

201003561
WASHINGTON COUNTY, STATE OF NEBRASKA
RECORDED September 28, 2010 AT 8:21 A.M.
BOOK 559 PAGE(S) 735-748
Karen A. Madsen
REGISTER OF DEEDS

735

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General _____
Numerical _____
Photostat _____
Proofed _____
Scanned _____

FILED

2010 SEP 28 AM 8:21

KAREN A. MADSEN
WASHINGTON COUNTY
REGISTER OF DEEDS
BLAIR, NE

Prepared By and When Recorded Return To:
Erin O'Gara, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102

Blair, NE
Store #4568-00

TEMPORARY SOIL REMOVAL EASEMENT

THIS TEMPORARY SOIL REMOVAL EASEMENT (this "Easement") is made this 24 day of Sept, 2010 by HAYDEN PLACE DEVELOPMENT, LLC and CEDAR VALLEY PLACE, LLC (collectively "Grantor"), in favor of WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust, its affiliates, heirs, successors, assigns, agents, licensees and invitees (collectively, "Wal-Mart").

PRELIMINARY STATEMENTS

Grantor is the fee simple owner of certain real property located in Blair, Nebraska as described in Exhibit A attached hereto and incorporated herein (the "Grantor Property"). Wal-Mart is the fee simple owner of certain real property located in Blair, Nebraska as described in Exhibit B attached hereto and incorporated herein (the "Wal-Mart Property"). Grantor desires to grant to Wal-Mart a temporary easement for the permanent removal and use of soil and dirt upon a portion of the Grantor Property depicted and legally described on Exhibit C attached hereto and incorporated herein (the "Easement Area"), subject to the terms and conditions hereinafter set forth.

AGREEMENT

For and in consideration of \$10 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees as follows:

1. **Grant of Easement.** Grantor hereby grants to Wal-Mart for the benefit of the Wal-Mart Property an exclusive temporary easement for (i) the permanent removal of fill, dirt, earth and other real property from the Easement Area from time to time and (ii) the permanent placement of fill, dirt, earth and other real property upon the Easement Area from time to time, subject to the terms and conditions of this Easement. Wal-Mart shall be responsible for all costs to conduct its activities at the Easement Area as allowed above. Grantor shall grant no other rights in the Easement Area or any portion thereof during the term of this Easement without Wal-Mart's written consent, which Wal-Mart may withhold in its sole discretion.

4823-8348-3398.2

Return to:
Nebraska Land Title & Abstract
PO Box 6577
Lincoln NE 68506

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2. **Access; Improvements.** Wal-Mart and/or its agents shall have the sole right to grade the Easement Area, to remove fill, dirt, earth and other real property from the Easement Area, and to place fill, dirt, earth and other real property upon the Easement Area. No buildings, improvements or other structures, nor any fill or fill material, or embankment work shall be placed in, on, over or across the Easement Area by Grantor during the term of this Easement without the express approval of Wal-Mart.

3. **Binding Upon Property.** The easement, rights and obligations created pursuant to the terms of this Easement shall be appurtenant to the Wal-Mart Property and run with and be binding upon the Grantor Property and the Easement Area, including future subdivisions and/or reconfigurations of such properties, and shall be binding on all entities having or acquiring any right, title or interest in such properties and shall inure to the benefit of each owner, tenant, subtenant, employee or invitee thereof.

4. **Term of Easement.** The Easement and all interests granted hereby shall expire and terminate upon Wal-Mart's completion of the activities described in Section 1 herein within the Easement Area. At the request of Grantor, Wal-Mart will execute and record in the real property records of Washington County, Nebraska, a termination of this Easement upon the expiration of this Easement.

5. **No Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public, or for any public use, or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any party hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Easement.

6. **Title.** Grantor confirms with Wal-Mart and its assigns that Grantor is seized in fee of the Easement Area and it has the right to grant and convey the easement and rights granted herein, and that it will warrant and defend such easement and rights to Wal-Mart and its assigns against the lawful claims and demands of all persons.

