

**Memo to:** Finance, Expenditures and Legislative Subcommittee  
**From:** *Jim Becic*  
**Date:** *3 June, 2019*  
**Re:** *Summit Lake Project Easement Agreement Request*

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The District was alerted by Director Ted Japp of a possible encroachment on the north side of our Summit Lake property in Burt County. The landowner, Ron Johnson (Eaglewood Homes, LLC), indicated that after securing the necessary building permits, had nearly completed a partially covered deck onto his restaurant, when he was made aware of the possible encroachment. Mr. Johnson immediately contacted Director Japp of his inadvertent encroachment, who informed General Manager Winkler of the issue.

The District (Director Japp, Surveyor Mike McNaney and Jim Becic) met with Mr. Johnson on site on the 29<sup>th</sup> of May and subsequently verified that a corner of the deck was on NRD property amounting to approximately 657 sq. ft. (0.015 acres). It should be noted that this area on the northern edge of the Summit Lake site has no improvements and is seldom if ever used by the public.

In order to resolve the matter and not to inflict unnecessary hardship on the landowner, Management determined that a permanent easement for Mr. Johnson with the ability of the District to rescind the easement at any future date, be authorized for the minimum District policy easement amount of \$200.00.

**Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute a Permanent Easement with EAGLEWOOD HOMES, LLC, in the amount of \$200.00, for deck improvements on 0.015 acres of land at the Summit Lake Project Site, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

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## **EASEMENT AGREEMENT**

This Easement Agreement is entered into by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a governmental subdivision of the State of Nebraska (hereinafter referred to as "the DISTRICT") and **EAGLEWOOD HOMES, LLC**, a Nebraska limited liability company (hereinafter referred to as "the GRANTEE").

**WHEREAS**, the DISTRICT owns a portion of a tract of land in Burt County, Nebraska, (hereinafter referred to as "the EASEMENT AREA"), described and depicted on the survey attached hereto as Exhibit "A" and incorporated herein by reference.

**WHEREAS**, the GRANTEE desires to use the EASEMENT AREA and to construct, install, use, maintain, repair and replace a wooden deck and deck roof acceptable to the DISTRICT in the EASEMENT AREA (such improvements hereinafter collectively being called "the DECK IMPROVEMENTS"); and, the DISTRICT is agreeable to grant an easement for such purposes in accordance with the terms and conditions set forth in this Easement Agreement.

**NOW, THEREFORE**, in consideration of the payment by the GRANTEE to the DISTRICT of the sum of Two Hundred Dollars (\$200.00), the receipt of which is acknowledged, and the mutual covenants herein expressed, the DISTRICT and the GRANTEE agree as follows:

1. The DISTRICT hereby grants to the GRANTEE, and its successors and assigns, the right to use the EASEMENT AREA for the rights to construct, install, use, maintain, repair and replace DECK IMPROVEMENTS in the EASEMENT AREA.
2. The GRANTEE shall maintain DECK IMPROVEMENTS in the EASEMENT AREA in a manner which will not in any manner interfere with the operation or maintenance of the DISTRICT's property adjacent to the EASEMENT AREA.
3. The GRANTEE assumes the entire risk of loss or damage to the DECK IMPROVEMENTS in the EASEMENT AREA from all causes whatsoever, including flood or other natural disaster or act of God, except such loss or damage as shall be caused solely by the negligence of the DISTRICT, its officers, agents, employees or contractors.

4. The GRANTEE agrees to defend and indemnify the DISTRICT, and hold the DISTRICT harmless, from and against any and all liability, causes of action, claims and expense for personal injury or property damage arising out of or occasioned by the GRANTEE's exercise of the rights granted by this Easement Agreement or by any other use of the EASEMENT AREA by the GRANTEE or DECK IMPROVEMENTS therein, except such injury or damage as may be caused solely by the negligence of the DISTRICT, its officers, agents, employees or contractors.

