

**AGREEMENT**

This Agreement is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation, hereafter called the "City," and **DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION, a Delaware Corporation**, of 140 North Phillips, Sioux Falls, SD, SD, 57104, hereafter collectively called "DM&E."

Recitals

**WHEREAS**, DM&E maintains Railroad Right of Way in the SE1/4 of SE1/4, Section 6, T1N, R8E; and

**WHEREAS**, the City plans to construct a right turn lane and storm sewer extension at the St Joseph and St Charles street intersection in the DM&E Right of Way in the SE¼ of SE¼; and

**WHEREAS**, it is understood that the permanent access and drainage easement and temporary construction easement will be located in the DM&E Right of Way in the SE¼ of SE¼. The easements will be east of the St. Joseph street Right of Way, as shown on Exhibit "1" and Exhibit "2", attached;

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed as follows:

1. DM&E shall grant to the City concurrent with the execution of this Agreement a permanent access and drainage easement in, on, over, under, and across that portion of Section 6 as shown on Exhibit "1", attached hereto and incorporated herein by reference. Said easement shall include the right to construct, operate, maintain, and repair the access road, storm sewer and related appurtenances as may be necessary.
2. DM&E shall grant to the City a temporary construction easement in, on, over, under and across that portion of Section 6 as shown on Exhibit "2", attached hereto and incorporated herein by reference. Said easement shall be used for the purpose of constructing turn lane and storm sewer on the property.

3. The City shall perform all work in a workmanlike manner and as nearly as reasonably possible to return the surface of the ground to the condition as it existed prior to the granting of this Agreement. This Agreement shall include the right to do those things reasonably necessary to effectuate its purpose.
4. The City agrees to pay DM&E the sum of Three Thousand Dollars (\$3,000.00) for the permanent access and drainage easement.
5. This Agreement shall run with the subject property and shall be binding on the heirs, devisees, and assigns of each party.


DATED: \_\_\_\_\_, 2008.

DATED: \_\_\_\_\_, 2008.

**CITY OF RAPID CITY**, a municipal Corporation

**DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION**

By: \_\_\_\_\_  
Alan Hanks, Mayor

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

Its: Kurt V. Feaster, Chief Financial Officer  
**Treasurer & Ass't Secretary**

ATTEST:

\_\_\_\_\_  
James F. Preston, Finance Officer  
(SEAL)

State of South Dakota,            )  
  ) ss.  
County of Pennington.            )

ON THIS DAY, \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the **CITY OF RAPID CITY**, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the **CITY OF RAPID CITY** by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My Commission Expires:  
  
(SEAL)

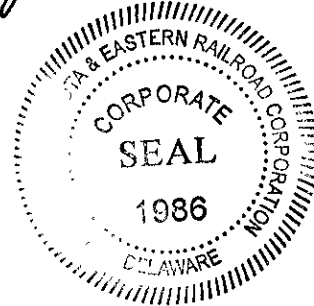
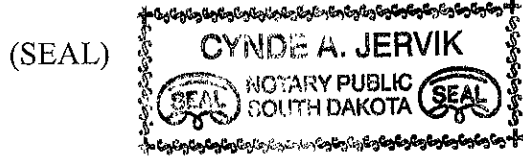
State of South Dakota, )  
 ) ss.  
County of ~~Pennington~~ )  
*Minnehaha*

ON THIS DAY, March 17, 2008, before me, the undersigned officer, personally appeared Kurt V. Feaster, who acknowledged himself to be the CFO/Asst Sec. of DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION, and that he as such CFO/Asst. Sec., being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION by himself as CFO/Asst. Sec..

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Cynde A. Jervik  
Notary Public

My Commission Expires: 6-15-12



Reviewed  
Prepared By: CITY ATTORNEY'S OFFICE  
JA 2-15-08

PREPARED BY: City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4140  
*3-5-08*

STATE OF SOUTH DAKOTA    )  
  )ss.       PERMANENT UTILITY EASEMENT  
COUNTY OF PENNINGTON    )

FOR AND 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, DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION, a Delaware Corporation, of 140 North Phillips, Sioux Falls, SD, 57104, Grantor, hereby grants to the CITY OF RAPID CITY, a South Dakota municipality, 300 Sixth Street, Rapid City, South Dakota, 57701, the Grantee, a perpetual access and drainage easement, subject to the conditions hereinafter set forth, as hereinafter described.

