
**THIS PAGE INCLUDED FOR INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT**

RETURN TO: City 4

MIS

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (the "Agreement") is made and entered into this 27th day of FEBRUARY, 2024, by and between CITY OF OMAHA, NEBRASKA, a Municipal Corporation, hereinafter referred to as ("City"), and ELMWOOD TONWHOMES, LLC, a Nebraska limited liability company, herein after referred to as ("Owner").

WHEREAS, Owner is the fee simple owner of certain real property located in Omaha, Nebraska, and legally described as follows (the "Owned Premises"):

Outlot A and Lot 12, Elmwood Townhomes an Administrative Subdivision to the City of Omaha; Douglas County, Nebraska

WHEREAS, the City is the holder of certain easement rights arising under that certain Permanent Sewer Easement dated August 16, 2023 and recorded on December 12, 2023 in the records of the Douglas County, Nebraska Register of Deeds office as Instrument No. 2023093045 (the "Sewer Easement");

WHEREAS, the Sewer Easement grants the City an easement over certain portions of the Owner Premises as generally depicted on Exhibit "1" attached hereto and incorporated by this reference (the "Easement Area").

WHEREAS, within the Easement Area, City will operate and maintain an 8-inch diameter Sanitary Sewer (the "Sewer" line).

WHEREAS, Owner is in the process of redeveloping the Owner Premises and intends to construct certain improvements thereto, including a driveway (the "Paving Improvements"), a 6-inch storm sewer line, individual unit water service lines, and crushed rock and related facilities used for stormwater mitigation (collectively, all of such improvements including the Paving Improvements are hereinafter referred to as the "Improvements"), over some portion or all of the Sewer Line and, at least in part, lies within the Sewer Easement.

WHEREAS, Owner desires to obtain City's permission to construct, maintain, and operate the Improvements upon a portion of the City's above-mentioned Easement Area; and,

WHEREAS, City is willing to grant such permission upon the terms and conditions set forth as follows.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions hereinafter set forth, the parties hereto agree as follows:

1. The City hereby grants to Owner the rights of ingress and egress for the installation and/or construction, maintenance, repair, and replacement of the Improvements within the Easement Area subject to the terms set forth herein.
2. Owner shall repair, at no expense to City, any damage to the Sewer Line that reasonably results from the construction of the Improvements whether such damage results during such construction or subsequent thereto.
3. That the permission granted herein by the City is limited exclusively to the Improvements. Owner shall not alter the grade or permit such alteration anywhere in the Easement Area, without the prior

express written consent of City, which express written consent may be given. *inter alia*, by virtue of the City issuing a building permit for improvements which alter the grade in the Easement Area. Any modifications to the Improvements on Exhibit "1" which encroach the Easement Area shall be approved by the Sewer Maintenance Division prior to starting construction, such approval to not be unreasonably withheld, conditioned or delayed.

4. The Owner shall at all times conduct all its activities within the Easement Area in such a manner as not to interfere with or impede the operation of the Sewer Line.
5. The Owner shall be responsible for the maintenance, repair, and general upkeep of the Improvements. Any costs associated with repair, alterations, or modifications to the Owners' Improvements placed in the Easement Area, due to the City exercising its rights as set out in the Easement Area, as defined herein, shall be the sole responsibility of the Owner and not the City; notwithstanding the foregoing, any costs associated with repair, alterations, or modifications to the Paving Improvements placed in the Easement Area, due to the City exercising its rights as set out in the Sewer Easement, as defined herein, shall be the sole responsibility of the City and not the Owner.
6. Following Owner's commencement of construction of the Improvements, should the City perform any work, repair, alterations, or improvements on the Sewer Line or in the Easement Area, the City shall:
 - a. Collaborate with Owner so as to pursue any and all possible strategies to perform such work without dismantling, demolishing, and/or removing the Improvements from the Easement Area;
 - b. Make its best efforts to perform such work in a manner as not to disrupt the usual function of and activities on the Improvements;
 - c. Make its best efforts to store construction material and equipment so as to not disrupt the usual function of and activities on the Improvements; and
 - d. Leave the Easement Area in the same condition as when the City commenced such work.
9. The Owner agrees to release, indemnify, defend, and hold harmless City against any and all claims, demands, and causes of action arising in favor of any person, corporation, or governmental entity because of personal injury, including death, or damage to property, including the Improvements installed pursuant to this Agreement, resulting from any act or omission of Owner, its employees, contractors, subcontractors, or agents in the course of construction, maintenance, use, repair or replacement of the Improvements and owners use of the Easement Area.
10. The parties hereto understand that this Agreement in no way constitutes a waiver by the City of its rights to enjoy the Sewer Easement, but constitutes City's consent to the Improvements within portions of the Easement Area.
11. The term of the Encroachment Agreement shall commence on the date of execution of the Agreement and shall terminate upon thirty (30) days in advance written notice from City to Owner.
12. The provisions of the Easements, and all rights, privileges, and duties, obligations, and liabilities created thereby, remain in full force and effect and are not affected hereby except to the extent and in the manner set forth above.

