

RESOLUTION NO. 2023-21

**A RESOLUTION APPROVING A PURCHASE AGREEMENT FOR CERTAIN
PROPERTY INTERESTS ASSOCIATED WITH THE CRESCENT AVENUE
PROJECT**

**BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN
OAKS, MISSOURI, AS FOLLOWS:**

Section 1. The Board of Aldermen hereby approves the Purchase Agreement attached as Exhibit A hereto and incorporated herein by reference and authorizes the Mayor to execute the Purchase Agreement on behalf of the City.

Section 2. The Board of Aldermen accepts the General Warranty Deed executed by the Sellers and attached as Exhibit 1 to the Purchase Agreement and the Mayor is authorized to execute the Deed on behalf of the City showing acceptance thereof.

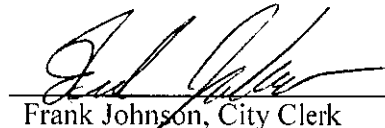
Section 3. This Resolution is adopted and shall be in full force and effect on and after its passage and approval.

THIS RESOLUTION WAS PASSED AND APPROVED THE 4th DAY OF OCTOBER 2023,
BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



Russ Fortune, Mayor

Attest:



Frank Johnson, City Clerk

Exhibit A

Purchase Agreement for Property Interests at 140 Crescent Avenue

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is made and entered into effective as of the 20th day of September, 2023, by and between **Craig A. Cwiklowski and Patricia M. Cwiklowski**, husband and wife, whose address is 140 Crescent Avenue, Twin Oaks, Missouri 63021 ("Sellers") and the **City of Twin Oaks, Missouri**, a city of the fourth class and a Missouri municipal corporation, with an address at 1381 Big Bend Road, Twin Oaks, MO 63021 ("City").

WITNESSETH:

AC
12/10

WHEREAS, Sellers are the owners of certain real property known and numbered as ~~99~~ Crescent Avenue (Parcel ID # 25Q521142) (the "Cwiklowski Property"); and

WHEREAS, City is undertaking a public works project to add a sidewalk, stormwater enhancements, and other improvements to and along Crescent Avenue from Golden Oak Court to the Twin Oaks city limit (the "Project") and needs additional right-of-way and certain permanent and temporary easements for stormwater improvements, future sidewalk maintenance, construction space, and other associated improvements; and

WHEREAS, because the Project necessitates the removal of four (4 – 1-Maple, 1-Dogwood, and 2 – Pine trees) existing mature trees (the "Trees") from the Sellers' property, and because the Sellers and the City recognize the beauty and environmental benefit that the Trees and their canopies provide, as part of this Agreement, the City has agreed to pay for the loss of the Trees which would allow Sellers to plant replacement trees in the future if desired; and

WHEREAS, the City, as a fourth class city organized and operated pursuant to Chapter 79 of the Revised Statutes of Missouri (RSMo.), has authority under Sections 88.667 and 88.844 RSMo., as amended, inter alia, to condemn land and interests in land for public use and to provide for the public safety and welfare; and

WHEREAS, Sellers desire to sell to City and City desires to purchase from Sellers certain portions of and property interests in the Cwiklowski Property, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Property.** Subject to the terms and conditions of this Agreement, Sellers hereby agrees to sell to City, and City hereby agrees to purchase from Sellers, the right-of-way legally described in Exhibit A (the "Right-of-Way") to the form of Warranty Deed attached hereto as **Exhibit 1** (the "Warranty Deed"), together with a permanent easement legally described in Exhibit B (the "Permanent Easement") and two (2) temporary construction easements legally described in Exhibit C (the "Temporary Easement") to the Warranty Deed, all of which property interests are located in the City of Twin Oaks, St. Louis County, State of Missouri and are part of the Cwiklowski Property. The Right-of-Way and Permanent and Temporary Easements are collectively referred to herein as the "**Property Interests.**"

