

ADMINISTRATIVE REPORT

DATE: 08/17/2021
TOPIC: 5.9 – Memorandum of Understanding with D.R. Horton
PRESENTER: Dan Hines, Asst. Director-Facilities

A. PURPOSE OF REPORT

- a. D.R. Horton homes is constructing a new development directly adjacent to Cottage Grove Elementary school. During this construction the developer will be providing a trail connection between the school and the housing development.
- b. Due to storm water regulation, D.R. Horton will also be making storm water management modifications to the current system shared between ISD 833 and the existing property owners.
- c. D.R. Horton requests a MOU for a temporary easement to ISD 833's eastern property boundaries to conduct minor excavation activities.
- d. There are no anticipated impacts to student occupied areas or traffic accessibility to the school.

B. RECOMMENDATION

- a. Administration recommends approval of the MOU between ISD 833 and D.R. Horton.



**Memorandum of Understanding
between
DR Horton, Inc. – Minnesota
&
Independent School District No. 833
for
Hinton Woods Development**

This Agreement is made this _____ day of _____, 2021 by and between D.R. Horton, Inc. - Minnesota (hereafter the “Developer”), and Independent School District No. 833 (hereafter the “Property Owner”).

Whereas, the Developer intends to install a trail through the Property Owner’s property to provide a connection from Hinton Woods, located in Washington, Minnesota, and

Whereas, the Developer’s construction of a stormwater pond will require minor grading on the Property Owner’s property, and

Whereas, this construction requires a temporary construction easement from the Property Owner.

Now therefore, the parties hereby agree that the following terms shall apply:

Construction Provisions:

1. A trail will be constructed on the subject property as shown on the attached construction plan sheet.
2. All disturbed areas will be restored with topsoil and seed or gravel surfacing, as determined by the Property Owner. Erosion control blanket will be used in areas of seeding as deemed necessary by the Developer.
3. Trees and brush located within 20 feet of each side of the proposed trail will be removed.
4. The intent is to complete the trail and associated restoration by July, 2022.
5. A right of entry over the Property Owner’s property (PID No. 0502721310001) shall be granted to allow for the construction of the trail and associated restoration.

Easement Provisions:

1. The Property Owner agrees to convey to the Developer a temporary construction easement as shown on the attached Easement Exhibit. In general, this easement is as discussed below:

- a. 30-foot temporary construction easement centered along the proposed trail. This easement is necessary to allow for the construction of the trail.
 - b. 20-foot temporary construction easement over the east property boundary lying south of the proposed trail. This easement is necessary to allow for the grading of a storm pond located in the Hinton Woods development.
2. The above-mentioned easement documents will be completed with this agreement. The Property Owner, upon completion of the easement documents, agrees to execute the documents, and will be paid by the Developer in accordance with the compensation provisions as outlined below.
3. It is understood by all parties that upon execution of this Agreement, the Property Owner will allow access to the Property in order to begin construction for the Project. To this end, the Property Owner represents that it is the fee simple owner of the property that will be encumbered by the easement contemplated by this Agreement.

Agreement and Compensation Provisions:

1. The Developer will be responsible for all construction and permitting costs related to installing the trail as described herein. The Developer will also be responsible for all project costs associated with the entire project (project management, design, topographic survey, plan preparation, bidding, construction staking, construction observation, construction administration, materials testing, etc.).
2. The Developer will prepare all design and easement documents. All costs, expenses and attorney's fees associated with the development of these documents will be paid by the Developer, as described herein.
3. The Property Owner will not be subject to any costs associated with this work, as described herein.

Acceptance:

The conditions and understandings outlined herein are acceptable and binding. Moreover, it is agreed these understandings will form the basis of all the forthcoming actions required regarding the temporary construction easement acquisition. Finally, should it be necessary to modify the conditions, understandings or methodologies contained herein due to circumstances yet unforeseen, such modifications will be completed by mutual agreement of the parties hereto through an instrument of mutually agreed upon form.