7. **Indemnity.** Wal-Mart shall indemnify, defend and hold Grantor harmless of and from any and all claims, liabilities, causes of action, charges or expenses of any kind arising from or concerning Wal-Mart's use or occupancy of the Easement Area (excluding claims, liabilities, causes of action, charges or expenses arising from the acts of Grantor).

[Remainder of page intentionally left blank – Signature page to follow]

IN WITNESS WHEREOF, this Easement has been executed by Grantor as of the day and year first above written.

GRANTOR:

HAYDEN PLACE DEVELOPMENT, LLC, a
Nebraska limited liability company

By Mary Berg
Printed Name Mary Berg
Its Managing Member

STATE OF Nebraska)
COUNTY OF Washington) SS.

The foregoing instrument was acknowledged before me on September 17, 2010 by Mary Berg, Managing Member of Hayden Place Development, LLC, a Nebraska limited liability company, on behalf of the limited liability company.



Randy W. Lock
Notary Public

My Commission Expires:

8-16-2014

IN WITNESS WHEREOF, this Easement has been executed by Grantor as of the day and year first above written.

GRANTOR:

CEDAR VALLEY PLACE, LLC, a Nebraska limited liability company

By Mary Berg
Printed Name Mary Berg
Its Managing Member

STATE OF Nebraska)
COUNTY OF Washington) SS.

The foregoing instrument was acknowledged before me on September 17, 2010 by Mary Berg, Managing Member of Cedar Valley Place, LLC, a Nebraska limited liability company, on behalf of the limited liability company.




Fandy W. Lock
Notary Public

My Commission Expires:
8-16-2014

WAL-MART:

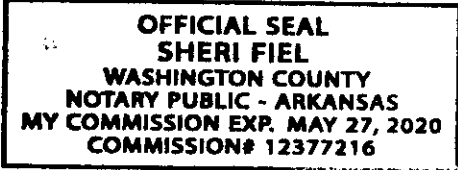
WAL-MART REAL ESTATE BUSINESS TRUST
a Delaware statutory trust


By: 
John Clarke ~~J Robert Bray~~ 9/21/2018
Vice President ~~Real Estate~~
Sr VP-Real Estate, Design, Construction

STATE OF Arkansas
COUNTY OF Benton

)
) ss.
)

The foregoing instrument was acknowledged before me this 21st day of September, 2010 by ~~John Clarke, Vice President - Real Estate~~ of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust. ~~J. Robert Bray, Sr VP-Real Estate, Design, Construction~~





Notary Public
My commission expires:
May 27, 2020

MORTGAGEE CONSENT

Two Rivers Bank ("Mortgagee") has made a loan (the "Loan") to Hayden Place Development, LLC secured by Real Estate Deed of Trust (with Future Advance Clause) securing a sum not to exceed \$1,300,000, dated September 7, 2007 and filed September 10, 2007 in Book 515, Page 630 in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Grantor Property.

Mortgagee hereby consents to this Easement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Easement, as the same may be amended from time to time.

MORTGAGEE:

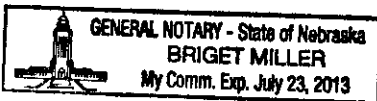
TWO RIVERS BANK

By: Randy W. Lock
Name: Randy W. Lock
Its: President/CEO
Date: 9-17-2010

STATE OF Nebraska)
) ss.
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 17th day of September, 2010, by Randy Lock, the President/CEO of Two Rivers Bank, a _____, on behalf of the _____.

[SEAL]



Briget Miller
Notary Public

My Commission Expires 7-23-13

MORTGAGEE CONSENT

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Jason Berg and Mary Berg, husband and wife, an undivided 1/2 interest and Wayne A. Jones and Holli M. Jones, husband and wife, an undivided 1/2 interest, the predecessors in interest to Hayden Place Development, LLC and Cedar Valley Place, LLC, secured by Deed of Trust with Future Advance Clause to secure the sum of \$975,000 dated October 20, 2006 and filed of record November 6, 2006 in Book 499, Page 278, in the office of the Register of Deeds of Washington County, Nebraska, (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Grantor Property.

