



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: John Hinzman, Community Development Director
Date: April 15, 2024
Item: Authorize Signature: Stormwater Maintenance Agreement – Storage Werks –
2489 Spiral Blvd

Council Action Requested:

Authorize signature of the attached Stormwater Maintenance Agreement between the City and Legacy Crossing LLC. for Storage Werks Mini Storage located at 2489 Spiral Blvd. Approval requires a simple majority of Council.

Background Information:

The City Council approved the Site Plan for Storage Werks on March 18, 2024 subject to execution of a Stormwater Maintenance Agreement. The agreement establishes parameters for stormwater maintenance and allows for City access to conduct maintenance in certain circumstances.

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

- Location Map
- Stormwater Management Agreement

Site Location



(Reserved for Recording Data)

STORMWATER MANAGEMENT FACILITIES AGREEMENT, DRAINAGE AND UTILITY EASEMENT AND PERMANENT ACCESS EASEMENT AGREEMENT

This Stormwater Management Facilities Agreement, Drainage and Utility Easement and Permanent Access Easement Agreement (“Agreement”) is made, entered into and effective this _____ day of _____, 2024, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Legacy Crossing L.L.C., a Minnesota limited liability company (“Developer”).

WHEREAS, Developer is the fee owner of certain real property situated in the City of Hastings, County of Dakota, State of Minnesota legally described as follows:

Lot 2, Block 1, RIES ADDITION, Dakota County, Minnesota.

Abstract Property
PID: 19-63700-01-020

(the “Property”); and

WHEREAS, Developer has obtained the approval of the City for the development of the Property for a mini-storage facility which requires Stormwater Management Facilities; and

WHEREAS, as used herein, the term “Stormwater Management Facilities” may refer to water quality and/or water quantity facilities (i.e. detention basins, retention basins, swales, pipes, oil/water separators, sand filtering devices, infiltration facilities, sump structures, etc.) which are located outside the public road right-of-way; and

WHEREAS, the City has required that the Developer make provision for the construction, maintenance and repair of the Stormwater Management Facilities located within the boundaries of the Property as depicted on the Stormwater Management Facilities and Drainage and Utilities Easement Depiction on **Exhibit A**, attached hereto; and

WHEREAS, the City and Developer desire to set forth their understanding with respect to the construction, repair and maintenance of the Stormwater Management Facilities and the responsibility relating to the costs of the repair and maintenance of the Stormwater Management Facilities as well as providing the City with a Drainage and Utility Easement and an Access Easement to the Stormwater Management Facilities.

NOW THEREFORE, in consideration of the foregoing facts and circumstances, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

A. STORMWATER MAINTENANCE FACILITIES AGREEMENT AND DRAINAGE AND UTILITY EASEMENT

1. Construction and Maintenance of Stormwater Management Facilities. The Developer agrees to construct the Stormwater Management Facilities according to the construction plans drawn by Johnson & Scofield Inc. dated February 19, 2024 (“Plans”), and repair and maintain the Stormwater Management Facilities at its sole cost and expense. Maintenance of the Stormwater Management Facilities shall include but is not limited to compliance with the Stormwater BMP Inspection and Maintenance Plan (“Inspection Plan”) attached as **Exhibit B**, attached hereto. Developer shall submit an annual inspection report that complies with the Inspection Plan by September 30th of each year. If the required annual inspection report is not submitted to the City by September 30th, the City shall have the right to enter onto the property to conduct the annual inspection. If it is determined that the Stormwater Management Facilities (1) have not been maintained; or (2) are not functioning as originally designed and intended; or (3) are in need of repair, the Developer agrees to restore the Stormwater Management Facilities so that it functions as it was designed and intended. Failure to comply with the restoration ordered by the City shall be an event of default. The Developer further agrees that it will not use the Stormwater Management Facilities for snow storage and will inform its snow removal contractors of this provision of the Agreement.

2. Developer’s Default. In the event of default by the Developer as to any of the work to be performed by it hereunder, following at least thirty (30) days prior written notice and Developer’s failure to cure such default within such time-frame, except in an emergency as determined by the City, the City may, at its option, perform the work and the Developer shall promptly, following receipt of an invoice and reasonable substantiation of such costs, reimburse the City for any reasonable out-of-pocket expense incurred by the City.