[Signatures on following pages]

DEVELOPER:
DR Horton, Inc. - Minnesota

Mike Suel, Land Development Manager

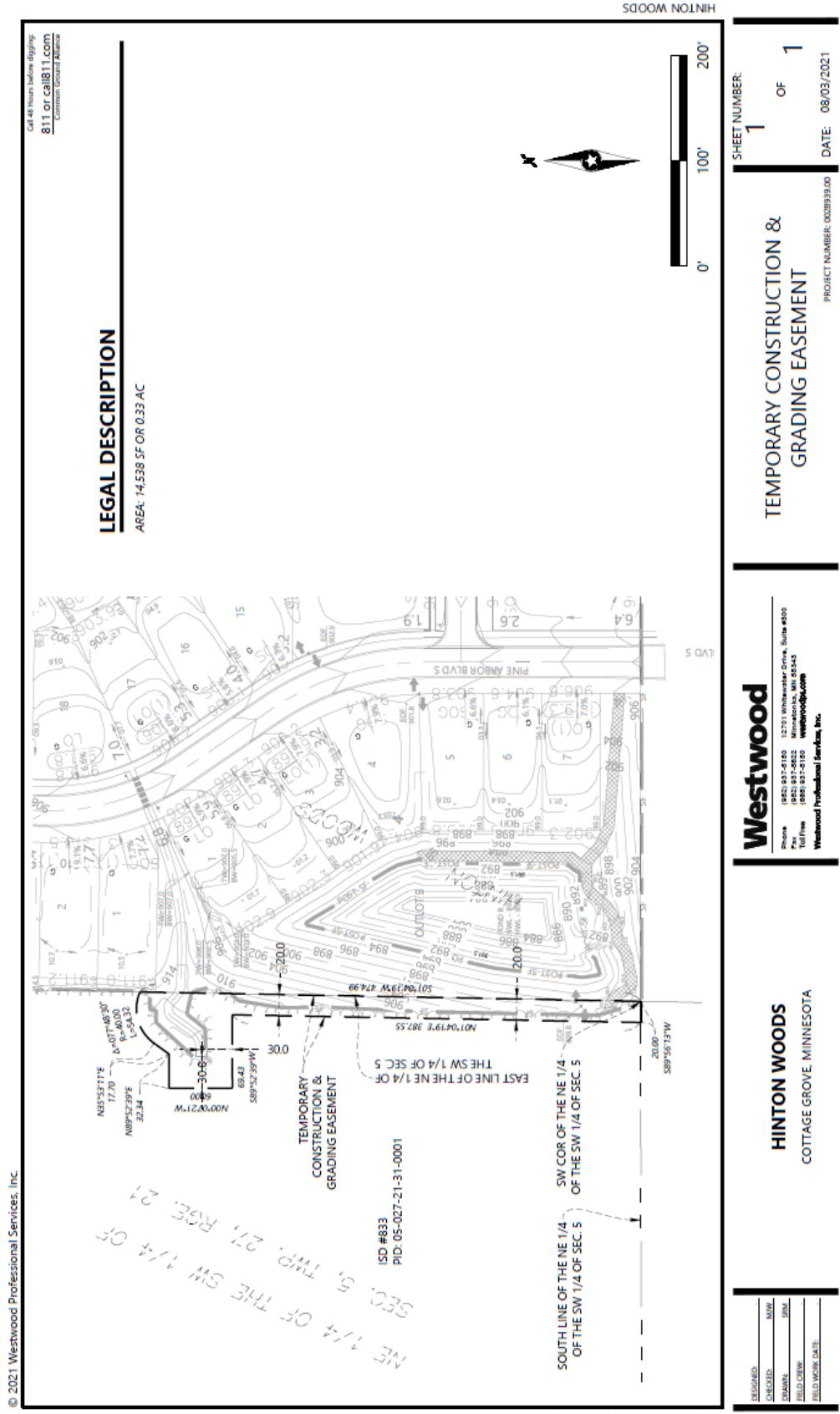
Date

PROPERTY OWNER:
Independent School District No. 833

Date

Date

Easement Exhibit



TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (the “*Easement*”) is entered into as of _____, 2021, by and between **Independent School District No. 833** (the “*Grantor*”), and **D.R. Horton, Inc. - Minnesota**, a Delaware Corporation (the “*Grantee*”).

RECITALS

- A. Grantor is the fee owner of the property legally described on Exhibit A;
- B. Grantor desires to grant to Grantee a temporary construction easement according to the terms and conditions contained herein.

