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FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

2012-33151

10/24/2012 1:38:31 PM

*Clay J. Dowling*

REGISTER OF DEEDS



**LAND DEVELOPMENT AGREEMENT**

THIS AGREEMENT is made as of July 3, 2012, by and between City of Springfield, Nebraska, Sarpy County, Nebraska ("City"), and B.H.I. Investment Company, a Nebraska corporation, located at 11205 S. 150<sup>th</sup> Street, Suite 100, Omaha, Nebraska 68138 ("Developer").

**WITNESSETH**

WHEREAS, City is a Nebraska municipal corporation in Sarpy County, Nebraska; and

WHEREAS, Developer is a Nebraska corporation; and

WHEREAS, Developer is the twenty percent (20%) tenant in common owner and Springfield Business Park, L.L.C. ("Springfield") is an eighty percent (80%) tenant in common owner of a certain tract of real estate in Sarpy County, Nebraska, which real estate is more fully described in the legal description attached hereto, made a part hereof, and marked Exhibit A (the "Tract"); and

WHEREAS, simultaneously with the recording of the Final Plat identified below, Developer shall purchase the interest of Springfield in the Tract and shall become the sole owner of the Tract for purposes of its development; and

WHEREAS, the Developer desires to develop the Tract (the "Development") in accordance with certain final subdivision and/or land development plans for the project known as Springfield Business Park; and

WHEREAS, the Tract is located outside the corporate limits of the City, but within the extraterritorial zoning jurisdiction of the City; and

WHEREAS, the Developer has submitted a Preliminary Plat of the Tract and Development, a copy of which is attached hereto as Exhibit B-1; and

WHEREAS, the Developer has submitted a Final Plat of the Tract and Development, a copy of which is attached hereto as Exhibit B-2; and

WHEREAS, the Developer wishes to provide for septic systems and water wells and a private drive; and

WHEREAS, the City wishes to provide for the orderly development of Springfield Business Park.

A

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and agreements contained herein, and intending to be legally bound hereby, agree to the following:

**I. Improvements by Developer**

**A. Private Drive and Storm Sewer**

1. The Developer shall cause the owner of Lot 1, Springfield Business Park to pave and build a private drive on Outlot "A" as shown on the plat. It will be a private drive to serve all lots in the Development.
2. The paving, drive construction and storm sewer for the private drive shall conform to the plans shown on attached Exhibit C-3. The drive shall conform to all specifications of the City of Springfield. The drive shall be seven (7) inch thick concrete and shall be a two (2) panel street.
3. The Developer will enter into a Development and Easement Agreement with the purchaser of Lot 1. A copy of the Development and Easement Agreement is attached hereto as Exhibit F.

**B. Sewage**

1. When each lot in the Development is developed, the lot owner will build a septic system for the owner's respective lot. The location of the septic systems is shown on Exhibit C-1.
2. All septic systems shall conform to all specifications of the City.

**C. Water**

1. When each lot in the Development is developed, the lot owner will construct a water well for the owner's respective lot. The location of the water wells is shown on Exhibit C-2.
2. All water wells shall conform to all specifications of the City.

**D. Signs**

Each lot owner shall erect such street sign or signs, traffic control sign or signs, and no parking sign or signs within the respective lot as shall be determined exclusively by the City of Springfield, Nebraska.

**II. Improvements by City**

None

### III. Right to Connect to City Water and Sewer Lines

#### A. Developer

1. The lot owners within the Development shall not have a right to connect to the City sewer lines or water lines until future agreement with the City.

### IV. Easements to City

None

### V. Building Permits

- A. Building Permits. The respective lot owners will apply for and obtain all necessary building permits before proceeding with construction on such owner's lot.

### VI. City Fees

Fees and Costs. The Fees for the Development shall be paid for by the following:

- A. All inspection and engineering fees incurred during the course of construction shall be paid for by the lot owner requesting such services.
- B. All water and sewer capital facility fees imposed by Springfield Municipal Code §3-105.03 and 3-209.03 which would be due on platting and recording shall be calculated on a per lot basis. The fees will be due and collectible as follows:

The fees for Lot 1 shall be payable at the time a building permit is issued for Lot 1. The fees for Lot 1 shall be allocated as follows:

|                                       |   |                    |
|---------------------------------------|---|--------------------|
| Water, 35.461 Acres x \$840.00/acre   | = | \$29,787.24        |
| Sewer, 35.461 Acres x \$1,960.00/acre | = | <u>\$69,503.56</u> |
| Total Fees Due                        | = | \$99,290.80        |

Fees are not due at this time for Lots 2 and 3 of the Springfield Business Park as these lots remain unimproved and zoned for agricultural uses only. The fee amounts for Lots 2 and 3 shall be due and determined at the time of the issuance of a building permit or final rezoning or replatting, whichever comes first, at the City's then current rate.

- C. All additional application fees associated with the Tract shall be paid by the lot owner.

**VII. Maintenance**

- A. Drive Maintenance. Developer and its successors and assigns, if necessary, shall maintain Outlot "A" according to the plan on attached Exhibit E.
- B. Erosion Control. Each lot owner agrees, at its expense, to establish and maintain with silt fencing barriers and such other appropriate measures to create an effective method of controlling the placement upon or a movement or flow of mud, silt, dust, construction debris and material and other matter onto or into a street right-of-way, sewers and infrastructure within the Subdivision or onto or off of lots of property within or without the Development. Such control shall be effectively and continuously in effect through all of the excavation, grading, construction, development and buildout of the Subdivision up to the final time of installation of the permanent ground cover and final landscaping of lots. Before commencement of initial rough grading of the Development, the respective lot owner shall present a specific plan for such erosion control in form and content satisfactory to the City Engineer. It will be the sole responsibility of the respective lot owner to devise and implement the necessary plan to accomplish the intended objective aforesated, but City may require amendments or enhancements to such erosion control plan if, in the determination of the City, the goals of the plan as aforesated have not been achieved. The City approved erosion control plan shall be incorporated into the grading contract for the Development, which work shall be within the coverage of the respective lot owner's performance bond. The Grading and Erosion Control Plan is shown on Exhibit D.

**VIII. Sidewalks**

- A. Sidewalks. No sidewalks must be constructed on any of the lots.

**IX. Miscellaneous**

- A. Compliance by Contractors. Each lot owner shall procure and be responsible for compliance by all of its contractors, subcontractors, and suppliers with all applicable Federal, State, County, statutes, ordinances, rules, and regulations in connection with any of the work on their respective lot. Compliance shall include, but not be limited to, the procuring of all necessary permits and licenses in connection with the work to be done and the payment of all the contributions, fees, premiums, and taxes required by such laws, ordinances, rules, and regulations.

D

B. Compliance with City Regulations, Etc. Each lot owner expressly agrees that it is and shall be:

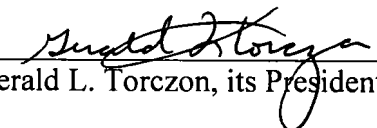
- (1) Bound by and to any provisions of any ordinances, rules and regulations hereafter made and adopted by the City of Springfield applicable to developers outside of the corporate limits of City.

