CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **April 20, 2020**

ITEM: Motion - Approval of Temporary Access License to Della Vita for removal of structures and improvements necessary for the EP True Parkway Extension Project (West of 88th Street, Project No. 0510-076-2017).

FINANCIAL IMPACT: None

BACKGROUND: On February 19, 2019, the City purchased property in fee title and an access license necessary for the EP True Parkway Extension (West of 88th Street), Project No. 0510-076-2017 ("Project"). This Access Agreement allows Della Vita to enter said property and remove structures and improvements necessary for the Project.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Approve the Temporary Access License.

Lead Staff Member: Richard J. Scieszinski, City Attorney

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

TEMPORARY ACCESS LICENSE

This Temporary Access License ("License") by and between the property owner City of West Des Moines, Iowa, an Iowa municipal corporation ("Owner") and developer Della Vita, LLC ("Developer") is effective as of the date it is duly executed by both parties ("Effective Date").

Property Owner: City of West Des Moines, Iowa, an Iowa municipal corporation

Project: Della Vita – EP True Extension (west of 88th Street)

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. Grant of License. Owner hereby grants Developer a temporary non-exclusive license to use Owner's property described on the property legal described below ("Property" or "Licensed Area") for the purposes specified herein ("Permitted Uses"):

As shown on the Warranty Deed recorded in Book 2019, Page 9505 on June 14, 2019 in the Office of the Dallas County, Iowa Recorder and attached as **Exhibit "A"** and including Owner's interest in that certain Temporary Construction Easement and Addendum also attached as Exhibit A

2. Permitted Uses. Developer may only use the Licensed Area for the demolition and removal of the improvements/structures and associated appurtenances located at the southwest corner of EP True Parkway and 88th Street, locally known as 525 88th Street, and for the restoration of the Property. Developer shall not use the Property for any other unrelated purpose whatsoever without Owner's prior approval. Developer shall not use the Licensed Area or permit the Licensed Area to be used in any manner that: (i) violates any applicable law; (ii) causes or is reasonably likely to cause any damage to the Licensed Area or liability to Owner; or (iii) constitutes or is reasonably likely to constitute a nuisance, annoyance or inconvenience.

3. Term. This License shall commence on the Effective Date and shall continue until completion of demolition of the improvements/structures and restoration of the property as described in Sections 2 and 6, respectively. Developer shall commence demolition within a reasonable amount of time and will pursue demolition and restoration to completion using commercially reasonable efforts, subject to unavoidable delays due to the outbreak of COVID-19.

4. Public Safety. Developer shall be solely responsible for protecting its public safety and the safety of all individuals entering the Licensed Area in connection with the activities described herein.

5. Developer Contractors. Developer shall be responsible for the acts, omissions, and compliance with this License by, any contractors or subcontractors performing work on the Licensed Area on behalf of Developer.

6. Utilities. Developer is responsible for and ensure that all utilities are properly disconnected and/or capped at the property line or at the utility main as deemed necessary by the appropriate utility provider at or before the time of demolition.

7. Restoration. Developer, at its own cost shall:

a. Developer shall remove all footing/foundation, driveway and any concrete patios at or adjacent to the Improvements. Developer shall also fill the basement excavation with clean structural backfill that contains no debris. Developer shall maintain safety fencing around the foundation/basement area until the site is filled.

b. Developer, unless otherwise authorized by Owner, shall have the area from which the Improvements were removed graded, seeded and watered until the seed is established. Developer shall comply with the applicable requirements detailed in Iowa Department of Natural Resources National Pollutant Discharge Elimination System (NPDES) General Permit No. 2. Developer shall be responsible for erosion control from the time work begins on demolishing the structures on the property to the time the grass is established. Developer shall complete grading within one week after completion of the demolition. The area shall be seeded and watered to City of West Des Moines Standard Construction Specifications for Subdivisions as soon as practicable after grading, depending upon weather.

c. Developer shall repair or replace to the reasonable satisfaction of Owner any and all damage resulting from the demolition or associated cleanup and restoration of the property, including but not limited to damage to sidewalks, trails, streets and curbs. Repair or replacement shall occur within thirty (30) days of the completion of the demolition, or as otherwise agreed by the Developer and the City.

