

## MEMORANDUM

**TO:** Projects, Programs and Operations Subcommittee

**FROM:** Martin P. Cleveland

**SUBJECT:** Little Papio Creek (Dodge Street to Cass Street)  
Piccolo's Pointe Development Easement Agreements

**DATE:** December 28, 2007

The referenced project location is on the east side of Little Papio Creek, immediately north of Dodge Street (see enclosed location map). The landowner of this property has proposed a redevelopment of this site for multiple uses (see enclosed site map). Douglas County, the former owner of Little Papio Creek Project, granted an easement to a previous landowner of the site for use of County (now NRD) owned land at the west edge of Piccolo's Pointe site. The easement area is east of a retaining wall along the creek and not readily accessible from creek/trail side of the wall.

The Piccolo's Pointe developer has proposed the following items:

1. The Developer will release his current easement (that County granted) over NRD property on the west edge of site. The current easement does not provide the Developer the uses he desires for property. The previous easement was specific to a drive in restaurant.
2. The NRD will grant an occupation of channel ROW easement over NRD property on west edge of site with easement conditions matching the proposed use of development at no cost to developer, while still maintaining the District's access and uses.
3. The Developer will grant a new ingress/egress easement across his property to allow NRD to access the NRD channel right-of-way at no cost to the NRD.
4. The Developer will grant a new channel/trail operation and maintenance easement over outlot "A" located at northwestern corner of development at no cost to NRD. This outlot includes a trail bridge over Cole Creek. It appears that this property should have been acquired by the County during the Channel Project construction in late 1960's, but was missed by the parties involved in the transaction.

Copies of the referenced easement agreements are attached.

**It is management's recommendation that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Little Papio Creek/Piccolo's Pointe easement agreements, subject to minor changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**

DWG: F:\Projects\007-1341\LDDVP\Exhibits\71341\_NRD Aerial Exhibit.dwg  
DATE: Dec 21, 2007 10:51am  
USER: mbickford  
XREFS: 71341\_pbase 71341\_xbase