Dated: July 3, 2012

ATTEST:

B.H.I. INVESTMENT COMPANY, a Nebraska corporation

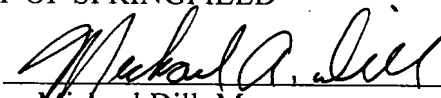


By:   
Gerald L. Torczon, its President

ATTEST:

CITY OF SPRINGFIELD

  
Kathleen Gottsch, City Clerk

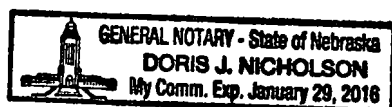
By:   
Michael Dill, Mayor

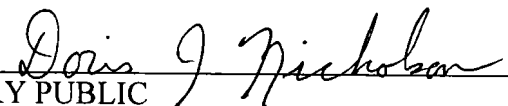
ACKNOWLEDGMENT OF NOTARY:

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF SARPY            )

On this 18 day of July, 2012, before me, a Notary Public, duly commissioned and qualified in and for said County, appeared Gerald L. Torczon, personally known by me to be the President of B.H.I. Investment Company, a Nebraska corporation, and the identical person whose name is affixed to the foregoing Land Development Agreement, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation.

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



  
NOTARY PUBLIC

(SEAL)

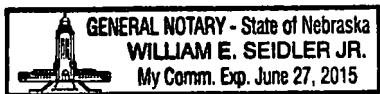
E

ACKNOWLEDGMENT OF NOTARY:

STATE OF NEBRASKA           )  
  ) ss.  
COUNTY OF SARPY           )

On this 18<sup>th</sup> day of September, 2012, before me, a Notary Public, duly commissioned and qualified in and for said County, appeared Michael Dill, personally known by me to be the Mayor of the City of Springfield and Kathleen Gottsch, to me personally known to be the City Clerk of the City of Springfield, and the identical persons whose names are affixed to the foregoing Land Development Agreement, and they acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said City.

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



(SEAL)

William E Seidler Jr  
NOTARY PUBLIC

## EXHIBIT SUMMARY

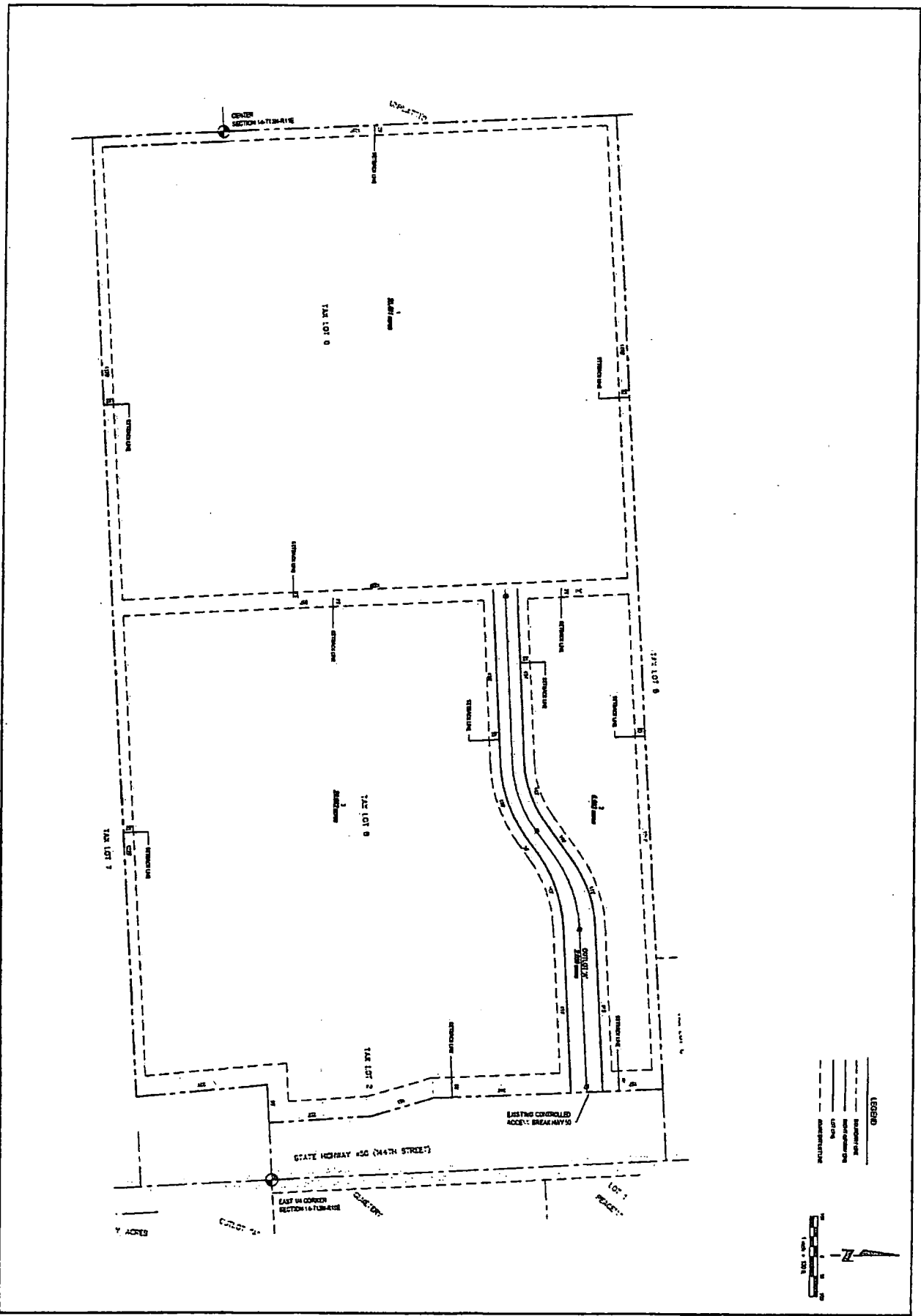
The exhibits proposed by E&A Consulting Group, Inc., engineers for B.H.I. Investment Company, are attached hereto and made a part hereof as follows:

|                    |   |
|--------------------|---|
| <b>Exhibit A</b>   | Metes and Bounds legal description  |
| <b>Exhibit B-1</b> | Preliminary Plat of Springfield Business Park<br>Dated March 6, 2012  |
| <b>Exhibit B-2</b> | Final Plat of Springfield Business Park<br>Dated May 1, 2012  |
| <b>Exhibit C-1</b> | Septic System Plan showing location of septic systems to<br>be constructed within the subdivision<br>Dated May 1, 2012                                  |
| <b>Exhibit C-2</b> | Water Well Plan showing location of water well to be<br>constructed within the subdivision<br>Dated May 1, 2012   |
| <b>Exhibit C-3</b> | Paving and Storm Sewer Plan showing location of paving<br>and storm sewer improvements to be constructed within<br>the subdivision<br>Dated May 1, 2012 |
| <b>Exhibit D</b>   | Grading and Erosion Control Plan<br>Dated May 1, 2012   |
| <b>Exhibit E</b>   | Developers Plan for maintaining Outlot "A"<br>Dated May 1, 2012   |
| <b>Exhibit F</b>   | Development and Easement Agreement  |

