

Memorandum

To: Programs, Projects and Operations Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: August 7, 2020
Re: Revised Easement Agreements for Access Drive at Prairie Queen with Ryan Companies

In March 2020, the District approved an easement for an access drive with developers and engineers for property adjacent to the Prairie Queen (WP-5) South Water Quality Basin. This is a shared access point off Hwy 370 to the proposed development and the Prairie Queen property, see attached map.

The easement is proposed in a portion of the WP-5 property that was not transferred to the City of Papillion and was included in the surplus property the District attempted to sell in 2016. Ryan Companies is requesting a revision of the two easements that the District approved in March on the WP-5 property. The easements are attached for consideration and are described as follows:

1. Permanent Access Easement. The developer proposes to locate an access drive and retaining wall on the property line between the WP-5 property and the development. The proposed easement is a 55-foot easement on the western most property line of the Prairie Queen property (south water quality basin). The revised easement was changed to include the installation of a retaining wall and the easement language was revised for the District to assume third party limited liability for any damage to the retaining wall caused by uninsured NRD contractors.

2. Temporary Construction Easement. The developer proposes a 150-foot temporary easement to allow for grading and construction of the access drive. Any disturbed property will be restored to original condition.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the revised Permanent Access Easement Agreement and Temporary Construction Easement Agreement with Ryan Companies for the WP-5 project property, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.



Return to:
David Madden
McGrath North Mullin & Kratz, PC LLO
1601 Dodge Street, Suite 3700
Omaha, NE 68102

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement Agreement") is made and entered into this ____ day of July, 2020, by PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("Grantor") and RYAN COMPANIES US, INC., a Minnesota corporation ("Grantee").

WHEREAS, Grantor is the owner of that certain tract of land located in Sarpy County, Nebraska, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Grantor Parcel");

WHEREAS, Grantee is the owner of that certain tract of land located in Sarpy County, Nebraska, located contiguous with and adjacent to the Grantor Parcel, which property is more particularly described in Exhibit B attached hereto and by this reference made a part hereof (the "Grantee Parcel"); and

WHEREAS, Grantee desires an easement over, under, across and upon the Grantor Parcel for the purposes set forth in this Easement Agreement and Grantor desires to grant, convey and deliver such easement to Grantee, subject to the terms and conditions of this Easement Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Grant of Easement.** Grantor hereby grants, conveys and delivers to Grantee for the non-exclusive use and benefit of the Grantee Parcel and Grantee, and its successors and assigns, a non-exclusive, perpetual easement (the "Easement") over, under, across and upon the portion of the Grantor Parcel identified on Exhibit C attached hereto (the "Easement Area") for the purpose of (a) the installation, use, operation, inspection, maintenance, repair and replacement of an access road (the "Access Road") to be constructed on the Easement Area by Grantee at Grantee's sole cost and expense, and (b) the installation, use, operation, inspection, maintenance, repair and replacement of a retaining wall, together with certain structural facilities and appurtenances, including without limitation, footings, foundation, piles, anchors, tie-backs and such other structural facilities and appurtenances as Grantee reasonably deems necessary (collectively, the "Retaining Wall") to be constructed on the Easement Area by Grantee at Grantee's sole costs and expense. The Access Road may be used by Grantee, as owner of the Grantee Parcel, and its officers, employees, agents, tenants, invitees, contractors, licensees and customers for vehicular and pedestrian access to and from the Grantee Parcel and Highway 370. The Access Road may also be used by Grantor, as owner of the Grantor Parcel, and its respective

officers, employees, agents, tenants, invitees, contractors, licensees, customers and successors and assigns for vehicular and pedestrian access to and from the Grantor Parcel and Highway 370.

2. **Installation, Repair and Maintenance.** Grantee shall, at its cost, be responsible for the initial installation, and the maintenance, repair, and replacement of the Access Road. The Access Road may not be relocated or removed without the prior written approval of the then owner(s) of the Grantor Parcel, which approval shall not be unreasonably withheld, conditioned or delayed. Grantee shall, at its cost, be responsible for the initial installation, and the maintenance, repair and replacement of the Retaining Wall; provided, however, that Grantor shall be responsible for repairing, at its sole cost and expense, any damage to the Retaining Wall caused by Grantor and its respective officers, employees, agents and any uninsured contractors hired by NRD. For the avoidance of doubt, NRD shall not be responsible for repairing, at its sole cost and expense, any damage to the retaining wall caused by insured contractors hired by NRD.

