

MISC 2015024773



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Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
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2015024773

AMENDED AND RESTATED SANITARY SEWER EASEMENT AND AGREEMENT

This Amended and Restated Sanitary Sewer Easement and Agreement (this "Agreement") is made and entered into effective the 30th day of March, 2015, by and between ROYCE GRAYHAWK, LLC, a Nebraska limited liability company ("Grantor"), and BSR 148 WEST MAPLE, LLC, a Nebraska limited liability company ("Grantee").

Preliminary Statement

Grantor is the owner of the real estate located in Douglas County, Nebraska, legally described as follows ("Grantor Property"):

Lot 6, West Grayhawk Replat 3, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Grantee is the owner of the real estate located in Douglas County, Nebraska, legally described as follows ("Grantee Property"):

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

The Grantee Property is benefited by a twenty foot wide sanitary sewer easement across the Grantor Property as depicted and legally described on Exhibit "A" attached hereto (the "Existing Easement"), which was created by the Plat of West Grayhawk Replat 1 recorded April 14, 2005, as Instrument No. 2005042011. Grantee's predecessor's in title has constructed a sanitary sewer line on and under the Grantor Property in the general location as depicted on Exhibit "B" attached hereto, and outside of the boundaries of the Existing Easement (the "Existing Sewer Line").

Grantor and Grantee have agreed that the Existing Sewer Line will be relocated on the Grantor Property to a location that is west of the Existing Easement and have agreed upon the terms and conditions for the construction and relocation of the Existing Sewer Line to the location as depicted on Exhibit "B" attached hereto (the "New Sewer Line"), the removal of those portions of the Existing Sewer Line that will not be needed following the construction of the New Sewer Line, and the amendment of the Existing Easement as located on the Grantor Property to the area depicted and legally described on Exhibit "C" attached hereto (the "New Sewer Easement"), all as provided in this Easement Agreement.

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

Return to:
 James D. Busch
 Pansing Hogan Ernst & Bachman, LLP
 10250 Regency Circle, Suite 300
 Omaha, Nebraska 68114

✓ 7240

1. Grantor shall construct the New Sewer Line which shall be of the same dimensions and of equal to or greater quality than the Existing Sewer Line. Upon completion of the New Sewer Line, Grantor will connect the New Sewer Line to the Existing Sewer Line at the connection point as generally depicted on Exhibit "C" attached hereto. Such connection will be made during non-business hours following at least two (2) business days' notice to Grantee and in a manner that will provide limited disruption of sanitary sewer service (estimated to be less than four (4) hours in time). Following completion of the New Sewer Line and the connection to the Existing Sewer Line, Grantor shall remove those portions of the Existing Sewer Line situated on the Grantor Property and not being utilized for the New Sewer Line. Grantor shall undertake all construction activities at Grantor's cost except for the Construction Contribution as provided in Section 2 below. Grantor shall indemnify, hold harmless, and defend Grantee from and against any and all construction costs and liability for damages of any kind, including but not limited to damages associated with personal injury, property damages, or business interruption on the part of the Grantor, Grantee, or any of Grantor or Grantee's tenants, and that arises out of or relates to the construction of the New Sewer Line.

2. Grantee shall pay to Grantor the sum of Eight Thousand Dollars (\$8,000) as Grantee's sole cost and expense for Grantor's agreement to construct and relocate the Existing Sewer Line and to perform Grantor's obligations under Section 1 above (the "Construction Contribution"). Payment of the Construction Contribution shall be made to Grantor not later than ten (10) business days following Grantee's receipt of notice from Grantor that the New Sewer Line construction has been completed and connection to the Existing Sewer Line has been made.

3. The Existing Easement is hereby amended and restated in its entirety to relocate the sewer easement area for the New Sewer Line to the area as depicted and legally described on Exhibit "C" attached hereto (the "New Sewer Easement"), and the Grantee hereby releases the Existing Easement as depicted and legally described on Exhibit "A". In furtherance thereof, Grantor hereby grants to Grantee a permanent sewer easement to connect to, maintain, repair and operate the New Sewer Line, and appurtenances thereto, in, through, and under, the New Sewer Easement, which easement rights shall also include reasonable ingress and egress from the Grantor Property for the purpose of inspecting, maintaining, operating, repairing or replacing the New Sewer Line.

4. Upon construction of the New Sewer Line, no buildings, improvements or other structures shall be placed, in, on, over, or across the New Sewer Easement by Grantor, or its successors and assigns, without the written approval of Grantee, provided, however, the foregoing restriction shall not restrict Grantor's construction of landscaping, road and/or street services, parking area surfacing and/or pavement on the New Sewer Easement. These improvements and any trees, grass or shrubbery placed on the New Sewer Easement shall be maintained by Grantor, and the successors and/or assigns to ownership of the Grantor Property.

