

EASEMENT AGREEMENT
(Storm Sewer Easement)

This Easement Agreement (this "**Easement Agreement**") is made effective this ___ day of _____, 2024 (the "**Effective Date**"), between Orscheln Properties Co. L.L.C., a Missouri limited liability company ("**Orscheln**"), and the City of Lexington, Nebraska, a municipal corporation of the State of Nebraska (the "**City**").

RECITALS

- A. Orscheln is the owner of certain real estate located in Lexington, Dawson County, Nebraska, as legally described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Orscheln Property**") and generally as shown by bold outline on the site plan attached hereto as **Exhibit B** and incorporated herein by reference. Exhibit B and any references in this Easement Agreement to same are for convenience and identification purposes only and not for scale, measurement, calculation or specification purposes.
- B. The City has requested from Orscheln a non-exclusive easement under and through a strip of land on Orscheln's Property, said strip being the south fifteen (15) feet of Orscheln's Property, with the southern boundary of said fifteen (15) foot easement strip being the same as the southern boundary line of Orscheln's Property (the "**Easement Area**"), with said Easement Area being generally as shown by crosshatching on Exhibit B, solely for the purposes of constructing, operating, maintaining, repairing, replacing, testing, altering, moving, and removing a wholly-underground storm sewer line (the "**Storm Sewer Line**") within the Easement Area to improve area drainage, and Orscheln has agreed to accommodate the City's request in accordance with the terms and conditions set forth below in this Easement Agreement.

AGREEMENT

NOW, THEREFORE, in consideration for One Dollar (\$1.00) paid by the City to Orscheln and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Recitals**. The above recitals are hereby incorporated herein by reference.
2. **Easement**. Orscheln hereby grants and quit-claims unto the City, subject to the terms and conditions set forth in this Easement Agreement, a non-exclusive

easement (the "**Easement**") under and through the Easement Area solely for the purpose of the City, at its sole cost, to construct, install, operate, maintain, inspect, repair, replace, test, alter, move, and remove the Storm Sewer Line, and not for any other purposes. No part of the Storm Sewer Line, and no appurtenances thereto, shall be located above-ground. The City covenants that it shall:

- (a) install the Storm Sewer Line in accordance with all applicable local, state, or federal regulations;
- (b) prior to any construction, deliver to Orscheln copies of all final construction plans and drawings of any and all improvements and modifications to the Storm Sewer Line;
- (c) ensure that all work performed in connection with the Storm Sewer Line and the Easement is carried out in a safe, orderly, and efficient manner so as not to endanger or interfere with Orscheln's operation or use of the Orscheln Property, including but not limited to any business operating on the Orscheln Property, and so as to minimize any annoyance to Orscheln or interference with Orscheln's use of the Orscheln Property or any business operating on the Orscheln Property;
- (d) be responsible for all required permits for the installation of the Storm Sewer Line;
- (e) ensure that all cuts, ditches, trenches, ruts, and excavations made in connection with the City's exercise of rights under this Easement Agreement shall be refilled to and permanently maintained, both at the conclusion of construction, and after any and all repair, maintenance or removal, and thereafter at all times, at the level of the adjoining ground and that the Orscheln Property and any appurtenances, if any (including, but not limited to, any paved driveway or parking lot, whether now or hereafter existing), shall be restored to a condition comparable to their prior condition, including without limitation full restoration, including repaving upon completion of such work, and the City shall restore any other damage to the Orscheln Property caused by the City's access and usage of the Easement Area, including, but not limited to, construction, maintenance, repair or use of the Storm Sewer Line;
- (f) be responsible for all monitoring, testing, maintenance, repairs, replacement, and upkeep of the Storm Sewer Line;
- (g) compensate Orscheln for any damage to the Orscheln Property including, but not limited to, any improvements thereon or appurtenances thereof presently existing or as may exist in the future, arising from or relating to the exercise of the rights granted under this Easement Agreement, or arising out of or related to the presence or use of the Storm Sewer Line, including, without limitation, damages to the Orscheln Property arising from depressions in the trench where the Storm Sewer Line is laid, arising from leaks or discharges from the Storm Sewer Line, including damage to the soil, cave-ins of the subsurface of the Orscheln Property, or other damage to the surface or subsurface of any part of the Orscheln Property;

- (h) require the City's contractors and subcontractors, including those involved in the initial construction or any later maintenance, repair, replacement, or removal of the Storm Sewer Line, to maintain at all times comprehensive general liability insurance with limits of liability of at least \$1,000,000 per person and per occurrence, which insurance shall name Orscheln and its affiliates and successors and assigns as an additional insured;
- (i) save harmless the Orscheln Property from and against any and all liens arising out of the City's exercise of its rights and performance of its duties under this Easement Agreement, including without limitation, mechanics' and materialmen's liens; and
- (j) to forever indemnify, defend, and hold harmless Orscheln, its successors and assigns, and its members, managers, shareholders, directors, officers, and employees from and against all costs, losses, claims, causes of action, or damages, including attorneys' fees and courts costs associated therewith, arising from or related to any third party claims for damage to the property or persons of such third parties arising from or related to the use or presence of the Storm Sewer Line or the City's use of the Easement Area. The provisions of this paragraph 2(i) shall survive the termination of the easement granted under this Easement Agreement.