5. In the event the DISTRICT, in its sole discretion, determines that it shall be necessary or convenient for the DISTRICT, or its assigns, to permanently and exclusively use and occupy the entire EASEMENT AREA for the construction, operation or maintenance of public works or for other public purposes, then, 30 days after the GRANTEE's receipt of written notice by the DISTRICT of such determination, this Easement Agreement shall terminate and the GRANTEE shall permanently vacate the EASEMENT AREA. In the event the DISTRICT, in its sole discretion, determines that it shall be necessary or convenient for the DISTRICT, or its assigns, to temporarily and exclusively use and occupy all or a portion of the EASEMENT AREA, or permanently and exclusively use a portion thereof, for the construction, operation or maintenance of public works or for other public purposes, then, within 15 days after the GRANTEE's receipt of written notice by the DISTRICT of such determination, for the duration expressed in such determination the GRANTEE shall vacate such portion thereof as the DISTRICT determines necessary or convenient. If any such determination shall terminate this Easement Agreement and require the GRANTEE to permanently vacate the entire EASEMENT AREA, the DISTRICT shall return to the GRANTEE (without interest) the monetary consideration which the GRANTEE paid to the DISTRICT, as recited above. Upon receiving written notice of the DISTRICT'S determination to terminate this Easement Agreement, GRANTEE, at its own expense, shall remove the DECK IMPROVEMENTS and restore the EASEMENT AREA to the condition existing prior to the installation, use, maintenance, repair or replacement of the DECK IMPROVEMENTS, which restoration may include, without limitation, the following: (a) all excavations shall be backfilled with the same or comparable material and compacted to a density at least equal to that of the adjacent ground; (b) all areas which are disturbed shall be reseeded and a vegetative cover acceptable to the DISTRICT shall be established; and, (c) all construction materials and debris shall be removed from the EASEMENT AREA. If any such restoration is not completed within a reasonable time after demand therefor by the DISTRICT, the DISTRICT may perform such work and the GRANTEE agrees to reimburse the DISTRICT upon demand for the reasonable costs of such work which exceed the monetary consideration paid to the DISTRICT, as recited above, which the DISTRICT may apply to such costs.

6. Nothing in this Easement Agreement shall be construed as a warranty by the DISTRICT of its title to the EASEMENT AREA, nor as a warranty with respect to the interest herein conveyed.

7. All notices herein required shall be in writing and shall be served on the parties at the addresses set out below, or at such other address as either party may hereafter designate in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested; or delivery thereof by messenger, shall be sufficient service.

GRANTEE: Attn: Ron Johnson  
Eaglewood Homes, LLC  
7601 Eaglewood Lane  
Arlington, NE 68002

DISTRICT: Attn: General Manager  
8901 S. 154<sup>th</sup> Street  
Omaha, NE 68138

8. The provisions of this Easement Agreement shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

9. The GRANTEE, for itself and for its successors and assigns, disclaims and quitclaims to the DISTRICT and its successors and assigns, all of the GRANTEE's right, title and interest in and to the EASEMENT AREA, except those rights granted to the GRANTEE by this Easement Agreement.

10. By accepting an assignment from the GRANTEE or its successors or assigns of the easement or rights granted by this EASEMENT AGREEMENT, or by exercising rights hereunder, each assignee agrees to be bound, jointly and severally with the GRANTEE, to the faithful performance of the covenants of the GRANTEE hereunder.

11. This Easement Agreement shall be effective upon signatures of the parties and recordation with the Register of Deeds of Burt County, Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement on the respective dates shown

Executed by the DISTRICT on this \_\_\_\_ day of \_\_\_\_\_, 2019

PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

BY \_\_\_\_\_

STATE OF NEBRASKA     )  
                                      )SS.  
COUNTY OF SARPY     )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for said County, personally came the above named John Winkler, General Manager of the Papio-Missouri River Natural Resources District, and he acknowledged the execution of the above Easement Agreement as his voluntary act and deed and the voluntary act and deed of said District.

WITNESS my hand and Notarial Seal the date aforesaid.

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

Executed by the GRANTEE on this \_\_\_\_ day of \_\_\_\_\_, 2019

**EAGLEWOOD HOMES, LLC,** a  
Nebraska limited liability company.

BY \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF NEBRASKA     )  
  )SS.  
COUNTY OF BURT         )