RTR (F)  
City of Springfield  
PO Box 189  
Springfield, NE 68059

**TABLE A 1**







SEVERAL HUNDRED FEET FOR THE SOUTH END OF THE 1000' SECTION 14, AND A NO  
TICEABLE NORTH PART OF THE 1000' A LARGE ROCKY POOL AND STREAM FOR THE SW  
OF SECTION 14, AND ALSO FORMERLY A PART OF A LARGE ROCKY POOL  
BE NEAR THE SOUTH END OF THE 1000' SECTION 14, LOCATED IN TOWNSHIP 13 NORTH, RANGE 11 EAST OF THE  
6TH 1/2 N. 64TH E. COUNTY, NEBRASKA

[illegible][illegible]

1

[illegible]

ST. GEORGE'S LONDON MEDICAL SCHOOL

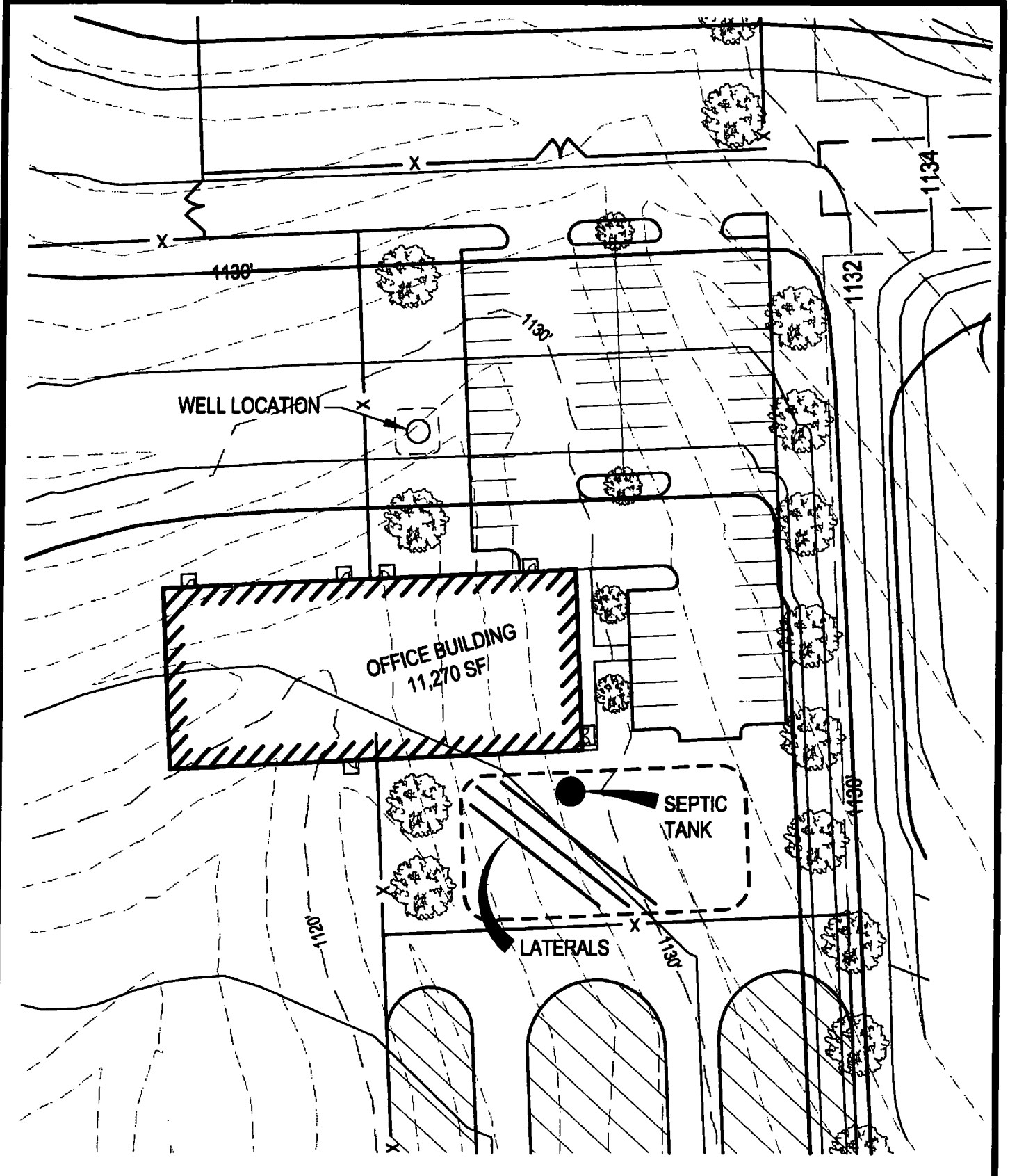
THE UNIVERSITY OF  
MICHIGAN LIBRARY

**THE NEW YORK VOLUNTARY ACT**

**USE PREVIOUS EDITIONS**

10

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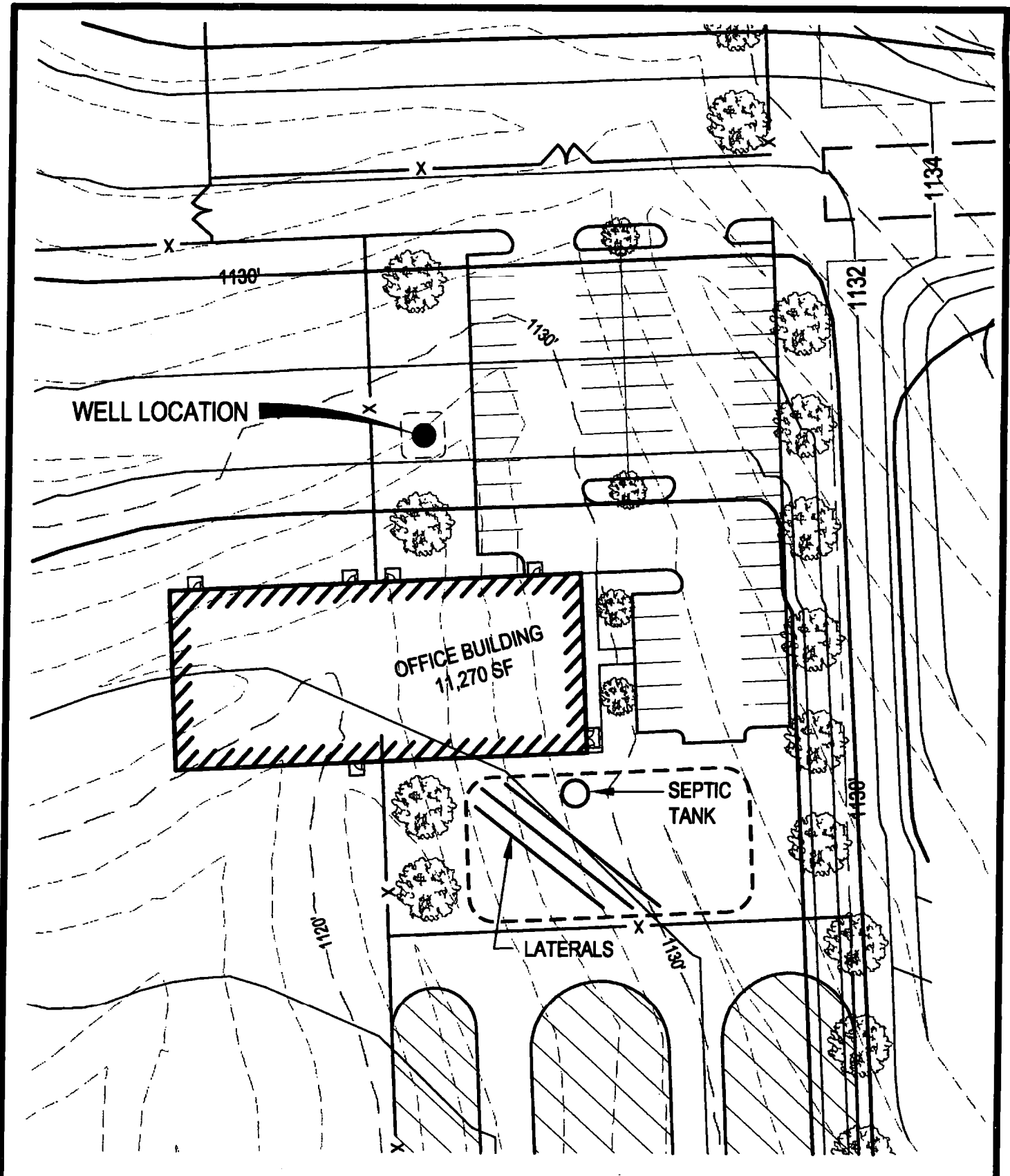