2. **Purchase Price.** The Purchase Price to be paid to Sellers for the Right-of-Way and Temporary Easement shall be **Twenty-Three Thousand Fifteen and 00/100 Dollars (\$23,015.00)** (the "**Purchase Price**"). Sellers acknowledge and agree that the Purchase Price includes (a) compensation for the removal of the Trees from the proposed Right-of-Way, and (b) the in-kind compensation contained in Section 9 below, and (c) any and all compensation to which Sellers would be entitled in a condemnation action for the Property Interests including, but not

limited to, any claims for moving expenses, loss of rent, loss of use, inconvenience, or other compensation related to the sale of the Property Interests or damages to the unburdened portion of the Cwiklowski Property. The Purchase Price, subject to any adjustments as hereinafter provided, shall be payable by City to Sellers on the Closing Date (as defined below).

3. Contract Date; Closing Date; Place of Closing. The "Contract Date" shall be the date on which the last party executes this Agreement. This transaction shall be closed (the "Closing") on a date that shall be no later than October 18, 2023 (the "Closing Date"). The Closing Date may be extended by the parties. The Closing shall be held at Twin Oaks City Hall, the Sellers' residence, or such other place as the parties may mutually agree in writing.

4. Taxes. Any unpaid real property taxes and assessments for 2023 for the Property Interests shall not be prorated at Closing because City asserts that, as a political subdivision, it is exempt from real property taxation.

5. Events of Closing. At Closing and on the Closing Date, Sellers will transfer and convey (or cause to be transferred and conveyed) to the City the Property Interests. The warranty deed shall be in substantially the form attached hereto as **Exhibit 1**.

6. Real Estate Brokers and Commission. Sellers and City hereby state and warrant to each other that neither has dealt with any real estate broker, agent or salespersons in connection with this transaction. Sellers and City each agree to indemnify and hold the other harmless against any claims for real estate commissions or consultant fees claiming representation of such party in this transaction. Such obligations to indemnify and hold harmless shall include, without limitation, all costs and attorneys' fees relating to litigation and other proceedings.

7. Conditions Precedent to City's Obligations. Sellers acknowledges that this Agreement is expressly contingent upon: (i) Sellers' compliance with the terms of this Agreement; (ii) Sellers' representations and warranties being true on the Contract Date and remaining true through the Closing of this transaction; (iii) City's due diligence investigation shall have revealed (a) no environmental problems or concerns, (b) no additional liens, encumbrances or other matters affecting title to the Property Interest or City's intended use of those Property Interests that Sellers is unable or unwilling to cause to be removed or resolved prior to Closing, and/or (c) no violation of the terms and conditions of this Agreement by Sellers. The foregoing conditions are (x) necessary prerequisites for City's purchase of the Property Interests, (y) included in this Agreement solely for City's benefit, and (z) may be waived solely by City, in City's sole discretion. Sellers further acknowledge that this Agreement may be terminated at City's sole election upon written notice to Sellers if any of the foregoing conditions are not satisfied. All of City's obligations under this Agreement shall be immediately discharged upon any such termination.

8. Sellers' Covenants, Representations and Warranties. Sellers covenant, represent and warrant that, as of the Contract Date and the Closing Date:

- a. Sellers have full and lawful right and authority to execute and deliver this Contract and to consummate the transactions contemplated hereunder;
- b. Sellers own good fee simple marketable title to the Property Interests;
- c. To the best of Sellers' knowledge there is currently no litigation, bankruptcy or other proceeding pending in any manner affecting the Property Interests;
- d. To the best of Sellers' knowledge, no unrecorded liens, encumbrances, or adverse claims exist with respect to the Property Interests or any portion thereof;

- e. There are no management contracts, repair contracts, service contracts, options or any other material agreements relating to the Property Interests or the conduct of business thereon;
- f. To the best of Sellers' knowledge, there are no unrecorded restrictions, contracts or other documents which could, in any manner or at any time whatsoever, affect or prohibit the development of the Property Interests for any commercial use or which could affect the manner or type of goods or services to be provided or sold from or at the Property Interests;
- g. There are no leases or occupancy agreements affecting all or any portion of the Property Interests.