3. **No Obstruction.** Grantor shall ensure that neither Grantor nor Grantor's officers, employees, invitees, licensees, tenants, contractors, or agents unreasonably impede or obstruct vehicular or pedestrian access by Grantee or its officers, employees, agents, tenants, invitees, contractors, licensees and customers over the Easement Area, or otherwise materially interfere with the exercise by the same of any of the rights granted under this Easement Agreement. Grantee shall ensure that neither Grantee nor Grantee's officers, employees, invitees, licensees, tenants, contractors, or agents unreasonably impede or obstruct vehicular or pedestrian access by the Grantor or its officers, employees, agents, tenants, invitees, contractors, licensees and customers over the Easement Area, or otherwise materially interfere with the exercise by the same of any of the rights granted under this Easement Agreement.

4. **Estoppel Certificate.** Grantor and Grantee shall each, at the request of the other, deliver to the other within twenty (20) days after such request, an estoppel certificate stating that the requesting party has not failed to perform any terms or conditions of this Easement Agreement or if the requesting party has failed, the nature of such failure. Both parties consent to the reliance on such statements by any lenders, prospective purchasers, or prospective tenants of any party to this Easement Agreement.

5. **Cooperation.** Grantor acknowledges that Grantee is pursuing approval for an upgraded commercial access (the "Access Approval") for the existing farm access located on the Grantor Property from the Nebraska Department of Transportation ("NDOT") and Grantor hereby consents to Grantee's pursuit of the Access Approval. Grantor agrees that it will cooperate with Grantee, at Grantee's cost and expense, and take such steps as are reasonably necessary, to assist Grantee in obtaining the Access Approval from NDOT. Grantor agrees, without any consideration, to execute any further documents, applications, permits or ancillary documents reasonably requested by Grantee for the purpose of obtaining the Access Approval.

6. **Term.** The Easement granted herein shall be irrevocable and perpetual, shall run with the land, and shall be an easement appurtenant, and not an easement in gross, for the benefit of Grantor and Grantee, as owner(s) of the Grantor Parcel and Grantee Parcel, and their respective officers, employees, agents, tenants, invitees, contractors, licensees, customers, successors and assigns.

7. **Notices.** All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of this Agreement to be given to any party, shall be delivered in person, or shall be deposited in the United States Mail, postage prepaid, return receipt requested, addressed as set forth below, and shall be effective on the date of delivery, to-wit:

To GRANTEE: Ryan Companies US, Inc.
111 East Grand, Suite 200
Des Moines, IA 50309
Attn: Andy Moffitt

To GRANTOR: John Winkler, General Manager
Papio-Missouri River Natural Resources District
8901 S. 154th Street
Omaha, NE 68138

8. **Repairs and Restoration.** The Grantee shall repair any damage to and restore, or shall pay the Grantor or its assigns the cost of repair to and restoring, to a similar condition as exists on the date of this Agreement any portion of the Grantor Parcel if such is damaged by the Grantee, its engineers, contractors, employees or agents, in carrying out the purposes and scope of this Agreement. Grantee shall have no obligation with respect to the mere discovery of existing conditions in existence as of the date of this Agreement. In the event the Grantor Parcel is developed in the future and such development requires, or otherwise uses, access to and from the Access Road, the owners of the Grantor Parcel and Grantee Parcel shall share in the actual cost of repairs and maintenance of the Access Road, including, without limitation, snow removal, beginning on the date construction commences on the Grantor Parcel. The owner of the Grantor Parcel shall reimburse the owner of the Grantee Parcel for its proportionate share of such costs of repairs and maintenance within thirty (30) days after receipt of written invoice therefor. Grantor's "proportionate share" shall equal fifty percent (50%) of the actual repair and maintenance costs attributed to the portion of the Access Road required and used by the owner of the Grantor Parcel for access to and from the Grantor Parcel and Highway 370.