**E & A CONSULTING GROUP, INC.**  
Engineering • Planning • Environmental & Field Services  
330 North 117th Street Omaha, NE 68154 Phone: 402.895.4700

**EXHIBIT C-1  
SEPTIC SYSTEM  
PLAN**

|                        |               |                |
|------------------------|---------------|----------------|
| Job No.: P2011.397.001 |               | Date: 8/6/2012 |
| Drawn by: RCD          | Scale: 1"=50' | Sht: 1 of 1    |

大



**E & A CONSULTING GROUP, INC.**

Engineering • Planning • Environmental & Field Services  
330 North 117th Street Omaha, NE 68154 Phone: 402.895.4700

Job No.: P2011.397.001

Date: 8/6/2012

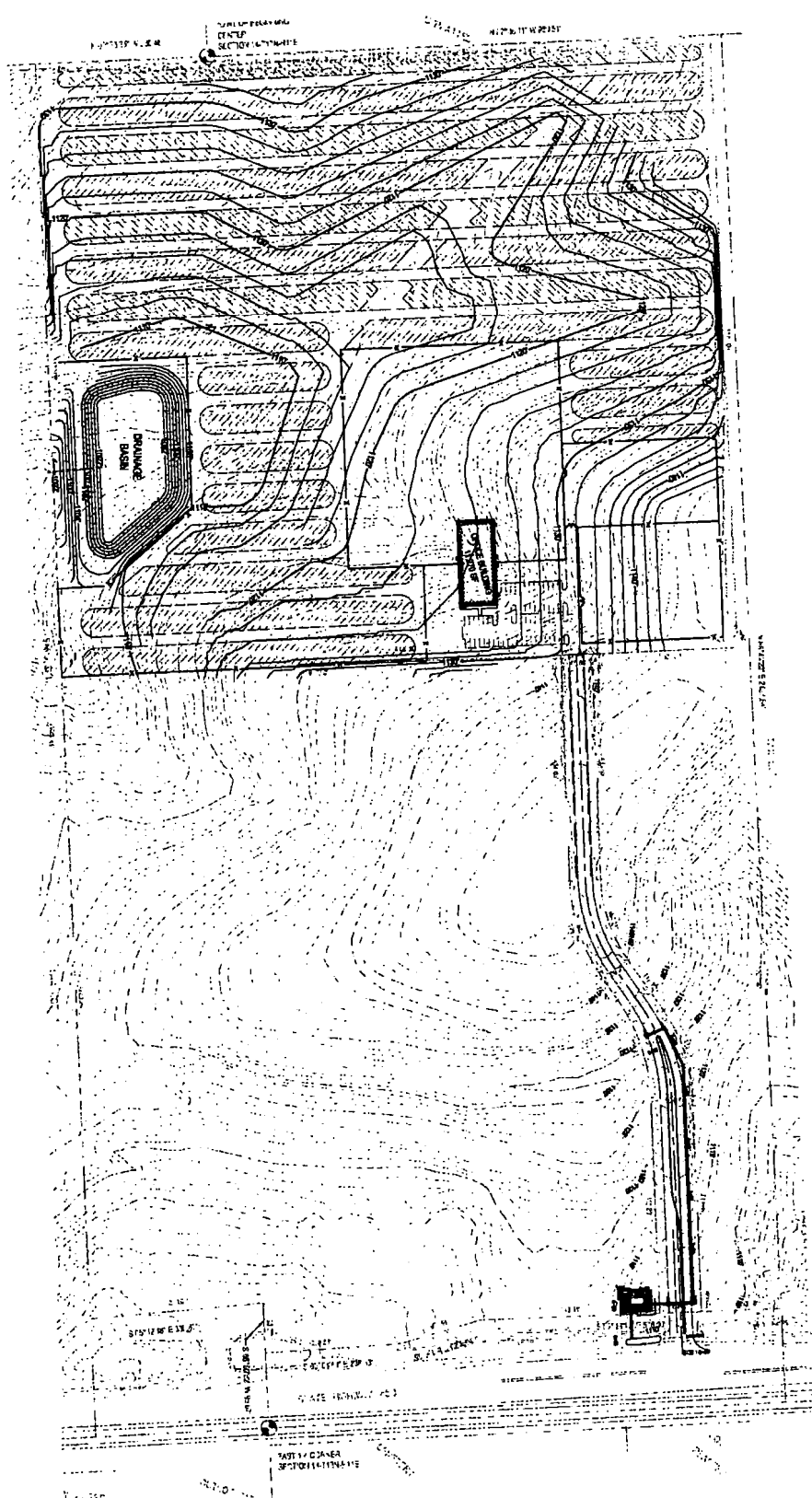
Drawn by: RCD

Scale: 1"=50'

