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**2016-01221**

**RECORDER MARK BRANDENBURG  
POTTAWATTAMIE COUNTY, IA  
FILE TIME: 01/29/2016 11:19:15 AM  
REC: 35.00AUD: T TAX:  
RMA: 1.00ECM: 1.00**

R FEE \$ 35.00 RMA \$ 1.00

A FEE \$ \_\_\_\_\_ ECOM \$ 1.00

T TAX \$ \_\_\_\_\_

**STORM WATER DRAINAGE AND DETENTION EASEMENT AGREEMENT**

This Storm Water Drainage and Detention Easement Agreement (this "Agreement") is made and entered into as of the 21<sup>st</sup> day of January, 2016, by and between Reuben Investments III, LLC, a Nebraska limited liability company ("Reuben") and Lake Resources, LLC, an Iowa limited liability company ("Lake").

**PRELIMINARY STATEMENT:**

WHEREAS, Reuben is the owner of the real estate legally described in Exhibit "A" attached hereto and incorporated herein by reference ("Reuben Property") and Lake is the owner of real estate legally described in Exhibit "B", attached hereto and incorporated herein by reference ("Lake Property");

WHEREAS, the Reuben Property and the Lake Property share a common boundary on the north side of the Reuben Property and the south side of the Lake Property;

WHEREAS, there is situated on the Lake Property an area that is unimproved that is utilized for storm water drainage and detention, such area being generally depicted on Exhibit "C" attached hereto and being referenced herein as the "Storm Water Detention Area"; and

WHEREAS, the Reuben Property benefits from the Storm Water Detention Area as storm water from parking and drive areas on the Reuben Property may drain in part to the Storm Water Detention Area; and

WHEREAS, Lake has agreed to grant to Reuben a perpetual non-exclusive easement to use the Storm Water Detention Area for storm water drainage and Reuben has agreed to share in the expense of "Current Drainage Improvements", as defined in this Agreement and future maintenance of the Storm Water Detention Area as described in this Agreement.

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

1. Grant of Easement. Lake, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys unto Reuben for the benefit of the Reuben Property, a perpetual non-exclusive easement for storm water drainage from the Reuben

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

Property on and across the Storm Water Drainage Area (the "Drainage Easement"), such Drainage Easement being granted subject to the further terms and conditions as set forth in this Agreement.

2. Change of Grade to Reuben Property Prohibited. Reuben shall not change the grade, elevation of contour of any part of the Reuben Property in such a manner that will materially increase the storm water drainage flows from the Reuben Property to the Storm Water Detention Area without the prior written consent of the owner of the Lake Property.

3. Maintenance of Storm Water Drainage Area. The owner of the Lake Property is intending to presently construct improvements to the Storm Water Detention Area that will enhance the detention and retention capabilities of the Storm Water Detention Area the "Current Drainage Improvements". Concurrently with the execution of this Agreement and as consideration for the agreements of Lake, the owner of the Reuben Property has made a one-time payment to Lake as a contribution to the Current Drainage Improvements, and for future expenditures by the owner of the Lake Property to maintain, repair and replace the Storm Water Detention Area, it being understood and agreed that the Reuben Property and the owner thereof shall have no future monetary obligations for the maintenance, repair and replacement of the Storm Water Detention Area, it being the responsibility of the owner of the Lake Property to maintain the Storm Water Detention Area in good condition reasonably suitable for its intended purpose of storm water detention and retention.

4. Grant of Easement Runs with the Land. This Agreement and the Drainage Easement shall run with the land and shall be binding upon Lake and Reuben and their respective successors and assigns in ownership of the Lake Property and Reuben Property.

5. Amendment. This Agreement may be modified, amended, or terminated by an instrument signed by the owners of the Lake Property and Reuben Property, any such modification, amendment or termination be effective only upon recording of the instruments with the Pottawatomie County, Iowa Recorder's Office. This Agreement shall automatically terminate in the event that the owner of the Lake Property shall at any time in the future improve the Storm Water Drainage Area in such a manner that the Storm Water Drainage Area no longer provides storm water detention or retention that benefits the Reuben Property.

6. 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 Agreement.

7. No Partnership. None of the terms or provisions of this Agreement are intended to create a partnership between or among the owners and their respective businesses or otherwise, nor shall this 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.

8. 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 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 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 Agreement.

9. Entire Agreement. This 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 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 Agreement.