The City acknowledges and agrees that this Easement is granted without warranty of any kind or nature, including without any warranty of title and without any warranty that the Easement Area or soils in which the Storm Sewer Line is to be built within is suitable for the construction, operation, or maintenance of the Storm Sewer Line. The Easement Area for the Easement is therefore provided on an "as-is, where is" basis. Orscheln shall not be liable to the City for damage to any property of the City's or the City's contractors or subcontractors arising from or related to the Storm Sewer Line or for any consequential damages related thereto.

- 3. **Orscheln's Use of Easement Area and Storm Sewer Line.** Orscheln, for itself, its successors and assigns, reserves the right to use and occupy the Orscheln Property, including but not limited to the Easement Area, for any purpose whatsoever; provided, however, Orscheln shall not construct permanent structures (other than a sign or gravel or paved driveway or parking facilities) within the Easement Area. Orscheln and the City agree that, in the event of any future development of the Orscheln Property, Orscheln shall have the right to connect to and utilize the Storm Sewer Line, for the benefit of the Orscheln Property, and the City shall cooperate and assist Orscheln in making the necessary connections to the Storm Sewer Line.
- 4. **Default or Breach.** The City acknowledges and agrees that in the event of a failure to perform or a breach of any of the City's duties and obligations under this Easement Agreement, and if such failure or breach is not cured within thirty (30) days after Orscheln sends written notice to the City, in addition to any other right or remedy available to Orscheln at law or in equity, Orscheln shall have the right, thereafter, to remedy such failure or breach on behalf of the City and the City shall then be obligated to reimburse Orscheln for the full cost of all such work immediately upon receipt of Orscheln's invoice therefor. In addition, and without limiting Orscheln's foregoing remedies, should a leak or discharge from

successors, and assigns. The Easement granted under this Easement Agreement is a permanent easement and will continue in full force and effect until and unless the City executes a written notice of abandonment and records it with the Register of Deeds of Dawson County, Nebraska, or otherwise abandons this Easement Agreement.

8. **Parties.** As used herein, the term "Orscheln" shall include "Orscheln, and its successors and assigns," and the term the "City" shall include "the City, its successors and assigns." Orscheln represents and warrants that Orscheln is the owner of the Orscheln Property and has the power, right and authority, by and through its signatory below, to make and execute this Easement Agreement. The City represents and warrants that it has the power, right and authority, by and through its signatory below, to make and execute this Easement Agreement. The City's rights hereunder may be exercised by the City, its successors and assigns, and their respective officers, agents, contractors and their respective employees.

IN WITNESS WHEREOF, this Easement Agreement is executed the day and year first above written.

SIGNATURE PAGES TO FOLLOW

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Orscheln:
Orscheln Properties Co. L.L.C.

By: *B. Habermehl*
Brian K. Habermehl
Vice President

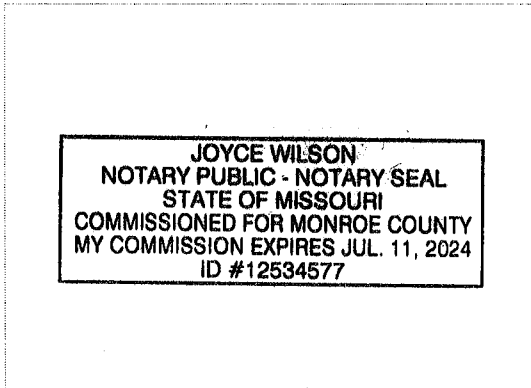
NOTARIAL WORDING FOR EASEMENT AGREEMENT
(Orscheln)

STATE OF MISSOURI)
)
COUNTY OF RANDOLPH) ss:

On this 26th day of April, 2024, before me, Joyce Wilson, a Notary Public in and for said state, personally appeared Brian K. Habermehl, Vice President of Orscheln Properties Co. L.L.C., known to me to be the person who executed the within Easement Agreement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

AFFIX NOTARY SEAL/STAMP BELOW



Joyce Wilson
Notary Public
Joyce Wilson

My Commission expires: July 11, 2024

The City:
City of Lexington, Nebraska

By: _____
Name: _____
Title: _____

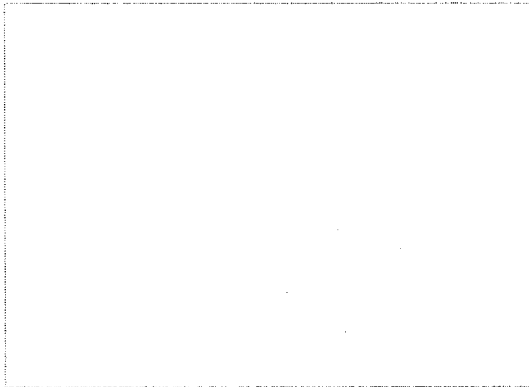
NOTARIAL WORDING FOR EASEMENT AGREEMENT
(the City)

STATE OF NEBRASKA)
)
COUNTY OF _____) ss:

On this ____ day of _____, 2024, before me, _____,
a Notary Public in and for said state, personally appeared _____,
_____ of the City of Lexington, Nebraska, known to me to be the person who
executed the within Easement Agreement on behalf of the City of Lexington, Nebraska, and
acknowledged to me that ____ executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day
and year last above written.