Sht: 1 of 1

**EXHIBIT C-2  
WATER WELL PLAN**

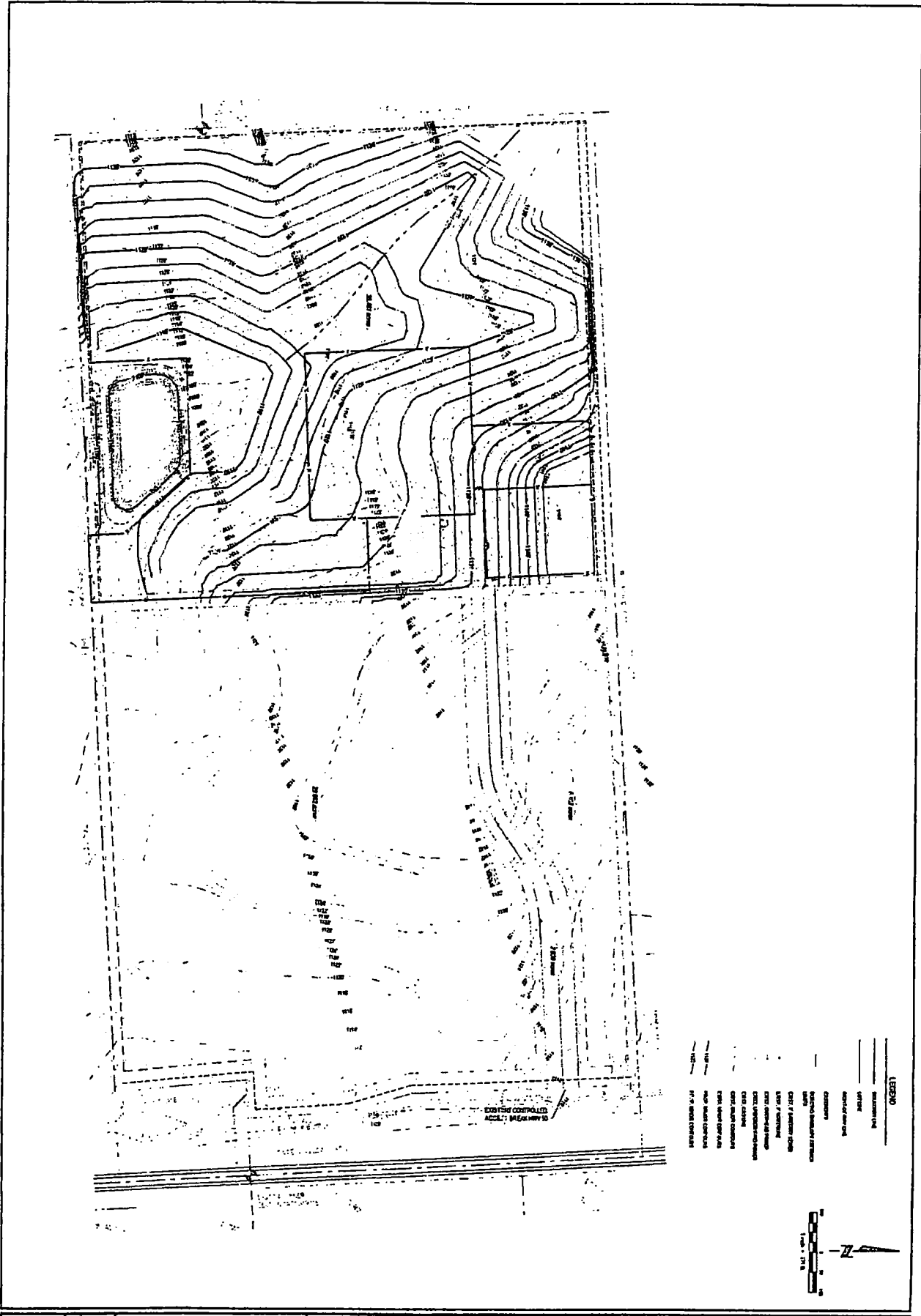
2



- LEGEND**
- PROPOSED SEWER LINE
  - EXISTING SEWER LINE
  - LOT LINE
  - ADJACENT LOT LINE
  - EXISTING ROAD
  - PROPOSED ROAD



|  |   |  |   |
|--|---|--|---|
| <p>Proj. No. 02011-001-001</p> <p>Date 09/01/03</p> <p>Designed By JPS</p> <p>Drawn By CFB</p> <p>Scale 1" = 50'</p> <p>Sheet 1 of 1</p> | <p><b>EXHIBIT C-3</b></p> <p><b>PAVING &amp; STORM</b></p> <p><b>SEWER PLAN</b></p> | <p><b>SPRINGFIELD BUSINESS PARK</b></p> <p><small>SPRINGFIELD, MASSACHUSETTS</small></p> | <div style="display: flex; align-items: center; justify-content: center;"> <div> <p><b>E&amp;A CONSULTING GROUP, INC.</b></p> <p>ENGINEERING • PLANNING • FIELD SERVICES</p> <p><small>325 NORTH 117TH STREET, CHRYSLER, NE 68134</small></p> <p><small>PHONE: (402) 885-4700 FAX: (402) 885-5889</small></p> <p><small>www.eagroup.com</small></p> </div> </div> |
|--|---|--|---|



|            |            |
|------------|------------|
| DATE       | 10/21/2010 |
| BY         | CHS        |
| CHECKED BY | CHS        |
| SCALE      | 1" = 50'   |

**EXHIBIT D**  
**GRADING & EROSION**  
**CONTROL PLAN**

**SPRINGFIELD BUSINESS PARK**  
 SPRINGFIELD, MISSOURI



**E&A CONSULTING GROUP, INC.**  
 ENGINEERING • PLANNING • FIELD SERVICES

200 WEST 14TH STREET, SUITE 200, OMAHA, NE 68102  
 PHONE: (402) 466-1000 FAX: (402) 466-1001

## **EXHIBIT E**

### **Outlot "A" Maintenance Plan 5/1/2012**

#### **Maintenance Obligations**

Until such time as Outlot "A" of Springfield Business Park and the associated infrastructure improvements are dedicated to the public, maintenance and repair of Outlot "A" and storm sewer shall be performed privately by the lot owners within the Development pursuant to a separate agreement between the lot owners.

Maintenance shall include but is not limited to:

- Annual inspection of paving
- Snow removal as necessary
- Sweeping (spring of each year)
- Crack sealing (per annual inspection report)
- Pavement remove and replacement (per annual inspection report)
- Pipe flushing (as required)

**Prepared By and After**  
**Recording Return To:**

John Q. Bachman  
PANSING HOGAN ERNST & BACHMAN LLP  
10250 Regency Circle, Suite 300  
Omaha, NE 68114

**DEVELOPMENT AND EASEMENT AGREEMENT**

**THIS DEVELOPMENT AND EASEMENT AGREEMENT** (this "Agreement") is granted as of the 6<sup>th</sup> of September, 2012, by and between **B.H.I. INVESTMENT COMPANY**, a Nebraska corporation, and its successors and assigns ("Grantor"), with an office at 11205 South 150<sup>th</sup> Street, Suite 100, Omaha, Nebraska 68138, and **CORNHUSKER DEVELOPMENT, LLC**, a Texas limited liability company, its successors and assigns ("Grantee"), with an office at c/o David Markwardt, 756 Jones Street, Lewisville, Texas 75057, Attn: Springfield, NE Access Easement.