8. Compliance with Laws. Developer shall observe and comply with any and all laws, statutes, regulations, or ordinances relating to the use of the Property.

9. Indemnification and Hold Harmless Agreement. All entries, analyses, inspections, and testing shall be conducted at Developer's sole risk. Developer shall defend, indemnify and hold the Owner harmless from any claim, liability, injury, loss, cost, expense, or damage to property and person incurred by the Owner as a result of Developer's entry onto the Licensed Area or work or labor performed, or for materials or supplies furnished to or at the request of Developer in connection with performance of any work done for Developer within the Licensed Area, or claims arising from any breach on the part of Developer in performance of any covenant or obligation contained in this License, except where such claim, liability, injury, loss, cost, expense, or damage is caused by the negligence or intentional bad act of Owner. Developer shall maintain or caused to be maintained from all entities authorized to access the Licensed Area insurance in sufficient form and coverage acceptable to Developer and Owner.

10. Integration. This License is the full and complete agreement between Owner and Developer with respect to all matters relating to Developer use of the Licensed Area for the Permitted Uses and supersedes any and all other agreements between the parties hereto relating to Developer's use of the Licensed Area as described in this License.

11. Jurisdiction and Venue. Developer agrees that the District Court in and for the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and

conditions of this easement and further consents to the jurisdiction of District Court of Iowa in and for **Dallas** County, Iowa.

12. Words and Phrases. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or gender neutral, according to the context.

13. Parties. The term "Owner" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, contractors, successors and assigns. The term "Developer" shall refer to the Hubbell Realty Company, its heirs, assigns, successors in interest, or lessees, if any.

14. Paragraph Headings. The paragraph headings in this License are included solely for convenience and shall not affect or be used in connection with the interpretation of this License.

This License has been duly executed by the parties on the date of each party's signature.

OWNER:

CITY OF WEST DES MOINES, IOWA

By: _____
Name: _____
Title: _____
Date: _____

DEVELOPER:

DELLA VITA, LLC
By: HUBBELL REALTY COMPANY, Manager
an Iowa corporation

By: _____
Name: JOE PIETRUSZINSKI
Title: SENIOR VICE PRESIDENT
Date: 4/3/20

By: _____
Name: BJ Nice
Title: Assistant Secretary
Date: 4/3/20

BK: 2019 PG: 9505
Recorded: 6/14/2019 at 12:48:49.0 PM
County Recording Fee: $22.00
Iowa E-Filing Fee: $12.79
Combined Fee: $34.79
Revenue Tax: $503.20
Chad C. Airhart Recorder
Dallas County, Iowa

Prepared by: Richard J. Scieszinski, City Attorney, 4200 Mills Civic Pkwy, PO Box 65320, West Des Moines, IA 50265; (515) 222-3614
Address Tax Statements/Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265

SPACE ABOVE THIS LINE FOR RECORDER

WARRANTY DEED

For the consideration of One Dollar and other valuable consideration, the undersigned, **Jeffrey J. Eastvold and Tara M. Eastvold, husband and wife** ("Grantors"), hereby convey to **City of West Des Moines**, a municipal corporation organized under the laws of the State of Iowa, ("Grantee"), the following described real estate in **Dallas** County, Iowa:

As shown on the attached Acquisition Plat marked **Exhibit "A"**,
subject to any and all easements of record.

Grantors do hereby covenant with Grantee, and successors in interest, that Grantors hold the real estate by title in fee simple; that Grantors have good and lawful authority to sell and convey the real estate; that the real estate is free and clear of all liens and encumbrances, except as may be above stated; and Grantors covenant to warrant and defend the real estate against the lawful claims of all persons except as may be above stated. Each of the undersigned hereby relinquishes all rights of dower, homestead, and distributive share in and to the real estate.