13. This grant of the rights set forth in this Encroachment Agreement shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors, or assigns.

IN WITNESS WHEREOF, the said GRANTOR has hereunto (caused its Corporate Seal to be affixed) (the said Corporation has no Corporate Seal) and these presents to be signed by its respective officers this 27th day of February, 2024.

ELMWOOD TOWNHOMES, LLC, a Nebraska Limited Liability Company
(Name of Limited Liability Company)

AUTHORIZED MEMBER:

ATTEST:

Jay B. Noddle, Manager

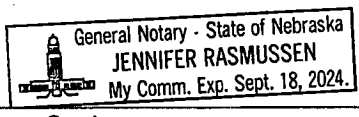
Paul R. Dietsch, VP

STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

On this 27 day of February, 2024, before me, a Notary Public in and for said County, personally came Jay B. Noddle, Manager, on behalf of Elmwood Townhomes, LLC, a Nebraska Limited Liability Company and Paul R. Dietsch, VP, of said Limited Liability Company, to me personally known to be the respective manager or officers of said Limited Liability Company and the identical person(s) whose name(s) is (are) affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as such manager and officer and the voluntary act and deed of said Limited Liability Company.

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



Notary Seal

Jennifer Rasmussen
NOTARY PUBLIC

Imprinted Seal

Approvals: Above dedication recommended for approval by:

City Engineer [Signature] Date: 3-25-2024

Planning Director [Signature] Date: 3-28-2024
EE

CITY OF OMAHA, a Municipal Corporation

ATTEST:

[Signature]
Elizabeth Butler
City Clerk, City of Omaha

By [Signature]
Jean Stothert,
Mayor, City of Omaha

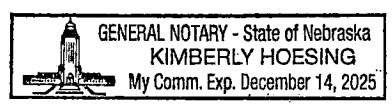
APPROVED AS TO FORM:

[Signature] 3/29/24
SENIOR CITY ATTORNEY

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On this 4th day of April, 2024, before me, a Notary Public in and for said County, personally came Elizabeth Butler, City Clerk of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as City Clerk and the voluntary act and deed of said Municipal Corporation. WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:

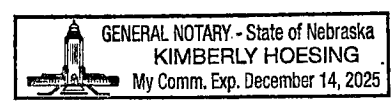


[Signature]
NOTARY PUBLIC

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On this 4th day of April, 2024, before me, a Notary Public in and for said County, personally came Jean Stothert, Mayor of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be her respective voluntary act and deed as Mayor and the voluntary act and deed of said Municipal Corporation. WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:

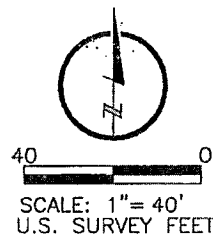


[Signature]
NOTARY PUBLIC

EXHIBIT 1

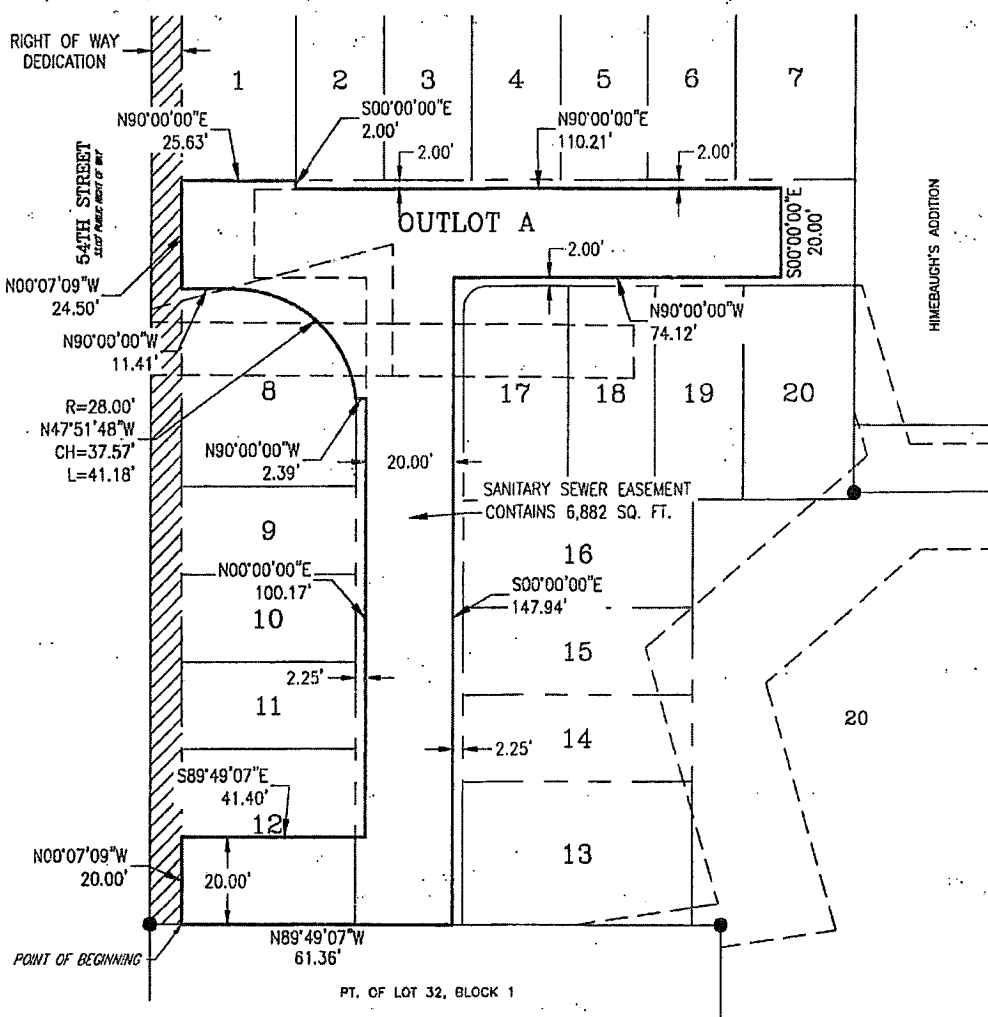
LEGAL DESCRIPTION

SEE SHEET 2



LEGEND

- EASEMENT LINE
- LOT LINE
- EXISTING EASEMENT



SHEET 1 OF 2

L:\Engineering\0121240-EXHIBIT\0121240-EXH-02.dwg, 6/21/2023 3:45:57 PM, RACHEL RENWEDER, LAMP RYNEARSON