Mortgagee hereby consents to this Easement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Easement, as the same may be amended from time to time.

MORTGAGEE:

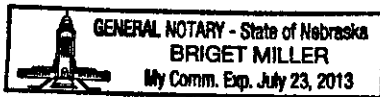
TWO RIVERS STATE BANK

By: Randy W. Lock
Name: RANDY W. LOCK
Its: President/CEO
Date: 9-17-2010

STATE OF Nebraska)
) ss.
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 17th day of September, 2010, by Randy Lock, the President/CEO of Two Rivers State Bank a _____, on behalf of the _____.

[SEAL]



Briget Miller
Notary Public

My Commission Expires 7-23-13

MORTGAGEE CONSENT

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Jason Berg and Mary Berg, husband and wife, an undivided 1/2 interest and Wayne A. Jones and Holli M. Jones, husband and wife, an undivided 1/2 interest, the predecessors in interest to Hayden Place Development, LLC and Cedar Valley Place, LLC, secured by Construction Security Deed of Trust With Future Advance Clause to secure the sum not to exceed \$1,900,000 dated November 6, 2006 and filed of record November 17, 2006 in Book 500, Page 113, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Grantor Property.

Mortgagee hereby consents to this Easement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Easement, as the same may be amended from time to time.

MORTGAGEE:

TWO RIVERS STATE BANK

By: *Bandy W. Lock*
Name: RANDY W. LOCK
Its: President/CEO
Date: 9.17.10

STATE OF Nebraska)
COUNTY OF Washington) ss.

The foregoing instrument was acknowledged before me this 17th day of September, 2010, by Bandy Lock, the President/CEO of Two Rivers State Bank a _____, on behalf of the _____.

[SEAL]



Briget Miller
Notary Public

My Commission Expires 7-23-13

MORTGAGEE CONSENT

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Cedar Valley Place, LLC secured by Real Estate Deed of Trust (with Future Advance Clause) securing a sum not to exceed \$370,000, dated February 9, 2007 and filed February 12, 2007 in Book 504, Page 572 in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Grantor Property.

Mortgagee hereby consents to this Easement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Easement, as the same may be amended from time to time.

MORTGAGEE:

TWO RIVERS STATE BANK

By: Randy Lock
Name: RANDY W. LOCK
Its: President/CEO
Date: 9-17-10

STATE OF Nebraska)
) ss.
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 17th day of September, 2010, by Randy Lock, the President/CEO of Two Rivers State Bank a _____, on behalf of the _____.

[SEAL]



My Commission Expires 7-23-13

Briget Miller
Notary Public

CONSENT OF LIENHOLDER

Olsson Associates ("Lienholder") has rendered certain construction services to Hayden Place Development, LLC and/or Cedar Valley Place, LLC and in connection with the same, has filed a (i) Construction Lien in the amount of \$175,111.79, plus interest, filed of record December 21, 2009 in Book 549, Page 291 in the office of the Register of Deeds of Washington County, Nebraska and (ii) a Construction Lien in the amount of \$17,280.52, plus interest, filed of record December 21, 2009 in Book 549, Page 294 in the office of the Register of Deeds of Washington County, Nebraska, , and (iii) a Construction Lien in the amount of \$1,943.10, plus interest, filed of record December 21, 2009 in Book 549, Page 297 in the office of the Register of Deeds of Washington County, Nebraska and (iv) a Construction Lien in the amount of \$265,064.82, plus interest, filed of record December 21, 2009 in Book 549, Page 301 in the office of the Register of Deeds of Washington County, Nebraska (together with any amendments, modifications, replacements and restatements thereto, collectively the "Construction Liens"). The Construction Liens constitutes a lien against a portion of the Grantor Property.