PROJECT NO: 007-1341  
DRAWN BY: MDB  
DATE: 12/18/2007

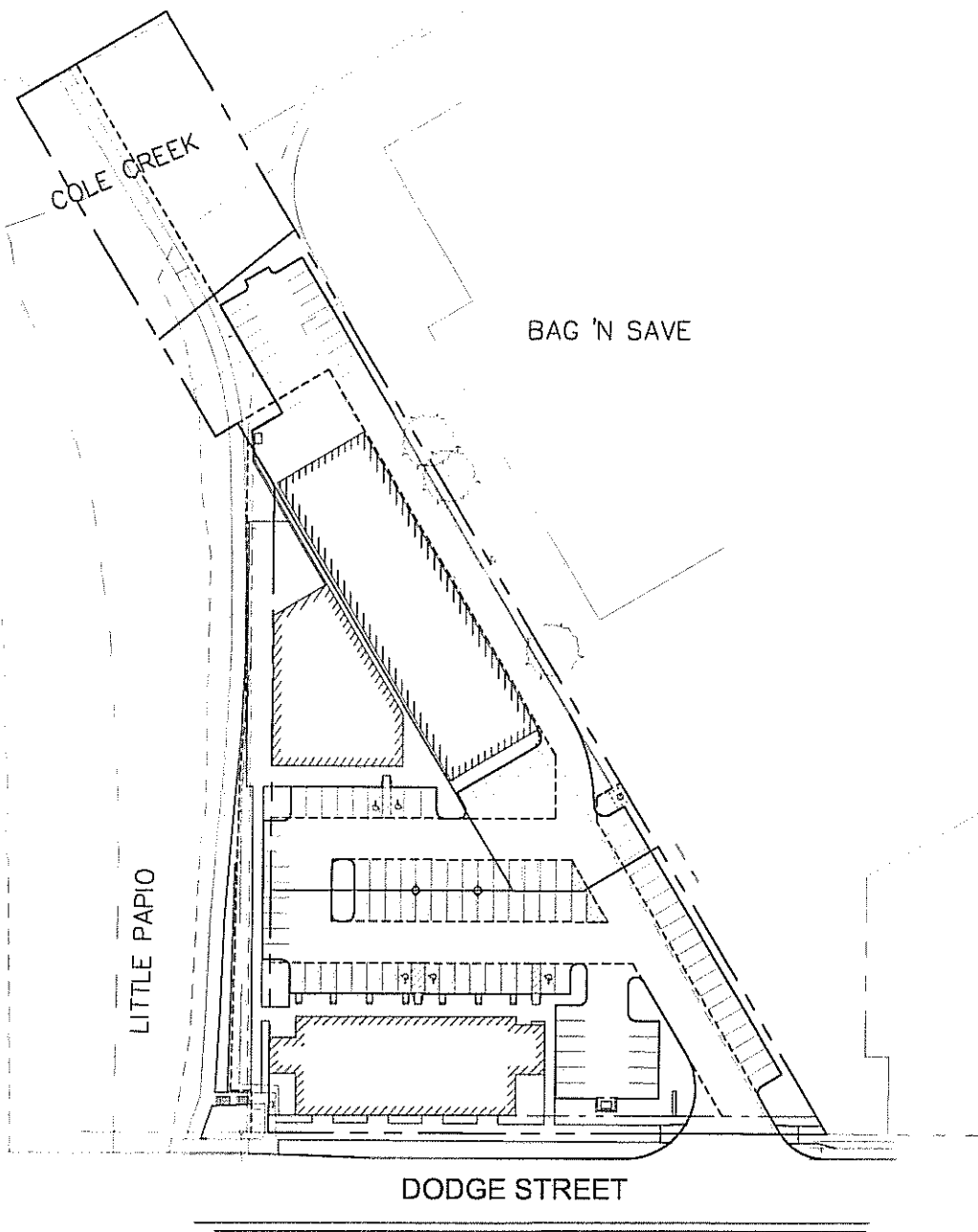
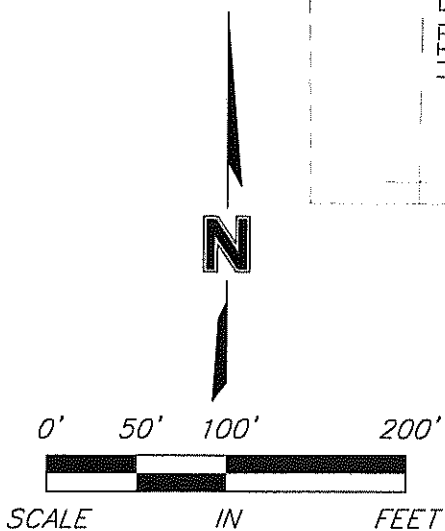
## PICCOLO'S POINTE SITE PLAN

**MOLSSON**  
ASSOCIATES

2120 South 72nd Street  
Suite 1400  
Omaha, NE 68124-6316  
TEL 402.341.1116  
FAX 402.341.5895

EXHIBIT  
A

DWG: F:\Projects\007-1341\DDVP\Exhibits\71341\_NRD\Aerial\Exhibit.dwg USER: mbickford  
 DATE: Dec 21, 2007 11:11am XREFS: 71341\_pbase 71341\_xbase



PROJECT NO: 007-1341  
 DRAWN BY: MDB  
 DATE: 12/18/2007

# PICCOLO'S POINTE SITE PLAN

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\_\_\_\_\_  
[The space above the line is for recording data.]

**TERMINATION OF EASEMENT**

KNOW ALL MEN BY THESE PRESENTS:

THAT BOESEN OMAHA REAL ESTATE, LLC, a Nebraska limited liability company, as successor-in-interest to Todd's Drive Inn Restaurant, Inc., does hereby forever terminate and release its easement granted by Permanent Easement in the Douglas County Register of Deeds at Book 464 Page 543 of the miscellaneous records

IN WITNESS WHEREOF, the successor in interest to the benefited parcel hereto have caused this Termination to be signed effective this \_\_\_\_ day of \_\_\_\_\_, 2006.

BOESEN OMAHA REAL ESTATE,  
LLC, a Nebraska limited liability  
company,

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

State of Nebraska        )  
                                  )cc.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_, member on behalf of Boesen Omaha Real Estate, LLC, a Nebraska limited liability company.

