



MISC Inst. # 2018047951, Pg: 1 of 11 Rec Date: 06/20/2018 15:04:44.537
 Fee Received: \$70.00 By: CC
 Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

TEMPORARY GRADING AND CONSTRUCTION EASEMENT

This Temporary Grading and Construction Easement (this "**Easement Agreement**") is made as of the 9 day of April, 2018, by and between Thomas L. Lund and Jean Lund, husband and wife ("**Grantor**"), and St. Wenceslaus Church of Omaha, a Nebraska non-profit corporation ("**Grantee**").

Preliminary Statement

Grantor is the owner of certain real property situated in Douglas County, Nebraska, and legally described on **Exhibit "A"** attached hereto and incorporated herein by this reference (herein the "**Grantor Property**").

Grantee is the owner of certain real property situated in Douglas County, Nebraska, and legally described on **Exhibit "B"** attached hereto and incorporated herein by this reference (herein the "**Grantee Property**").

The Grantor Property and Grantee Property share a common boundary along the north side of the Grantor Property and the south side of the Grantee Property (the "**Common Boundary**").

Grantee intends to improve the Grantee Property with a new building (the "**Proposed Improvement**"). As part of the construction of the Proposed Improvement, Grantor desires to secure a temporary easement to grade and fill on, across and under portions of the Grantor Property as generally set forth on **Exhibit "C"** and generally depicted on **Exhibit "C-1"**, both of which are attached hereto and incorporated herein by this reference (the "**Grading Work**").

As such, Grantee desires to secure from Grantor, and Grantor desires to grant to Grantee, a temporary grading and construction easement to conduct the "**Easement Activities**", as hereinafter defined (the "**Grading and Construction Easement**").

As consideration for Grantor granting the Grading and Construction Easement to Grantee pursuant to this Easement Agreement, Grantee agrees to: (i) pay Grantor the sum of Six Thousand and No/100 Dollars (\$6,000.00), reduced by 50% of the cost of the Boundary Fence (as defined on Exhibit C) shown on Exhibit C-1; and (ii) construct certain improvements to the

Return to:
 Patrick M. Flood
 Pansing Hogan Ernst & Bachman, LLP
 10250 Regency Circle, Suite 300
 Omaha, Nebraska 68114

PANSI

Grantor Property which are memorialized herein on **Exhibit "D"** attached hereto and incorporated herein by this reference (the "**Grantor Improvements**").

NOW, THEREFORE, in consideration of the foregoing Preliminary Statement, which is incorporated herein by this reference, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grantor hereby grants and conveys to Grantee and its agents, contractors and subcontractors, the Grading and Construction Easement over and through the Grantor Property for the purposes of conducting the Easement Activities. Upon complete execution of this Easement Agreement, and weather permitting, said Easement Activities shall commence in a commercially reasonable manner and continue in a diligent and good and workmanlike manner until completion of the Easement Activities.

2. For purposes of this Easement Agreement, the term "**Easement Activities**" shall refer to the Grading Work and the Grantor Improvements, and such actions or activities reasonably related thereto that are necessary to complete either of the foregoing.

3. Grantor and Grantee agree that this Easement Agreement may be modified and amended only by written instrument executed by Grantor and Grantee or their respective successors and assigns. The Grading and Construction Easement shall continue until the earlier to occur of completion of the Easement Activities or January 1, 2019.

4. Grantee covenants and agrees that it will undertake the Easement Activities at its sole expense; that it will promptly pay all bills pertaining to such Easement Activities and will not permit any liens to be filed against the Grantor Property as a result or consequence of such Easement Activities.

5. Grantee agrees to remediate damage caused to the Grantor Property by Grantee's Easement Activities so that any change in grade or elevation will not impair or interfere with drainage patterns of the Grantor Property.

6. The Grading and Construction Easement granted herein shall run with the land, inure to the benefit of, and be binding upon the Grantor and Grantee, the owners of the Grantor Property and Grantee Property, and each of their respective heirs, personal representatives, successors and assigns.

7. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Easement Agreement by reason of acts of terrorism or vandalism, strikes, lockouts, acts of God, failure of power, riots, war or other reason of like nature not the fault of the party delayed in performing its obligations hereunder, then performance of any such act shall be extended for a period equivalent to the period of such delay. No delay under this Section shall be effective unless and until the party asserting non-performance due to such circumstances shall have notified the other party in writing of the delay within ten (10) business days of the event giving rise to such delay.

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8. 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.

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

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Exhibit "A"
Legal Description – Grantor Property

Lot 127, Pacific Hollow, an addition to the city of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska.

