

RE: Condemnation Ordinance for 310 North Missouri Avenue

Background:

In 2020 funds were made available to begin the Cheery Street Stormwater improvement project to alleviate historical flooding in the area East of Main St. from North St to Rice St. Since this time, engineering has been completed, temporary construction easements and stormwater easements have been obtained and phase one completed from Rice St to 308 N. Missouri Ave. Phase two has also been funded for construction. This phase would begin at 308 N Missouri St progressing through 310, 312 and 314 N Missouri, as well as 303 & 305 Cherry St. Improvements would also be made to Cherry St to accommodate improvements under the street.

Analysis:

For phase two, all stormwater and temporary construction easements have been obtained except for 308 N Missouri Avenue. Starting in 2021, staff has acquired a third-party valuation of the property within the needed easements and provided it, as well as the legal description of the requested easements, to the property owner on several occasions. Contact has also been made in person on two occasions with staff reiterating our request for discussion regarding the project, its benefits for the community and our interest in the required easement. Unfortunately, no progress has been made and the resident continues to ignore, or has not replied to, phone calls, text messages and certified mail attempts.

Without this acquisition, many residents will continue to see flooding and erosion issues. It is staffs opinion that by moving forward with the installation of new inlets and the larger pipe throughout the project, residents in the area will no longer suffer from these types of events. Therefore, providing the entire area with a better quality of life.

Recommendation:

To continue this beneficial project, staff is requesting passage of this Ordinance to allow for condemnation of the attached easement descriptions at 310 North Missouri Avenue.

MEMO PREPARED BY:

Jeff Roussell | Street Superintendent

jroussell@nixa.com | 417-725-2353

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA DECLARING THE
 2 NECESSITY OF ACQUIRING BY CONDEMNATION CERTAIN PROPERTY RIGHTS
 3 OVER, UNDER, AND THROUGH CERTAIN PROPERTY FOR THE PURPOSE OF
 4 CONSTRUCTING AND MAINTAINING STORM WATER INFRASTRUCTURE AS PART
 5 OF THE CHERRY STREET STORMWATER PROJECT; AND AUTHORIZING
 6 CERTAIN CITY OFFICIALS TO DO ALL THINGS NECESSARY OR CONVENIENT TO
 7 CARRY OUT THE TERMS AND INTENT OF THIS ORDINANCE.

8 _____
 9

10 **WHEREAS** the Cherry Street Stormwater Project (SW2020-01) is included in the
 11 2023-2027 Capital Improvements Program (Resolution No. 2022-123); and

12
 13 **WHEREAS** said Project involves the installation of stormwater inlets and new
 14 concrete piping; and

15
 16 **WHEREAS** said Project is necessary to alleviate periodic flooding from stormwater
 17 flows that inundate and damage public and private properties, including without limitation,
 18 flooding garages and crawl spaces under area homes; and

19
 20 **WHEREAS** said Project is necessary to alleviate periodic flooding from stormwater
 21 flows that inundate the public sanitary sewer system which could potentially cause
 22 backups and overflows thus contaminating natural rainwater, public, and private property;
 23 and

24
 25 **WHEREAS,** the City has undertaken the Project to alleviate historical flooding
 26 around the area East of Main Street from North Street to Rice Street; and

27
 28 **WHEREAS** City staff has actively been engaged in negotiating the acquisition of
 29 the necessary easement rights for the construction and maintenance of said project since
 30 April of 2021; and

31
 32 **WHEREAS** City staff have reached agreements and acquired all necessary and
 33 temporary easements required for the project on all but one parcel of land; and

34
 35 **WHEREAS** City staff have been unable to secure an agreement for easement
 36 rights over the parcel generally located at 310 North Missouri Avenue; and

37
 38 **WHEREAS** to allow this Project to remain on schedule and because the Project
 39 serves a legitimate public purpose, the City Council desires to authorize the use of
 40 condemnation to acquire the remaining property interests.