SEAL

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



BOOK 464 PAGE 543

PERMANENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the COUNTY OF DOUGLAS, NEBRASKA, hereinafter called the Grantor, does hereby grant unto TODD'S DRIVE INN RESTAURANT, INC., hereinafter called Grantee, its successors and assigns, a permanent easement over and across the real estate described as follows:

The East Twelve and Five-Tenths Feet (12.5') of a tract of land lying in the Northwest Quarter (NW 1/4) of Section 23, Township 15 North, Range 12, East of the 5th P.M., Douglas County, Nebraska, more particularly described as follows:

Beginning at a point on the South line of New Tax Lot 2 in the Northwest 1/4, Section 23, 15-12, said point being on the North E.C.W. line of Dodge Street 200.10 feet West of the Southeast corner of said Tax Lot 2; thence S 88°04'53" W along said South line for a distance of 33.91 feet; thence N 51°43'13" E for a distance of 402.40 feet to a point on the Westerly Railroad E.C.W. of the Chicago and Northwestern Railroad; thence N 51°08'31" E for a distance of 15.00 feet; thence S 32°51'29" E for a distance of 42.06 feet; thence S 01°42'27" E for a distance of 174.05 feet to the point of beginning, containing 12,609 square feet more or less of which 12,916 square feet more or less is usable, and 693 square feet more or less is unusable. All bearings given are assumed bearings.

The purpose of said easement shall be to allow grantees, their successors and assigns, the right to park automobiles, for the ingress and egress incidental thereto, and to construct electronic ordering stands at 20 foot intervals within the East 3.3' of said easement, provided stands can be removed as required for periodic maintenance of the adjoining channel; the consideration for said easement shall be One Dollar (\$1.00) and other good and valuable consideration.

Grantor hereby retains the right to the use of the property conveyed by this Easement when necessary for the purpose of performing maintenance work on the Papio Channel.

BOOK 464 PAGE 544

DATED this 28th day of May 1968

COUNTY OF DOUGLAS, NEBRASKA

ATTEST

County Clerk

Chairman of the Board

May 28, 1968

RECORDED IN COMMISSIONER'S

Record 164 Page 483

RECEIVED

JUN 12 AM 9 25

DEPT. OF REVENUE  
REGISTER OF DEEDS  
COUNTY OF DOUGLAS, NEB.

RECEIVED  
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**EASEMENT AGREEMENT FOR OCCUPATION OF  
LEVEE/CHANNEL RIGHT-OF-WAY**

This Agreement is entered into by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCE DISTRICT, a governmental subdivision of the State of Nebraska, with offices at 8901 South 154<sup>th</sup> Street, Omaha, Nebraska, 68138-3621 (hereinafter called "the District") and Boesen Omaha Real Estate, LLC, a Nebraska limited liability company (hereinafter called "the Grantee", whether one or more and regardless of gender).

**WHEREAS**, the Grantee desires to install, operate, maintain and replace a sidewalk, parking and outdoor marketplace/plaza along with landscaping (hereafter collectively called "the Construction") in that portion of the District's levee/channel right-of-way in Douglas County, Nebraska, described in Exhibit 'A' attached hereto and incorporated herein by reference (such portion of the District's levee/channel right-of-way hereinafter being called "the Easement Area"); and,

**WHEREAS**, the District is agreeable to grant a permanent easement for the Construction in accordance with the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of their mutual covenants herein expressed, the District and Grantee agree as follows:

1. The District does hereby grant to the Grantee, and its successors and assigns, the permanent easement and right to install, operate, maintain, repair and replace the Construction in, under and through the Easement Area, in accordance with the plans and specifications for the Construction dated \_\_\_\_\_ and prepared by Olsson Associates and Kenneth Hahn Architects and more specifically permits the following items:
  - a.) Grantee may install tables, seating and fencing in the Easement Area, provided the same is of a portable or removable type.
  - b.) A fixed awning or roof of Building B and C as shown on the plans and specifications, may protrude up to 5 feet into the Easement Area as shown on the plans and specifications, any further protrusion shall be retractable type only.
  - c.) Footings for Buildings B and C may protrude up to 3 feet into the Easement Area.