10. Counterparts. 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.

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

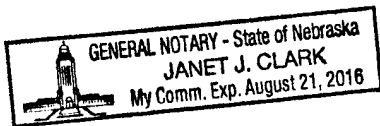
**REUBEN:**


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"**  
**Reuben Property**

Lots 18 and 19, Auditor's Subdivision of Section 21, Township 75 North, Range 44 West of the 5<sup>th</sup> 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:

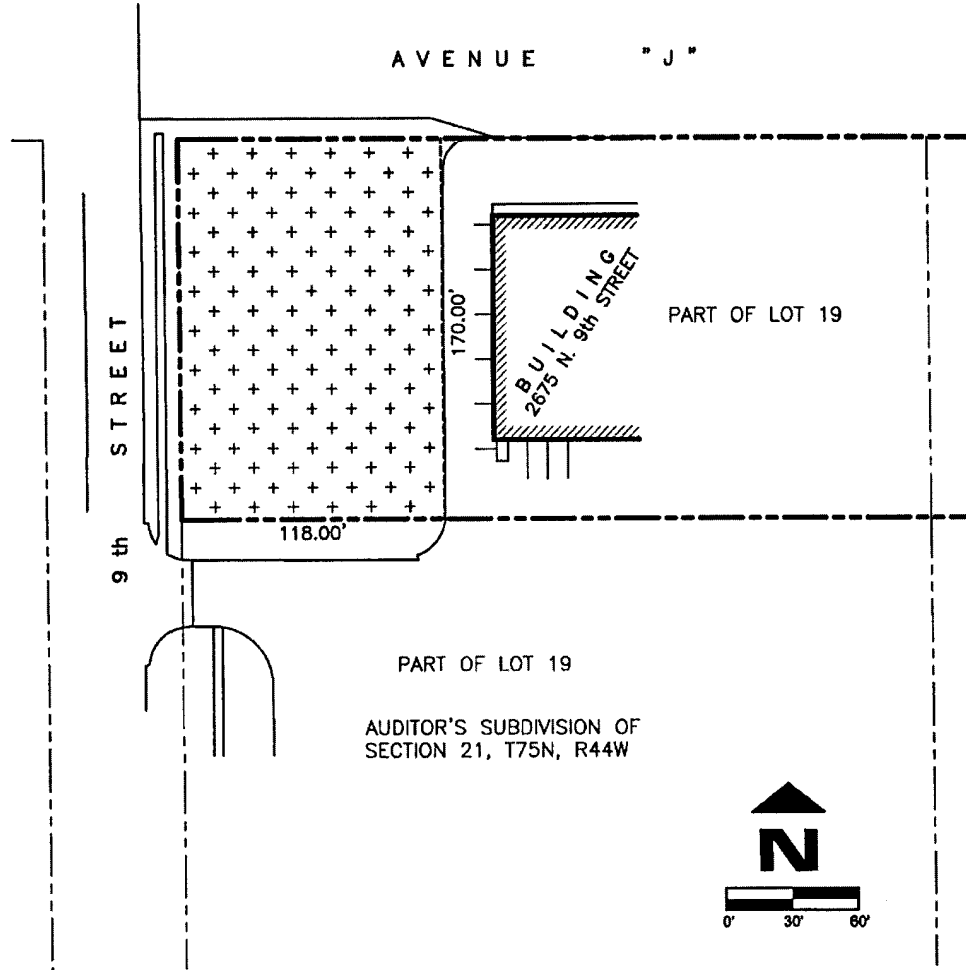
Beginning at a capped 5/8" rebar stamped 8891 at the Southwest corner of said Lot 19, said point being the intersection of the North right-of-way line of Avenue "H" and the East right-of-way line of 9<sup>th</sup> Street; thence North 02°56'14" West (bearings assumed), for 23.02 feet, on the West line of said Lot 19 and the East right-of-way line of 9<sup>th</sup> 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"  
Lake'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**

\\21\2016 200 PM 608 808\740 N\1768\1768 Collins International\1768-15\01 600 Issue H Series 21 T75N R44W Lot 18 and 19\Drawings\1768-15-EX3.dwg



**LEGAL DESCRIPTION**

THE NORTH 170.00 FEET OF THE WEST 118.00 FEET OF LOT 19, AUDITORS SUBDIVISION OF SECTION 21, T75N, R44W OF THE 5TH P.M., POTTAWATTAMIE COUNTY, IOWA.

	Job Number: 1768-15-1(EX3)	Date: JANUARY 19, 2016	<b>EXHIBIT " C "</b>
	thompson, dreesen & dorner, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com	Drawn By: RJR Reviewed By: DHN Revision Date:	