41
 42 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
 43 **NIXA, AS FOLLOWS, THAT:**

44
 45 **SECTION 1:** The City Council hereby declares it necessary to condemn the
 46 property described on "Council Bill Exhibit A," for the purpose of constructing and

47 maintaining storm water infrastructure as part of the Cherry Street Stormwater Project
48 (SW2021-01) which once completed will be a part of the City of Nixa’s public stormwater
49 infrastructure. “Council Bill Exhibit A” is attached hereto and is incorporated herein by this
50 reference as though fully set forth herein.

51
52 **SECTION 2:** City Council hereby finds and declares that the Cherry Street
53 Stormwater project, identified as Project Number SW2021-01, serves a legitimate public
54 purpose for the reasons stated in this Ordinance and City staff’s accompanying memo.

55
56 **SECTION 3:** The City Attorney, or designee, is hereby authorized to proceed with
57 condemnation proceedings against the properties described herein as authorized by law.
58 The Officers of the City are further authorized to exercise any and all powers necessary
59 or convenient to carry out the terms and intent of this Ordinance.

60
61 **SECTION 4:** This Ordinance shall be in full force and effect from and after its final
62 passage by the City Council and after its approval by the Mayor, subject to the provisions
63 of section 3.11(g) of the City Charter.

64
65

66 **ADOPTED BY THE COUNCIL THIS 22nd DAY OF May 2023.**

67
68 ATTEST:
69
70 _____
71 PRESIDING OFFICER CITY CLERK

72
73
74 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2023.**

75
76 ATTEST:
77
78 _____
79 MAYOR CITY CLERK

80
81 APPROVED AS TO FORM:
82
83 _____
84 CITY ATTORNEY

COUNCIL BILL EXHIBIT A

Title of Document: **PERPETUAL STORM WATER DRAINAGE EASEMENT**

Date of Document:: _____

Grantor(s):

Grantee(s): CITY OF NIXA, MISSOURI

Legal Description: See Attached Exhibit A

Reference Book and Page(s): _____

Mail Recorded Document to: City of Nixa
Attention: Cindy Robbins
P.O. Box 395
Nixa, Missouri 65714

PERPETUAL STORM WATER DRAINAGE EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of _____ dollars (\$ _____) in cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **DANIEL O’CONNOR**, (hereinafter, “Grantor”) does hereby grant, bargain, and convey to the **CITY OF NIXA, MISSOURI**, its successors, licensees, lessees, and assigns (hereinafter, “Grantee”), with a mailing address of: P.O. Box 395, Nixa, Missouri 65714, a **PERPETUAL STORM WATER DRAINAGE EASEMENT**, with the right, privilege, and authority to Grantee to lay, locate, construct, reconstruct, repair, maintain, patrol, and replace storm water drainage improvements as deemed necessary by Grantee in, on, through, over, under, and across the following described land in the County of Christian, State of Missouri, to-wit:

A **PERPETUAL STORM WATER DRAINAGE EASEMENT**, described on attached Exhibit A per the Exhibit Sketch provided on attached Exhibit B.

AND ALSO;

A **TEMPORARY CONSTRUCTION EASEMENT**, described on attached Exhibit A per the Exhibit Sketch provided on attached Exhibit B for the purpose of constructing storm water drainage improvements or for such other purposes hereinabove set out. This temporary easement shall expire upon the completion of construction.

Together with the right, privilege; and authority to remove from said premises any obstructions which interfere with the construction, maintenance, or operation of the storm water drainage improvements. Grantor further does hereby grant, bargain, and convey to Grantee the right of ingress and egress to, from, and over the above-described real estate for doing anything necessary or useful for the enjoyment of the easement herein granted, and together with all rights, privileges, and appurtenances which may be required for full enjoyment of the rights herein granted.

Grantor warrants that they have good title to the above described premises and that there are no encumbrances which will limit or interfere with the rights granted herein to Grantee.