**WITNESSETH:**

**WHEREAS**, Grantor is the owner in fee simple absolute of that certain parcel of land adjacent to Highway 50 in Springfield, NE, which property is more particularly described as Lots 1, 2 and 3 and Outlot "A", Springfield Business Park, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska ("Grantor's Parcel");

**WHEREAS**, Grantee has contemporaneously acquired, pursuant to a deed from Grantor to Grantee dated of even date herewith, title in fee simple absolute, ownership of Lot 1, Springfield Business Park, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska ("Grantee's Parcel"); and together with the remainder of Grantor's Parcel, legally described as Lots 2 and 3 and Outlot "A", Springfield Business Park, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska (the "Grantor's Remaining Parcels"), collectively the "Parcels" or each individually a "Parcel"; and



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**WHEREAS**, as partial consideration for the acquisition by Grantee of Grantee's Parcel and as a condition precedent to such acquisition, subject to the terms and conditions contained herein, Grantor desires to grant (a) a perpetual non-exclusive easement for the benefit of the Parcels over, across, upon and through the Access Easement Area (defined below) for the purpose of pedestrian and vehicular ingress, egress and passage, among, to and from the Parcels and Highway 50 (the "Access Easement"); (b) a temporary easement for such time as any construction, repair, replacements or maintenance is taking place on or with respect to the Access Easement Area (defined below) (the "Temporary Easement"); (c) a perpetual easement for the installation and maintenance of certain signage by Grantee on Grantor's Parcel along Highway 50 (the "Signage Easement"); and (d) a perpetual utility easement over Grantor's Remaining Parcels, for the benefit of Grantee's Parcel, which easement shall grant Grantee the right to install and maintain aboveground and belowground utility lines necessary for the use and orderly development of Grantee's Parcel over, across, upon and through Grantor's Remaining Parcels to Highway 50, including, without limitation, gas, electric, water, storm and sanitary sewers, telephone, internet and such other utilities as Grantee deems reasonably necessary, from time to time, for the continued operation and use of Grantee's Parcel (the "Utility Easement", and together with the Access Easement, the Temporary Easement and the Signage Easement, the "Easements").

**NOW, THEREFORE**, for One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee, for themselves and their successors and assigns, do hereby declare and agree as follows:

1. **Recitals Incorporated.** The Recitals set forth above are incorporated herein as if fully set forth in this Section 1.

2. **Grant of Easements.** Grantor hereby grants and conveys to Grantee, and Grantee hereby accepts from Grantor:

(A) A non-exclusive, perpetual easement for the benefit of Grantee's Parcel and every portion thereof over, across, upon and through Outlot "A", Springfield Business Park, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska as depicted on Schedule A attached hereto (the "Access Easement Area") for the purpose of (i) constructing, installing, maintaining, replacing and repairing a road, driveway and other improvements deemed necessary by Grantee from time to time, and approved by Grantor, such approval not to be unreasonably withheld, conditioned, or delayed (collectively, the "Access Easement Area Improvements") as detailed below in Section 2(A)(iii), (ii) placing, installing, repairing and maintaining signage, lighting, underground utilities, drainage systems and pipes, landscaping and other improvements and decorative elements on, under or above the Access Easement Area, and (iii) ingress and egress by pedestrians, automobiles, trucks, vehicles and other forms of transportation to and from Grantee's Parcel and Highway 50 over the Access Easement Area;

(B) An exclusive, perpetual easement for the benefit of Grantee's Parcel and every portion thereof over, across upon and through that portion of Grantor's Parcel depicted on Schedule A attached hereto (the "Signage Easement Area") for the purpose of installing and

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maintaining any and all signage deemed necessary or desirable by Grantee to identify and advertise the occupants of Grantee's Parcel and/or the business being conducted thereon, provided that any such signage shall otherwise comply with applicable law and is approved by Grantor, which approval shall not be unreasonably withheld, conditioned or delayed, together with the right to cross Grantor's Parcel at any and all times to access the Signage Easement Area; and

(C) A perpetual easement for the benefit of Grantee's Parcel over, across, upon and through that portion of Grantor's Remaining Parcels depicted on Schedule A (the "Utility Easement Area") for the purpose of installing, connecting and maintaining any and all aboveground and belowground utilities serving Grantee's Parcel through Grantor's Remaining Parcels to Highway 50, including, without limitation, gas, electric, water, sewer, telephone, internet and such other utilities as Grantee deems reasonably necessary, from time to time, for the operation of its business and use of Grantee's Parcel. In the event Grantee reasonably requires additional areas be added to the Utility Easement Area, then Grantee shall present the same to Grantor for Grantor's approval, such approval not to be unreasonably withheld, conditioned, or delayed; provided, however, that such additional Utility Easement Area shall not interfere with Grantor's use of Grantor's Remaining Parcels. The parties shall execute an amendment to this Agreement in the event Schedule A is so amended. All costs and damages associated with the installation, repair and replacement of the utilities will be borne by the Grantee, except to the extent caused or necessitated by Grantor or its contractor's, subcontractor's or agent's negligence or willful misconduct of Grantor.

3. **Construction, Repair and Maintenance Over Access Easement Area.** Grantee shall construct the Access Easement Area Improvements or other improvements permitted hereunder. The initial improvements within the Access Easement Area shall be constructed by Grantee at such time as a permanent building or commercial structures are constructed on the Grantee's Parcel, and such area within the Access Easement Area shall be improved with seven inch (7") concrete, two (2) panel pavement and associated concrete curbs and gutters creating a drive lane including curbs and gutters of a minimum of twenty-eight feet (28') in width as shown on Schedule A. The drive shall conform to all specifications of the City of Springfield, Nebraska. Additionally, subject to the terms of Section 5 below, Grantee shall have the continuing right to perform such maintenance, repair and replacement that it deems reasonably necessary for the ongoing maintenance of the Access Easement Area. In furtherance of the foregoing maintenance requirement, Grantor hereby grants to Grantee and its agents and contractors the Temporary Easement, which Temporary Easement shall be over, across, upon and through an additional distance of ten feet (10') extending outward from each of the boundary lines of the Access Easement Area.

4. **Emergency Access.** Grantor agrees that the Easements granted herein may be assigned and conveyed, in whole or in part, by Grantee, nonexclusively, to the City of Springfield or any other governmental or quasi-governmental body as an emergency access easement or easements for all purposes required by such body.

5. **Cost of Improvement and Maintenance; Obstructions; Taxes.**

(A) **Improvement and Maintenance of Access Easement Area.** The cost and expense

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of the installation, construction, maintenance and repair of the road or driveway and any other improvements made by Grantee upon or within the Access Easement Area (including, without limitation, the Access Easement Area Improvements), which improvements may include, but not be limited to, landscaping, signage, drainage and lighting, shall be shared by Grantor and Grantee in the following proportion: Grantor: 52% and Grantee 48% (the "Proportionate Share"). The parties acknowledge and agree that the costs related to such improvements are as detailed on Schedule B attached hereto, subject to modification as reasonably agreed to by the parties. Grantee shall be responsible for completing all work and shall be reimbursed for such work in accordance with the procedure set forth in Section 5(B) below. For the avoidance of doubt, the parties agree that Grantee, in its reasonable judgment, shall determine from time to time what improvements, repairs, replacements, or maintenance is necessary or desirable with respect to the Access Easement Area.