<h2 style="margin: 0;">LAMP RYNEARSON</h2> <p style="margin: 0;">LAMP RYNEARSON.COM</p>	<p style="font-size: small; margin: 0;">OMAHA, NEBRASKA 14710 W DODGE RD, STE 100 (402) 496 2498</p> <p style="font-size: small; margin: 0;">FORT COLLINS, COLORADO 4715 SAVANNAH DR, STE 100 (970) 226 0242</p> <p style="font-size: small; margin: 0;">KANSAS CITY, MISSOURI 8025 STATE LINE RD, STE 200 (816) 385 8442</p>	<p style="font-size: small; margin: 0;">DESIGNER / DRAFTER TLW/RER</p> <p style="font-size: small; margin: 0;">REVIEWER TODD L. WHITFIELD</p> <p style="font-size: small; margin: 0;">PROJECT NUMBER 0121240.01</p> <p style="font-size: small; margin: 0;">DATE 6/21/2023</p> <p style="font-size: small; margin: 0;">SURFACE LOCATION</p> <p style="font-size: small; margin: 0;">BOOK AND PAGE</p>	EXHIBIT 1
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EXHIBIT 1

LEGAL DESCRIPTION

THAT PART OF OUTLOT A AND LOT 12, ELMWOOD TOWNHOMES, A SUBDIVISION AS SURVEYED, PLATTED, AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, PARTICULARLY DESCRIBED AS FOLLOWS:
 BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 12;
 THENCE NORTH 00°07'09" WEST (BEARINGS REFERENCED TO THE FINAL PLAT OF ELMWOOD TOWNHOMES) FOR 20.00 FEET ON THE WEST LINE OF SAID LOT 12;
 THENCE SOUTH 89°49'07" EAST FOR 41.40 FEET;
 THENCE NORTH 00°00'00" EAST FOR 100.17 FEET;
 THENCE NORTH 90°00'00" WEST FOR 2.39 FEET TO THE WEST LINE OF SAID OUTLOT A;
 THENCE ON A CURVE TO THE LEFT (HAVING A RADIUS OF 28.00 FEET AND A LONG CHORD BEARING NORTH 47°51'48" WEST FOR 37.57 FEET) FOR AN ARC LENGTH OF 41.18 FEET ON SAID WEST LINE;
 THENCE NORTH 90°00'00" WEST FOR 11.41 FEET CONTINUING ON SAID WEST LINE;
 THENCE NORTH 00°07'09" WEST FOR 24.50 FEET CONTINUING ON SAID WEST LINE TO THE NORTHWEST CORNER OF SAID OUTLOT A;
 THENCE NORTH 90°00'00" EAST FOR 25.63 FEET ON THE NORTH LINE OF SAID OUTLOT A;
 THENCE SOUTH 00°00'00" EAST FOR 2.00 FEET;
 THENCE NORTH 90°00'00" EAST FOR 110.21 FEET;
 THENCE SOUTH 00°00'00" EAST FOR 20.00 FEET;
 THENCE NORTH 90°00'00" WEST FOR 74.12 FEET;
 THENCE SOUTH 00°00'00" EAST FOR 147.94 FEET TO THE SOUTH LINE OF SAID OUTLOT A;
 THENCE NORTH 89°49'07" WEST FOR 61.36 FEET TO THE POINT OF BEGINNING.
 CONTAINS 6,882 SQUARE FEET.

L:\Engineering\0121240 - Nodes 54th and Leavenworth SURVEY\DRAWINGS\EXHIBITS\0121240-EXH-02.dwg, 6/21/2023 3:43:43 PM, RACHEL BENNECKER, LAMP RYNEARSON

 <p>LAMP RYNEARSON</p> <p>LAMPRYNEARSON.COM</p>	<p>OMAHA, NEBRASKA 14710 W. DODGE RD. STE. 100 (402) 496 2198</p> <p>FORT COLLINS, COLORADO 4715 INNOVATION DR., STE. 100 (970) 228 9342</p> <p>KANSAS CITY, MISSOURI 8021 STATE LINE RD., STE. 200 (816) 851 0440</p>	<p>DESIGNER / DRAFTER TLW/RER</p> <p>REVIEWER TODD L. WHITFIELD</p> <p>PROJECT NUMBER 0121240.01</p> <p>DATE 6/21/2023</p> <p>SURFACE LOCATION</p> <p>BOOK AND PAGE</p>	<h1>EXHIBIT 1</h1>
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