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2016-01220

**RECORDER MARK BRANDENBURG
POTTAWATTAMIE COUNTY, IA
FILE TIME: 01/29/2016 11:19:14 AM
REC: 45.00AUD: T TAX:
RMA: 1.00ECM: 1.00**

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**AMENDED AND RESTATED
INGRESS/EGRESS AND PARKING EASEMENT AGREEMENT**

This Amended and Restated Ingress/Egress and Parking Easement Agreement (this "Easement Agreement"), is made and entered into as of this 20th day of January, 2016, by and between Reuben Investments III, LLC, a Nebraska limited liability company ("Grantor") and Lake Resources, LLC, an Iowa limited liability company ("Grantee").

PRELIMINARY STATEMENT

WHEREAS, Grantor is the owner of the real estate legally described in Exhibit "A", attached hereto and incorporated herein by reference ("Grantor's Property") and Grantee is the owner of real estate legally described in Exhibit "B", attached hereto and incorporated herein by reference ("Grantee's Property"), both of which are located in Pottawattamie County, Iowa;

WHEREAS, Grantor's Property and Grantee's Property share a common boundary on the north side of Grantor's Property and the south side of Grantee's Property;

WHEREAS, Grantor's Property and Grantee's Property are subject to an Ingress/Egress and Parking Easement dated September 10, 2005 and recorded with the Pottawattamie County Recorder at Book 106, Page 1759 on October 17, 2005, as amended by the Modification of the Ingress/Egress Parking Easement dated November 26, 2008 and recorded with the Pottawattamie County Recorder as Instrument No. 2008-016504 on December 2, 2008 (as amended, the "Original Easement"); and

WHEREAS, Grantor and Grantee being the successors in ownership of the real estate that is the subject of the Original Easement have determined that it is in the best interests of Grantor and Grantee to amend and restate the Original Easement to clarify the terms thereof and to provide for easement rights and obligations in line with the intended and actual use of the real estate.

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

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Grant of Easement. Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey unto Grantee perpetual easements for the benefit of Grantee's Property, as follows (the "Granted Easements"): (i) a non-exclusive easement for ingress and egress over, on, through and across that part of the Grantor's Property depicted and legally described on Exhibit "C" attached hereto (the "Ingress and Egress Easement Area"); (ii) an exclusive easement for Grantee's use as a truck loading, unloading, staging and temporary parking area, over, on, through and across that portion of the Ingress and Egress Easement Area designated on Exhibit "C" attached hereto as the "North Staging Area", such easements being granted subject to the further terms and conditions as set forth in this Easement Agreement.

2. Easement Limitations and Restrictions. Grantee acknowledges that the Granted Easements shall not be deemed exclusive to Grantee, Grantor hereby reserving unto itself all remaining ownership rights in and to the Ingress and Egress Easement Area, including the exclusive right to use that part of the Ingress and Egress Easement Area designated on Exhibit "C" as the "South Staging Area" for truck loading, unloading, staging and temporary parking. Grantor and Grantee acknowledge and agree that the Ingress and Egress Easement Area is the primary means of ingress and egress for trucks and other vehicles loading and unloading at Grantor's Property and Grantee's Property. No fences, barriers or other structures shall be constructed over, on or across the Ingress and Egress Easement Area and no parking of vehicles shall be permitted within those portions of the Ingress and Egress Easement Area outside of the North Staging Area and South Staging Area. For purposes of clarification as to the purpose and intended use of the North Staging Area and South Staging Area, Grantor and Grantee acknowledge there will be semi and other long bed truck traffic and loading and unloading to the loading docks and buildings situated on Grantor's Property and Grantee's Property during which time such trucks will be parked within such areas.

3. Change of Grade Prohibited. Grantor shall not change the grade, elevation or contour of any part of the Ingress and Egress Easement Area without obtaining the prior written consent of the owner of the Grantee's Property.

4. Maintenance. The owner of Grantor's Property shall provide all maintenance, repair and replacement of the Ingress and Egress Easement Area at its sole cost and expense. The maintenance, repair and replacement responsibilities for the Ingress and Egress Easement Area 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 and repair and replacing any necessary and appropriate directional signs, markers and lines; and
- d. Operating, keeping and repairing 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 applicable to the Ingress and Egress Easement Area.