The Grantors, their tenants, heirs, successor, and assigns shall have the right to use and enjoy the said premises fully, except for the rights and privileges hereinbefore granted to the Grantee; provided however, that no buildings, structures, or improvements shall be erected or placed upon said easement, nor shall the terrain be altered without the prior written consent of Grantee, nor shall any other roads be placed in on, through, over, or across the easement without Grantee's prior written consent; that the use of said premises shall at all times be subject to such acts and uses by Grantee as may be necessary for the purposes herein set forth.

IN WITNESS WHEREOF, said Grantor(s) have hereunto set their hands and seals this _____ day of _____, 20____.

Daniel O'Connor

STATE OF MISSOURI)
)SS.
COUNTY OF _____)

On the _____ day of _____, 20____, before me, a Notary Public, within and for the County and State aforesaid, personally appeared, DANIEL O'CONNOR, to me known to be the person(s) described in, and who executed the foregoing instrument, and who severally acknowledged that they had read said instrument, and that they had executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal the day and year first above written.

Notary Public: Print Name _____

My Commission Expires the _____ day of _____, 20____.

EXHIBIT A

A PERPETUAL DRAINAGE EASEMENT, BEING A PART OF A TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE. SAID TRACT OF LAND BEING A PART OF THE SOUTHEAST QUARTER (SE1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 13, TOWNSHIP 27 NORTH, RANGE 22 WEST, IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI. SAID PERPETUAL DRAINAGE EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIN AT THE NORTHEAST CORNER OF SAID SE1/4 OF THE NW1/4, ESTABLISHED BY DAY & ASSOCIATES, INC. SURVEY DATED 11/14/1988 JOB NO. 880890; THENCE S02°04'09"W, ALONG THE EAST LINE OF SAID SE1/4 OF THE NW1/4, A DISTANCE OF 133.82 FEET TO THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE N87°31'30"W, ALONG THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242, A DISTANCE OF 271.15 FEET TO THE NORTHWEST CORNER OF SAID TRACT OF LAND, ALSO BEING THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355 IN SAID RECORDER'S OFFICE; THENCE S02°23'00"W, ALONG THE EAST LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, ALSO BEING THE WEST LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242, A DISTANCE OF 75.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, ALSO BEING THE NORTHEAST CORNER OF SAID TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702; THENCE N87°31'30"W, ALONG THE NORTH LINE OF SAID TRACT OF LAND, ALSO BEING THE SOUTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, A DISTANCE OF 59.55 FEET FOR A POINT OF BEGINNING; THENCE S06°04'01"E, LEAVING SAID NORTH LINE, A DISTANCE OF 24.13 FEET; THENCE S06°49'39"E, A DISTANCE OF 51.81 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702, ALSO BEING THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN BOOK 351 AT PAGE 5426 IN SAID RECORDER'S OFFICE; THENCE N87°31'30"W, ALONG SAID SOUTH LINE, A DISTANCE OF 20.27 FEET; THENCE N06°49'39"W, LEAVING SAID SOUTH LINE, A DISTANCE OF 48.67 FEET; THENCE N06°04'01"W, A DISTANCE OF 27.27 FEET TO A POINT ON THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702; THENCE S87°31'30"E, ALONG SAID NORTH LINE, A DISTANCE OF 20.22 FEET TO THE POINT OF BEGINNING. SAID PERPETUAL DRAINAGE EASEMENT

CONTAINS 1,519 SQUARE FEET (MORE OR LESS) AND IS SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY, AND RESTRICTIONS OF RECORD.

