees shall be the personal obligation of the Owner of each respective Lot at the time when the Assessment first becomes due and payable. The Assessments, together with interest thereon, costs and reasonable attorney fees, shall also be a charge and continuing lien against the property for which the Assessments are charged.

4.6. Certificate. The Association shall, upon demand, and for no additional charge, furnish a certification signed by an officer of the Association setting forth whether any charges, dues or assessments on a specified Lot are due and unpaid.

**ARTICLE V
MISCELLANEOUS**

5.1. Enforcement. In the event of a breach or threatened breach of this Agreement, only the Association or an Owner shall be entitled to institute proceedings for full and adequate relief from consequences of such breach or threatened breach. Time is of the essence for purposes hereof.

5.2. Perpetual Duration. This Agreement and the covenants, conditions, restrictions and easements shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the parties hereto, and their respective heirs, representatives, lessees, successors and assigns. This Agreement shall be perpetual, provided, however, that this Agreement may be modified, amended or terminated by an instrument signed by Owners holding at least 80% of the Member Votes of the Association and recorded with the Douglas County Register of Deeds; provided, however, that no portion of any Drive Area located on a Lot may be expanded or contracted without the prior written consent of the Owner of such Lot upon which such expansion or contraction is proposed. In addition, no amendment to this Agreement that results in an increase in any Owner's percentage of assessments or other charges under Article IV hereof shall be valid or binding upon such Owner without such Owner's express written consent.

5.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall have the same force and effect as the original thereof.

5.4. Survival. Invalidity of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

**[Space Below Intentionally Left Blank –
Signature Page to Follow]**

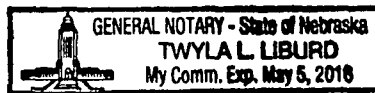
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date and year first above written.

"Royce"

ROYCE GRAYHAWK, LLC, a Nebraska limited liability company

By: L.R. J.
Printed Name: LAWRENCE R. JAMES II
Title: MANAGER / MEMBER

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

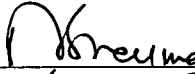


The foregoing instrument was acknowledged before me this 17th day of July, 2014, by Lawrence R. James, II, Manager of Royce Grayhawk, LLC, a Nebraska limited liability company, on behalf of the company.

[Signature]
Notary Public

"BSR"

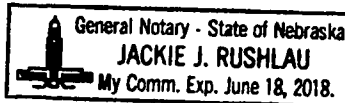
BSR 148 WEST MAPLE, LLC,
a Nebraska limited liability company

By: 
Printed Name: ARUN SHARMA
Title: PARTNER/OWNER.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 5th day of August, 2014, by Arun Sharma, Owner of BSR 148 West Maple, LLC, a Nebraska limited liability company, on behalf of the company.


Notary Public



"3506 North"

3506 NORTH 147TH, LLC,
a Nebraska limited liability company

By: ER
Printed Name: Eric Renner
Title: Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 17th day of July, 2014, by Eric Renner, Vice President of 3506 North 147th, LLC, a Nebraska limited liability company, on behalf of the company.

Jennifer Lyn Goaley
Notary Public



CONSENT BY BENEFICIARY TO
INGRESS, EGRESS AND UTILITY EASEMENT
AGREEMENT FOR
WEST GRAYHAWK

American Interstate Bank hereby consents to the terms of the foregoing Ingress, Egress and Utility Easement Agreement for West Grayhawk, and hereby acknowledges that the lien of the Deed of Trust held by American Interstate Bank, as Trustee and Beneficiary dated September 27, 2012 filed on September 12, 2012, as Instrument No. 2012097340 of the records of the Douglas County Register of Deeds, shall be subordinate to the terms of the foregoing Declaration.

American Interstate Bank

By: [Signature]
Title: Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 17th day of July, 2014, by July Barrett James, Chairman of American Interstate Bank, on behalf of the Bank.



[Signature]
Notary Public

CONSENT BY BENEFICIARY TO
INGRESS, EGRESS AND UTILITY EASEMENT
AGREEMENT FOR
WEST GRAYHAWK

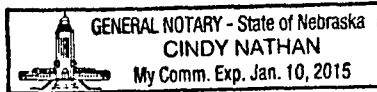
Elkhorn Valley Bank & Trust hereby consents to the terms of the foregoing Ingress, Egress and Utility Easement Agreement for West Grayhawk, and hereby acknowledges that the lien of the Deed of Trust held by Elkhorn Valley Bank & Trust, as Trustee and Beneficiary dated May 8, 2014, filed on May 14, 2014, as Instrument No. 2014035460 of the records of the Douglas County Register of Deeds, shall be subordinate to the terms of the foregoing Declaration.