As provided in Section 7 above, City's obligations under this Agreement are expressly conditioned on the foregoing covenants, representations and warranties of Sellers being true on the Contract Date and remaining true through Closing. The foregoing covenants, representations and warranties shall survive Closing.

9. City's Obligations. City agrees, at its expense and as part of the Project add the notes similar to the following to the construction plans:

- a. *Protection of Trees.* Prior to construction, Contractor shall install orange construction fencing out to at least the dripline around 3 trees nearest to the road that will not be taken down as part of the project but could be affected by said project. *The trees to be protected are comprised of 1 redbud and 2 dogwood trees and are located approximately as shown on Exhibit 2 attached hereto.*
- b. *Irrigation.* Contactor to coordinate with homeowners' irrigation service (Terry's Irrigation) at City's expense to do the following:
 - (i) prior to the start of construction, cap off and pull irrigation pipe back on 6-7 roadside sprinkler heads, and
 - (ii) post construction, reset 6-7 roadside sprinkler heads post grading and prior to sod being placed.
- c. *Post Construction Sod:* Before substantial completion, Contractor shall backfill disturbed areas of the temporary construction easement with topsoil, grade the area and lay fescue sod to return the property back to its pre-construction condition.

10. Default. In the event of any default hereunder by City, Sellers may either cancel this Agreement or enforce the specific performance of this Agreement. In the event of any default hereunder by Sellers that is not cured within the time periods set forth herein, City may cancel this Agreement and thereupon Sellers and City shall have no further liability to the other under this Agreement or otherwise, or City may enforce the specific performance of this Agreement. Sellers and City hereby specifically waive any and all rights that each may have to damages as result of the other's default under this Agreement.

11. Notices. All notices and other communication between the parties hereto shall be in writing and shall be sent by certified or registered mail, return receipt requested, or by personal delivery against receipt, or by overnight courier, shall be deemed to have been validly served, given or delivered immediately when delivered against receipt or one business day after deposit in the mail, postage prepaid, or with an overnight courier, and shall be addressed as follows:

If to Sellers:	Craig Cwiklowski and Patricia Cwiklowski 140 Crescent Avenue Twin Oaks, MO 63021
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If to City: City Clerk/Administrator
City of Twin Oaks
1381 Big Bend
Twin Oaks, MO 63021

or to such other address (including email address) as each party may designate for itself by notice given in accordance with this Section.

12. Miscellaneous.

(a) **Release and Indemnification.** Sellers shall indemnify, defend and hold City harmless against and with respect to any and all loss, claims, injury, deficiency or any other damage resulting from any misrepresentation, breach of warranty or non-fulfillment of any covenant, representation, warranty or agreement by Sellers hereunder. Such indemnification shall include, without limitation, City's legal fees, expert fees, and expenses. The indemnification obligations of Sellers set forth in this Section shall survive Closing.

(b) **Interpretation.** The headings herein are solely for convenience and shall in no way be deemed to affect the meaning or construction of any part hereof. This Agreement, the legal relations between the parties, and the transaction contemplated hereby, shall be governed by, and construed and enforced in accordance with, the laws of the State of Missouri without regard to its conflicts of law rules. If any term or provision of this Agreement shall be unlawful, then such term or provision of this Agreement shall be null and void, but the remainder of the Agreement shall remain in full force and effect and be binding on both Sellers and City.

(c) **Amendment.** This Agreement constitutes the entire understanding and agreement between the parties hereto and may not be amended, supplemented, or modified except by a writing executed by each of the parties hereto.

(d) **Assigns.** This Agreement shall be binding upon the parties hereto and their permitted successors and assigns, provided that this Agreement is not assignable by City without the written consent of Sellers.

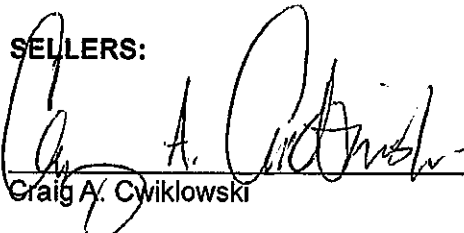
(e) **Time of Essence.** Time is of the essence of this Agreement.