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Exhibit "B"
Legal Description – Grantee Property

PART THE OF THE EAST HALF OF THE NORTHWEST QUARTER IN SECTION 26, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE SOUTH 03°12'49" EAST (BEARINGS REFERENCED TO THE NEBRASKA STATE PLANE COORDINATE SYSTEM) FOR 192.18 FEET ON THE WEST LINE OF SAID EAST HALF OF NORTHWEST QUARTER TO THE TRUE POINT OF BEGINNING; THENCE NORTH 86°47'11" EAST FOR 293.94 FEET; THENCE SOUTH 66°22'26" EAST FOR 160.95 FEET; THENCE ALONG A CURVE TO THE LEFT (HAVING A RADIUS OF 1035.00 FEET AND ALONG CHORD BEARING SOUTH 18°03'57" EAST FOR 385.26 FEET) FOR AN ARC LENGTH OF 387.52 FEET; THENCE NORTH 61°12'29" EAST FOR 10.00 FEET; THENCE ALONG A CURVE TO THE LEFT (HAVING A RADIUS OF 1025.00 FEET AND A LONG CHORD BEARING SOUTH 33°03'11" EAST FOR 152.32 FEET) FOR AN ARC LENGTH OF 152.46 FEET; THENCE SOUTH 37°18'51" EAST FOR 223.33 FEET; THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 275.00 FEET AND ALONG CHORD BEARING SOUTH 37°42'26" WEST FOR 531.31 FEET) FOR AN ARC LENGTH OF 720.15 FEET; THENCE ALONG A CURVE TO THE LEFT (HAVING A RADIUS OF 525.00 FEET AND ALONG CHORD BEARING NORTH 80°14'33" WEST FOR 235.68 FEET) FOR AN ARC LENGTH OF 237.71 FEET; THENCE SOUTH 86°47'11" WEST FOR 168.63 FEET TO SAID WEST LINE; THENCE NORTH 03°12'49" WEST FOR 1106.35 FEET TO THE POINT OF BEGINNING.