Words and phrases herein, including acknowledgement hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the content.

Dated this 14 day of June, 2019.

By _____
Jeffrey J. Eastvold

By _____
Tara M. Eastvold

STATE OF IOWA)
) SS
COUNTY OF Polk)

This record was acknowledged before me on the 14th day of June, 2019, by **Jeffrey J. Eastvold and Tara M. Eastvold.**

MATTHEW R. PICK
Commission Number 775769
My Commission Expires
11/16/21

NOTARY PUBLIC
My Commission expires:

INDEX LEGEND

Exhibit "A"

LOCATION:	PT NE1/4 SE1/4 SEC 10-78-26 WEST DES MOINES, DALLAS COUNTY, IOWA
REQUESTOR:	CITY OF WEST DES MOINES
PROPRIETOR:	JEFFREY J. EASTVOLD
SURVEYOR:	MICHAEL A. BROONER
COMPANY:	CIVIL DESIGN ADVANTAGE
RETURN TO:	3405 SE CROSSROADS DRIVE, SUITE G GRIMES, IA. 50111 PH: 515-369-4400

ACQUISITION PLAT

AREA SUMMARY:

NE1/4 SE1/4 PROPOSED ROW	=	26,793 SF	(0.61 AC)
NE1/4 SE1/4 EXISTING ROW	=	7,260 SF	(0.17 AC)
TOTAL	=	34,053 SF	(0.78 AC)

DATE OF SURVEY:
OCTOBER 5, 2017

ACQUISITION DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 10; THENCE SOUTH 00°27'44" WEST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, 220.00 FEET TO THE NORTHERLY LINE OF PARCEL 'J' OF SAID SOUTHEAST QUARTER OF THE PLAT OF SURVEY RECORDED IN BOOK 2007, PAGE 11742; THENCE SOUTH 82°56'46" WEST ALONG SAID NORTHERLY LINE, 60.52 FEET; THENCE NORTH 00°27'44" EAST, 102.45 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS IS 50.00 FEET, WHOSE ARC LENGTH IS 85.10 FEET AND WHOSE CHORD BEARS NORTH 48°17'45" WEST, 75.19 FEET; THENCE SOUTH 82°56'46" WEST, 278.45 FEET TO SAID NORTHERLY LINE OF SAID PARCEL 'J'; THENCE NORTH 00°27'44" EAST ALONG SAID NORTHERLY LINE, 60.52 FEET TO THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE NORTH 82°56'46" EAST ALONG SAID NORTH LINE, 396.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.78 ACRES (34,053 SQUARE FEET).

LICENSED PROFESSIONAL LAND SURVEYOR
MICHAEL A. BROONER
15980
IOWA

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

MICHAEL A. BROONER, P.L.S. — DATE: 5-29-2019

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2020
PAGES OR SHEETS COVERED BY THIS SEAL:
SHEETS 1 AND 2

E.P. TRUE PARKWAY AND 88TH STREET

REVISION:

OWNER: JEFFREY EASTVOLD

1407.352

CIVIL DESIGN ADVANTAGE

3405 CROSSROADS DRIVE, SUITE G,
GRIMES, IOWA 50111
PH: (515) 369-4400 Fax: (515) 369-4410

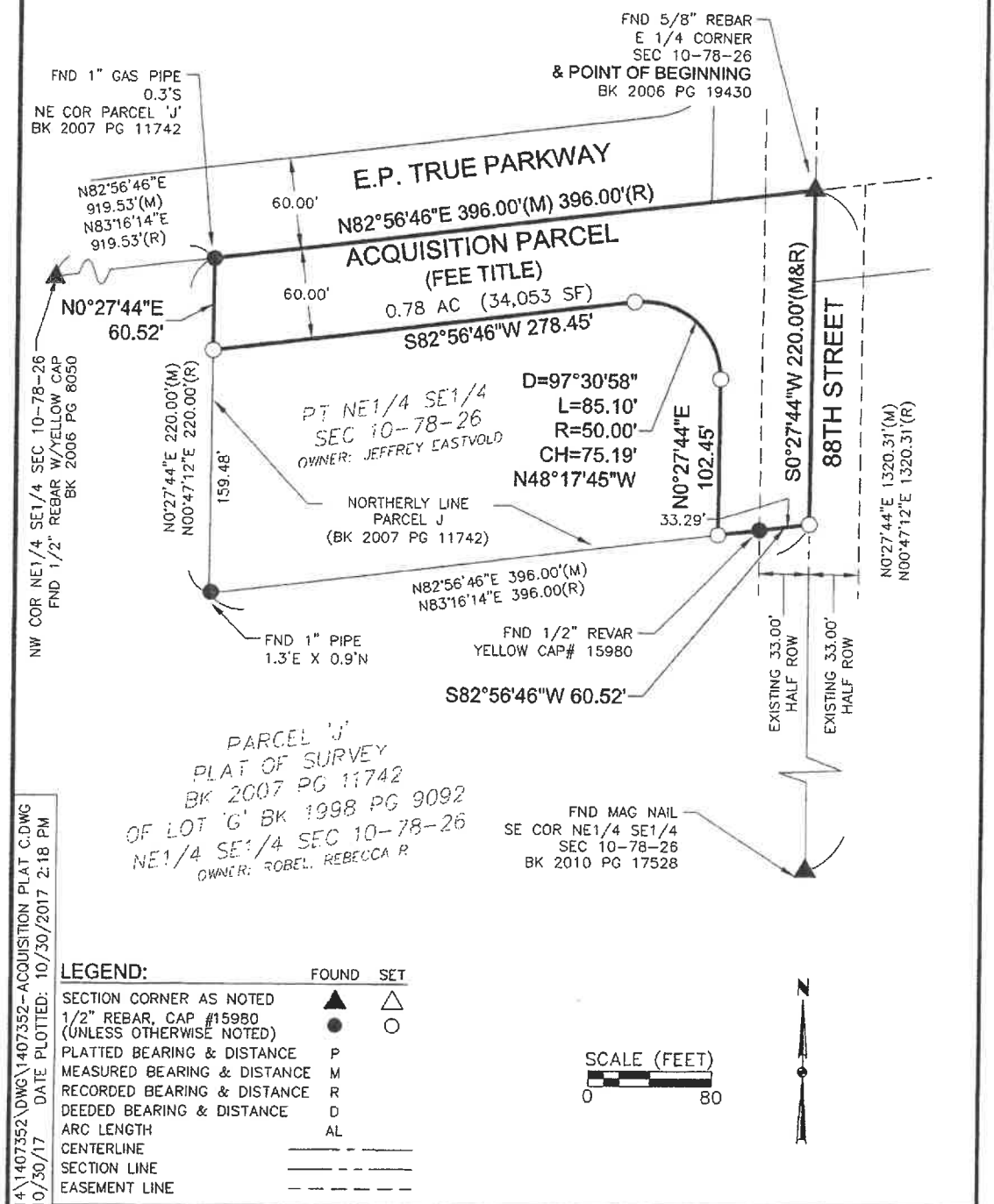
SHEET 1 OF 2

FILE: H:\2014\1407352\DWG\1407352-ACQUISITION PLAT C.DWG
FILE DATE: 10/30/17 DATE PLOTTED: 5/29/2019 7:57 AM

INDEX LEGEND

LOCATION:	PT NE1/4 SE1/4 SEC 10-78-26 WEST DES MOINES, DALLAS COUNTY, IOWA
REQUESTOR:	CITY OF WEST DES MOINES
PROPRIETOR:	JEFFREY J. EASTVOLD
SURVEYOR:	MICHAEL A. BROONER
COMPANY:	CIVIL DESIGN ADVANTAGE
RETURN TO:	3405 SE CROSSROADS DRIVE, SUITE G GRIMES, IA. 50111 PH: 515-369-4400