9. **Indemnification.** Grantor and Grantee shall each indemnify, defend and hold the other party harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees) to the extent incurred in connection with or arising out of the indemnifying party's use of the Easement Area or exercise of the rights granted herein, except to the extent caused by the other party's negligent or wrongful act or omission to act. Notwithstanding the foregoing, in no event shall Grantee have any liability to Grantor or any third party for the mere discovery of existing conditions on the land subject to this Easement.

10. **Waiver.** The failure of Grantor or Grantee to insist on strict performance of any of the agreements contained herein shall not be deemed a waiver of any rights or remedies that Grantor or Grantee may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the agreements contained herein by the same or any other person.

11. **Severability.** If any term or provision of this Easement Agreement or the application of it to any person or circumstance to any extent shall be invalid or unenforceable, the remainder of this Easement Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term or provision of this Easement Agreement shall be valid and shall be enforced to the extent permitted by law.

12. **Modification and Termination.** Except as otherwise provided in this Easement Agreement, this Easement Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of Grantor and Grantee and then only by written instrument duly executed and acknowledged by Grantor and Grantee and recorded in the Office of the Register of Deeds of Sarpy County, Nebraska.

13. **Successors and Assigns.** This Easement Agreement and the Easement created hereby shall be binding upon Grantor and Grantee, their successors and assigns, and upon any person or entity acquiring the Grantor Parcel and the Grantee Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

14. **Counterparts.** This Easement Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Easement Agreement as of the date and year first above written.

GRANTOR:

PAPIO-MISSOURI RIVER
NATURAL RESOURCES DISTRICT

By: _____
Name: JOHN WINKLER
Title: General Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this ____ day of July, 2020, by JOHN WINKLER, General Manager of the Papio-Missouri River Natural Resources District, said district.

Notary Public

GRANTEE:

RYAN COMPANIES US, INC., a Minnesota corporation

By: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this ____ day of July 2020, by _____, the _____ of RYAN COMPANIES US, INC., a Minnesota corporation, on behalf of said corporation.

Notary Public

EXHIBIT A

THE SOUTH ONE-HALF OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 11, EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, EXCEPT THAT PART DEEDED TO THE STATE OF NEBRASKA, DEPARTMENT OF ROADS IN WARRANTY DEED FILED JULY 23, 1997 IN INSTRUMENT NO. 97-15464, AND THE DEED OF CORRECTION FILED FEBRUARY 13, 2009 IN INSTRUMENT NO. 2009-03854.

EXHIBIT B

THE SOUTHWEST QUARTER (SW1/4) OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, EXCEPT THAT PART CONVEYED TO THE STATE OF NEBRASKA, DEPARTMENT OF ROADS BY WARRANTY DEED RECORDED NOVEMBER 5, 1998 AT INSTRUMENT NO. 98-031455 OF THE OFFICIAL RECORDS OF SARPY COUNTY, NEBRASKA MORE FULLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND LOCATED IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE SIXTH PRINCIPAL MERIDIAN, SARPY COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 25; THENCE NORTHERLY A DISTANCE OF 2645.24 FEET ALONG THE WESTERLY LINE OF SAID QUARTER SECTION TO THE NORTHWEST CORNER OF THE SAID WEST HALF OF THE SAID QUARTER SECTION; THENCE EASTERLY DEFLECTING 090 DEGREES, 37 MINUTES, 23 SECONDS RIGHT ALONG THE NORTHERLY LINE OF THE SAID QUARTER SECTION FOR A DISTANCE OF 140.01 FEET TO A POINT ON THE EXISTING EASTERLY RIGHT OF WAY LINE OF HIGHWAY N-50; THENCE SOUTHERLY DEFLECTING 089 DEGREES, 23 MINUTES, 28 SECONDS RIGHT, ALONG THE SAID EXISTING EASTERLY RIGHT OF WAY LINE OF HIGHWAY N-50 FOR A DISTANCE OF 633.85 FEET; THENCE SOUTHEASTERLY DEFLECTING 047 DEGREES, 38 MINUTES, 57 SECONDS LEFT, A DISTANCE OF 58.64 FEET; THENCE SOUTHERLY DEFLECTING 051 DEGREES, 28 MINUTES, 23 SECONDS RIGHT, A DISTANCE OF 561.75 FEET; THENCE CONTINUING SOUTHERLY DEFLECTING 007 DEGREES, 33 MINUTES, 20 SECONDS LEFT, A DISTANCE OF 846.69 FEET; THENCE EASTERLY DEFLECTING 69 DEGREES, 33 MINUTES, 26 SECONDS LEFT, A DISTANCE OF 1182.76 FEET TO A POINT ON THE EASTERLY LINE OF THE SAID WEST HALF OF SAID QUARTER SECTION; THENCE SOUTHERLY DEFLECTING 073 DEGREES, 18 MINUTES, 29 SECONDS RIGHT, ALONG THE SAID EASTERLY LINE OF THE SAID WEST HALF OF SAID QUARTER SECTION, FOR A DISTANCE OF 237.12 FEET TO THE SOUTHEAST CORNER OF THE SAID WEST HALF OF SAID QUARTER SECTION; THENCE WESTERLY DEFLECTING 090 DEGREES, 30 MINUTES, 21 SECONDS RIGHT, ALONG THE SOUTHERLY LINE OF THE SAID QUARTER SECTION, FOR A DISTANCE OF 1333.12 FEET TO THE POINT OF BEGINNING.