The property which is the subject of this permanent utility easement is legally described as:

A portion of the Southeast Quarter of the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>) of Section Six (6), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as more fully described on Exhibit "A", attached hereto and incorporated herein by reference.

Such easement shall include the right to enter upon the easement property to construct, install, operate, inspect, maintain, and repair all streets, storm sewers, and their related

appurtenant facilities. The City shall perform all work in a workmanlike manner and shall leave the property in as good condition as existed prior to entry thereon.

The area which is the subject of this easement shall be kept free of all obstacles, including fences, shrubs, walls, or other items which obstruct the visibility or usefulness of the easement.

This easement shall include the right to enter upon the above described real property and otherwise to do those things reasonably necessary to effectuate its purpose.

DATED this 17th day of March, 2008.

DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION

By: [Signature]

Its: Kurt V. Feaster, Chief Financial Officer  
Treasurer & Ass't Secretary

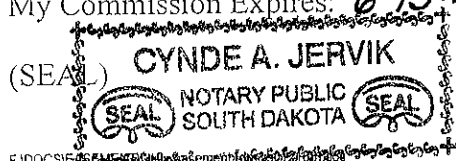
State of South Dakota )  
                                  ) SS.  
County of ~~Pennington~~ )  
Minnehaha

On this the 17 day of March, 2008, before me, the undersigned officer, personally appeared Kurt V. Feaster, who acknowledged himself to be the CFO/Asst. Sec. of DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION, and that he as such CFO/Asst. Sec., being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION by himself as CFO/Asst. Sec..

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

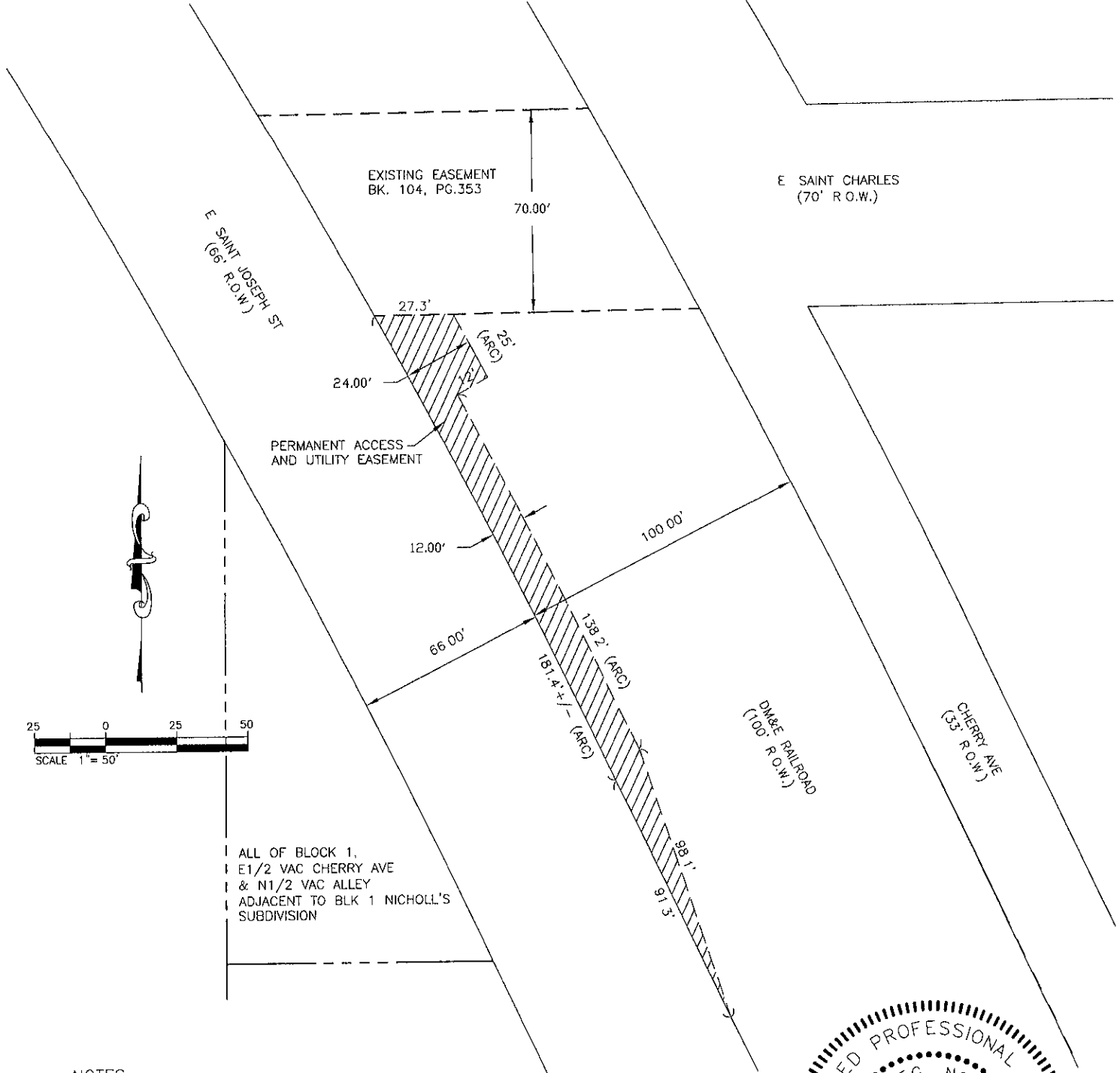
[Signature]  
Notary Public, South Dakota