ACQUISITION PLAT



LEGEND:	FOUND	SET
SECTION CORNER AS NOTED	▲	△
1/2" REBAR, CAP #15980 (UNLESS OTHERWISE NOTED)	●	○
PLATTED BEARING & DISTANCE	P	
MEASURED BEARING & DISTANCE	M	
RECORDED BEARING & DISTANCE	R	
DEEDED BEARING & DISTANCE	D	
ARC LENGTH	AL	
CENTERLINE	——— - ———	
SECTION LINE	——— - - ———	
EASEMENT LINE	— — — — — —	

SCALE (FEET)
0 80

N

E.P. TRUE PARKWAY AND 88TH STREET

REVISION:

OWNER: JEFFREY EASTVOLD

1407.352

CIVIL DESIGN ADVANTAGE

3405 CROSSROADS DRIVE, SUITE G,
GRIMES, IOWA 50111
PH: (515) 369-4400 Fax: (515) 369-4410

SHEET 2 OF 2

FILE: H:\2014\1407352\DWG\1407352-ACQUISITION PLAT C.DWG
FILE DATE: 10/30/17 DATE PLOTTED: 10/30/2017 2:18 PM

TEMPORARY CONSTRUCTION EASEMENT

THE UNDERSIGNED, Jeffrey J. Eastvold and Tara M. Eastvold, husband and wife, owner of property upon which this Easement is located ("Grantor"), in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to the **City of West Des Moines, Iowa**, a municipal corporation ("City"), a Temporary Construction Easement ("Easement") upon, over, under, through and across the real property as shown and legally described on the attached Temporary Construction Easement Plat as **Exhibit "A"** ("Easement Area").

1. Use and Purpose of the Easement

This Easement shall be for the purpose of permitting the City, its agents, contractors, employees and assigns a right of entry in, upon and onto the Easement Area for the purpose of transporting and storing materials and equipment, grading, shaping, and access during construction of **E.P True Parkway Extension Project** ("Project"), West Des Moines Project Number **0510-076-2017.** This Easement terminates the earlier of (a) formal acceptance of the Project by the City Council of the City of West Des Moines; or (b) **eighteen (18) months** from the initiation of construction on the Temporary Easement Area. The use of the Easement Area is subject to the following terms and conditions:

(a) The City shall take reasonable steps to ensure that all work performed by the City in the Temporary Easement Area will be initiated and completed within a reasonable period. Following completion of the work performed by the City, the Temporary Easement Area shall be restored to a condition similar to that which existed prior to the performance of work by the City, excluding the replacement of trees and landscaping and restoration of the existing grade. The City shall also be responsible for removal of all debris, spoils, equipment, etc. used by the City in connection with the work performed in the Temporary Easement Area.

(b) Unless done by or at the direction of the City, nothing in this grant of Temporary Easement shall obligate the City to perform any work or engage in any repair or restoration of the Temporary Easement Area resulting from actions taken by other individuals or entities other than the City, its employees or contractors.

(c) Grantor shall not erect any fence or other structure under, over, on, through, across, or within the Easement Area, without obtaining the prior written consent of the City, nor shall Grantor cause or permit any obstruction, planting or material to be placed under, over, on, through, across, or within the Easement Area, without obtaining the prior written consent of the City during the term of this Temporary Easement.

The City shall have the right to remove any unauthorized fences, structures, obstructions, plantings or material placed or erected under, over, on, through, across or within the Easement Area at Grantor's sole expense. Grantor will not be reimbursed for any unauthorized items removed by the City.

(d) It is understood and agreed that the consideration for this Easement includes full compensation for damages to Grantor as agreed upon by the City and the Grantor.

(e) Upon restoration of the Temporary Easement Area and termination of the Temporary Easement, City will have no further obligation for the Temporary Easement Area whatsoever.