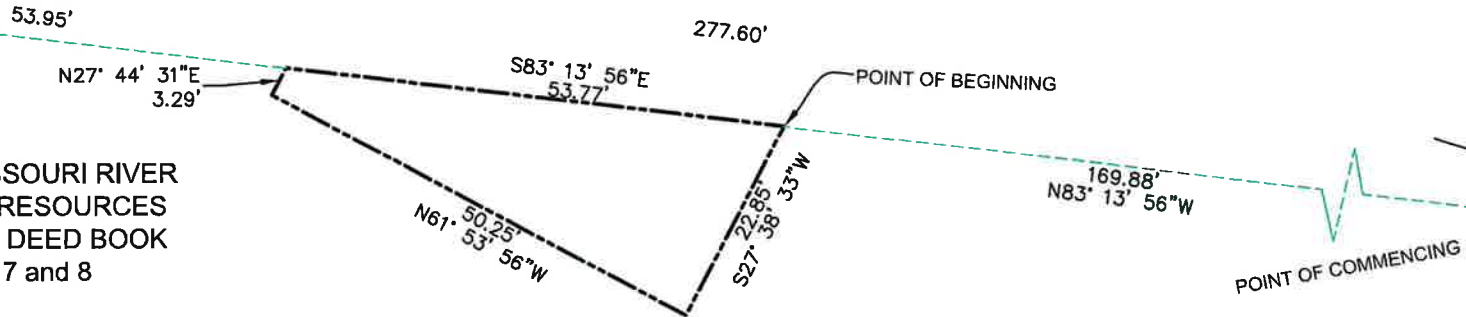
On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for said County, personally came the above named \_\_\_\_\_, \_\_\_\_\_ of Eaglewood Homes, LLC, a Nebraska limited liability company, and he or she acknowledged the execution of the above Easement Agreement as his or her voluntary act and deed and the voluntary act and deed of said entity.

WITNESS my hand and Notarial Seal the date aforesaid.

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

TRACT OF LAND IN THE  
NORTHEAST QUARTER OF  
SECTION 28, TOWNSHIP 21  
NORTH, RANGE 10 EAST OF THE  
6TH PM AS DESCRIBED IN DEED  
BOOK 86 PAGES 709 and 710

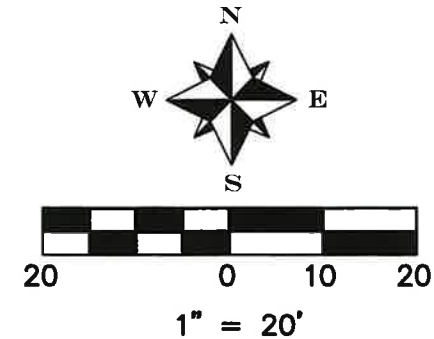
PAPIO-MISSOURI RIVER  
NATURAL RESOURCES  
DISTRICT DEED BOOK  
57 PAGES 7 and 8



#### LEGAL DESCRIPTION

That part of the East  $\frac{1}{2}$  of Section 28, Township 21N, Range 10E of the 6th P.M. as described in Deed Book 57 Pages 7 and 8, Burt County, Nebraska. More particularly described as follows:

Commencing at the Southeast corner of a tract of land located in the Northeast Quarter of said Section 28, as described in Deed Book 86 Pages 709 and 710, Burt County, Nebraska; thence North 83° 13' 56" West along the South line of said tract, for a distance of 169.88 feet to the Point of Beginning; thence South 27° 38' 33" West, for a distance of 22.85 feet; thence North 61° 53' 56" West, for a distance of 50.25 feet; thence North 27° 44' 31" East, for a distance of 3.29 feet to a point on said South line; thence South 83° 13' 56" East along said South line, for a distance of 53.77 feet to the Point of Beginning, containing an area of 656.828 sq ft or 0.015 acres more or less.