(f) **Execution in Counterparts.** This Agreement may be executed in two or more identical counterparts, which taken together shall constitute one and the same instrument.


(g) **Entire Agreement.** This Agreement contains and constitutes the entire agreement of the parties regarding the subject matter hereof. There are no other agreements, written or oral, between the parties affecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands this day and year first above written.

SELLERS:


Craig A. Cwiklowski

Date: 9-20-23


Patricia M. Cwiklowski

Date: 9-20-23

CITY:

City of Twin Oaks, Missouri

By: *Russ Fortune*
Mayor

Date: *Oct 11, 2023*

ATTEST:

City Clerk

< SEAL >

Exhibit 1

Form of General Warranty Deed
(next page)

_____ [Space Above this Line for Recording Data] _____

Title of Document: **GENERAL WARRANTY DEED**

Date of Document: ~~September~~ 27 2023

Grantor: **Craig A. Cwiklowski and Patricia M. Cwiklowski**
 Husband & Wife

Grantor's Address: 140 Crescent Avenue
 Twin Oaks, MO 63021

Grantee: **CITY OF TWIN OAKS, MISSOURI**

Grantee's Address: 1381 Big Bend Road
 Twin Oaks, MO 63021

Full Legal Description:

Legal Descriptions are contained on pages _____ hereof.

Reference Book(s) and Page(s), if required:

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made and entered into as of the 20 day of September, 2023, by and between **Craig A. Cwiklowski and Patricia M. Cwiklowski**, Husband and Wife, whose address is 140 Crescent Avenue, Twin Oaks MO 63021 ("Grantors") and the **CITY OF TWIN OAKS, MISSOURI**, a city of the fourth class and a Missouri municipal corporation, whose address is 1381 Big Bend Road, Twin Oaks, MO 63021 ("Grantee").

WITNESSETH: Grantors, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, do by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto Grantee, the following described real property situated in the County of St. Louis, State of Missouri:

The real property legally described in Exhibit A and depicted on the Plat contained in Exhibit A-1 both attached hereto and incorporated herein for all purposes (the "Right-of-Way").

TO HAVE AND TO HOLD the Right-of-Way, together with all rights and appurtenances to the same belonging, unto Grantee and to the successors and assigns of Grantee forever. Grantor hereby covenant that they and their heirs, successors and assigns shall and will WARRANT AND DEFEND the title to the Right-of-Way unto Grantee and Grantee's successors and assigns forever, against the lawful claims of all persons whomsoever, excepting however taxes for the calendar year 2023 and thereafter, any special taxes becoming a lien after the date of this Deed, and all liens and encumbrances of record.


Together with the following grants by Grantors to Grantee:

A Permanent Easement to improve, construct, repair, inspect, access, maintain and to use as a public sidewalk in, over, and upon the real property legally described in Exhibit B, and depicted on the Plat contained in Exhibit B-1, both attached hereto and incorporated herein for all purposes.


Two Temporary Construction Easements for the purpose of making cuts, fills and sloping embankment, constructing drives, sidewalks, temporary roadways, and overhead utilities, etc., if any, providing working room and implementing any and all other related construction items over the real property legally described in Exhibit C, and depicted on the Plat contained in Exhibit C-1, both attached hereto and incorporated herein for all purposes (the "Temporary Easements"), until such time as the Crescent Avenue Project may be completed and accepted by the City of Twin Oaks, Missouri. Upon the granting or denial of acceptance by the City of Twin Oaks or its assigns, the Temporary Easements shall terminate. Grantors covenant that no installation or obstructions will be placed on the Temporary Easements as will interfere with the proper construction of the Crescent Avenue Project until the easements are terminated.

IN WITNESS WHEREOF, Grantors and Grantee have executed this General Warranty Deed as of the date first above written.