5. Grantee will replace or rebuild any and all damage to improvements caused by Grantee in exercising its rights of maintaining, repairing, constructing, replacing or operating the New Sewer Line, including damage to, or loss of landscaping trees and shrubbery.

6. The easement rights and obligations set forth in this Agreement shall be perpetual, run with the land, and be binding upon the successors and assigns of Grantor and Grantee, provided, however, that this Agreement and the easement rights created herein may be terminated in the event that Grantee abandons use of the New Sewer Line, in which event, Grantor and Grantee, or their respective successors and assigns shall cooperate in the execution and recording of a notice of termination of this Agreement. This Agreement is also for the benefit of any contractor, agent, employee, or representative of Grantor

and Grantee as necessary or appropriate for the construction, connection to, and maintenance and operation of the New Sewer Line.

7. This Agreement contains the entire agreement of the parties relating to the subject matter thereof and there are no other or different agreements or understandings with respect to the matters addressed by this Agreement. It is understood and agreed that all payments, consideration and agreements given by parties to this Agreement are not to be construed as an admission of liability by the parties, but rather such payments, consideration and agreements are made in full settlement of any and all claims which are denied and disputed among the parties. It is further understood and agreed that this Agreement is made as a compromise to avoid expense and to terminate all controversies and claims of any nature whatsoever, known or unknown, in any way arising out of or connected with the subject matter of this Agreement.

8. This Agreement may be executed in any number of counterpart originals, each of which, when taken together, shall be deemed to be one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska. Time is of the essence.

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

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

ROYCE GRAYHAWK, LLC, a Nebraska limited liability company

By: L. R. James, II
Printed Name: Lawrence R. James, II
Title: Manager / Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of March, 2015, by Lawrence R. James, II, Manager of Royce Grayhawk, LLC, a Nebraska limited liability company, on behalf of the company.

Emily O'Connor
Notary Public



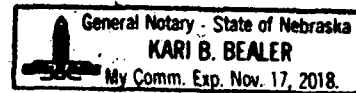
BSR 148 WEST MAPLE, LLC,
a Nebraska limited liability company

By: [Signature]
Printed Name: SUBHASH C BHATIA
Title: PRESIDENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 24th day of March, 2015, by Subhash C. Bhatia, President of BSR 148 West Maple, LLC, a Nebraska limited liability company, on behalf of the company.

Kari B. Bealer
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: Barrett L.L. James
Title: Chairman

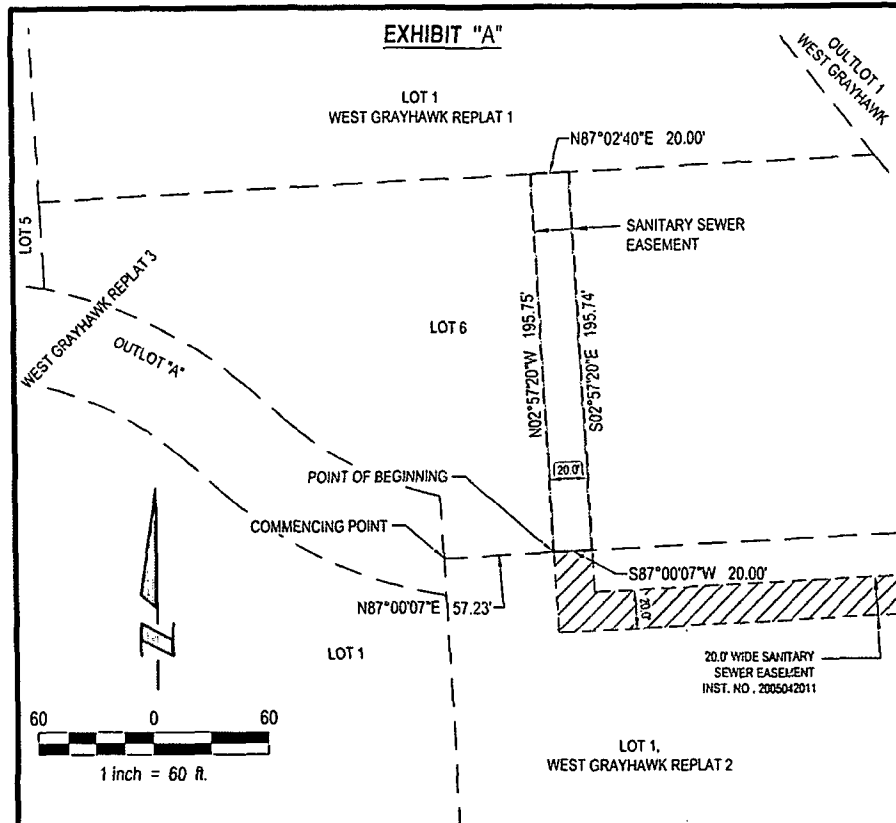
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of March, 2015, by Barrett L.L. James, Chairman of American Interstate Bank, on behalf of the Bank.