AND EXCEPT THAT PART OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA TAKEN BY THE STATE OF NEBRASKA, DEPARTMENT OF ROADS BY RETURN OF APPRAISERS RECORDED OCTOBER 29, 1957 IN BOOK 22 AT PAGE 332 OF THE OFFICIAL RECORDS OF SARPY COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHWEST CORNER OF SAID SECTION 25; THENCE EASTERLY ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 25 A DISTANCE OF 139.35 FEET; THENCE NORTHERLY 43.9 FEET TO THE POINT OF BEGINNING, WHICH POINT IS 139.36 FEET EASTERLY FROM THE WEST LINE OF SAID SOUTHWEST QUARTER; THENCE NORTHERLY A DISTANCE OF 2,602.1 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER; THENCE WESTERLY ON SAID NORTH LINE A DISTANCE OF 107.0 FEET TO A POINT 33 FEET EASTERLY FROM THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE SOUTHERLY ON A LINE 33 FEET EASTERLY FROM AND PARALLEL TO THE WEST LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 2,442.0 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ON A 172.7 FOOT RADIUS CURVE TO THE LEFT (INITIAL TANGENT OF WHICH COINCIDES

WITH THE LAST DESCRIBED COURSE) A DISTANCE OF 203.7 FEET TO THE POINT OF BEGINNING.

AND EXCEPT THAT PART OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA PLATTED AS PART OF PRAIRIE CORNERS TWO RECORDED JULY 20, 1998 AT INSTRUMENT NO. 98-019557 OF THE OFFICIAL RECORDS OF SARPY COUNTY, NEBRASKA.

AND EXCEPT THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA TAKEN BY THE STATE OF NEBRASKA DEPARTMENT OF ROADS BY RETURN OF APPRAISERS FILED OCTOBER 15, 1997 AT INSTRUMENT NO. 97-023108 OF THE OFFICIAL RECORDS OF SARPY COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE WESTERLY A DISTANCE OF 1333.12 FEET ALONG THE SOUTHERLY LINE OF SAID QUARTER SECTION TO A POINT; THENCE NORTHERLY DEFLECTING 089 DEGREES, 29 MINUTES, 39 SECONDS RIGHT, ALONG THE WESTERLY LINE OF SAID EAST HALF OF THE QUARTER SECTION, FOR A DISTANCE OF 237.12 FEET; THENCE EASTERLY DEFLECTING 091 DEGREES, 06 MINUTES, 08 SECONDS RIGHT, FOR DISTANCE OF 768.99 FEET; THENCE CONTINUING EASTERLY DEFLECTING 014 DEGREES, 10 MINUTES, 50 SECONDS LEFT, A DISTANCE OF 579.46 FEET TO A POINT ON THE EASTERLY LINE OF SAID QUARTER SECTION; THENCE SOUTHERLY DEFLECTING 103 DEGREES, 06 MINUTES, 42 SECONDS RIGHT, ALONG THE SAID EASTERLY LINE OF SAID QUARTER SECTION, FOR A DISTANCE OF 365.22 FEET TO THE POINT OF BEGINNING.