#### EXHIBIT "A"

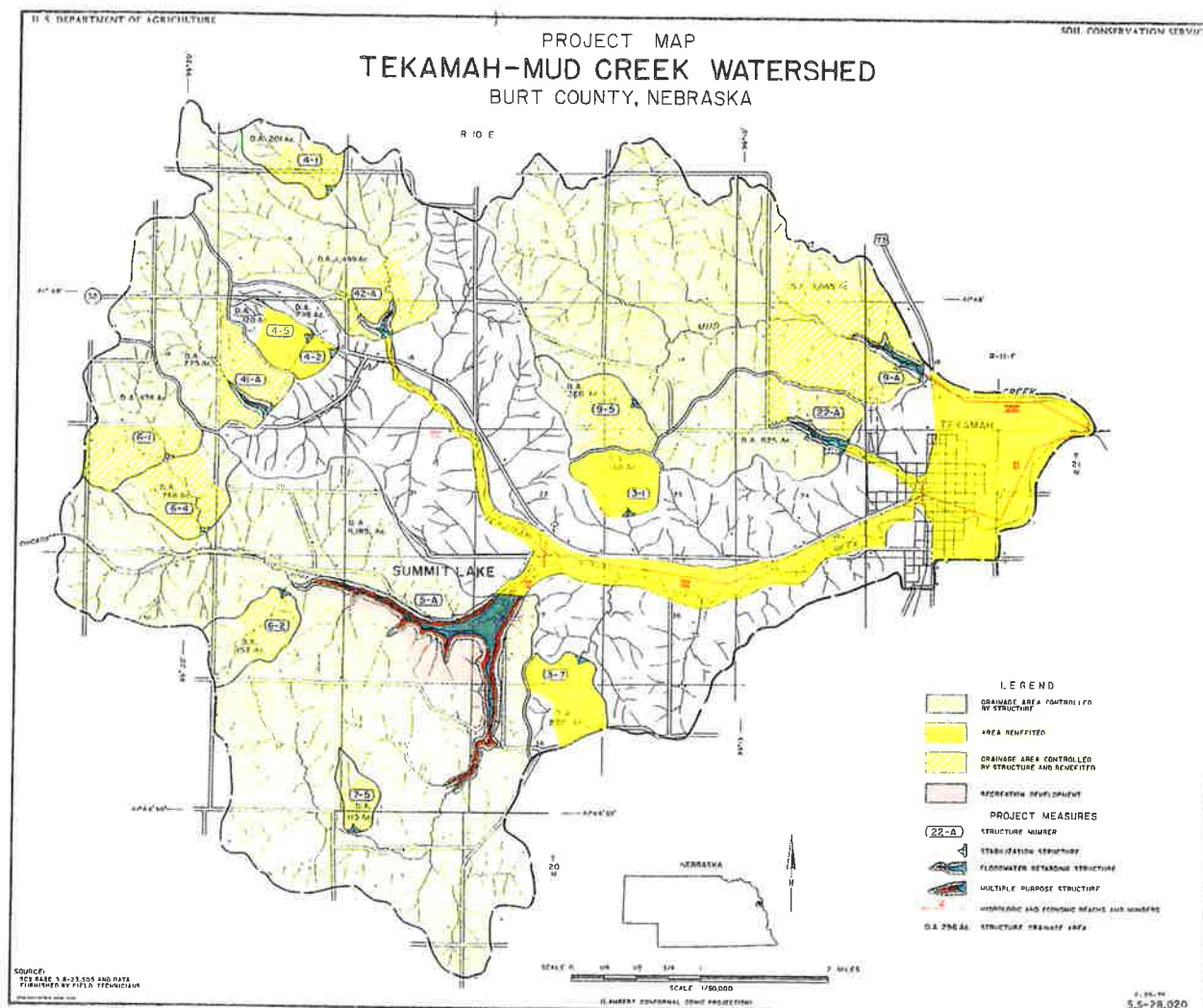


**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES  
DISTRICT**  
8901 S. 154TH STREET  
OMAHA NE. 68138-3621  
OFFICE: 402-444-6222  
www.papionrd.org FAX: 402-895-6543

**EASEMENT AGREEMENT IN THAT PART OF THE  
EAST  $\frac{1}{2}$  OF SECTION 28, T21N, R10E RECORDED IN  
DEED BOOK 57 PAGES 7 AND 8**

PROJECT:  
DATE: 06-03-2019  
DRAWN BY: SMH  
SCALE: 1" = 20'  
SHEET 1 OF 1

A map of Burt County, Nebraska, and its surrounding areas. The map shows the Missouri River flowing along the eastern border with Iowa. Major towns include Lyons, Oakland, Craig, Tokamah, Herman, Blair, and Fremont. The map also shows the locations of Burt County, Washington County, and Nebraska. Distances are marked for several locations: 7mi to Lyons, 39mi to Sioux City, 27mi to Fremont, 6mi to Missouri Valley, and 28mi to Omaha. A scale bar indicates a distance of 5mi, and the scale is given as 1:250,000.