3. Drainage and Utility Easement. The Landowner does hereby grant and convey unto the City, its successors and assigns, a permanent easement for drainage and utility purposes and all such purposes ancillary, incident or related thereto under, over, across, through and upon that real property legally described on **Exhibit C** attached hereto (“Permanent D&U Easement”), also depicted on **Exhibit A**. The Permanent D&U Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any sanitary sewer, storm sewer, water mains, storm water facilities, above ground and below ground drainage facilities, any utilities, underground pipes, conduits, culverts, other utilities and mains, and all facilities and improvements ancillary, incident or related thereto, under, over, across, through and upon the Permanent D&U Easement.

4. License and Assessment. This Agreement is a license for the City to act when so authorized under this Agreement, and it shall not be necessary for the City to seek a Court order for permission to act. When the City does any such work, the City may, in addition to its other remedies, assess the reasonable out-of-pocket cost in whole or in part. The Developer has conveyed to the City and the public a permanent drainage and utility easement, which is dedicated to the City, or its successors responsible hereunder, for purposes of inspecting and performing any necessary maintenance to the Stormwater Management Facilities. The Developer hereby waives any right to challenge the assessment and accepts that the work performed by the City is less than or equal to the benefit received.

5. Changes to Site Configuration or Stormwater Management Facilities. If site configurations or Stormwater Management Facilities change, causing decreased effectiveness of Stormwater Management Facilities, new or improved Stormwater Management Facilities must be implemented to ensure the conditions for post-construction stormwater management continue to be met.

B. PERMANENT ACCESS EASEMENT

1. The Developer does hereby grant and convey unto the City, its successors and assigns, the following Permanent Access Easement which is legally described on **Exhibit D** and depicted on **Exhibit A**, attached hereto:

A permanent access easement for access purposes and all such purposes ancillary, incident or related thereto under, over, across, through and upon Developer's Property (the "Permanent Access Easement Area").

The Permanent Access Easement rights granted herein are forever and shall include, but not be limited to providing access under, over, across, through and upon the Permanent Access Easement Area to the Stormwater Maintenance Facilities above ground and below ground, any utilities, underground pipes, conduits, culverts, other utilities and mains, and all facilities and improvements ancillary, incident or related thereto.

The City shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Permanent Access Easement Area or the Developer's Property prior to the date hereof.

C. GENERAL TERMS AND CONDITIONS

1. Successors and Assigns. This Agreement shall run with the land and shall be binding upon Developer's successors and assigns with respect to the Property. The terms and conditions of this Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and assigns.

2. Developer Warranty. Developer warrants and represents the following to the City and acknowledges that this Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms. Developer warrants and represents that it is well seized in fee of the Developer's Property described above, the Permanent D&U Easement, Permanent Access Easement Area and has good right to grant and convey the Permanent D&U Easement, Permanent Access Easement and the other rights and benefits herein to the City. The party signing on behalf of the Developer has been duly authorized by the entity to sign the Agreement and bind the entity. Developer has been duly formed under the laws of the State of Minnesota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by Developer pursuant hereto have each been duly authorized by all necessary action on the part of Developer and such execution, delivery and performance does and will not conflict with or result in a violation of Developer's organizational agreement or any judgment or order. The execution, delivery and performance by Developer of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Developer, or (b) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Developer is a party or by which it or any of its properties may be bound.

3. Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6. Consent. Developer consents to the recording of this Agreement.

7. Limitation of Liability. Notwithstanding any other provision of this Agreement, in no event shall either party or any of their affiliates, by reason of any of their respective acts or omissions be liable whether in contract, tort, misrepresentation, warranty, negligence, strict

liability or otherwise for any special, indirect, incidental or consequential damages arising out of or in connection with this Agreement, or the performance, non-performance or breach thereof. Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Developer or its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

8. Notice. Notice shall mean notices given by one party to the other if in writing and if and when delivered or tendered: (i) in person; (ii) by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, or (iii) by proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended addressed as follows:

If to City:	City of Hastings Attention: City Administrator 101 4th Street East Hastings, MN 55033
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If to Developer:	Legacy Crossing, L.L.C. Attn: Chad Smurawa W12322 888th Avenue River Falls, WI 54022
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or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, on the third day after mailing if mailed by United States postal service as provided above, or within twenty-four (24) hours if sent via overnight courier service provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the day and year first above written.