GRANTORS:



Patricia M. Cwiklowski



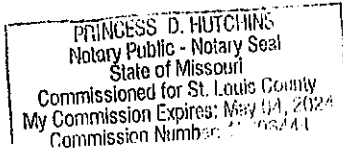
Craig A. Cwiklowski

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 20th day of September, 2023, before me personally appeared Patricia M. Cwiklowski to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

(SEAL)



Princess D. Hutchins
Notary Public

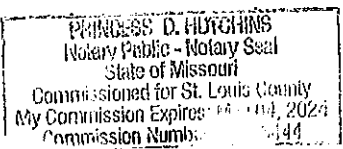
My commission expires: May 4, 2024

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 20th day of September, 2023, before me personally appeared: Craig A. Cwiklowski to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

(SEAL)



Princess D. Hutchins
Notary Public

My commission expires: May 4, 2024

Agreed and Accepted
by Grantee this ____ day of
_____, 2023:

GRANTEE:

City of Twin Oaks, Missouri

By: _____
Mayor

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2023, before me, a notary public in and for said state, personally appeared Russ Fortune, who being by me duly sworn, did say that he is the Mayor of the City of Twin Oaks, Missouri, a Missouri municipal corporation, and that said instrument was signed on behalf of the City by authority of its Board of Aldermen, and said Mayor acknowledged said instrument to be the free act and deed of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

(SEAL)

Notary Public

My commission expires: _____

Exhibit B

Legal Description Permanent Easement

A tract of land being part of Lot 25 of "Amended Plat of Quinette's Subdivision" in the Southwest Quarter of Section 7, Township 44 North, Range 5 East of the 5th P.M., City of Twin Oaks, St. Louis County, Missouri, to wit:

Commencing at the Southwest Corner of Lot 25 of "Amended Plat of Quinette's Subdivision" recorded on January 9, 1980 in Book 8, Page 132 of the St. Louis County Recorder of Deeds Office, thence along said south line S89°-21'-40"E 183.12 ft. to a point; thence leaving said south line N00°-38'-20"E 32.18 ft. to the point of beginning; thence N02°-36'-03"E 20.42 ft. to a point; thence N47°-36'-03"E 12.73 ft. to a point; thence S02°-36'-03"W 38.42 ft. to a point; thence N42°-23'-57"W 12.73 ft. to the point of beginning, containing 265 square feet.