Lienholder hereby consents to this Easement and agrees that the Construction Liens shall be subject and subordinate to the terms, provisions, covenants, easements, conditions and restrictions contained in this Easement as the same may be amended from time to time. Further, Lienholder represents and warrants to Wal-Mart that the Construction Liens are the only liens filed against the Grantor Property by Lienholder. Lienholder agrees that any liens that may be filed against the Grantor Property in the future shall be subject and subordinate to the terms, provisions, covenants, easements and conditions contained in this Easement as the same may be amended from time to time.


LIENHOLDER:

OLSSON ASSOCIATES

By: Brad St. Matthew
Name: Brad St. Matthew
Its: President
Date: September 20, 2010

STATE OF Nebraska)
COUNTY OF Lancaster) ss.

The foregoing instrument was acknowledged before me this 20th day of September, 2010, by Brad St. Matthew, the President of Olsson Associates a Nebraska Corporation, on behalf of the Lien holder.

[SEAL] 

Mary L. Miller
Notary Public

My Commission Expires 5/1/2013

745

EXHIBIT A

Legal Description of Grantor Property

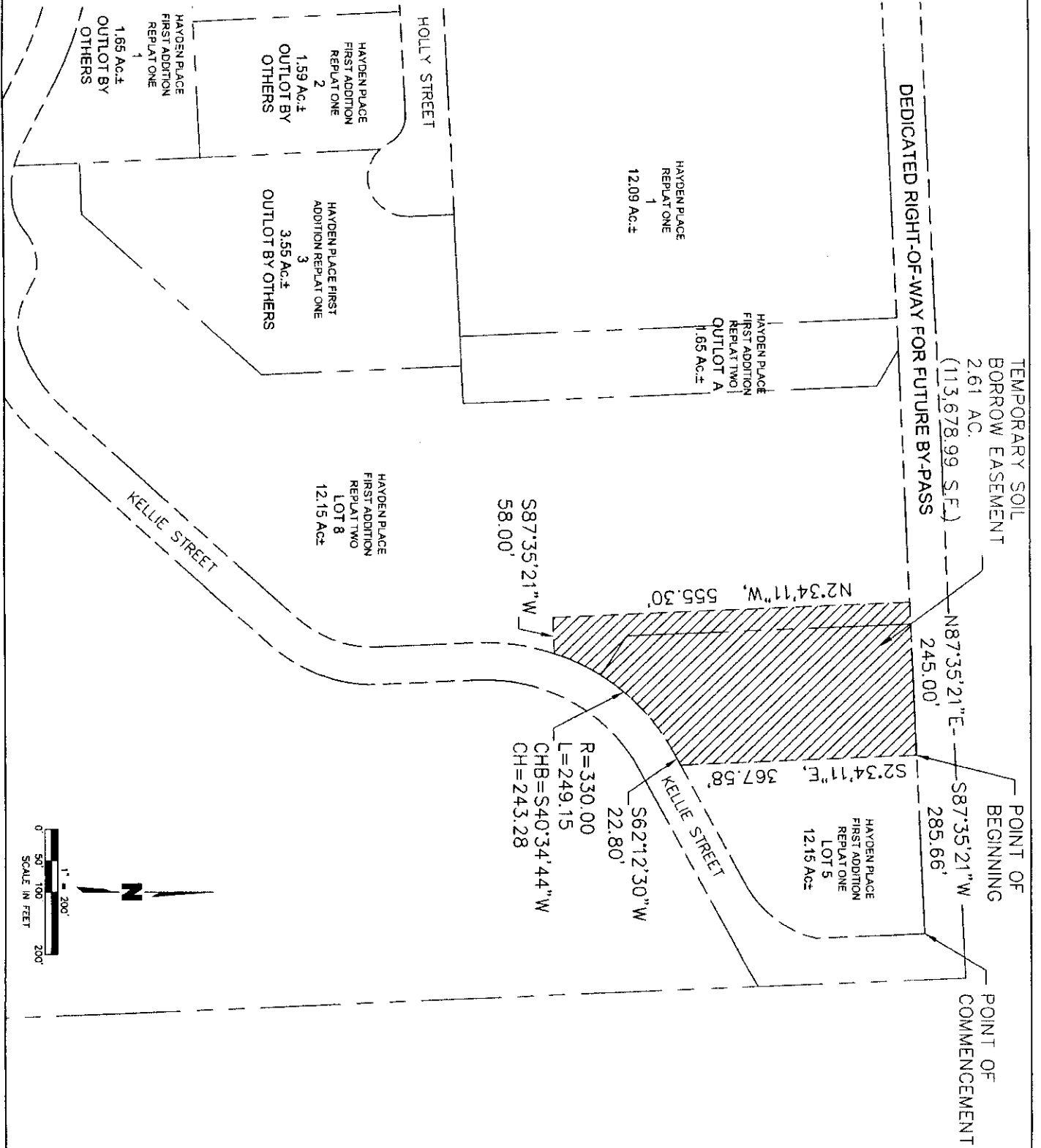
Lot 8, Hayden Place First Addition Replat Two, and Lot 5, Hayden Place First Addition Replat One,
City of Blair, Washington County, Nebraska