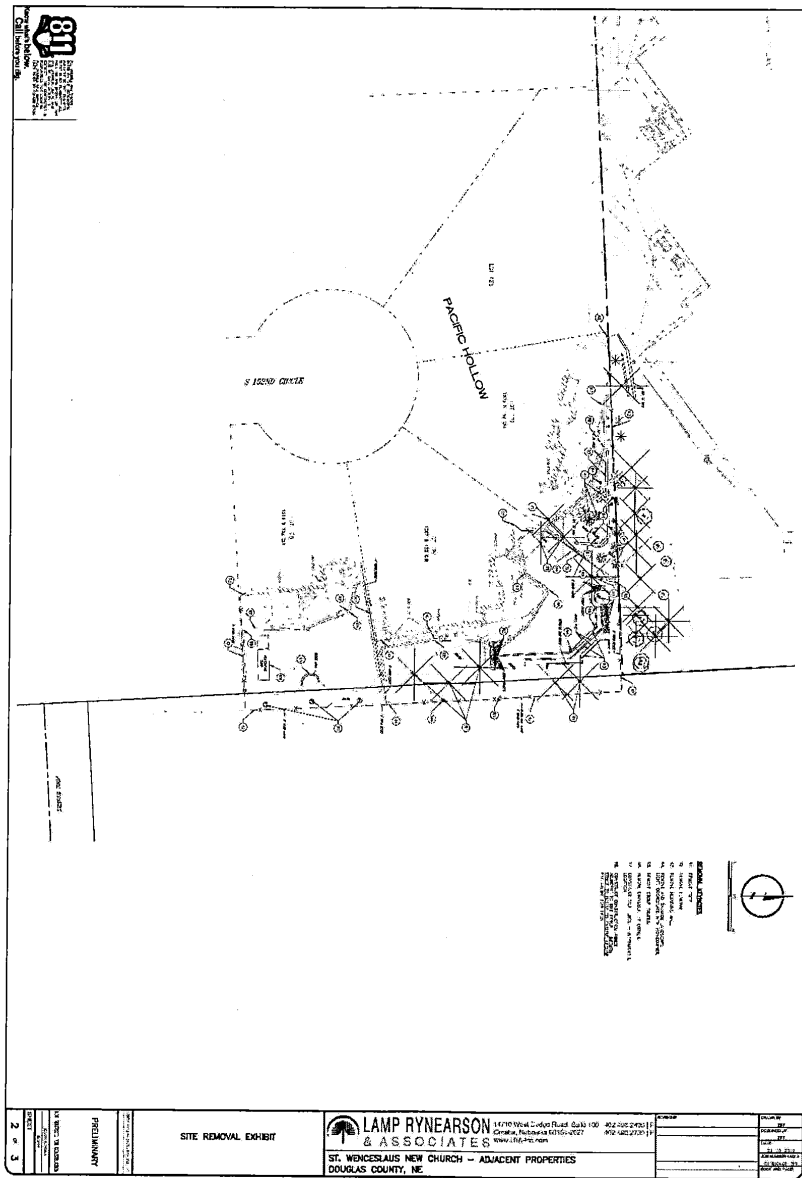
now known as lot 1 south farm

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Exhibit "C"
Grading Work

1. Removal of trees, landscaping and other improvements, including, without limitation the irrigation systems or portions thereof, and the upper retaining wall located near the northeast corner of the Grantor Property.
2. Removal of the fence, or portions thereof, located along the Common Boundary, to the extent necessary to complete the excavation work on Grantor Property (the "**Boundary Fence**").
3. Removal of the fence, or portions thereof, located between the Grantor Property and the property located immediately to the east of the Grantor Property, which is owned by James and Alyson Demman, as is necessary to complete the excavation work on Grantor Property (the "**East Fence**").
4. Temporary removal of OPPD transformer and pedestals for other utilities servicing the Grantor Property, if necessary (the "**Utility Pedestals**"). In the event it becomes necessary for Grantee to temporarily relocate any Utility Pedestals on the Grantor Property, Grantee shall provide Grantee advance written notice of such temporary relocation and shall, prior to any cessation of utility service, make arrangements for temporary service of said utility to be provided to Grantor Property. Grantee shall diligently work to minimize any interruption of utility services to the Grantor Property caused by or in connection with the Easement Activities.
5. Earthwork (excavation) at or around the northeast portion of the back half of the Grantor Property sufficient for purposes of constructing the Proposed Improvement.
6. Installation of a silt fence, and such additional erosion control measures as deemed necessary by Grantee's grading contractor, at perimeter of the excavation area.

Exhibit "C-1"



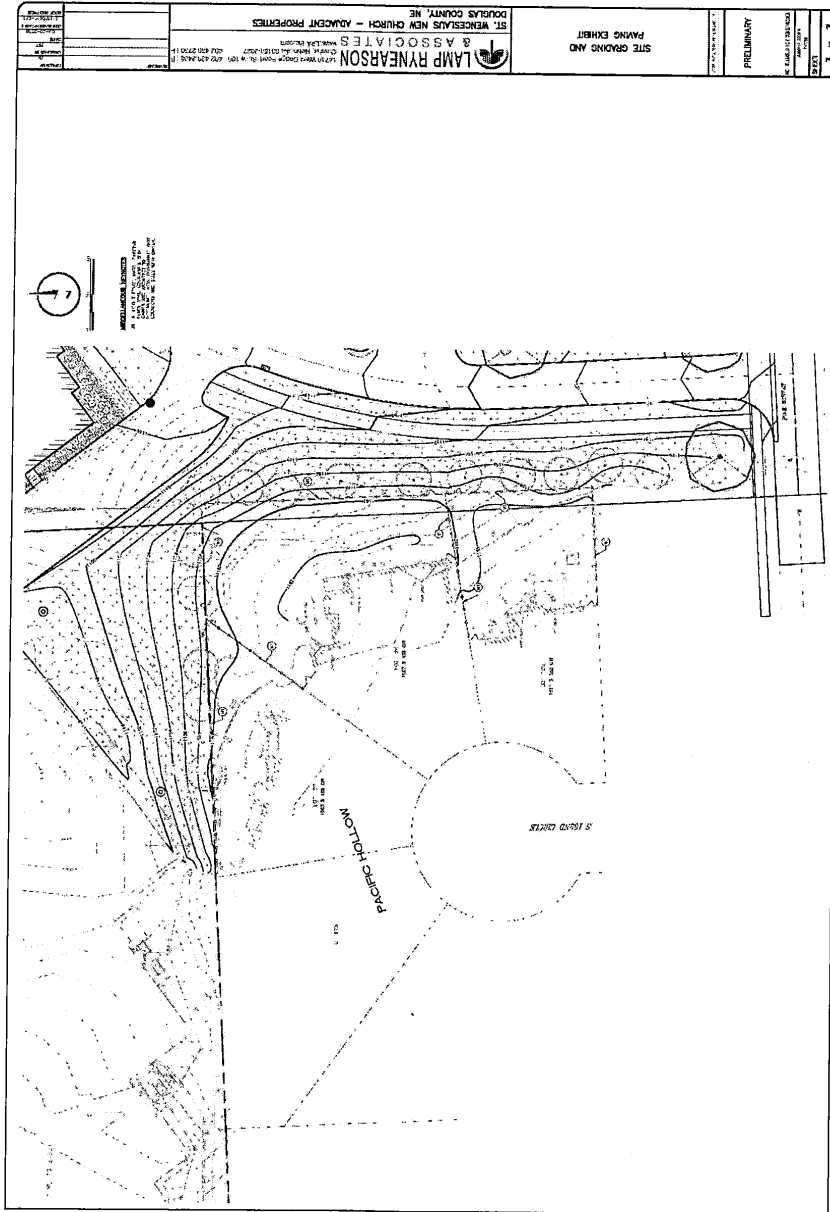


Exhibit "D"
The Grantor Improvements

1. Replace all portions of the Boundary Fence and East Fence removed by Grantee or its agents in connection with the Grading Work with a six (6) foot tall "board on board" privacy fence in the location of the fence removed pursuant to this Agreement.
2. Replace portions of the irrigation system on the Grantor Property, if any, removed by Grantee or its agents in connection with the Easement Activities. Grantor to approve layout of replacement irrigation systems.
3. Sod portions of the Grantor Property irreparably damaged by Grantee or its agents in connection with the Easement Activities.
4. Install landscaping on the north side of the Boundary Fence at a time convenient to the construction of the Proposed Improvement.