# Untitled Map

Summit Lake - Aerial Map

## Legend

 Summit Reservoir State Recreation Area

Summit Lake

Google Earth

© 2018 Google



2000 ft

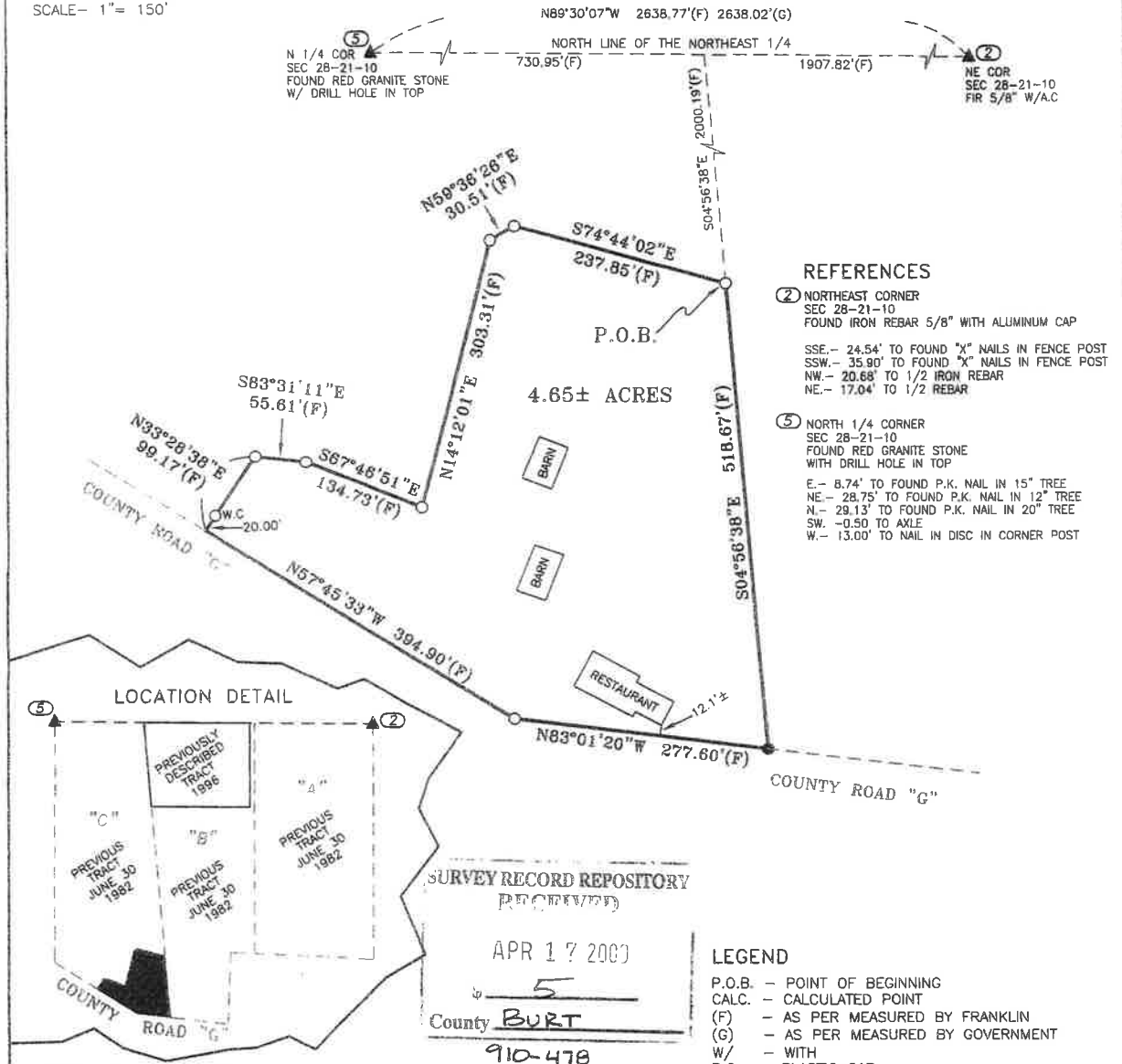




# PLAT OF SURVEY

LOCATED IN THE NORTHEAST 1/4  
OF SECTION 28, TOWNSHIP 21 NORTH,  
RANGE 10 EAST OF THE 6TH P.M.,  
BURT COUNTY, NEBRASKA

SCALE- 1"= 150'



## LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 21 NORTH, RANGE 10 EAST OF THE 6TH P.M., BURT COUNTY, NEBRASKA. ALL CORNERS OF THIS DESCRIPTION ARE SET OR FOUND AS DESCRIBED ON OFFICIAL PLAT SIGNED ON 12-24-2008. HEREAFTER MADE A PART OF THIS DESCRIPTION BY THIS REFERENCE AND ON FILE AT THE BURT COUNTY COURTHOUSE IN THE COUNTY SURVEYOR'S OFFICE. SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 28; THENCE N89°30'07"W, ON THE NORTH LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 1907.82 FEET TO THE NORTHWEST CORNER OF A PREVIOUSLY DESCRIBED TRACT OF LAND, IDENTIFIED AS TRACT "B" ON A SURVEY BY JOE NEARY ON JUNE 30, 1982; THENCE S04°56'38"E, ON THE WEST LINE OF PREVIOUSLY DESCRIBED TRACT, A DISTANCE OF 2000.19 FEET TO THE POINT OF BEGINNING; THENCE S04°56'38"E, ON SAID WEST LINE, A DISTANCE OF 518.67 FEET TO THE SOUTHWEST CORNER OF SAID PREVIOUSLY DESCRIBED TRACT; THENCE N83°01'20"W, ON THE SOUTHERLY LINE OF A PREVIOUSLY DESCRIBED TRACT IDENTIFIED AS TRACT "C" ON A SURVEY BY JOE NEARY ON JUNE 30, 1982, A DISTANCE OF 277.60 FEET; THENCE N57°45'33"W, ON SAID SOUTHERLY LINE, A DISTANCE OF 394.90 FEET; THENCE N33°28'38"E A DISTANCE OF 99.17 FEET; THENCE S83°31'11"E A DISTANCE OF 55.61 FEET; THENCE S67°46'51"E A DISTANCE OF 134.73 FEET; THENCE N14°12'01"E A DISTANCE OF 303.31 FEET; THENCE N59°36'26"E A DISTANCE OF 30.51 FEET; THENCE S74°44'02"E A DISTANCE OF 237.85 FEET BACK TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 4.65 ACRES MORE OR LESS.

## Alpha Land Surveying

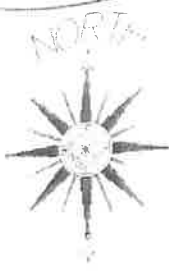
OFFICE- OAKLAND, NEBRASKA (402)-685-6944  
OFFICE- SOUTH SIOUX CITY, NEBRASKA (402)-494-2122  
OFFICE- NORFOLK, NEBRASKA (402)-371-7571

DRAWN BY: NNS CHECKED BY: FMF  
PROJECT # 2008-109

## CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEYING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF STATE OF NEBRASKA.

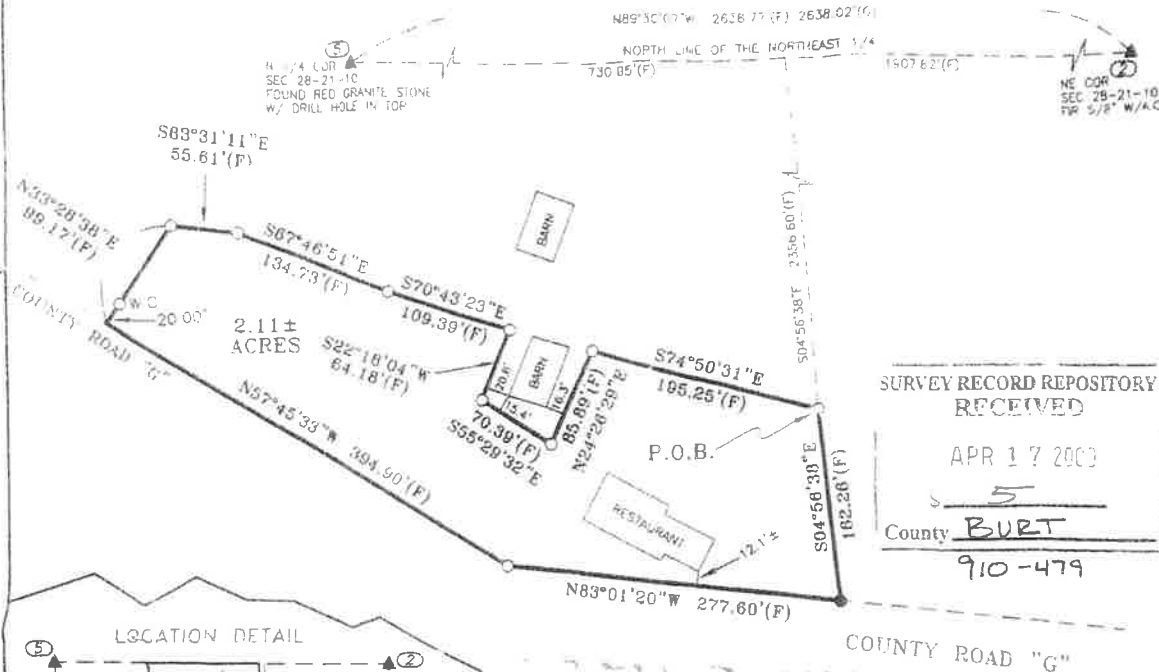
12-24-2008  
DATE OF SIGNATURE FRED M. FRANKLIN R.L.S. 525  
NOT VALID UNLESS EMBOSSED WITH RAISED SEAL



SCALE = 1" = 20'