- d.) Sidewalks and patios installed by Grantee in the Easement Area will be constructed with concrete at least six inches in thickness. The District will not be responsible for any damages to Grantee's sidewalks, patios and other improvements comprising the Construction except as may be solely and proximately caused by the negligent act or omission of the District.
  - e.) Grantee may install a six foot tall privacy fence on the North end of the Easement Area, which fence may encroach upon the easement area up to five (5) feet.
  - f.) Shrubs and grasses may be planted in the Easement Area provided however, such shrubs and grasses shall not interfere or impede the District's access across the Easement Area to the channel.
2. The District's levee and channel facilities, and appurtenances thereto, which are damaged or altered as a result of the installation, operation, maintenance, repair or replacement of the Construction, shall be properly and immediately restored by the Grantee to their "as-built" condition. This shall include but not be limited to the following:
- a.) Excavations shall be backfilled with the same or comparable material and compacted to a density at least equal to that of the adjacent levee.
  - b.) Seeded areas which are disturbed shall be re-seeded and a vegetative cover acceptable to the District shall be established.
  - c.) Materials, pipe, debris and other construction materials shall be removed.
  - d.) A new three inch (3") thick by ten foot (10') wide crushed limestone (1-1/2 inch crusher run) surfacing will be placed on all traveled unpaved portions of the levee roadway, unless District waives this requirement at the project's final inspection.
3. The Grantee agrees to pay the reasonable cost of all repairs of damages or rectification of alterations to the District's levee and channel facilities necessitated or caused by or arising out of the installation, operation, maintenance, repair or replacement of the Construction, or the use of the levee system by the Grantee and/or its contractors. In the event any such facilities are not restored to their "as-built" condition in accordance with paragraph 2 above, within thirty (30) days after the District shall have demanded the same in writing, the District shall be authorized or commission such repairs and, following demand therefor, shall have an action against the Grantee for the reasonable cost thereof, for the District's associated administration costs, and for such attorney fees and court costs as may be permitted by law.
4. The Grantee agrees to indemnify and hold the District harmless from and against any and all liability, causes of action, claims and expenses for personal injury or property damage arising out of or occasioned by the use of the Easement Area by the Grantee pursuant this Easement Agreement, except as may be caused solely by the negligence of the District, its agents and employees.



5. Except as provided herein, the Grantee shall be responsible for obtaining its own rights of ingress and egress to and from the Easement Area. Any use by the Grantee of the District's levee for vehicular traffic shall be limited to the Easement Area, and shall be limited to ¾ ton rated pickups and automobiles (except in the immediate work area).
6. The Grantee agrees to reimburse the District for all costs incurred by the District in connection with the District's inspection of the installation, operation, maintenance, repair and replacement work permitted under this agreement, which inspection costs shall be itemized and transmitted by the District to the Grantee within ninety (90) days after their accrual.
7. The Grantee agrees to notify the District at least 24 hours prior to beginning any work in the Easement Area.
8. Upon completion of the installation of the Construction or any replacements thereof, the Grantee shall furnish to the District two copies of "as-built" plans for the Construction or replacement.
9. The Grantee shall maintain the Construction in a manner which will not interfere with the continued operation and maintenance of the District's levee and channel facilities, the level of flood protection afforded by the District's levee system to be maintained at all times.
10. The Easement Area shall not include the existing retaining wall.
11. Grantee assumes the entire risk of loss or damage to the Construction, from all causes whatsoever, including flood or other natural disaster or act of God, and excluding only loss or damage caused solely by the negligence of the District or its officers and employees.
12. It is understood that this agreement does not include a warranty by the District of its title to the Easement Area or to the interest herein conveyed.

**IN WITNESS WHEREOF**, the parties hereto have executed this Easement Agreement on the respective dates shown, such agreement to be effective upon the date the same has been signed by all parties.

**GRANTEE:**

**Boesen Omaha Real Estate, LLC, a Nebraska limited liability company**

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

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**GRANTOR:**  
**Papio-Missouri River Natural Resource District**

By \_\_\_\_\_  
John G. Winkler, General Manager

STATE OF NEBRASKA                    )  
  ) ss:  
COUNTY OF DOUGLAS                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, a notary public in and for said County, personally came the above named JOHN G. 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.