EXHIBIT C

After recording, return to:

David Madden
McGrath North Mullin & Kratz, PC LLO
1601 Dodge Street, #3700
Omaha, NE 68102

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

In consideration of the sum of **ONE DOLLAR (\$1.00)** and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as the “District”), for itself and for its successors and assigns, does hereby grant to _____ (hereinafter referred to as the “Grantee”), and its successors and assigns, the easements hereinafter described, in, over and across certain real property located in Sarpy County, Nebraska legally described as follows (the “Easement Area”):

See Exhibit “A” attached hereto and incorporated herein by reference.

Subject to the terms and conditions of this temporary construction easement agreement (this “Agreement”), Grantee and its successors, assigns, and contractors shall have full and free right, liberty and authority to enter upon and use the Easement Area for construction related to the improvement and installation of an access road.

The term of this Agreement and the easement granted hereunder shall commence on the date of commencement of the Grantee’s construction and shall continue during the period of construction of the referenced projects by the Grantee and its agents and contractors, but in all events the temporary construction easement shall terminate twenty-four (24) months from and after the recording of this Agreement.

The purpose and scope of the easement herein granted shall be for the construction of a road to be used by the Grantee and others pursuant to a separate written agreement between the District and Grantee, and, for pedestrian, vehicular and machine ingress and egress, including, without limitation, the right to have the air space above the Easement Area free from obstruction to such height as will permit passage and operation of machinery. Grantee shall not access or use the Easement Area for any other use or purpose not expressly set forth herein.

In regard to said easements, it is expressly agreed:

1. The date of commencement of construction shall be the date upon which the Grantee or its contractors first enters upon the property subject to this temporary construction easement for the purpose of construction.
2. All work performed by Grantee in the performance of the purposes set forth above shall be done in conformance with the plan and specifications provided to the District and attached hereto as Exhibit "B-1" and "B-2" which are approved by the District ("Approved Plans"). All work shall be done in compliance with the Approved Plans. Material deviations from the Approved Plans shall require the further approval of the District, and such approval shall not be unreasonably withheld, delayed or conditioned. The finished grade of the road constructed by Grantee hereunder shall not exceed a slope of 3:1.
3. The Grantee, its engineers, contractors and agents, shall have the full right and authority of ingress and egress at all times upon the Easement Area in order to perform any of the acts and functions described within the purposes and scope of this easement.
4. The Grantee shall repair any damage to and restore, or shall pay the District or its assigns the cost of repair to and restoring, to a similar condition as exists on the date of commencement of this easement any area on District's property within the Easement Area and any area that is outside of the Easement Area if such area outside the Easement Area is damaged by the Grantee, its engineers, contractors, employees or agents, in carrying out the purposes and scope of this easement. Grantee shall have no obligation with respect to the mere discovery of existing conditions.
5. Except to the extent caused by the negligence or willful misconduct of the District, its agents and employees, the Grantee agrees to indemnify 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 (a) Grantee's breach of any term, obligation or condition set forth herein, and/or (b) Grantee and/or Grantee's engineers, contractors, employees and agents in carrying out the purposes and scope of this easement.
6. The District warrants and agrees that the District has lawful possession of the real estate on which the Easement Area is located, good, right and lawful authority to make the conveyance herein and that the District and its heirs, executors, administrators, successors and assigns shall warrant and defend the same and will indemnify and hold harmless the Grantee forever against the claims of all persons whomsoever in any way asserting any right, title or interest prior to or contrary to this grant of easement. No third-party consents are required for the District to make this grant of easement.

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Executed by the District on this _____ day of March, 2020.

PAPIO-MISSOURI RIVER
NATURAL RESOURCES DISTRICT

By: _____

Name: JOHN WINKLER

Title: General Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this _____ day of March, 2020, by
JOHN WINKLER, General Manager of Papio-Missouri River Natural Resources District.