- e. In the event that the owner of Grantor's Property fails to maintain, repair and replace the Ingress and Egress Easement Area as required by this Section 4 following thirty (30) days written notice from the owner of Grantee's Property (except in case of emergency, in which case 48 hours actual notice shall be required), the owner of Grantee's Property shall have the right but not the obligation to take such reasonable action as may be necessary to perform the obligations of the owner of Grantor's Property. In the event the owner of Grantee's Property takes such action, the owner of the Grantee's Property shall invoice the owner of the Grantor's Property for reasonable expenses incurred by the owner of Grantee's Property which shall be due and payable not later than thirty (30) days from receipt of invoice. In the event that the owner of Grantor's Property shall fail to timely remit payment to the owner of Grantee's Property, the owner of Grantor's Property shall pay a late charge equal to 15% of the amount due and the owner of Grantee's Property shall have a lien on Grantor's Property for such unpaid amounts, may file a notice of lien liability and may exercise such rights and remedies as available under applicable law, including foreclosure of its lien.
5. Easement Benefit. This Easement Agreement and the Granted Easements shall be for the benefit of Grantor, Grantee, and their respective successors, assigns, tenants, permittees and licensees.
6. Granted Easements Run with the Land. This Easement Agreement and the Granted Easements shall run with the land and shall be binding upon the Grantor and Grantee and their respective successors and assigns.
7. Amendment and Restatement. This Easement Agreement shall have the effect of terminating and replacing the Original Easement which shall cease to be in effect on the execution hereof and recording of this Easement Agreement in the Pottawattamie County, Iowa Recorder's Office.
8. Amendment. This Easement Agreement may be modified, amended or terminated by an instrument signed by the owners of Grantor's Property and Grantee's Property, any such modification, amendment or termination to be effective only upon recording of the instruments with the Pottawattamie County, Iowa Recorder's Office.
9. Miscellaneous. This Agreement shall be construed and interpreted in accordance with the laws of the State of Iowa. Any invalidation of any covenants by judgment or court order shall no way effect any of the other provisions hereof, which shall remain in full force and effect. Time is of the essence for purposes of this Easement Agreement.
10. No Partnership. None of the terms or provisions of this Easement Agreement are intended to create a partnership between or among the owners and their respective businesses or otherwise, nor shall this Easement Agreement cause them to be considered joint venturers or members of any joint enterprise. Each owner shall be considered a separate owner, and no party shall have the right to act as an agent for the other owner, unless expressly authorized to do so herein or by separate written instrument signed by the owner to be charged.
11. No Waiver. The failure of any owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which the owner may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants and conditions. No waiver of any owner of any default under this Easement Agreement shall be effective or binding on such owner unless made in writing by such owner and no such waiver shall be implied from any omission by owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other

period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Easement Agreement shall not be deemed a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Easement Agreement.

12. Entire Agreement. This Easement Agreement constitutes the entire agreement between parties hereto with respect to the subject matter contained herein. Each of the parties hereto do not rely upon any statement, promise or representation not herein expressed, and this Easement 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 Easement Agreement.

13. Counterparts. This Easement 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.

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Signature Page to Follow]

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

GRANTOR:

REUBEN INVESTMENTS III, LLC, a Nebraska limited liability company

By: 
Michael P. Sortino, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 28 day of January, 2016, by Michael P. Sortino, as Manager of Reuben Investments III, LLC, a Nebraska limited liability company, for and on behalf of the company.