My Commission Expires: 6-15-12



# EXHIBIT "A"

PERMANENT ACCESS AND DRAINAGE EASEMENT  
A PORTION OF THE SE1/4 SE1/4 OF SECTION 6, T1N, R8E, B.H.M., PENNINGTON COUNTY, SD



ALL OF BLOCK 1,  
E 1/2 VAC CHERRY AVE  
& N 1/2 VAC ALLEY  
ADJACENT TO BLK 1 NICHOLL'S  
SUBDIVISION

### NOTES

- 1 THE PERMANENT ACCESS AND DRAINAGE EASEMENT SHOWN HEREON IS FOR THE EXPRESS USE OF THE CITY OF RAPID CITY.
- 2 THE PERMANENT ACCESS AND DRAINAGE EASEMENT SHOWN HEREON IS FOR THE PURPOSE OF INSTALLATION AND OPERATION OF STREET, SIDEWALK, STORM SEWER AND APPURTENANCES
- 3 EASEMENT AREA = 0.069 ACRE +/-

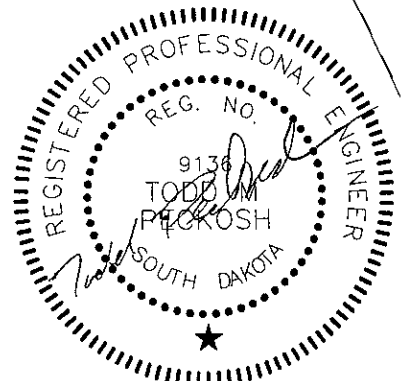


EXHIBIT "2"  
PAGE 1 OF 3

PREPARED BY: City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4140  
*JAC*  
*1-28-08*

STATE OF SOUTH DAKOTA        )  
  ) SS.       TEMPORARY CONSTRUCTION  
COUNTY OF PENNINGTON        )                   EASEMENT

FOR AND 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, DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION, a Delaware Corporation, of 140 North Phillips, Sioux Falls, SD, 57104, Grantor, hereby grants to the CITY OF RAPID CITY, 300 Sixth Street, Rapid City, South Dakota, 57701, its agents, employees, and contractors, a temporary construction easement over and across the following described real property:

A portion of the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Six (6), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as more fully described on Exhibit "A", attached hereto and incorporated herein by reference.

This easement shall include the right to enter upon the easement property for the purpose of constructing the project entitled, "East St. Joseph/East St. Charles Turn Lane, Project No. ST07-1660."

The City shall perform all work in a workmanlike manner and shall leave the property in as good condition as existed prior to entry thereon. However, the City will not be responsible for repairing or replacing any structures or improvements that are placed in the temporary easement after the effective date of the easement.

This Temporary Easement shall be effective from the date of signing to December 31, 2009.

EXHIBIT "2"  
PAGE 1 OF 3

Dated this 17th day of March, 2008.