ALSO,

A TEMPORARY CONSTRUCTION EASEMENT, TO BE RELINQUISHED UPON COMPLETION OF CONSTRUCTION, BEING A PART OF A TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE. SAID TRACT OF LAND BEING A PART OF THE SOUTHEAST QUARTER (SE1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 13, TOWNSHIP 27 NORTH, RANGE 22 WEST, IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI. SAID TEMPORARY CONSTRUCTION EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIN AT THE NORTHEAST CORNER OF SAID SE1/4 OF THE NW1/4, ESTABLISHED BY DAY & ASSOCIATES, INC. SURVEY DATED 11/14/1988 JOB NO. 880890; THENCE S02°04'09"W, ALONG THE EAST LINE OF SAID SE1/4 OF THE NW1/4, A DISTANCE OF 133.82 FEET TO THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE N87°31'30"W, ALONG THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242, A DISTANCE OF 271.15 FEET TO THE NORTHWEST CORNER OF SAID TRACT OF LAND, ALSO BEING THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355 IN SAID RECORDER'S OFFICE; THENCE S02°23'00"W, ALONG THE EAST LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, ALSO BEING THE WEST LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242, A DISTANCE OF 75.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, ALSO BEING THE NORTHEAST CORNER OF SAID TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702; THENCE N87°31'30"W, ALONG THE NORTH LINE OF SAID TRACT OF LAND, ALSO BEING THE SOUTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, A DISTANCE OF 39.33 FEET FOR A POINT OF BEGINNING; THENCE S06°04'01"E, LEAVING SAID NORTH LINE, A DISTANCE OF 21.00 FEET; THENCE S06°49'39"E, A DISTANCE OF 54.96 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702, ALSO BEING THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN BOOK 351 AT PAGE 5426 IN SAID RECORDER'S OFFICE; THENCE N87°31'30"W, ALONG SAID SOUTH LINE, A DISTANCE OF 50.67 FEET; THENCE N06°49'39"W, LEAVING SAID SOUTH LINE, A DISTANCE OF 47.10 FEET; THENCE N06°04'01"W, A DISTANCE OF 8.97 FEET; THENCE N83°55'59"E, A DISTANCE OF 10.00 FEET; THENCE N06°04'01"W, A DISTANCE OF 18.37 FEET TO A POINT ON THE NORTH LINE OF SAID TRACT OF

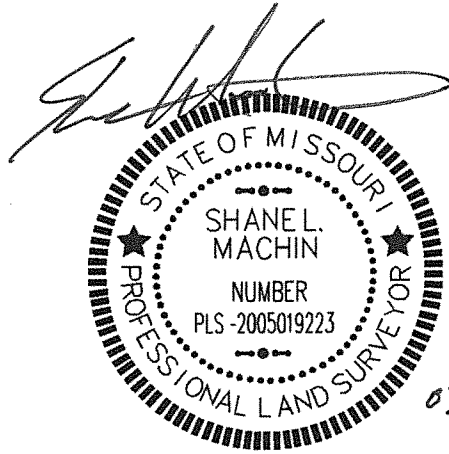
LAND DESCRIBED IN BOOK 2010 AT PAGE 6702; THENCE S87°31'30"E, ALONG SAID NORTH LINE, A DISTANCE OF 40.45 FEET TO THE POINT OF BEGINNING.