(B) Reimbursement Procedures. Within thirty (30) days of request for same, which request shall include evidence of full and complete payment and lien waivers from Grantee's contractors and subcontractors for the work done in connection with the Access Easement Area Improvements, Grantor shall reimburse Grantee for Grantor's Proportionate Share of all costs incurred by Grantee in connection with the construction of the improvements and ongoing maintenance of the Access Easement Area (including, without limitation, the Access Easement Area Improvements). In the event any requested amount shall be disputed by Grantor, Grantor shall reimburse Grantee for the amount requested, and the parties shall reasonably cooperate to reach a satisfactory resolution of the disputed amount.

(C) Obstructions. Grantor or Grantee shall not cause or permit to exist any obstructions or barriers of any kind on or above the Access Easement Area which would result in the blockage or impairment of Grantor's or Grantee's ingress and egress to and from Highway 50 and the Parcels, including, but not limited to, truck parking for deliveries.

(D) Improvement and Maintenance of Signage Easement Area and Utility Easement Area. The cost and expense of installing and maintaining Grantee's signage and other improvements existing or created upon or within the Signage Easement Area (whether required by any governmental authority having jurisdiction or otherwise) shall be the obligation and responsibility of Grantee. Additionally, Grantee shall bear any and all costs for the maintenance, repair, replacement and/or removal required or performed on the Utility Easement Area in furtherance of the rights granted to Grantee herein under the Utility Easement.

(E) Public Sanitary Sewer/Water. Grantee agrees to reimburse Grantor for Grantee's Proportionate Share of the hard costs associated with the installation of any public sanitary sewer service servicing the Parcels; provided, however, that Grantee's obligation to reimburse Grantor shall only be applicable in the event connection to the public sanitary sewer is elected by Grantee or required by the applicable governmental authority.

(F) Relocation of Utilities. Grantor shall have the right, at any time, and from time to time, to relocate any such utility easements then located on Grantor's Remaining Parcels on the conditions that: (i) such right of relocation will be exercisable only after thirty (30) days' prior written notice of the intention to relocate has been given to all owners using the easements to be relocated or whose Parcels are otherwise affected by the relocation; (ii) such relocation, without

the prior consent of the owners of Parcels benefitted by the subject utility easement, will not interrupt, during business hours, any sewer or utility service to the improvements then located on the Parcels benefitted by the subject utility easement; (iii) such relocation will not materially reduce or impair the usefulness or function of the easements to be relocated; and (iv) all costs and damages reasonably incurred by the owner of Grantor's Remaining Parcels as a direct result of such relocation will be borne such owner.

6. **Rights and Obligations of Lenders and Lienors.** Any mortgage or lien on Grantor's Remaining Parcels, and the rights of any assignee or successor in interest of a mortgagee holding such a mortgage or lienor holding such lien, shall be subject and subordinate to the terms and conditions of this Agreement.

7. **Expansion or Partition.** The parties agree that in the event any of the Parcels is expanded by ownership, control of the parties or agreement with a third party or is otherwise partitioned or subdivided, all of the provisions of this Agreement shall apply to and burden or benefit such expanded, partitioned and/or subdivided area, as applicable.

8. **Breach; Self-Help.** In the event of breach or threatened breach of this Agreement, any or all record owners of the Parcels or their respective mortgagees, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, including, without limitation the right to seek injunctive relief, in addition to any other remedy at law or in equity. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for out-of-pocket attorneys' fees and expenses. If any party (the "Defaulting Party") shall fail to perform any obligation of the Defaulting Party under this Agreement for ten (10) days after written notice of such failure given to the Defaulting Party by the other party (the "Non-Defaulting Party"), the Non-Defaulting Party shall have the right but not the obligation to enter upon such portions of the Parcel owned by the Defaulting Party (if required for such cure) as may be reasonably necessary and perform such obligation unless the Defaulting Party has commenced to cure such breach within the above-referenced ten (10) day cure period and is diligently pursuing said cure through completion. All costs incurred by the Non-Defaulting Party upon such performance shall be paid by the Defaulting Party to the Non-Defaulting Party, together with interest thereon computed at a rate per annum equal to the "prime rate" from time to time as set forth in the "Money Rates" section of The Wall Street Journal. The self-help rights of each party set forth in this Section are in addition to and not in substitution for (and do not limit) the rights to institute proceedings as set forth in this Section. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorney' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid; provided however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens, mortgages, or other encumbrances recorded prior to the date of such Assessment Lien and (iii) all leases entered into, whether or not recorded, prior to the date of such Assessment Lien. All liens recorded subsequent to the date such Assessment Lien is recorded in the records of Sarpy County, Nebraska shall be junior and subordinate to that Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of such

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Assessment Lien was recorded, the party recording same shall record an appropriate release of such Assessment Lien.

9. **Release From Liability.** Any person acquiring fee title to any Parcel or any portion thereof, shall be bound by this Agreement only as to the Parcel or portion of the Parcel acquired by such person and shall be liable for all obligations then existing or hereafter arising under this Agreement. Any Owner hereunder as of the date such Owner conveys their Parcel to a successor owner shall be released of any liability with respect thereto arising after the date of any conveyance to a new owner.

10. **Indemnification.** Grantor and Grantee shall protect, indemnify and save the other party and such parties' employees, agents, contractors, invitees, lessees, sublessees or licensees from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from injury to persons or damage to property on the Access Easement Area, Signage Easement Area, and Utility Easement Area arising from an act or negligence or willful misconduct of the indemnifying party or its employees, agents, contractors, invitees, lessees, sublessees or licensees, but only to the extent that all such obligations, liabilities, costs, damages, claims and are not covered by a collectible insurance policy and are not caused by the negligent or willful misconduct of the non-indemnifying party or its employees, agents, contractors, invitees, lessees, sublessees or licensees

11. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns, including any mortgagee or the successor or assigns of any such mortgagee but only after it has foreclosed on any Parcel. The singular number includes the plural and the masculine gender includes the feminine and neuter as appropriate. Further, any reference to "Grantor" herein shall mean the then-current owner of Grantor's Remaining Parcels or the relevant portions thereof, and any reference to "Grantee" herein shall mean the then-current owner of Grantee's Parcel or any portion thereof.

12. **Notices.** All notices under this Agreement shall be in writing and shall be delivered certified mail, return receipt requested, addressed to a party at the address set forth in the introductory recital hereto or in any subsequent deed conveying any Parcel to a third party until such time as a party notifies the other in writing of a new address.

13. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter herein. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document by the owners of Grantor's Remaining Parcels and Grantee's Parcel, or any of their respective heirs, representatives and/or assigns. This Agreement shall be interpreted according to the laws of the State of Nebraska and

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may be signed in counterparts, any one of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument. The invalidity of any provision of this Agreement shall not affect the remaining provisions. One or more waivers of a default shall not be deemed a waiver of a later default.

**[THE BALANCE OF THIS PAGE LEFT INTENTIONALLY BLANK –  
SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

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IN WITNESS WHEREOF, the undersigned have hereunto set their hand and seal as of the day first above written.