AFFIX NOTARY SEAL/STAMP BELOW



Notary Public
Printed Name: _____

My Commission expires: _____

Exhibit A
(to Easement Agreement)

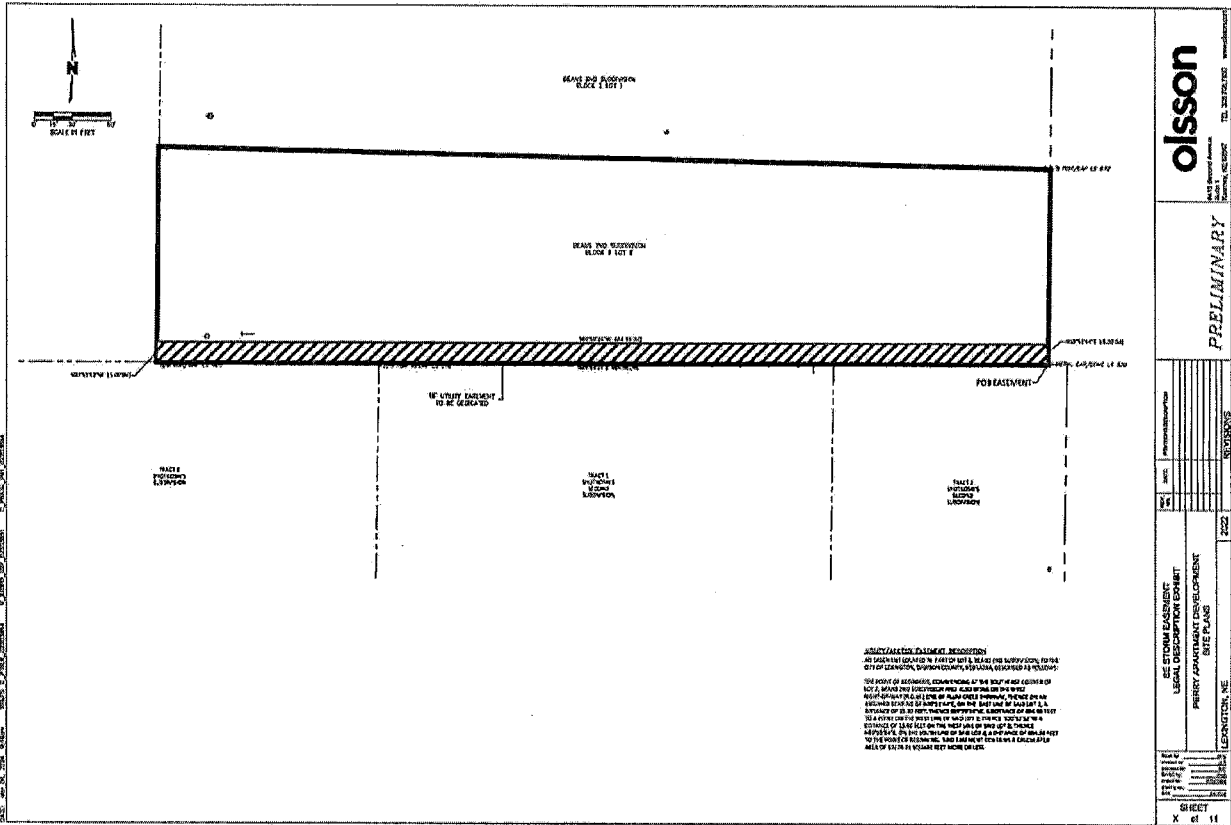
Orscheln Property

Real estate situated in Dawson County, Nebraska, and legally described as follows:

Lot 2 of Orscheln's Administrative Replat of Block 2, Beans 2nd Subdivision, to the City of Lexington, Dawson County, Nebraska, recorded as Instrument No. 2020-3186, in Plat Cabinet No. 3, at Index No. 19, in the records of Register of Deeds of Dawson County, Nebraska.

Exhibit B (to Easement Agreement)

Site Plan



DISCLAIMER
 THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION OR AS A BASIS FOR ANY OTHER DESIGN OR CONTRACT. THE DESIGNER ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS PLAN. THE USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR VERIFYING THE ACCURACY OF ALL DATA AND INFORMATION PROVIDED TO THE DESIGNER. THE DESIGNER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED BY THE DESIGNER AND DOES NOT INCLUDE THE CONSTRUCTION OF THE PROJECT OR THE PERFORMANCE OF THE PROJECT.