Elkhorn Valley Bank & Trust

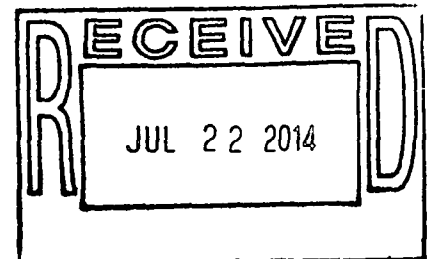
By: Andrew A. Culen
Title: Asst. Vice Pres.

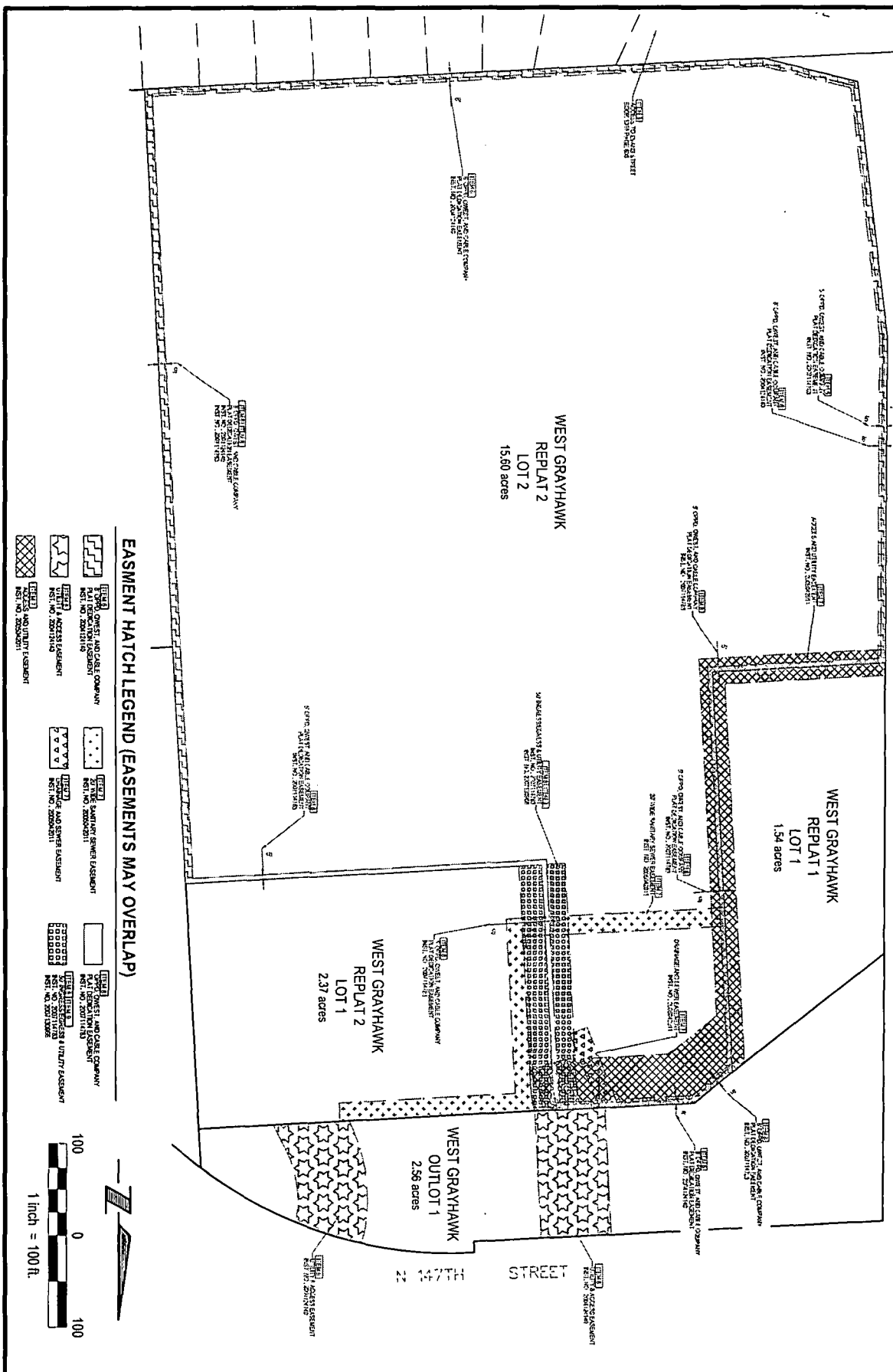
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 18 day of July, 2014, by Andrew A. Culen, Asst. Vice Pres. of Elkhorn Valley Bank & Trust, on behalf of the Bank.