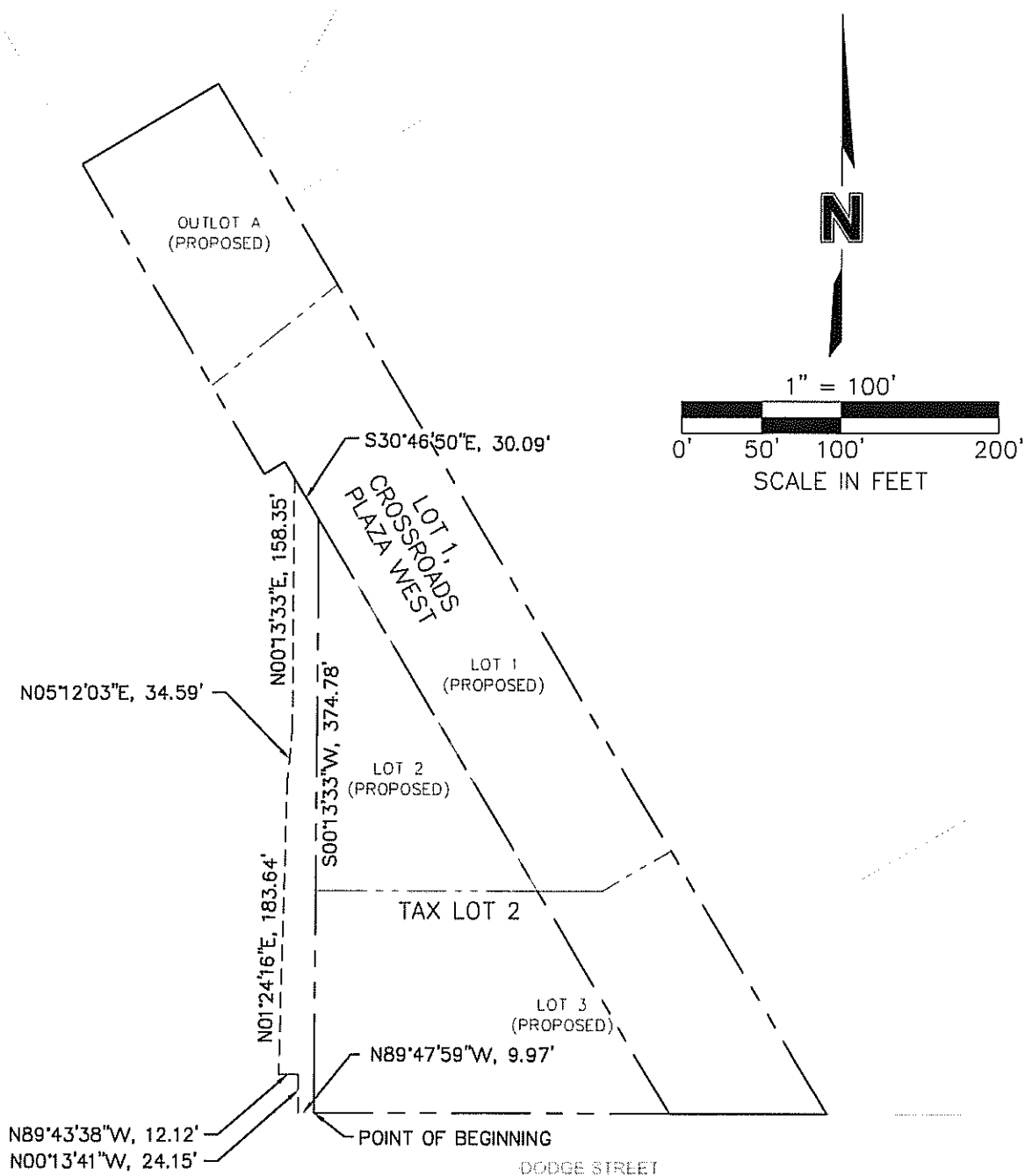
WITNESS my hand and Notorial Seal the date last aforesaid.

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

**EXHIBIT 'A'**

**LEGAL DESCRIPTION**  
(METES AND BOUNDS)

DWG: F:\Projects\007-1341\DDVP\Exhibits\71341\_NRDEaseementExhibit(alt).dwg  
DATE: Nov 14, 2007 8:32am  
USER: mbickford  
XREFS:



### LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NE $\frac{1}{4}$  OF THE NW $\frac{1}{4}$  OF SECTION 23, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF TAX LOT 2 (PROPOSED LOT 3, PICCOLOS POINTE); THENCE ON THE NORTH RIGHT OF WAY LINE OF DODGE STREET, N89°47'59"W, 9.97 FEET; THENCE N00°13'41"W, 24.15 FEET; THENCE N89°43'38"W, 12.12 FEET; THENCE N01°24'16"E, 183.64 FEET; THENCE N05°12'03"E, 34.59 FEET; THENCE N00°13'33"E, 158.35 FEET; THENCE S30°46'50"E, 30.09 FEET; THENCE S00°13'33"W, 374.78 FEET TO THE POINT OF BEGINNING, CONTAINING 0.16 ACRES MORE OR LESS.