Trudy A. Johnson
Notary Public

EXHIBIT "A" **Existing Sewer Easement**



LEGAL DESCRIPTION

A 20.0 FOOT EXISTING SANITARY SEWER EASEMENT LOCATED IN LOT 6, WEST GRAYHAWK REPLAT 3, A SUBDIVISION LOCATED IN THE NE1/4 OF SECTION 11, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1, WEST GRAYHAWK REPLAT 2, A SUBDIVISION LOCATED IN SAID SECTION 11, SAID POINT ALSO BEING ON THE WEST LINE OF OUTLOT "A", SAID WEST GRAYHAWK REPLAT 3, SAID POINT ALSO BEING THE SOUTHWESTERLY MOST CORNER OF SAID LOT 6, WEST GRAYHAWK REPLAT 3; THENCE N87°00'07"E (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID LOT 1, WEST GRAYHAWK REPLAT 2, SAID LINE ALSO BEING ALONG THE SOUTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3, A DISTANCE OF 57.23 FEET TO THE POINT OF BEGINNING; THENCE N02°57'20"W, A DISTANCE OF 195.75 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3, SAID POINT ALSO BEING ON THE SOUTH LINE OF LOT 1, WEST GRAYHAWK REPLAT 1, A SUBDIVISION LOCATED IN SAID SECTION 11; THENCE N87°02'40"E ALONG THE SAID NORTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3, SAID LINE ALSO BEING ALONG SAID SOUTH LINE OF LOT 1, WEST GRAYHAWK REPLAT 1, A DISTANCE OF 20.00 FEET; THENCE S02°57'20"E, A DISTANCE OF 195.74 FEET TO A POINT ON THE SAID NORTH LINE OF SAID LOT 1, WEST GRAYHAWK REPLAT 2, SAID LINE ALSO BEING ON SAID SOUTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3; THENCE S87°00'07"W ALONG SAID NORTH LINE OF SAID LOT 1, WEST GRAYHAWK REPLAT 2, SAID LINE ALSO BEING ALONG SAID SOUTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID 20.0 FOOT SANITARY SEWER EASEMENT CONTAINS AN AREA OF 3,915 SQUARE FEET OR 0.090 ACRES, MORE OR LESS.

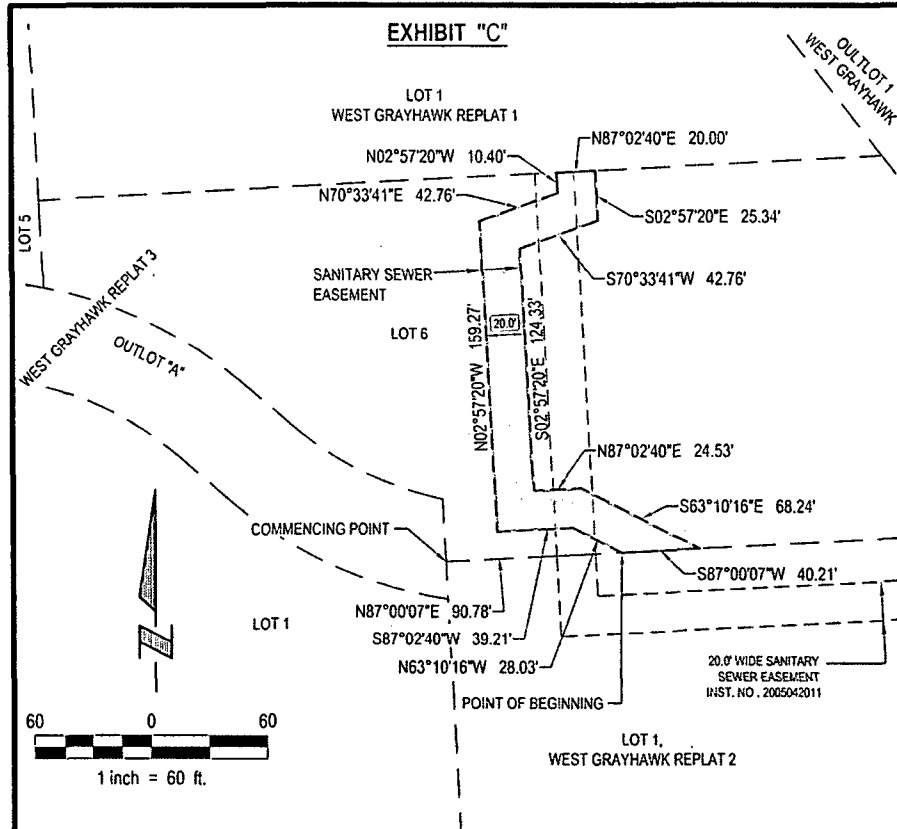
 <p>E & A CONSULTING GROUP, INC. Engineering • Planning • Environmental & Field Services 309 North 117th Street Omaha, NE 68134 Phone: 402.239.4700</p>	<p>Drawn by: CJV Chkd by:  Date: 02-24-2015</p>	<p>EXISTING SANITARY SEWER EASEMENT LOT 6, WEST GRAYHAWK REPLAT 3 DOUGLAS COUNTY, NEBRASKA</p>
	<p>Job No.: P2011.192.004</p>	