Exhibit B-1

Permanent Easement Plat

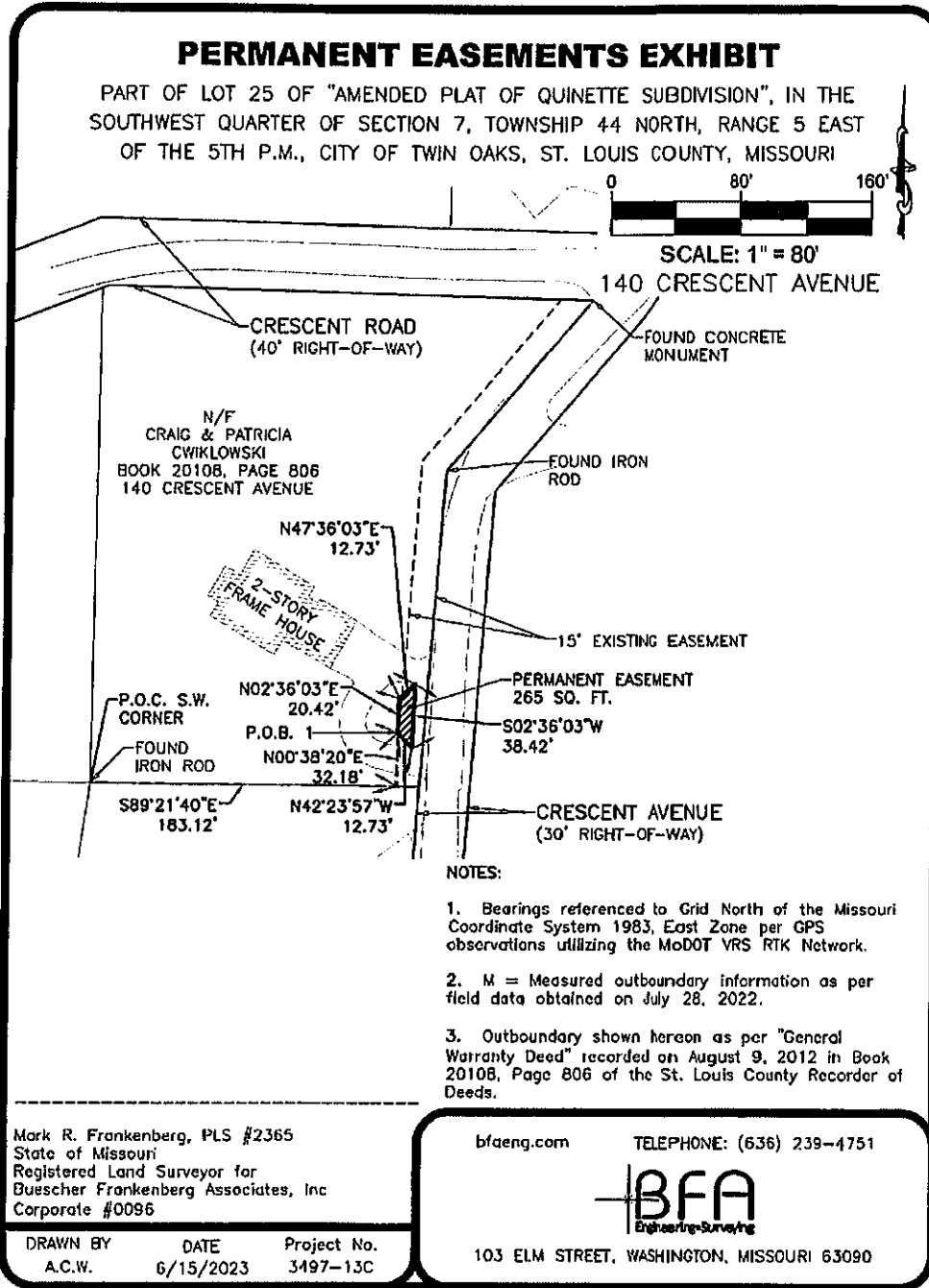


Exhibit C

Legal Descriptions: Temporary Construction Easements

A tract of land being part of Lot 25 of "Amended Plat of Quinette's Subdivision" in the Southwest Quarter of Section 7, Township 44 North, Range 5 East of the 5th P.M., City of Twin Oaks, St. Louis County, Missouri, to wit:

Legal Description: Temporary Construction Easement # 1

Commencing at the Northeast Corner of Lot 25 of "Amended Plat of Quinette's Subdivision" recorded on January 9, 1980 in Book 8, Page 132 of the St. Louis County Recorder of Deeds Office, also being the south right-of-way line of Crescent Road and the west right-of-way line of Crescent Avenue, thence along said south right-of-way line N88°-26'-51"W 12.10 ft. to the point of beginning; thence leaving south right-of-way S44°-11'-40"W 60.60 ft. to a point; thence along a curve deflecting to the left having a radius of 155.00 ft., an arc length of 74.51 ft., a chord bearing of S30°-25'-25"W, a chord distance of 73.79 ft. to a point; thence along a curve deflecting to the left having a radius of 263.00 ft., an arc length of 71.18 ft., a chord bearing of S08°-53'-57"W, a chord distance of 70.96 ft. to a point; thence S02°-36'-03"W 52.13 ft. to a point; thence S47°-36'-03"W 8.97' ft. to a point; thence N01°-12'-19"E 123.69 ft. to a point; thence N17°-48'-54"E 31.27 ft. to a point; thence N44°-19'-40"E 114.75 ft. to a point on the south right-of-way line of Crescent Road; thence along said south right-of-way line S88°-26'-51"E 7.23 ft. to the point of beginning, containing 2326 square feet.