CITY:
CITY OF HASTINGS

By: _____
Mary Fasbender
Its Mayor

By: _____
Kelly Murtaugh
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this _____ day of _____, 2024, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that said instrument was signed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

DEVELOPER:
LEGACY CROSSING, L.L.C.

By: _____
Name: Chad Smurawa
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 by Chad Smurawa, the _____ of Legacy Crossing, L.L.C., a Minnesota limited liability company on behalf of said limited liability company.

Notary Public

**This instrument drafted by
And after recording, please return to:**
Korine Land, #262432
LeVander, Gillen, & Miller, P.A.
1305 Corporate Center Dr., Suite 300
Eagan, MN 55121
(651) 451-1831

EXHIBIT A STORMWATER MAINTENANCE FACILITIES, DRAINAGE AND UTILITY EASEMENT AND ACCESS EASEMENT DEPICTION

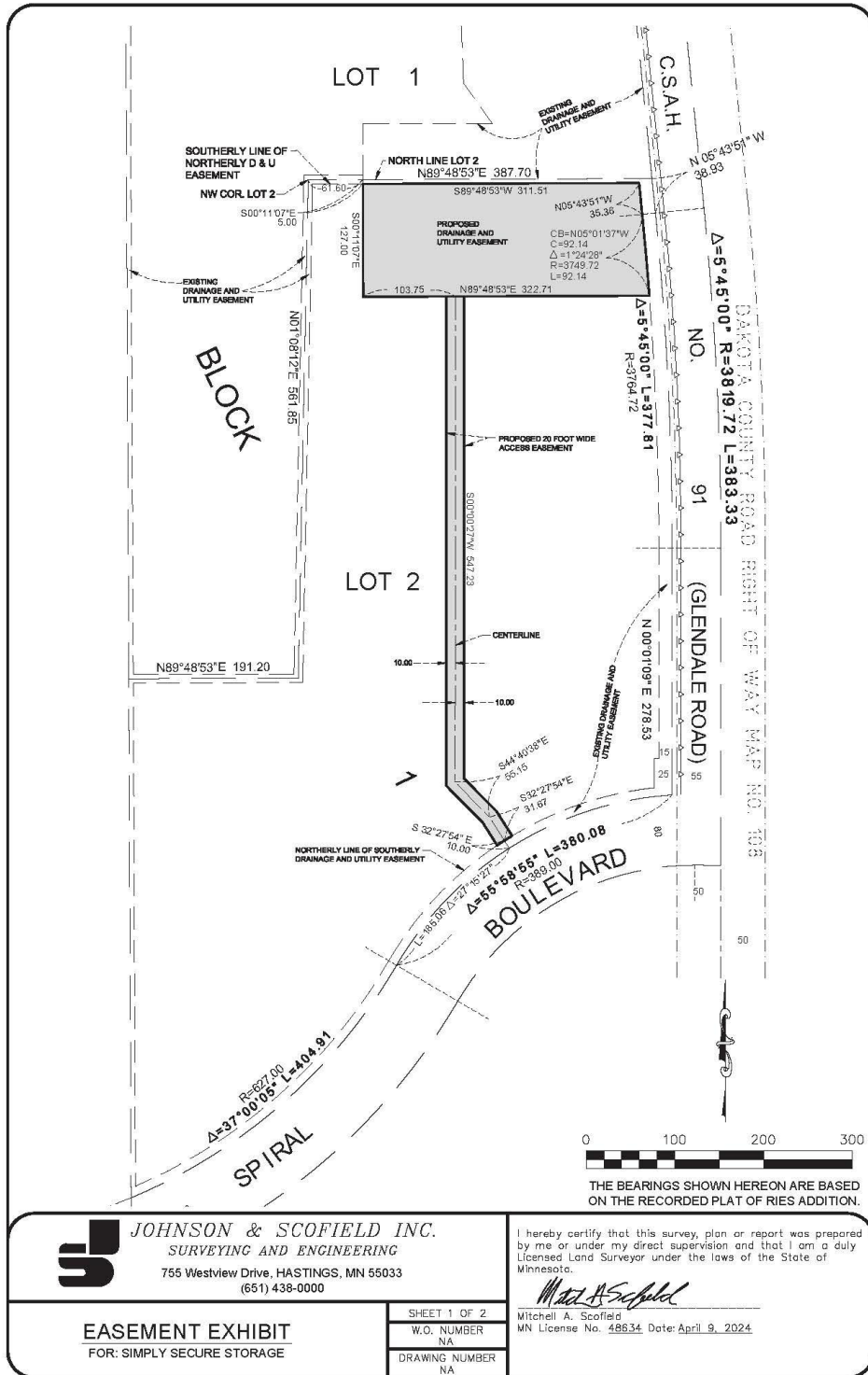


EXHIBIT B STORMWATER BMP INSPECTION AND MAINTENANCE PLAN

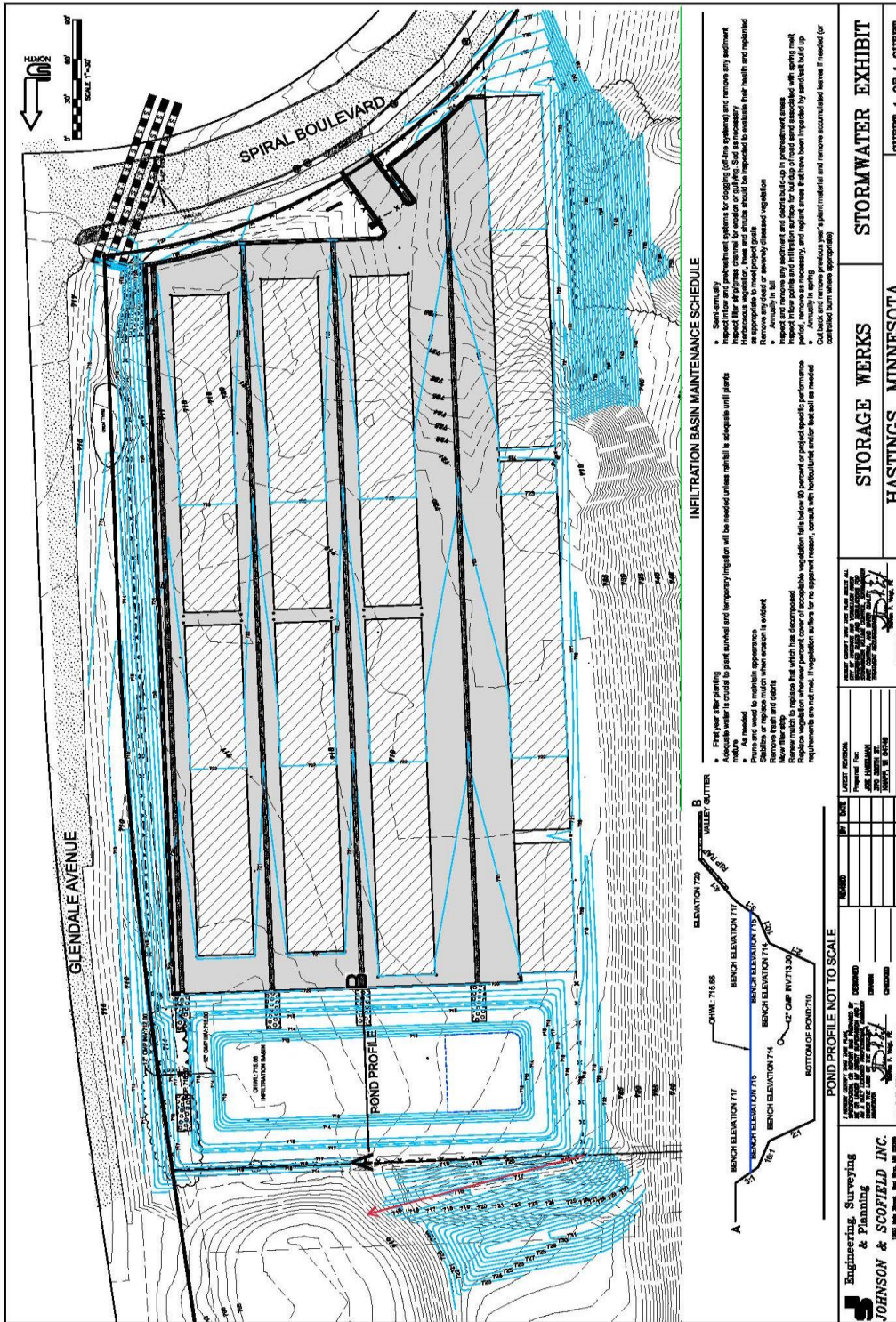


EXHIBIT C
DRAINAGE AND UTILITY EASEMENT LEGAL DESCRIPTION

An easement for drainage and utility purposes over, under and across that part of Lot 2, Block 1, RIES ADDITION, Dakota County, Minnesota, described as follows:

Commencing at the northwest corner of said Lot 2; thence on an assumed bearing of North 89 degrees 48 minutes 53 seconds East, along the north line of said Lot 2, a distance of 61.60 feet; thence South 00 degrees 11 minutes 07 seconds East, a distance of 5.00 feet to the southerly line of the northerly drainage and utility easement on said Lot 2, as dedicated in said RIES ADDITION also being the point of beginning of the easement to be described; thence continue South 00 degrees 11 minutes 07 seconds East, a distance of 127.00 feet; thence North 89 degrees 48 minutes 53 seconds East, a distance of 322.71 feet to the westerly line of the easterly drainage and utility easement on said Lot 2, as dedicated in said RIES ADDITION; thence northerly, a distance of 92.14 feet, along said westerly line, along a nontangential curve concave to the west, having a central angle of 01 degrees 24 minutes 28 seconds, a radius of 3749.72 feet and a chord that bears North 05 degrees 01 minutes 37 seconds West; thence North 05 degrees 43 minutes 51 seconds West, along said westerly line and tangent to said curve, a distance of 35.36 feet to the southerly line of the northerly drainage and utility easement on said Lot 2, as dedicated in said RIES ADDITION; thence South 89 degrees 48 minutes 53 seconds West, along said southerly line, a distance of 311.51 feet to the point of beginning.

EXHIBIT D
ACCESS EASEMENT LEGAL DESCRIPTION

A 20.00 foot wide easement for access purposes over, under and across part of Lot 2, Block 1, RIES ADDITION, Dakota County, Minnesota. The centerline of said easement is described as follows:

Commencing at the northwest corner of said Lot 2; thence on an assumed bearing of North 89 degrees 48 minutes 53 seconds East, along the north line of said Lot 2, a distance of 61.60 feet; thence South 00 degrees 11 minutes 07 seconds East, a distance of 5.00 feet to the southerly line of the northerly drainage and utility easement on said Lot 2, as dedicated in said RIES ADDITION; thence continue South 00 degrees 11 minutes 07 seconds East, a distance of 127.00 feet; thence North 89 degrees 48 minutes 53 seconds East, a distance of 103.75 feet to the point of beginning of the centerline to be described; thence South 00 degrees 00 minutes 27 seconds West, a distance of 547.23 feet; thence South 44 degrees 40 minutes 38 seconds East, a distance of 55.15 feet; thence South 32 degrees 27 minutes 54 seconds East, a distance of 31.67 feet to the northerly line of the southerly drainage and utility easement on said Lot 2, as dedicated in said RIES ADDITION.

The sidelines of said easement are to be prolonged or shortened to terminate at the northerly line of the southerly drainage and utility easement on said Lot 2, as dedicated in said RIES ADDITION and at a line bearing North 89 degrees 48 minutes 53 seconds East and South 89 degrees 48 minutes 53 seconds West from the point of beginning.