2. **Hold Harmless**

Each party shall indemnify and hold harmless the other party from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or other injury or damages related to this agreement, to the extent such damage or injury is attributable to the negligence or willful misconduct of the indemnitor, provided, indemnitee gives the indemnitor prompt notice of any such claim and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claim, and indemnitee does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

3. **Benefits, Burdens and Assignment**

All provisions of this Easement, including benefits and burdens, run with the land and are binding upon the City and the Grantor, including but not limited to future owners, developers, lessees, occupants or assignees. Grantor acknowledges and agrees that this Easement is assignable by the City without consent from the Grantor to a third-party public entity, and assignable by the City with written notice to and consent from the Grantor to a third-party private entity.

4. **Jurisdiction and Venue**

The Grantor agrees that the District Court in and for the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this easement and further consents to the jurisdiction of District Court of Iowa in and for **Dallas** County, Iowa.

5. **Lawful Authority**

The Grantor covenants with the City that the Grantor holds the property by good and perfect title and that the Grantor has a right and lawful authority to make and execute this Easement.

6. **Approval of City**

This Easement shall not be binding until it has received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Easement Agreement by the City Clerk.

7. **Words and Phrases**

Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or gender neutral, according to the context.

8. **Parties**

The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, contractors, successors and assigns. The term "Grantor" shall refer to the undersigned, undersigned's heirs, assigns, successors in interest, or lessees, if any.

9. **Integration**

This Agreement shall constitute the entire Agreement between the parties and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties.

10. **Paragraph Headings**

The paragraph headings in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

Dated this 14 day of June, 2019.

By _____
Jeffrey J. Eastvold

By _____
Tara M. Eastvold

STATE OF IOWA)
) SS
COUNTY OF Polk)

This record was acknowledged before me on the 14th day of June, 2019, by **Jeffrey J. Eastvold and Tara M. Eastvold.**

_____
NOTARY PUBLIC

MATTHEW R. PICK
Commission Number 775769
My Commission Expires
11/16/21

CERTIFICATION BY CITY OF WEST DES MOINES, IOWA

I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that acquisition of the within and foregoing Temporary Construction Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. 19-067, passed on the 19th day of February, 2019, and that this certificate is made pursuant to the authority of said City Council.

Signed this 17th day of June, 2019.

CITY OF WEST DES MOINES, IOWA

BY: Ryan T. Jacobson

Ryan T. Jacobson, City Clerk

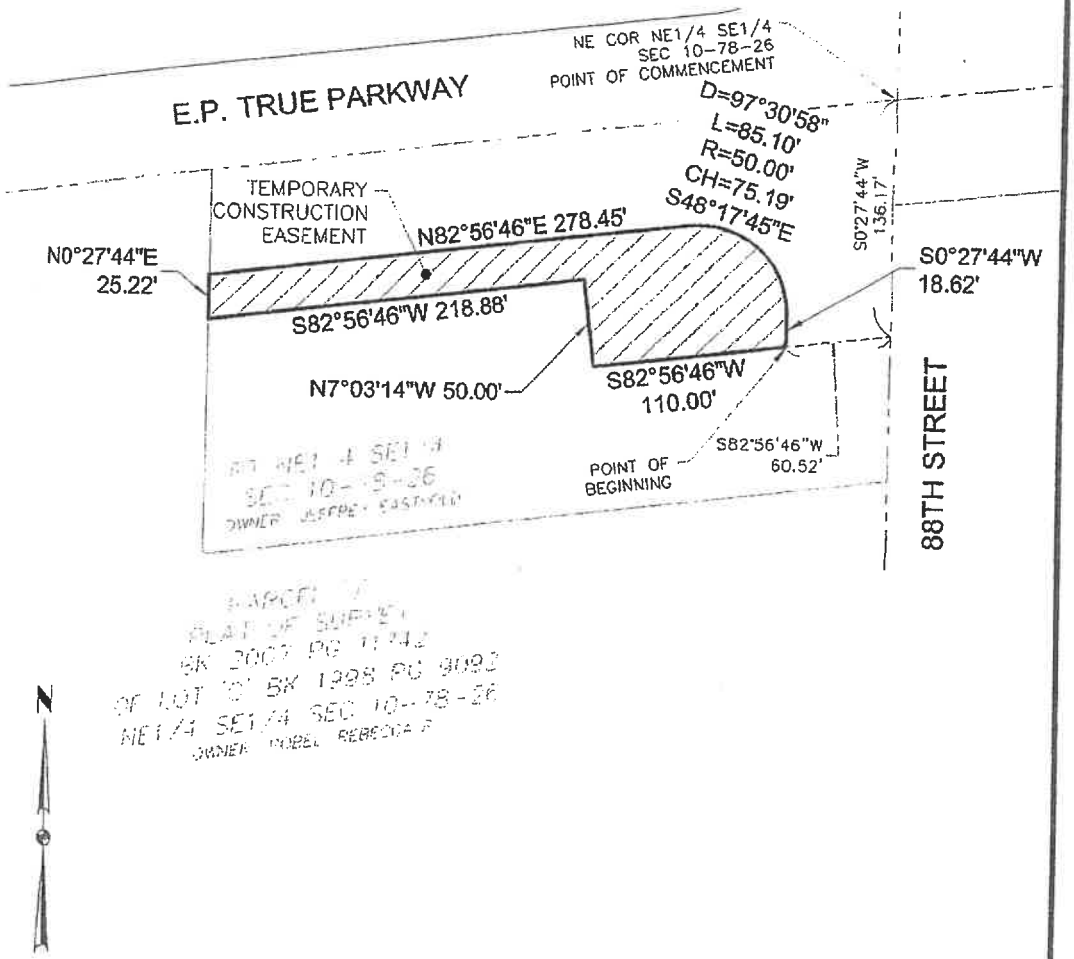
RETURN TO: CIVIL DESIGN ADVANTAGE, 3405 SE CROSSROADS DRIVE, SUITE G, GRIMES, IA. 50111, PH: 369-4400 FAX: 369-4410