# PLAT OF SURVEY

LOCATED IN THE NORTHEAST 1/4  
OF SECTION 28, TOWNSHIP 21 NORTH,  
RANGE 10 EAST OF THE 6TH P.M.,  
BURT COUNTY, NEBRASKA



## REFERENCES

- ② NORTHEAST CORNER  
SEC 28-21-10  
FOUND IRON REBAR 5/8" WITH ALUMINUM CAP  
SSE - 24.54' TO FOUND "X" NAILS IN FENCE POST  
SSW - 35.90' TO FOUND "X" NAILS IN FENCE POST  
NW - 20.86' TO 1/2 IRON REBAR  
NE - 17.04' TO 1/2 REBAR
- ⑤ NORTH 1/4 CORNER  
SEC 28-21-10  
FOUND RED GRANITE STONE  
WITH DRILL HOLE IN TOP  
E - 8.74' TO FOUND P.K. NAIL IN 15" TREE  
NE - 28.75' TO FOUND P.K. NAIL IN 12" TREE  
N - 29.13' TO FOUND P.K. NAIL IN 20" TREE  
SW - 0.50' TO AXLE  
W - 13.00' TO NAIL IN DISC IN CORNER POST

## LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 21 NORTH, RANGE 10 EAST OF THE 6TH P.M., BURT COUNTY, NEBRASKA. ALL CORNERS OF THIS DESCRIPTION ARE SET OR FOUND AS DESCRIBED ON OFFICIAL PLAT SIGNED ON 12-24-2006 HEREAFTER MADE A PART OF THIS DESCRIPTION BY THIS REFERENCE AND ON FILE AT THE BURT COUNTY COURTHOUSE IN THE COUNTY SURVEYOR'S OFFICE, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 28; THENCE N89°30'07"W, ON THE NORTH LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 1907.82 FEET TO THE NORTHWEST CORNER OF A PREVIOUSLY DESCRIBED TRACT OF LAND, IDENTIFIED AS TRACT "B" ON A SURVEY BY JOE NEARY ON JUNE 30, 1982; THENCE S04°56'38"E, ON THE WEST LINE OF PREVIOUSLY DESCRIBED TRACT, A DISTANCE OF 2356.60 FEET TO THE POINT OF BEGINNING; THENCE S04°56'38"E, ON SAID WEST LINE, A DISTANCE OF 162.26 FEET TO THE SOUTHWEST CORNER OF SAID PREVIOUSLY DESCRIBED TRACT; THENCE N83°01'20"W, ON THE SOUTHERLY LINE OF A PREVIOUSLY DESCRIBED TRACT IDENTIFIED AS TRACT "C" ON A SURVEY BY JOE NEARY ON JUNE 30, 1982, A DISTANCE OF 277.60 FEET; THENCE N57°45'33"W, ON SAID SOUTHERLY LINE, A DISTANCE OF 394.90 FEET; THENCE N33°28'38"E A DISTANCE OF 99.17 FEET; THENCE S83°31'11"E A DISTANCE OF 55.61 FEET; THENCE S67°46'51"E A DISTANCE OF 134.73 FEET; THENCE S70°43'23"E A DISTANCE OF 109.39 FEET; THENCE S27°18'04"W A DISTANCE OF 64.18 FEET; THENCE S55°29'32"E A DISTANCE OF 70.39 FEET; THENCE N24°26'29"E A DISTANCE OF 85.89 FEET; THENCE S74°50'31"E A DISTANCE OF 195.25 FEET BACK TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 2.11 ACRES MORE OR LESS

## LEGEND

- P.O.B. - POINT OF BEGINNING
- CALC. - CALCULATED POINT
- (F) - AS PER MEASURED BY FRANKLIN
- (G) - AS PER MEASURED BY GOVERNMENT
- W/ - WITH
- P.C. - PLASTIC CAP
- A.C. - ALUMINUM CAP
- W.C. - WITNESS CORNER
- FIR - FOUND IRON REBAR
- FPKN - FOUND P.K. NAIL
- SIR - SET IRON REBAR 5/8"x24"
- - SET IRON REBAR 5/8" WITH PLASTIC CAP
- - FOUND IRON REBAR 5/8" SET PLASTIC CAP
- ▲ - FOUND SECTION CORNER AS NOTED

CERTIFICATE OF SURVEY  
I HEREBY CERTIFY THAT THIS DOCUMENT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND IN ACCORDANCE WITH THE NEBRASKA SURVEYOR ACT.  
DATE OF SIGNATURE: 12-24-2006  
NOT VALID UNLESS SIGNED WITH RAISED SEAL