DAKOTA, MINNESOTA AND EASTERN  
RAILROAD CORPORATION

By: [Signature]  
Its: \_\_\_\_\_

**Kurt V. Feaster, Chief Financial Officer  
Treasurer & Ass't Secretary**

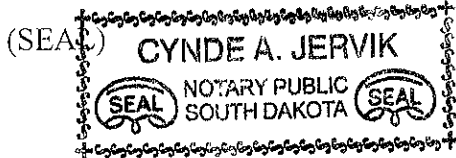
State of South Dakota )  
  SS.  
County of Pennington )

Minnehaha  
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IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]  
Notary Public, South Dakota

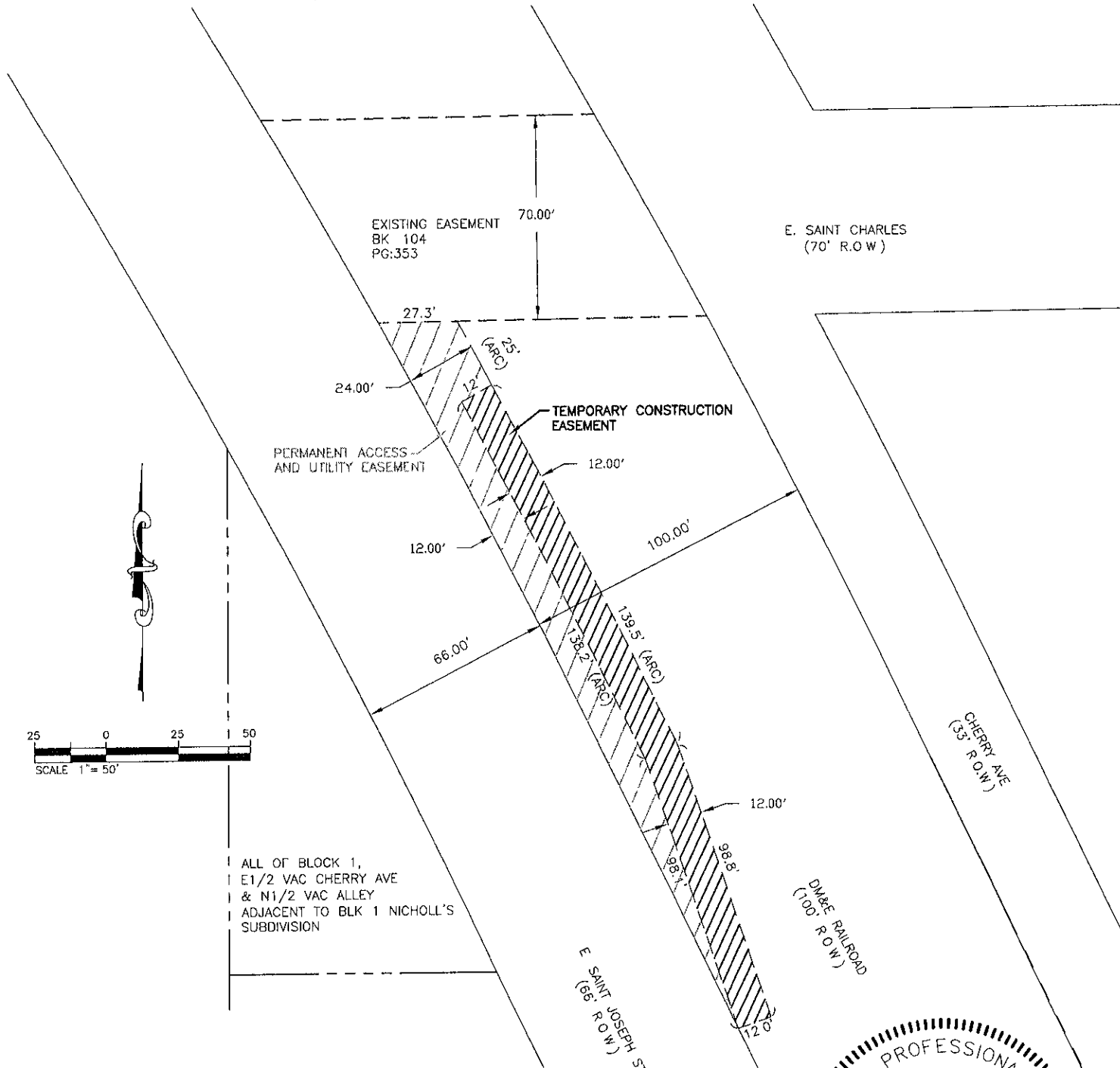
My Commission Expires: 6-15-12





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ALL OF BLOCK 1,  
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ADJACENT TO BLK 1 NICHOLL'S  
SUBDIVISION

**NOTES:**

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- 3 EASEMENT AREA = 0.065 ACRE +/-.