EXCEPT,

COMMENCING AT AN EXISTING IRON PIN AT THE NORTHEAST CORNER OF SAID SE1/4 OF THE NW1/4, ESTABLISHED BY DAY & ASSOCIATES, INC. SURVEY DATED 11/14/1988 JOB NO. 880890; THENCE S02°04'09"W, ALONG THE EAST LINE OF SAID SE1/4 OF THE NW1/4, A DISTANCE OF 133.82 FEET TO THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE N87°31'30"W, ALONG THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242, A DISTANCE OF 271.15 FEET TO THE NORTHWEST CORNER OF SAID TRACT OF LAND, ALSO BEING THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355 IN SAID RECORDER'S OFFICE; THENCE S02°23'00"W, ALONG THE EAST LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, ALSO BEING THE WEST LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2013 AT PAGE 13242, A DISTANCE OF 75.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, ALSO BEING THE NORTHEAST CORNER OF SAID TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702; THENCE N87°31'30"W, ALONG THE NORTH LINE OF SAID TRACT OF LAND, ALSO BEING THE SOUTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 173 AT PAGE 355, A DISTANCE OF 59.55 FEET FOR A POINT OF BEGINNING; THENCE S06°04'01"E, LEAVING SAID NORTH LINE, A DISTANCE OF 24.13 FEET; THENCE S06°49'39"E, A DISTANCE OF 51.81 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702, ALSO BEING THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN BOOK 351 AT PAGE 5426 IN SAID RECORDER'S OFFICE; THENCE N87°31'30"W, ALONG SAID SOUTH LINE, A DISTANCE OF 20.27 FEET; THENCE N06°49'39"W, LEAVING SAID SOUTH LINE, A DISTANCE OF 48.67 FEET; THENCE N06°04'01"W, A DISTANCE OF 27.27 FEET TO A POINT ON THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2010 AT PAGE 6702; THENCE S87°31'30"E, ALONG SAID NORTH LINE, A DISTANCE OF 20.22 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED TEMPORARY CONSTRUCTION EASEMENT CONTAINS 2,087 SQUARE FEET (MORE OR LESS) AND IS SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY, RESTRICTIONS OF RECORD.

(BEARINGS ARE BASED ON GRID NORTH, MISSOURI COORDINATE SYSTEM OF 1983, CENTRAL ZONE.)



03/17/2021

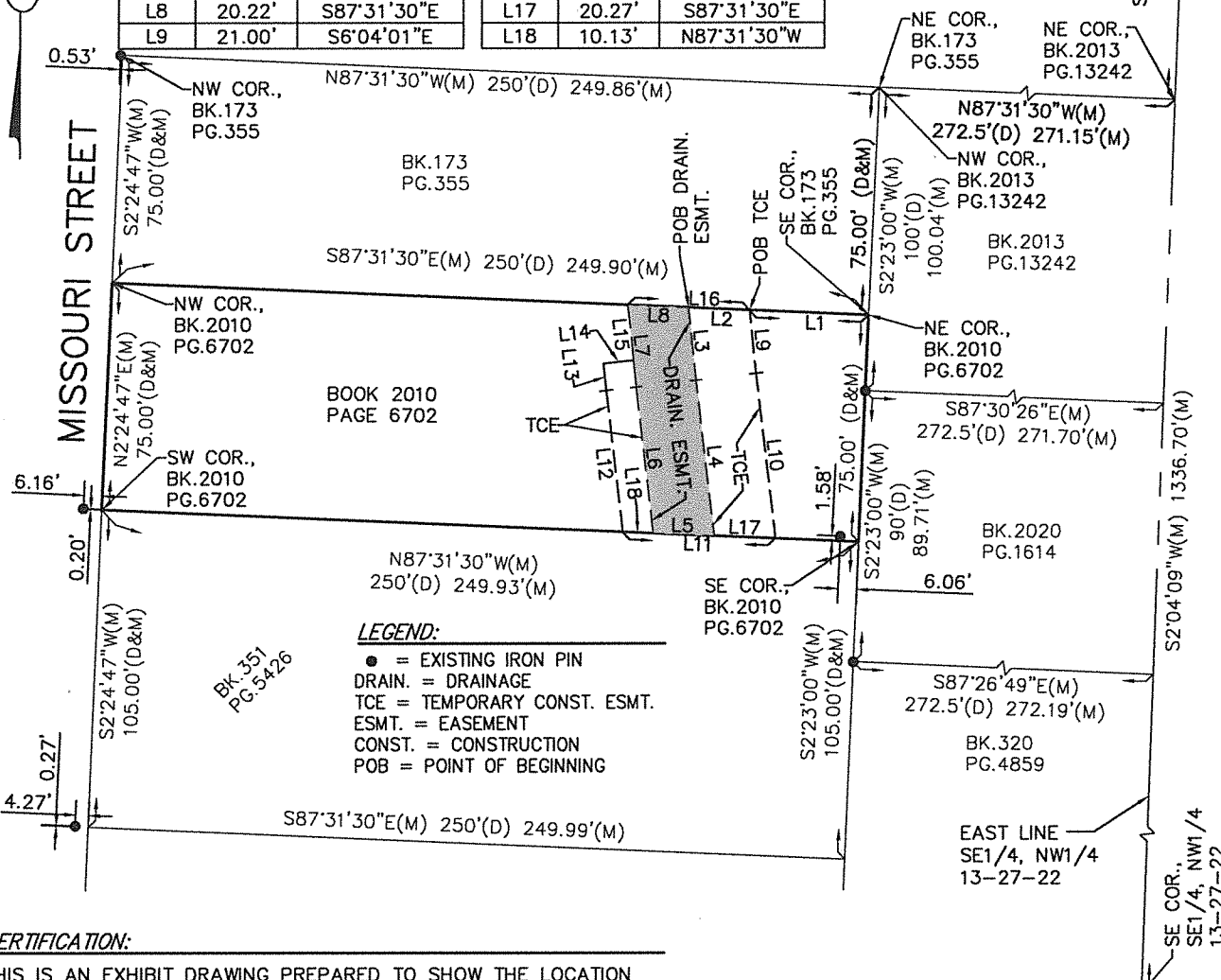
THIS IS A SKETCH FOR REFERENCE PURPOSES ONLY. THIS IS NOT A BOUNDARY SURVEY, AND SHOULD NOT BE USED AS SUCH.