PROJECT NO: 007-1341  
DRAWN BY: MDB  
DATE: 11/08/07

NRD EASEMENT  
LEGAL DESCRIPTION

**MOLSSON**  
ASSOCIATES

2120 South 72nd Street  
Suite 1400  
Omaha, NE 68124-6316  
TEL 402.341.1116  
FAX 402.341.5895

EXHIBIT  
A

**PERMANENT EASEMENT FOR INGRESS AND EGRESS  
LITTLE PAPILLION CREEK PROJECT**

For and in consideration of ten dollars (\$10.00) and other good and valuable consideration in hand paid, \_\_\_\_\_ (hereinafter referred to as "**GRANTOR**"), for itself and for its successors and assigns, does hereby grant to the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "**the DISTRICT**"), and its successors and assigns, an assignable and permanent easement (hereinafter referred to as "**THIS EASEMENT**") in, on, under, over and across the tract of land in Douglas County, Nebraska, described in the legal description and diagram attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "**EASEMENT AREA**").

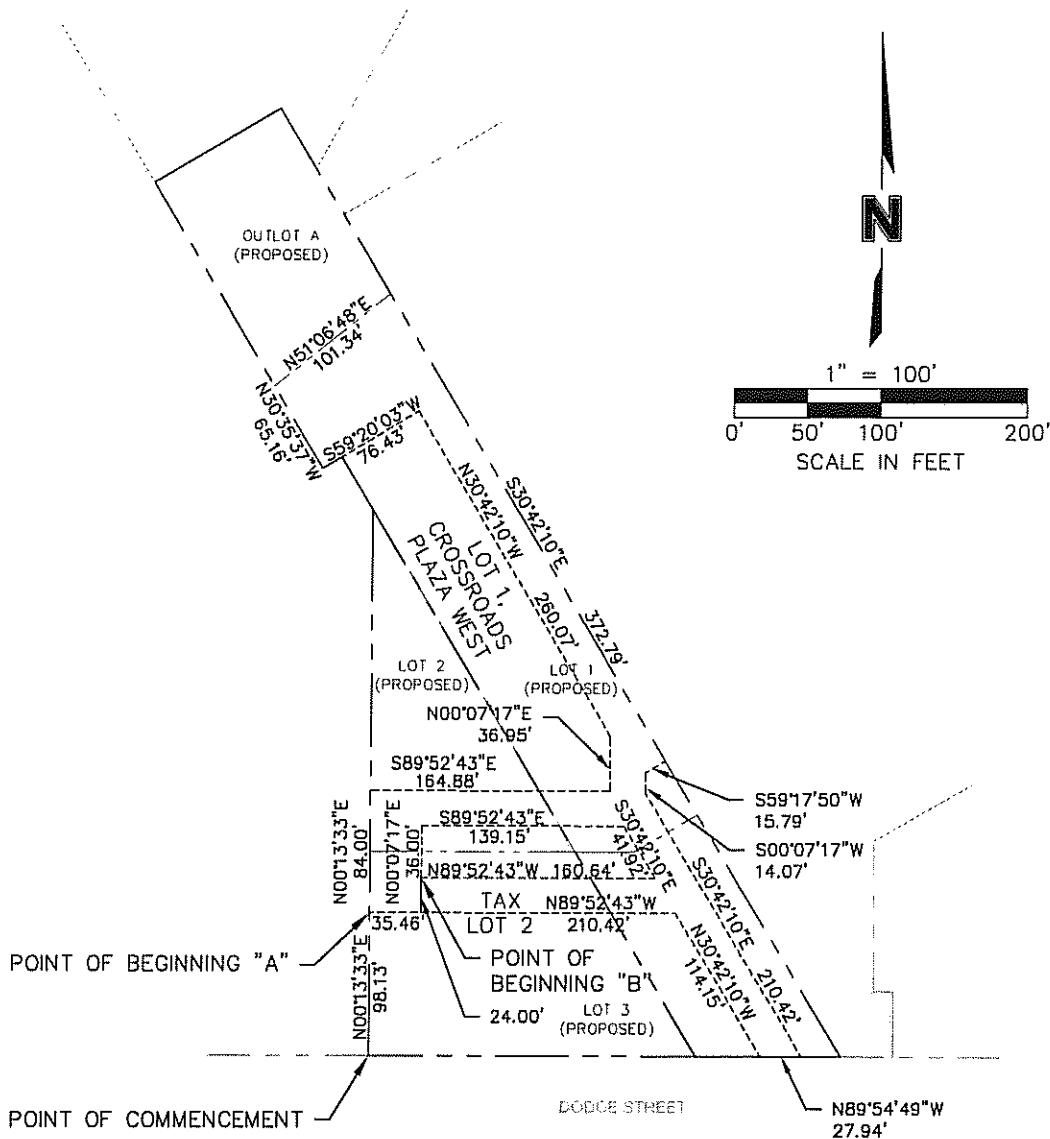
THIS EASEMENT consists of the permanent and non-exclusive right of the DISTRICT to use the surface of the EASEMENT AREA for vehicular, equipment and pedestrian ingress and egress in connection with the DISTRICT's construction, operation, maintenance, repair, reconstruction, replacement and inspection of the DISTRICT'S Little Papillion Creek flood control and recreational improvements on adjacent lands, all subject to the following:

1. The consideration recited herein constitutes payment in full for any and all damages sustained by GRANTOR, its successors and assigns, by reason of the exercise by the DISTRICT, its successors and assigns, of the rights and privileges described or granted by THIS EASEMENT.
2. GRANTOR waives compliance by the DISTRICT with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Sec. 25-2501, R.R.S. 1995, et seq.).





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DATE: Dec 13, 2007 1:40pm XREFS: 71341\_pbase 71341\_xbase



PROJECT NO: 007-1341  
DRAWN BY: MDB  
DATE: 12/10/07

NRD INGRESS/  
EGRESS EASEMENT

**MOLSSON**  
ASSOCIATES

2120 South 72nd Street  
Suite 1400  
Omaha, NE 68124-6316  
TEL 402.341.1116  
FAX 402.341.5895

EXHIBIT  
A

**PERMANENT EASEMENT FOR LITTLE PAPILLION CREEK FLOOD  
CONTROL PROJECT IMPROVEMENTS**

For and in consideration of ten dollars (\$10.00) and other good and valuable consideration in hand paid, \_\_\_\_\_ (hereinafter referred to as "**GRANTOR**"), for itself and for its successors and assigns, does hereby grant to the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "the **DISTRICT**"), and its successors and assigns, an assignable and permanent easement (hereinafter referred to as "**THIS EASEMENT**") in, on, under, over and across the tract of land in Douglas County, Nebraska, described in the legal description and diagram attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "**EASEMENT AREA**").

**THIS EASEMENT** consists of the permanent and exclusive right of the **DISTRICT** to construct, patrol, operate, maintain, regulate, repair, modify, reconstruct, replace and use flood control levees and channel improvements in the **EASEMENT AREA**, together with public bicycle and pedestrian trail improvements thereon, all subject to the following:

1. The consideration recited herein constitutes payment in full for any and all damages sustained by **GRANTOR**, its successors and assigns, by reason of the exercise by the **DISTRICT**, its successors and assigns, of the rights and privileges described or granted by **THIS EASEMENT**.
2. **GRANTOR** waives compliance by the **DISTRICT** with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Sec. 25-2501, R.R.S. 1995, et seq.).

3. GRANTOR shall not have any responsibility for maintaining any of the DISTRICT'S improvements in the EASEMENT AREA.

4. THIS EASEMENT shall not pass, nor be construed to pass, to the DISTRICT, or its successors or assigns, any fee simple interest or title.

5. THIS EASEMENT shall be deemed to run with the land and shall be binding upon GRANTOR, and its successors, and assigns.

6. GRANTOR, for itself and for its successors and assigns, warrants to the DISTRICT, and its successors and assigns, that GRANTOR is the owner of the EASEMENT AREA and that it has good right to grant THIS EASEMENT over the same; that the EASEMENT AREA is free and clear of all leases, liens and other encumbrances, except recorded easements and protective covenants; and, that GRANTOR will warrant and defend the title of the DISTRICT, and the title of its successors and assigns, to THIS EASEMENT against all lawful claims and demands of all persons whomsoever.

THIS EASEMENT is executed by GRANTOR on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_, GRANTOR

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA )  
                                  ) SS.  
COUNTY OF DOUGLAS )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, a Notary Public, personally came the above-named \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_, the GRANTOR, and he acknowledged the execution of the above instrument as his voluntary act and deed as such officer.

WITNESS my hand and Notarial Seal the date last aforesaid.