EXHIBIT 'A' - EASEMENT PLAT

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION:

A PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE SOUTH 0°27'44" WEST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 136.17 FEET; THENCE SOUTH 82°56'46" WEST, 60.52 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 82°56'46" WEST, 110.00 FEET; THENCE NORTH 07°03'14" WEST, 50.00 FEET; THENCE SOUTH 82°56'46" WEST, 218.88 FEET TO THE EAST LINE OF PARCEL 'J' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 2007, PAGE 11742 OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, DALLAS COUNTY, IOWA; THENCE NORTH 00°27'44" EAST ALONG SAID EAST LINE, 25.22 FEET; THENCE NORTH 82°56'46" EAST, 278.45 FEET; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS IS 50.00 FEET, WHOSE ARC LENGTH IS 85.10 FEET AND WHOSE CHORD BEARS SOUTH 48°17'45" EAST, 75.19 FEET; THENCE SOUTH 00°27'44" WEST, 18.62 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.31 ACRES (13,328 SQUARE FEET).



SCALE (FEET)
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FILE DATE: 10/11/17 DATE PLOTTED: 10/13/2017 7:50 AM

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1407.352

PT NE1/4 SE1/4 SEC 10-78-26
EASEMENT PLAT
WEST DES MOINES, IOWA

CIVIL DESIGN ADVANTAGE

3405 SE CROSSROADS DRIVE, SUITE G
GRIMES, IOWA 50111
PH: (515) 369-4400 Fax: (515) 369-4410

ADDENDUM TO TEMPORARY CONSTRUCTION EASEMENT

This Temporary Easement, executed by Grantors on June 14, 2019 and accepted by the City on February 19, 2019, also includes the authority and right to demolish and remove of improvements, structures, and associate appurtenances located within the Easement Area.

Dated this 6th day of March, 2020.

By _____
Jeffrey J. Eastvold

By _____
Tara M. Eastvold

STATE OF IOWA)
) SS
COUNTY OF Polk)

This record was acknowledged before me on this 6th day of March, 2020, by Jeffrey J. Eastvold and Tara M. Eastvold.

_____
NOTARY PUBLIC

DRENNAN L. FISCHER
Commission Number 804421
My Commission Expires
3-17-2020