EXHIBIT B

LINE TABLE:

LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	39.33'	N87°31'30"W	L10	54.96'	S6°49'39"E
L2	20.22'	N87°31'30"W	L11	50.67'	N87°31'30"W
L3	24.13'	S6°04'01"E	L12	47.10'	N6°49'39"W
L4	51.81'	S6°49'39"E	L13	8.97'	N6°04'01"W
L5	20.27'	N87°31'30"W	L14	10.00'	N83°55'59"E
L6	48.67'	N6°49'39"W	L15	18.37'	N6°04'01"W
L7	27.27'	N6°04'01"W	L16	40.45'	S87°31'30"E
L8	20.22'	S87°31'30"E	L17	20.27'	S87°31'30"E
L9	21.00'	S6°04'01"E	L18	10.13'	N87°31'30"W

GRID NORTH
SCALE: 1"=60'

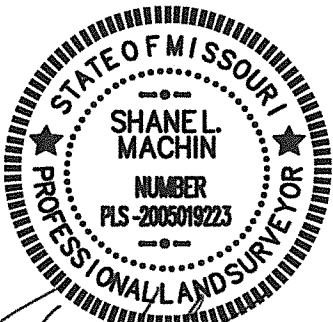


LEGEND:

- = EXISTING IRON PIN
- DRAIN. = DRAINAGE
- TCE = TEMPORARY CONST. ESMT.
- ESMT. = EASEMENT
- CONST. = CONSTRUCTION
- POB = POINT OF BEGINNING

CERTIFICATION:

THIS IS AN EXHIBIT DRAWING PREPARED TO SHOW THE LOCATION OF A DESCRIPTION ONLY, AND DOES NOT COMPLY WITH THE CURRENT STANDARDS FOR PROPERTY BOUNDARY SURVEYS.



SHANE L. MACHIN P.L.S. 2005019223

03/17/2021
DATE

AREA:

DRAINAGE EASEMENT: 1,519 SQ. FT±
TEMPORARY CONSTRUCTION EASEMENT: 2,087 SQ. FT±

PREPARED FOR:

DANIEL O'CONNOR
BOOK 2010 PAGE 6702

SHAFFER & HINES, inc.

CONSULTING ENGINEERS - PROFESSIONAL LAND SURVEYORS
729 W. MT. Vernon, Nixa, Missouri 65714
Phone (417) 725-4663 - Fax (417) 725-5230

PROJECT NO.: 202002 DATE: 03-17-2021