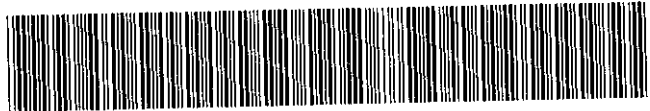


MISC 2003197856

RICHARD H. TANECH  
REGISTER OF DEEDS  
STATE OF NEBRASKA



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### EASEMENT AGREEMENT

This EASEMENT AGREEMENT is made and entered into this 2<sup>nd</sup> day of October, 2003, by and between RAIL CAR AMERICA, INC. d/b/a RAIL CAR NEBRASKA, a corporation ("Rail Car") and PHILLIPS REALTY, LLC, a Nebraska limited liability company ("Phillips").

### PRELIMINARY STATEMENT

Phillips is the owner of Lots 9, 10, 11 and 12 in Stockyards Business Park, a subdivision as platted and recorded in Douglas County, Nebraska (the "Phillips Property"). The Phillips Property is situated to the east of 30<sup>th</sup> Street and Edward (Babe) Gomez Avenue.

Rail Car is the owner of the property adjacent to the south and east of the Phillips Property (the "Rail Car Property"). The Rail Car Property includes the Easement Property (described below).

Rail Car has agreed to allow Phillips to install and use a concrete drive over a portion of the Rail Car Property, as depicted and legally described on Exhibit "A" to this EASEMENT AGREEMENT (the "Easement Property") for ingress and egress between Edward (Babe) Gomez Avenue and the Phillips Property.

Rail Car and Phillips have executed this EASEMENT AGREEMENT for the purpose of confirming their agreements in respect to the installation and use of the Easement Property.

NOW, THEREFORE, in consideration of the foregoing Preliminary Statement which is incorporated herein by reference, and other consideration, the receipt and sufficiency of which is hereby acknowledged, Rail Car and Phillips agree as follows:

1. **Easement to Construct and Maintain Drive.** Rail Car hereby grants and conveys to Phillips a non-exclusive perpetual easement over and upon the Easement Property and surrounding areas, for purposes of constructing, maintaining and improving the approach and drive over the Easement Property.

Return to:  
Thomas R. Pansing, Jr.  
Gaines Pansing & Hogan LLP  
10050 Regency Circle, Suite 200  
Omaha, NE 68114

*misc 7/5*

FEE 37.50 FB 35-37063  
BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP by [signature]  
DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

2. **Ingress and Egress and Access Agreement.** Rail Car hereby grants and conveys to Phillips a non-exclusive perpetual easement over and upon the Easement Property for the purposes of vehicular ingress, egress, passage and traffic upon, over, across and through the Easement Property for the purpose of providing access between Edward (Babe) Gomez Avenue and the Phillips Property.

3. **Permittees.** The easements granted in this EASEMENT AGREEMENT shall extend to "permittees" which shall include the agents, customers, invitees, licensees, employees, servants and contractors of Phillips and its successors in ownership of the Phillips Property.

4. **No Dedication.** Nothing in this EASEMENT AGREEMENT will be deemed to constitute a gift, grant or dedication of any portion of the Rail Car Property to the general public or for any public purpose whatsoever, it being the intention that this easement and license will be strictly limited in accordance with its terms, to the private use of Phillips and its permittees.

5. **Restrictions.** Except as necessary for maintenance and repair of the Easement Property, neither Phillips nor Rail Car, nor the permittees, shall permit parking of any vehicles on the Easement Property or any temporary or permanent obstruction of the Easement Property. Each of the parties agree to use their best efforts to assure that the Easement Property is kept free of obstruction in order to provide free and unimpeded flow of vehicular traffic over and across the Easement Property.

6. **Construction and Maintenance of the Drive on the Easement Property.** Phillips shall be solely responsible for removal of the existing pavement, construction and installation of an 8" PCC approach and the drive on the Easement Property. In addition, Phillips shall be solely responsible for maintaining the approach and drive for so long as Rail Car does not use the approach and drive for regular business access to and from the Rail Car Property. If Rail Car shall commence regular business use of the approach and drive on the Easement Property, promptly following demand from Phillips, Rail Car shall thereafter reimburse Phillips for one-half of the cost of maintaining, repairing and replacing the approach and drive. For this purpose, occasional use of the drive by Rail Car shall not be treated as regular business use of the Easement Property.

7. **Easements Run With the Land.** The easement rights granted herein and the obligations set forth herein shall be a covenant running with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective assignees and successors in interest to their respective properties.

8. **Term.** The easement granted, created and established by this EASEMENT AGREEMENT shall be perpetual.

9. **Indemnification.**

(a) Phillips shall protect, defend, hold harmless and indemnify Rail Car from and against any and all claims, losses, damage or liability arising from any negligent act or omission of Phillips, including all costs, claims, expenses (including reasonable attorney's fees and court

costs), penalties, liens and liability incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

(b) Rail Car shall protect, defend, hold harmless and indemnify Phillips from and against any and all claims, losses, damage or liability arising from any negligent act or omission of Rail Car, including all costs, claims, expenses (including reasonable attorney's fees and court costs), penalties, liens and liability incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

**10. Miscellaneous.**

(a) This EASEMENT AGREEMENT may only be amended with the written agreement of the owners of the Phillips Property and the Rail Car Property.