**GRANTOR:**

**B.H.I. INVESTMENT COMPANY,**  
a Nebraska corporation

By: *Gerald L. Torczon*  
Name: Gerald L. Torczon  
Title: President

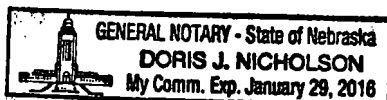
**GRANTEE:**

**CORNHUSKER DEVELOPMENT,**  
LLC, a Texas limited liability company

By: \_\_\_\_\_  
David Markwardt, Manager

STATE OF NEBRASKA                    )  
  : ss.  
COUNTY OF DOUGLAS                )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of September, 2012, by Gerald L. Torczon, President of B.H.I. Investment Company, a Nebraska corporation, on behalf of the corporation, as its and his free act and deed.



*Doris J. Nicholson*  
Notary Public  
My Commission Expires:

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**IN WITNESS WHEREOF**, the undersigned have hereunto set their hand and seal as of the day first above written.

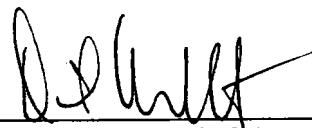
**GRANTOR:**

**B.H.I. INVESTMENT COMPANY,**  
a Nebraska corporation

By: \_\_\_\_\_  
Name: Gerald L. Torczon  
Title: President

**GRANTEE:**

**CORNHUSKER DEVELOPMENT,**  
LLC, a Texas limited liability company

By:  \_\_\_\_\_  
David Markwardt, Manager

STATE OF NEBRASKA                    )  
  : ss.  
COUNTY OF DOUGLAS                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2012, by Gerald L. Torczon, President of B.H.I. Investment Company, a Nebraska corporation, on behalf of the corporation, as its and his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



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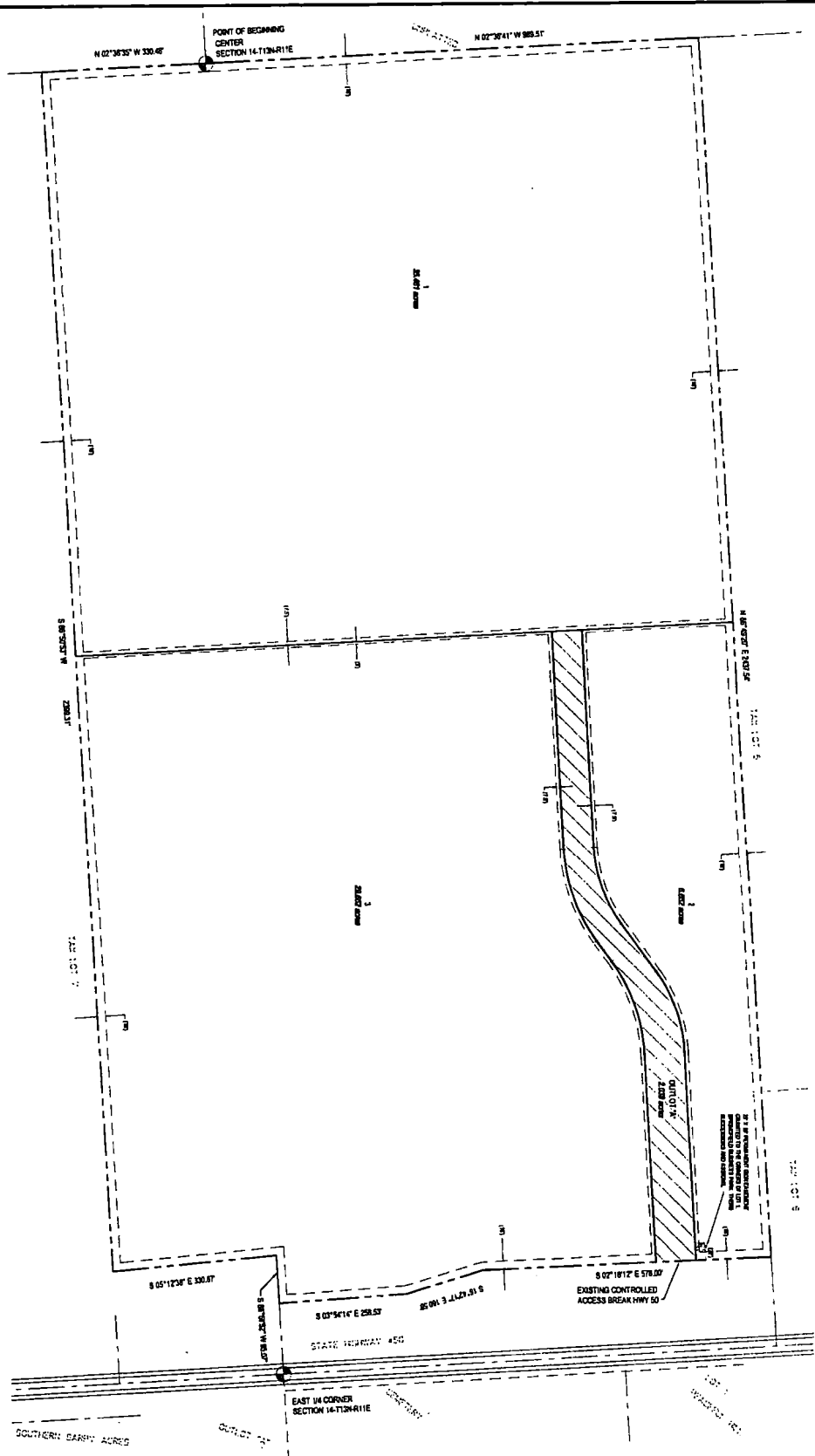
 **MINDY L. MEANS**  
Notary Public, State of Texas  
My Commission Exp. 08-11-2015

M. J. L. Means  
Commissioner of the Superior Court  
Notary Public  
My Commission Expires:

SCHEDULE A

Map of Easement Areas

ATTACHED



**LEGEND**

- EASEMENT LINE
- RIGHT-OF-WAY LINE
- LOT LINE
- QUANTITY EXCEEDED BY MORE THAN 10%
- QUANTITY EXCEEDED BY MORE THAN 10%
- QUANTITY EXCEEDED BY MORE THAN 10%
- QUANTITY EXCEEDED BY MORE THAN 10%
- QUANTITY EXCEEDED BY MORE THAN 10%
- QUANTITY EXCEEDED BY MORE THAN 10%
- QUANTITY EXCEEDED BY MORE THAN 10%

1" = 100'

## SCHEDULE B

Improvement Cost Breakdown

|                    |           |             |               |
|--------------------|-----------|-------------|---------------|
| Concrete paving    | 47,942 SF | 3.90 SF     | \$ 186,973.00 |
| Curb               | 2,738 LF  | 5.00 LF     | \$ 13,690.00  |
| Storm water pipe   | 752 LF    | 58.00 LF    | \$ 43,616.00  |
| Catch Basins       | 4 EA      | 4,000.00 EA | \$ 16,000.00  |
| Pavement Marking   | LS        | 3,500.00 LS | \$ 3,500.00   |
| PRIVATE ROAD TOTAL |           |             | \$ 263,779.00 |