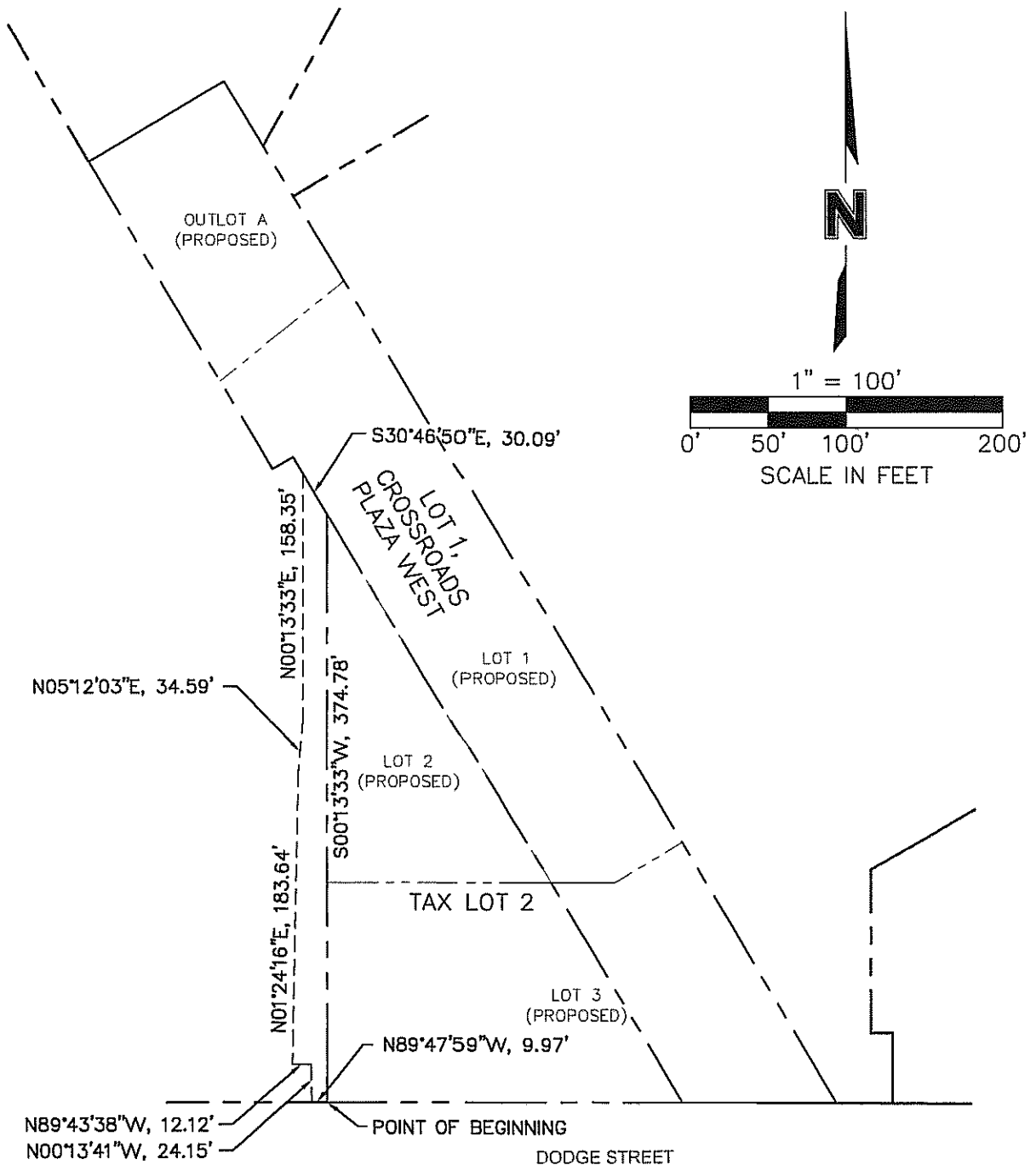
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Notary Public

USER: mbickford

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DATE: Jan 07, 2008 8:06am

XREFS:



### LEGAL DESCRIPTION:

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PROJECT NO: 007-1341	OCCUPATION OF LEVEE/CHANNEL RIGHT-OF-WAY EASEMENT		2120 South 72nd Street Suite 1400 Omaha, NE 68124-6316 TEL 402.341.1116 FAX 402.341.6895	EXHIBIT
DRAWN BY: MDB				"A"
DATE: 11/08/07				