(b) The invalidity or unenforceability of any provision hereof shall in no way affect the validity of the remaining provisions of this EASEMENT AGREEMENT.

(c) The paragraph headings in this EASEMENT AGREEMENT are for convenience only, and shall in no way define or limit the scope or content of this EASEMENT AGREEMENT, and shall not be considered in any construction or interpretation of this EASEMENT AGREEMENT, or any part thereof.

(d) No delay or omission on the part of any party who is now or hereafter an owner of the Phillips Property or the Rail Car Property in the exercise of any right accruing on any default of the other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any party of a breach or default in the observance or performance of any of the terms and conditions of this EASEMENT AGREEMENT by any other party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this EASEMENT AGREEMENT. No breach, whether or not material, of the obligations imposed or created by this EASEMENT AGREEMENT shall entitle any party to cancel, rescind or otherwise terminate this EASEMENT AGREEMENT, but such limitation shall not effect, in any other manner, any of the rights or remedies which any party may have under or by reason of any breach of the provisions of this EASEMENT AGREEMENT.

(e) This EASEMENT AGREEMENT shall be construed in accordance with the laws of the State of Nebraska.

(f) This EASEMENT AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this EASEMENT AGREEMENT on the date and year first above written.

RAIL CAR AMERICA, INC. d/b/a RAIL CAR

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RAIL CAR AMERICA, INC. d/b/a RAIL CAR NEBRASKA, a corporation

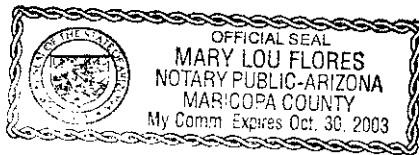
By [Signature]  
Title VICE PRESIDENT CFO

PHILLIPS REALTY, LLC, a Nebraska limited liability company

By \_\_\_\_\_  
George J. Kubat, President

Arizona  
STATE OF ~~NEBRASKA~~ )  
Maricopa ) ss.:  
COUNTY OF ~~DOUGLAS~~ )

The foregoing instrument was acknowledged before me this 2nd day of October, 2003, by Robert J. Antozak of Rail Car America, Inc. d/b/a Rail Car Nebraska, a corporation, on behalf of the corporation.

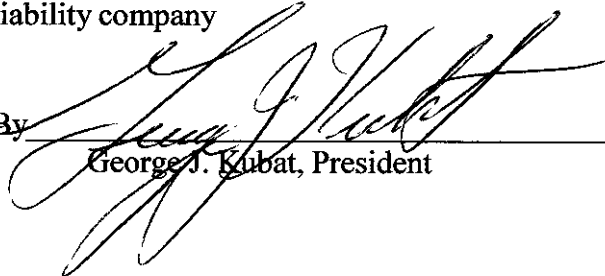


Mary Lou Flores  
Notary Public

NEBRASKA, a corporation

By \_\_\_\_\_  
Title \_\_\_\_\_

PHILLIPS REALTY, LLC, a Nebraska limited liability company

By  \_\_\_\_\_  
George J. Kubat, President

STATE OF NEBRASKA    )  
  ) ss.:  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, \_\_\_\_\_ of Rail Car America, Inc. d/b/a Rail Car Nebraska, a corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
                                  ) ss.:  
COUNTY OF DOUGLAS    )