Legal Description: Temporary Construction Easement # 2

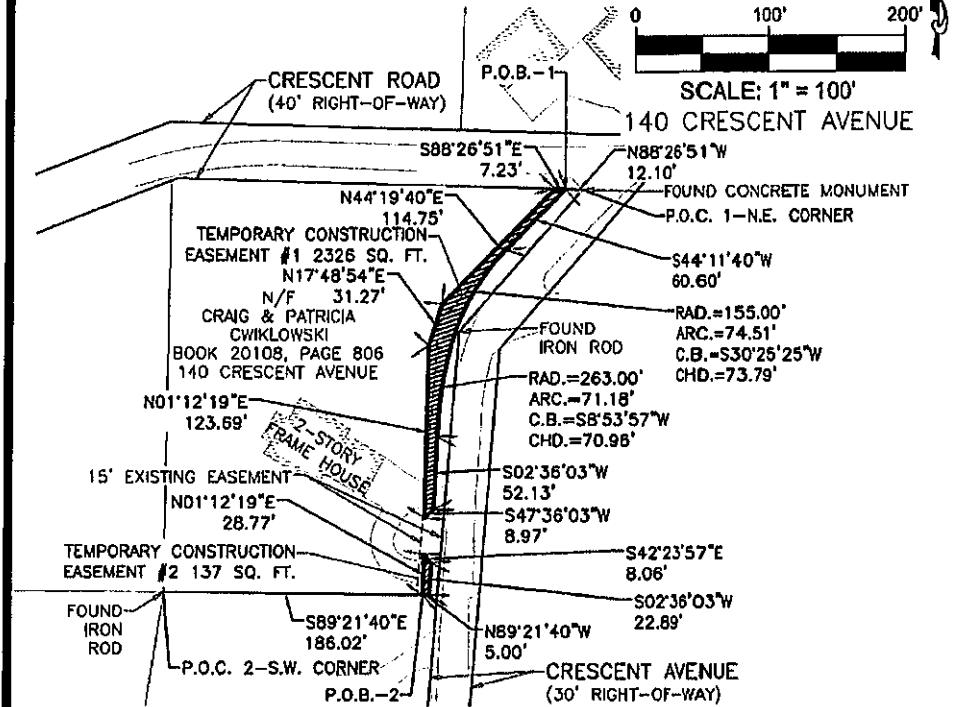
Commencing at the Southwest Corner of Lot 25 of "Amended Plat of Quinette's Subdivision" recorded on January 9, 1980 in Book 8, Page 132 of the St. Louis County Recorder of Deeds Office, thence along said south line S89°-21'-40"E 186.02 ft to the point of beginning; thence leaving said south line N01°-12'-19"E 28.77 ft. to a point; thence S42°-23'-57"E 8.06 ft. to a point; thence S02°-36'-03"W 22.89 ft. to a point on the south line; thence along said south line N89°-21'-40"W 5.00 ft. to the point of beginning, containing 137 square feet.

Exhibit C-1

Temporary Construction Easement Plat

TEMPORARY CONSTRUCTION EASEMENTS EXHIBIT

PART OF LOT 25 OF "AMENDED PLAT OF QUINETTE SUBDIVISION", IN THE
SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 44 NORTH, RANGE 5 EAST
OF THE 5TH P.M., CITY OF TWIN OAKS, ST. LOUIS COUNTY, MISSOURI



NOTES:

1. Bearings referenced to Grid North of the Missouri Coordinate System 1983, East Zone per GPS observations utilizing the MoDOT VRS RTK Network.
2. M = Measured outboundary information as per field data obtained on July 28, 2022.
3. Outboundary shown hereon as per "General Warranty Deed" recorded on August 9, 2012 in Book 20108, Page 806 of the St. Louis County Recorder of Deeds.

Mark R. Frankenberg, PLS #2365
State of Missouri
Registered Land Surveyor for
Buescher Frankenberg Associates, Inc
Corporate #0096

bfaeng.com TELEPHONE: (636) 239-4751



103 ELM STREET, WASHINGTON, MISSOURI 63090

DRAWN BY DATE Project No.
A.C.W. 6/15/2023 3497-13C

**Exhibit 2
Trees to be Protected by Contractor**