Cindy Nathan
Notary Public





Project	2011.01.02
Date	12/19/2013
Drawn by	JD
Checked by	JD
Scale	1" = 100'
Sheet	1 of 1

EXHIBIT A
EXISTING EASEMENTS



E & A CONSULTING GROUP, INC.
Engineering • Planning • Environmental & Field Services

330 North 11th Street Omaha, NE 68154
Phone 402.895.4700 Fax 402.895.3509
www.eacg.com

EXHIBIT "B" SITE PLAN

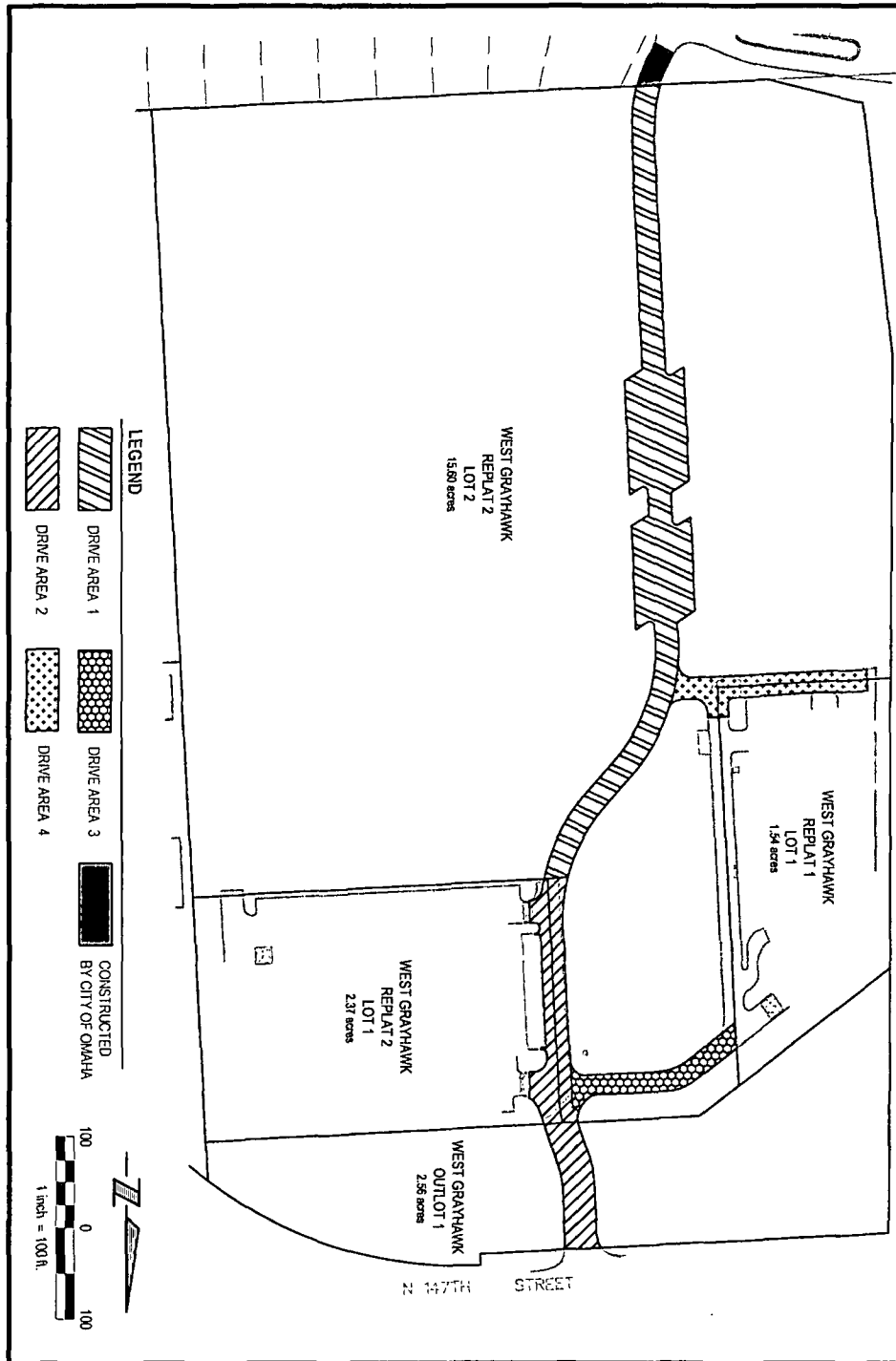


EXHIBIT B SITE PLAN		 Engineering • Planning • Environmental & Field Services	E & A CONSULTING GROUP, INC. 3211 North 117th Street, Omaha, NE 68164 Phone: 412.828.4733 Fax: 412.828.2314 e-mail: eap@eacg.com
Date: 4/10/2014 Drawn by: [blank] Checked by: [blank] Project No.: 11192020	Scale: [blank] Date: 4/10/2014 Drawn by: [blank] Checked by: [blank] Project No.: 11192020		

Nicole M. Napierala 4/10/2014 9:20 AM K:\Projects\2011\1192020\Plans\Site\Street Drive Exhibit-000.dwg