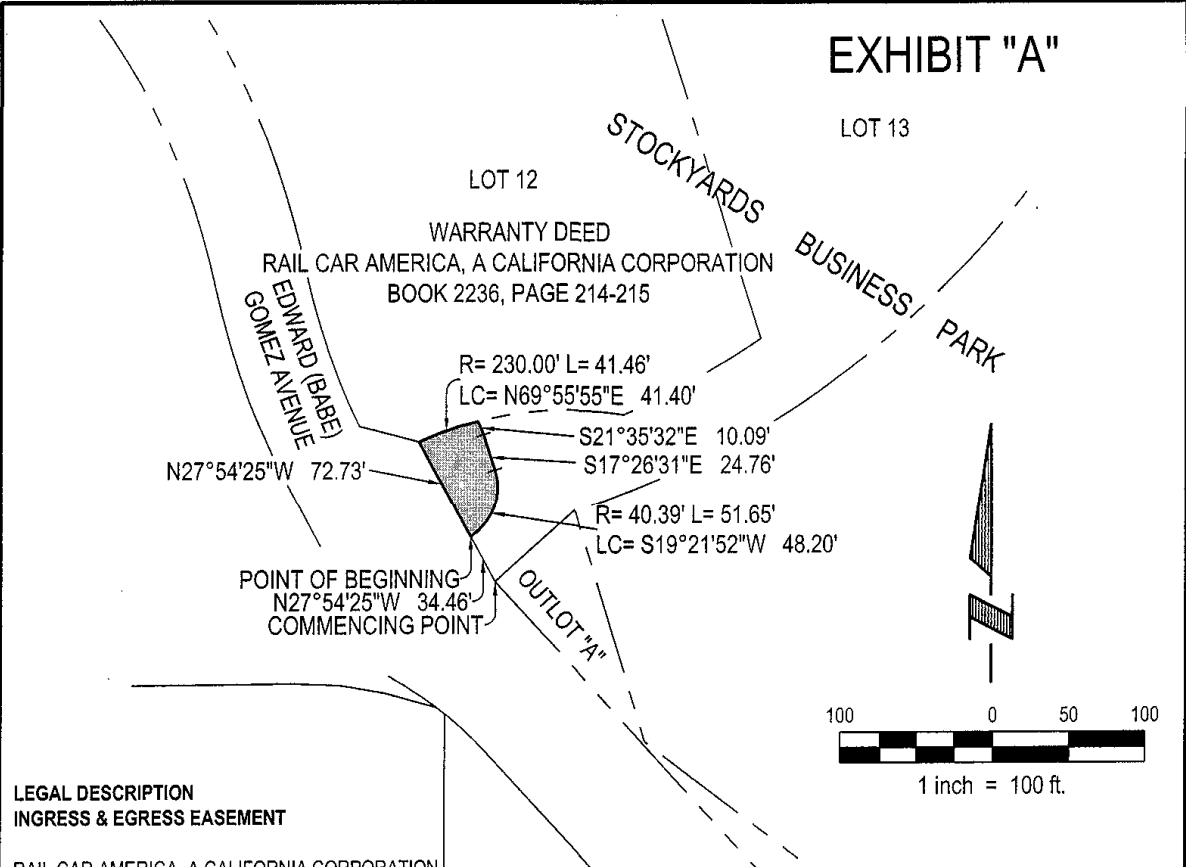
The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of September, 2003, by George J. Kubat, President of Phillips Realty, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Barb Steinhaus  
Notary Public



175643

# EXHIBIT "A"



**LEGAL DESCRIPTION  
INGRESS & EGRESS EASEMENT**

RAIL CAR AMERICA, A CALIFORNIA CORPORATION  
WARRANTY DEED  
BOOK 2236, PAGE 214

AN INGRESS & EGRESS EASEMENT LOCATED IN PART OF LOT 13, STOCKYARDS BUSINESS PARK, A SUBDIVISION LOCATED IN THE SE 1/4 OF SECTION 4, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 13, STOCKYARDS BUSINESS PARK, SAID POINT ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF EDWARD (BABE) GOMEZ AVENUE, SAID POINT ALSO BEING THE NORTHWEST CORNER OF OUTLOT "A", SAID STOCKYARDS BUSINESS PARK; THENCE N27°54'25"W (ASSUMED BEARING) ALONG THE WESTERLY LINE OF SAID LOT 13, STOCKYARDS BUSINESS PARK, SAID LINE ALSO BEING SAID EASTERLY RIGHT-OF-WAY LINE OF EDWARD (BABE) GOMEZ AVENUE, A DISTANCE OF 34.46 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N27°54'25"W ALONG SAID WESTERLY LINE OF LOT 13, STOCKYARDS BUSINESS PARK, SAID LINE ALSO BEING SAID EASTERLY RIGHT-OF-WAY LINE OF EDWARD (BABE) GOMEZ AVENUE, A DISTANCE OF 72.73 FEET TO A POINT ON THE SOUTHERLY LINE OF LOT 12, SAID STOCKYARDS BUSINESS PARK; THENCE EASTERLY ALONG SAID WESTERLY LINE OF LOT 13, STOCKYARDS BUSINESS PARK, SAID LINE ALSO BEING SAID SOUTHERLY LINE OF LOT 12, STOCKYARDS BUSINESS PARK, ON A CURVE TO THE RIGHT WITH A RADIUS OF 230.00 FEET, A DISTANCE OF 41.46 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N69°55'55"E A DISTANCE OF 41.40 FEET; THENCE S21°35'32"E, A DISTANCE OF 10.09 FEET; THENCE S17°26'31"E, A DISTANCE OF 24.76 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 40.39 FEET, A DISTANCE OF 51.65 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S19°21'52"W A DISTANCE OF 48.20 FEET TO THE POINT OF BEGINNING.

SAID INGRESS & EGRESS EASEMENT CONTAINS AN AREA OF 2305 SQUARE FEET OR 0.053 ACRES, MORE OR LESS.

**E&A CONSULTING GROUP, INC.**  
ENGINEERS • PLANNERS • SURVEYORS  
12001 Q STREET, OMAHA, NE 68137 PHONE: (402) 895-4700

## INGRESS & EGRESS EASEMENT

Drawn by: JNT    Chkd by: WAL Date: 9-4-03    Chkd by: \_\_\_\_\_ Date: \_\_\_\_\_  
Job No.: 2000179.01    Date: 09/03/03    Book No.: \_\_\_\_\_

DOUGLAS COUNTY, NEBRASKA