Notary Public

Executed by the Grantee on this _____ day of March, 2020.

[GRANTEE NAME]

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020,
by _____, the _____ of
_____, on behalf of said _____.

Notary Public

EXHIBIT A

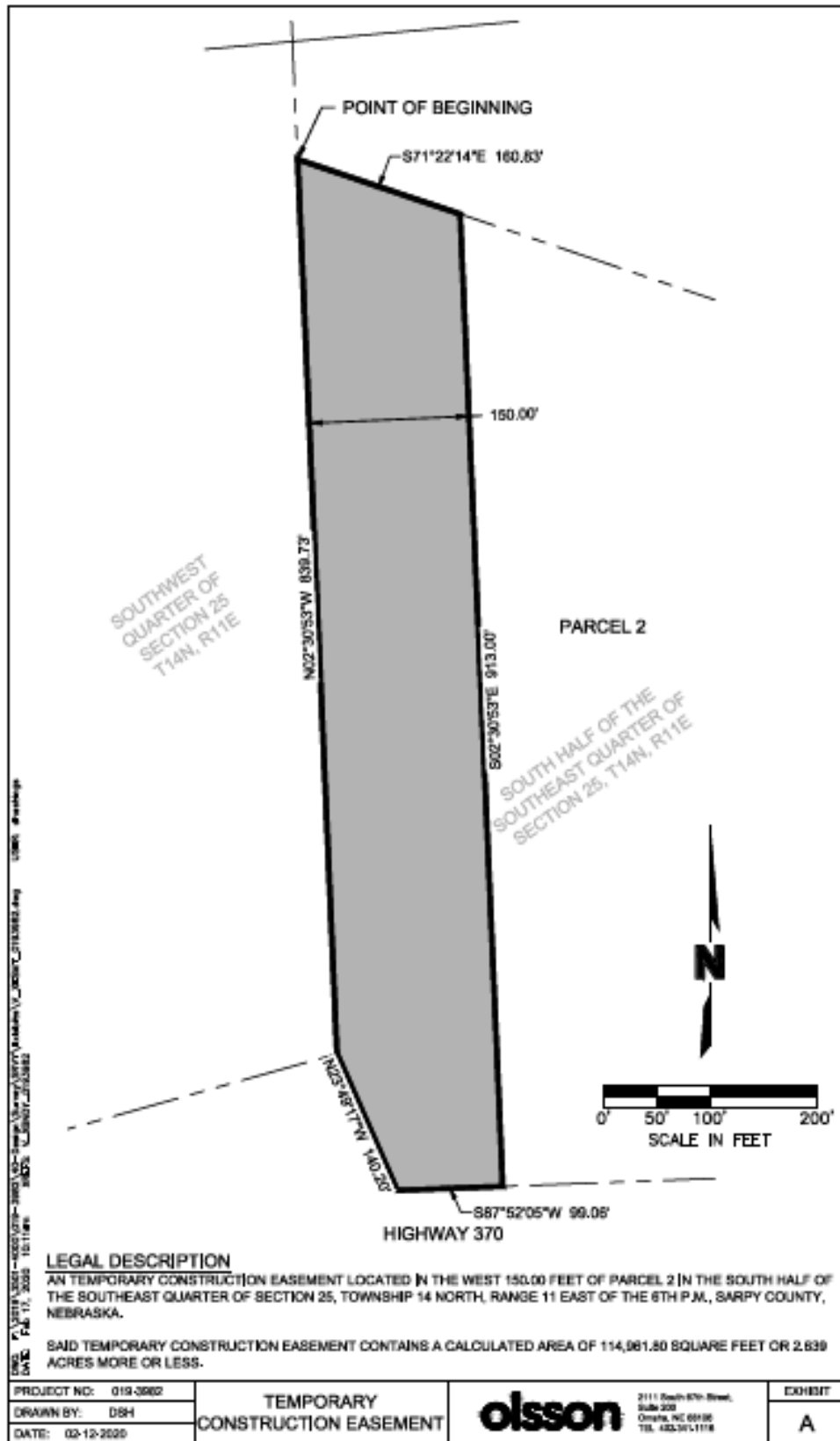


EXHIBIT B