AGREEMENT

In consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants to Grantee, its successors and assigns, a temporary construction easement lying over, under and across that portion of Grantor’s land situated in the County of Dakota, State of Minnesota, legally described on Exhibit B attached hereto and sketch of which is depicted on Exhibit C attached hereto and (the “*Easement Area*”), all in accordance with and subject to the provisions of this Easement.

TO HAVE AND TO HOLD the same, commencing upon the execution of this Easement and expiring as of the earlier of the date Grantee delivers written notice to Grantor that Grantee has completed its construction activities pursuant to this Easement or July 15, 2022. Upon expiration of this Easement and upon request from Grantor, Grantee will execute and deliver to Grantor an instrument in recordable form evidencing such expiration. Grantee shall perform the construction activities in a good and workmanlike manner, consistent with current industry standards and practices, and in compliance with all requirements imposed by the jurisdictions having control and authority over such construction activities.

Grantee shall indemnify, defend and hold Grantor and Grantor’s property harmless from mechanics’ liens caused by the activities of Grantee or Grantee’s agents, contractors or subcontractors. Grantee agrees to cause Grantee’s construction contractor, Belair Sitework Services, to carry Broad Form Commercial General Liability Insurance on an Occurrence Form (the “*CGL Policy*”), which contains a per occurrence limit of no less than One Million Dollars

(\$1,000,000.00) and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00), as evidenced by a certificate of insurance in the form attached hereto as Exhibit D.

Grantor shall be named as an Additional Insured on the CGL Policy. Such insurance shall also provide for a waiver of subrogation.

Grantee shall provide evidence that the required insurance is in full force by furnishing to Grantor, upon request by Grantor, a Certificate of Insurance specifically identifying that Grantor is an Additional Insured.

Grantor, its successors and assigns, does covenant with Grantee, its successors and assigns, that it is the fee owner of the Easement Area, that it has the lawful right and authority to convey and grant this Easement to Grantee, that there are no unrecorded interests in the Easement Area, and that it will indemnify and hold Grantee harmless for any breach of the foregoing covenants. This Easement is binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. This Easement shall be construed and governed by the laws of the State of Minnesota.

[The remainder of this page left blank intentionally. Signature page follows.]

**SIGNATURE PAGE TO
TEMPORARY CONSTRUCTION EASEMENT**

IN WITNESS WHEREOF, the undersigned have executed this Easement as of the day and year first above written.

GRANTOR
Independent School District No. 833

Its:

Its:

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____ as _____ and _____ as _____ on behalf of the School District.

Notary Public

NOTARY STAMP OR SEAL

**SIGNATURE PAGE TO
TEMPORARY CONSTRUCTION EASEMENT**

GRANTEE:

D.R. HORTON, INC. - MINNESOTA,
a Delaware corporation

By: _____

Name: James R. Slaikeu

Title: Vice President

STATE OF MINNESOTA)
) ss
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by James R. Slaikeu, the Vice President of D.R. Horton, Inc. - Minnesota, a Delaware corporation, on behalf of the corporation.

Notary Public

NOTARY STAMP OR SEAL

THIS INSTRUMENT WAS DRAFTED BY
AND TO BE RETURNED TO:
Stinson LLP (JCK)
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402

EXHIBIT A

Legal Description for Grantor's Land

Washington County PID No. 0502721310001

EXHIBIT B

Legal Description of Easement Area:

A Temporary Construction and Grading Easement lying over, under and across that part of the Northeast Quarter of the Southwest Quarter of Section 5, Township 27, Range 21, Washington County, Minnesota, described as follows:

Beginning at the southeast corner of said Northeast Quarter of the Southwest Quarter; thence South 89 degrees 56 minutes 13 seconds West, assumed bearing along the south line of said Northeast Quarter of the Southwest Quarter, a distance of 20.00 feet; thence North 01 degree 04 minutes 19 seconds East, a distance of 387.55 feet; thence South 89 degrees 52 minutes 39 seconds West, a distance of 69.43 feet; thence North 00 degrees 07 minutes 21 seconds West, a distance of 60.00 feet; thence North 89 degrees 52 minutes 39 seconds East, a distance of 32.34 feet; thence North 35 degrees 53 minutes 11 seconds East, a distance of 17.70 feet; thence northeasterly and easterly along a tangential curve, concave to the southeast having a central angle of 77 degrees 48 minutes 30 seconds, a radius of 40.00 feet for an arc distance of 54.32 feet to the east line of said Northeast Quarter of the Southwest Quarter; thence South 01 degree 04 minutes 19 seconds West, along said east line, a distance of 474.99 feet to the point of beginning.