Cody Vander Molen 3/5/2015 8:28 AM K:\Projects\2011\192\p041\Survey\Easement\EA-SE - LOT 6_EXISTING 20 SAN-000.dwg

[illegible]

EXHIBIT "C"

New Sewer Easement



LEGAL DESCRIPTION

A NEW 20.0 FOOT SANITARY SEWER EASEMENT LOCATED IN LOT 6, WEST GRAYHAWK REPLAT 3, A SUBDIVISION LOCATED IN THE NE1/4 OF SECTION 11, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1, WEST GRAYHAWK REPLAT 2, A SUBDIVISION LOCATED IN SAID SECTION 11, SAID POINT ALSO BEING ON THE WEST LINE OF OUTLOT "A", SAID WEST GRAYHAWK REPLAT 3, SAID POINT ALSO BEING THE SOUTHWESTERLY MOST CORNER OF SAID LOT 6, WEST GRAYHAWK REPLAT 3; THENCE N87°00'07"E (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID LOT 1, WEST GRAYHAWK REPLAT 2, SAID LINE ALSO BEING ALONG THE SOUTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3, A DISTANCE OF 90.78 FEET TO THE POINT OF BEGINNING; THENCE N63°10'16"W, A DISTANCE OF 28.03 FEET; THENCE S87°02'40"W, A DISTANCE OF 39.21 FEET; THENCE N02°57'20"W, A DISTANCE OF 159.27 FEET; THENCE N70°33'41"E, A DISTANCE OF 42.76 FEET; THENCE N02°57'20"W, A DISTANCE OF 10.40 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3, SAID POINT ALSO BEING ON THE SOUTH LINE OF LOT 1, WEST GRAYHAWK REPLAT 1, A SUBDIVISION LOCATED IN SAID SECTION 11; THENCE N87°02'40"E ALONG THE SAID NORTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3, SAID LINE ALSO BEING ALONG SAID SOUTH LINE OF LOT 1, WEST GRAYHAWK REPLAT 1, A DISTANCE OF 20.00 FEET; THENCE S02°57'20"E, A DISTANCE OF 25.34 FEET; THENCE S70°33'41"W, A DISTANCE OF 42.76 FEET; THENCE S02°57'20"E, A DISTANCE OF 124.33 FEET; THENCE N87°02'40"E, A DISTANCE OF 24.53 FEET; THENCE S63°10'16"E, A DISTANCE OF 68.24 FEET TO A POINT ON THE SAID NORTH LINE OF SAID LOT 1, WEST GRAYHAWK REPLAT 2, SAID LINE ALSO BEING ON SAID SOUTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3; THENCE S87°00'07"W ALONG SAID NORTH LINE OF SAID LOT 1, WEST GRAYHAWK REPLAT 2, SAID LINE ALSO BEING ALONG SAID SOUTH LINE OF SAID LOT 6, WEST GRAYHAWK REPLAT 3, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID 20.0 FOOT SANITARY SEWER EASEMENT CONTAINS AN AREA OF 5,649 SQUARE FEET OR 0.130 ACRES, MORE OR LESS.



E & A CONSULTING GROUP, INC.

Engineering • Planning • Environmental & Field Services
300 North 117th Street Omaha, NE 68154 Phone: 402.226.4700

Drawn by: CJV Chkd by: JH Date: 03-02-2015
Job No.: P2011.192.004

NEW SANITARY SEWER
EASEMENT

LOT 6, WEST GRAYHAWK REPLAT 3
DOUGLAS COUNTY, NEBRASKA