**Alpha Land Surveying**  
OFFICE - OAKLAND, NEBRASKA (402)-685-6944  
OFFICE - SOUTH SIOUX CITY, NEBRASKA (402)-494-2122  
OFFICE - NORFOLK, NEBRASKA (402)-371-7571

DRAWN BY: NNS CHECKED BY: FMF  
PROJECT # 2008-109-2

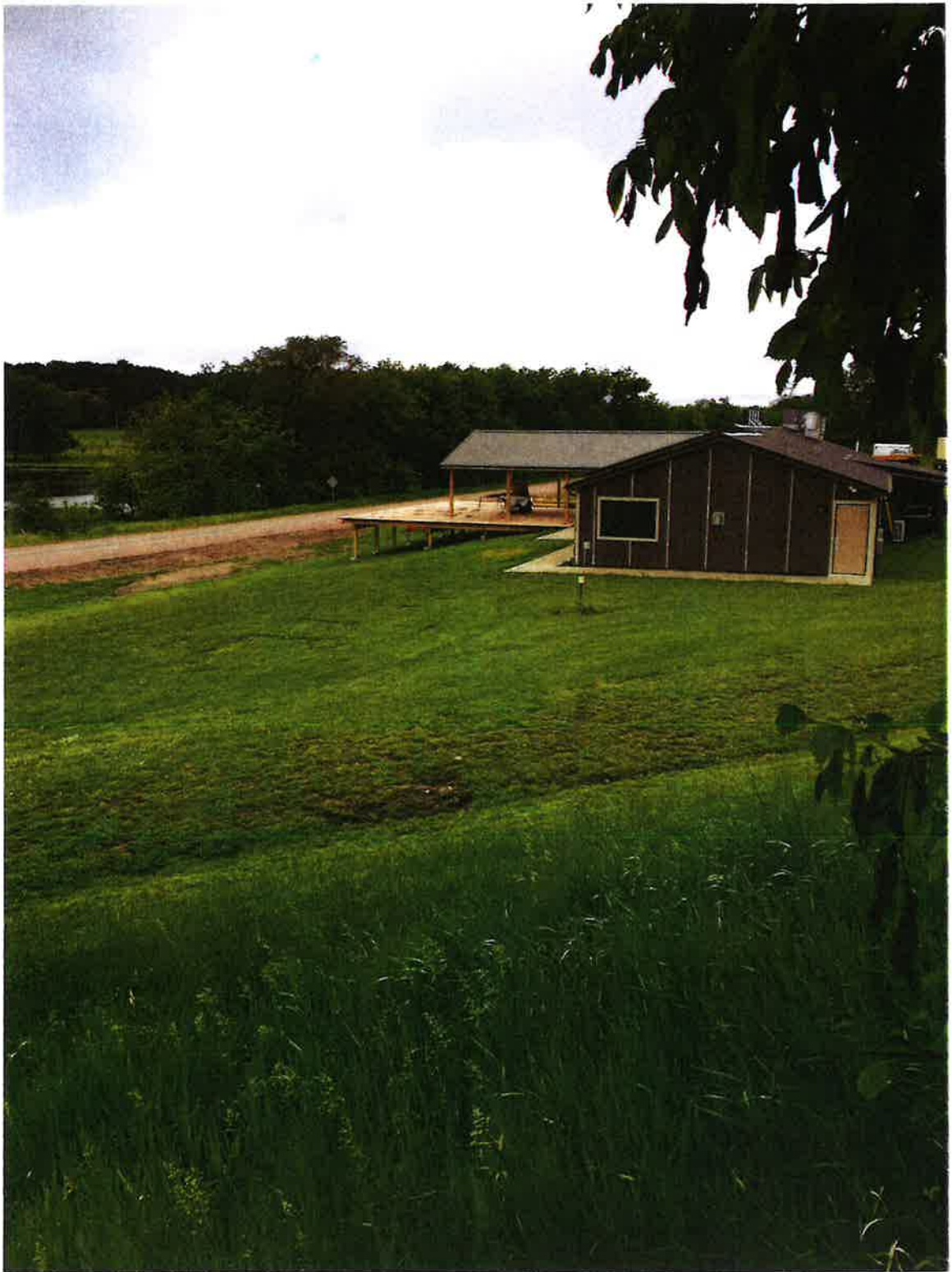
055630
















### LEGEND

-  RIGHT OF WAY
-  DECK ROOF
-  WOOD DECK