AREA: 14,538 SF OR 0.33 AC

EXHIBIT C

Depiction of Easement Area

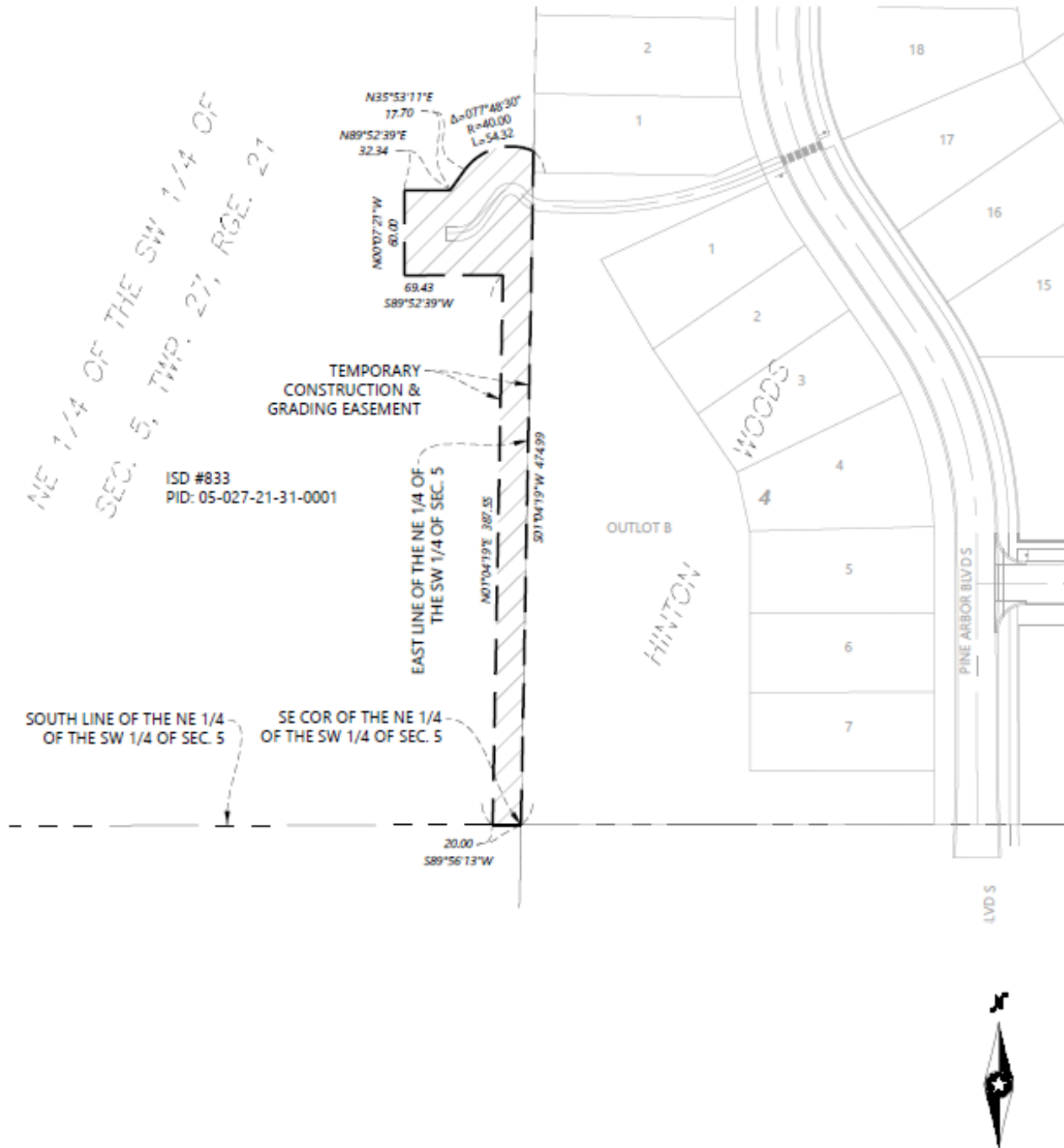


EXHIBIT D

Form of Certificate of Insurance