EXHIBIT B

Legal description of Wal-Mart Property

Lot 1, Hayden Place Replat One and Outlot B, Administrative Lot Line Adjustment of Outlot B and Lot 10, Hayden Place Replat One and Outlot A of Hayden Place First Addition Replat Two, City of Blair, Washington County, Nebraska

PROJECT: I:\Projects\2006\1603\Landplan\1-4\1603\Easement Declaration\Offsite Borrow.dwg USER: embickford
 DATE: Sep 09, 2010 10:48am PLOT: 050162_PLAT-HAYDEN PLACE FIRST ADDITION REPLAT-1 1603, PHASE



PROJECT NO: 006-1603

DRAWN BY: MDB

DATE: 8/17/2010

EXHIBIT C-1
OFFSITE SOIL BORROW
EASEMENT




2111 South 67th Street
 Suite 200
 Omaha, NE 68106
 TEL 402.341.1116
 FAX 402.341.5895

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED ON HAYDEN PLACE FIRST ADDITION, REPLAT TWO LOT 8 AND HAYDEN PLACE FIRST ADDITION, REPLAT ONE LOT 5, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF HAYDEN PLACE, REPLAT ONE LOT 5, SAID POINT ALSO BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF THE FUTURE BLAIR BY-PASS, THENCE WESTERLY ALONG SAID SOUTH RIGHT-OF-WAY LINE AND NORTH LINE OF LOT 5 ON AN ASSUMED BEARING OF S87°35'21"W, 285.66 FEET TO THE POINT OF BEGINNING, THENCE S02°34'11"E, 367.58 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 5 AND NORTH RIGHT-OF-WAY LINE OF KELLIE STREET; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE AND SOUTH LINE OF SAID LOT 5 S62°12'30"W, 22.80 FEET TO A POINT OF CURVATURE OF A CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A RADIUS OF 330.00 FEET, AN ARC LENGTH OF 249.15 FEET, A CHORD BEARING S40°34'44"W AND CHORD DISTANCE OF 243.28 FEET; THENCE S87°35'21"W, 58.00 FEET; THENCE N02°34'11"W, 555.30 FEET TO A POINT ON THE NORTH LINE HAYDEN PLACE FIRST ADDITION, REPLAT TWO LOT 8, ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF THE FUTURE BLAIR BY-PASS; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE N87°35'21"E, 245.00 FEET TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING 2.61 ACRES (113,678.99 SQ. FT.) MORE OR LESS.

PROJECT NO: 006-1603	EXHIBIT C-2 OFFSITE SOIL BORROW EASEMENT	 2111 South 67th Street Suite 200 Omaha, NE 68106 TEL 402.341.1116 FAX 402.341.5695
DRAWN BY: MDB		
DATE: 8/17/2010		