Notary Public

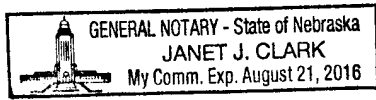


Exhibit "A"
Grantor's Property

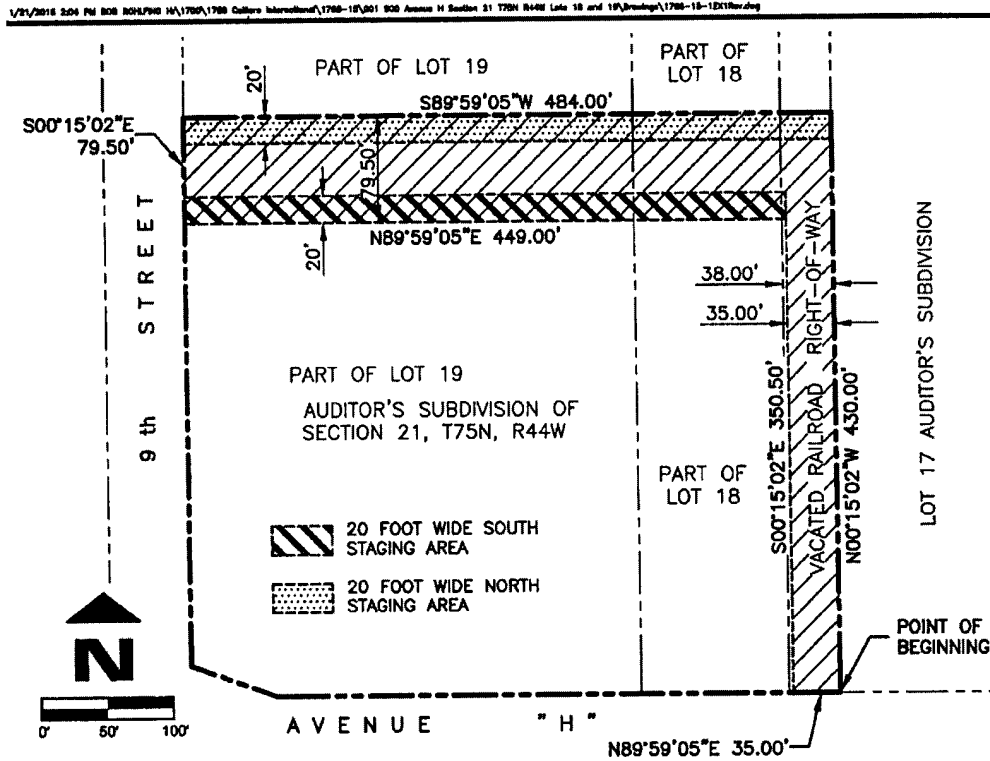
Lots 18 and 19, Auditor's Subdivision of Section 21, Township 75 North, Range 44 West of the 5th P.M., Pottawattamie County, Iowa, except the North 170.00 feet thereof, together with the 38.00 feet wide railroad right-of-way adjacent thereto on the east except a right-of-way acquisition over that part of said Lot 19, described as follows:

Beginning at a capped 5/8" rebar stamped 8891 at the Southwest corner of said Lot 19, said point being the intersection of the North right-of-way line of Avenue "H" and the East right-of-way line of 9th Street; thence North 02°56'14" West (bearings assumed), for 23.02 feet, on the West line of said Lot 19 and the East right-of-way line of 9th Street; thence South 72°49'23" East, for 67.84 feet, to the South line of said Lot 19 and North right-of-way of Avenue "H"; thence South 87°20'16" West, for 63.70 feet, to the point of beginning.

Exhibit "B"
Grantee's Property

The North 170.00 feet of Lots 18 and 19, in Auditor's Subdivision of Section 21, Township 75 North, Range 44 West, in the City of Carter Lake, Pottawattamie County, Iowa, together with the vacated Railroad Right-of-Way laying adjacent to the North 170.00 feet of Lot 18.

Exhibit "C" Easement Area



LEGAL DESCRIPTION

THE NORTH 79.50 FEET OF THE SOUTH 430.00 FEET OF LOTS 18 AND 19, AUDITORS SUBDIVISION OF SECTION 21, T75N, R44W OF THE 5TH P.M., POTTAWATTAMIE COUNTY, IOWA, TOGETHER WITH PART OF THE 38.00 FOOT WIDE VACATED RAILROAD RIGHT-OF-WAY ADJACENT THERETO ON THE EAST, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 18 AND THE EAST LINE OF THE 38.00 FOOT WIDE VACATED RAILROAD RIGHT-OF-WAY;

THENCE N00°15'02"W 430.00 FEET ON THE EAST LINE OF THE 38.00 FOOT WIDE VACATED RAILROAD RIGHT-OF-WAY;

THENCE S89°59'05"W 484.00 FEET ON A LINE 430.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINES OF SAID LOTS 18 AND 19 AND THEIR EASTERLY EXTENSION TO THE WEST LINE OF SAID LOT 19;

THENCE S00°15'02"E 79.50 FEET ON THE WEST LINE OF SAID LOT 19;

THENCE N89°59'05"E 449.00 FEET ON A LINE 350.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINES OF SAID LOTS 18 AND 19 AND THEIR EASTERLY EXTENSION;

THENCE S00°15'02"E 350.50 FEET ON A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE 38.00 FOOT WIDE VACATED RAILROAD RIGHT-OF-WAY TO THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 18;

THENCE N89°59'05"E 35.00 FEET ON THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 18 TO THE POINT OF BEGINNING.

 TD2 engineering & surveying	Job Number: 1768-15-1(EX1Rev) thompson, dreessen & dörner, Inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.6888 td2co.com	Date: JANUARY 19, 2016 Drawn By: RJR Reviewed By: DHN Revision Date: 01/21/2016	EXHIBIT "C"
			Book Page