

15-13

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 15-13 by replacing the Real Estate Purchase Agreement which is attached to the ordinance with the Real Estate Purchase Agreement attached hereto.

Introduced by:

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Approved as to Form and Legality:

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City Attorney

Requested by: Law Department

Reason for Request: Changes were made to the agreement to clarify that Buyer's (R.C. Krueger Development Company) obligation to purchase the City property is not contingent upon Buyer's purchase of Outlot A, Trendwood 17th Addition and the City's rezoning of Outlot A, Trendwood 17th Addition to H-4 General Commercial District and including it in the boundaries of Special Permit No. 14045 for a planned service commercial development consisting of up to 130,00 square feet of mini-warehouses. The City administration continues to support such rezoning and use of Outlot A, Trendwood 17th Addition, with the understanding that while such changes may be an enhancement to the Buyer's use of the City Property, they are not conditions precedent to Buyer's obligation to close on the purchase of the City Property.

## REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between **R. C. Krueger Development Company**, a Nebraska corporation ("Buyer"), and the **City of Lincoln, Nebraska**, a municipal corporation ("Seller").

### RECITALS

- A. Seller owns Lot 51, Irregular Tract, Section 34, Township 10 North, Range 7 East of the 6<sup>th</sup> P.M., Lincoln, Lancaster County, Nebraska which is approximately 15.01 acres of real estate located generally south of South Street, immediately west of and adjacent to 84<sup>th</sup> Street, upon which the Seller has constructed certain municipal improvements, including a water tower and a fire station, both of which are currently in operation by the Seller.
- B. The Seller has determined that a portion equal to 9.37 acres of its real estate is not required for the operation of the current and future municipal improvements and is in the process of being declared surplus for municipal needs.
- C. The Buyer desires to acquire such Property, as defined below, subject to the City vacating View Point Drive north of Karl Ridge Road and conveying a portion thereof to Buyer, rezoning the Property to H-4 General Commercial District, and approving a special permit for a planned service commercial development consisting of mini-storage, together with outside storage of vehicles, provided that parking of vehicles shall only be allowed if in conformance with the National Electrical Safety Code within the 110' Easement for Overhead Transmission Lines shown on Exhibit "B" attached hereto.
- D. Doris Jean Stoner, a single person ("Stoner") and the Kenlon H. Hake Revocable Trust ("Hake"), the owners of the property abutting View Point Drive north of Karl Ridge Road have submitted Petitions to the City designated as Street and Alley Vacation No. 14009 for the vacation of View Point Drive north of Karl Ridge Road. Stoner and Hake have further consented to the interior 32 feet of View Point Drive being conveyed to Buyer. Simultaneously, with the approval of this Agreement, the City is approving said vacation of View Point Drive, subject to the City retaining utility easements within said vacated View Point Drive ("Vacated View Point Drive") and subject to the interior 32 feet of Vacated View Point Drive being transferred to Buyer for inclusion as part of the planned service commercial development site and under the terms and conditions of the ordinance vacating View Point Drive.
- E. Simultaneously with the approval of this Agreement, the City is rezoning the Property to H-4 General Commercial District and approving the use of the Property under a special permit (Special Permit No. 14045) for a planned service commercial development consisting of up to 130,000 square feet of mini-warehouses, together with outside storage areas for vehicles, provided that parking of vehicles shall only be allowed if in conformance with the National

Electrical Safety Code within the 110' Easement for Overhead Transmission Lines shown on Exhibit "B" attached hereto.

NOW THEREFORE, in consideration of the above recitals which are hereby made part of this Agreement and of the mutual covenants contained herein, the parties do agree as follows:

1. **Property.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the real estate (as defined in Neb. Rev. Stat. § 76-201) located generally south of South Street and 84<sup>th</sup> Street in Lincoln, Lancaster County, Nebraska and legally described as "Parcel 2" and depicted on Exhibit "A" attached hereto (the "Property"), together with any other adjacent gaps or gores owned by Seller adjacent to the Property as may be revealed by the Survey, and easements and servient estates appurtenant thereto, free and clear of all liens, leases, and encumbrances, but with reservations and exceptions as follows:

- A. Title shall be taken subject to any covenants, restrictions and conditions of record;
- B. Title shall be taken subject to public utility easements of record;
- C. Title shall be taken subject to a restriction/control of access prohibiting access to South 84th Street;
- D. Title shall be taken subject to the City's reservation of easements for LES to have the permanent right, privilege, and easement to survey, construct, reconstruct, relocate, maintain, inspect, operate, alter and replace underground electric distribution facilities and underground cables, communication lines, fiber optic cables, duct system and wires under, in and across the Property and for at grade switchgear and transformers located on the surface and have the permanent right, privilege and easement to survey, construct, reconstruct, relocate, maintain, inspect, operate, alter and replace overhead electric transmission lines and appurtenances thereto including structures, structure foundations, poles, pole foundations, down guys, anchors, insulators, underground cables, communication lines, duct system, wire and supports upon, above, along, under, in, and across the Property for overhead transmission lines, including communication lines, fiber optic ducts, and appurtenances thereto ("LES Reserved Easements"). Said easements are depicted on Exhibit "B" attached hereto;
- E. Title shall be taken to any title exceptions shown on the title commitment and which are not properly and timely objected to by the Buyer;
- F. Title shall be taken subject to the City's reservation of an easement over the Property abutting South 84th Street for street right-of-way purposes ("South 84th Street ROW") sufficient to provide 60 feet of right-of-way west of the centerline on South 84th Street. The South 84th Street ROW is depicted on Exhibit "B"; and

- G. Title shall be taken subject to a use restriction limiting use of the Property for a development consisting of up to 130,000 square feet of mini-warehouses, together with outside storage areas for vehicles as approved under the special permit (Special Permit No. 14045) and depicted on the approved site plan for the planned service commercial; provided that parking of vehicles shall only be allowed if in conformance with the National Electrical Safety Code within the 110' Easement for Overhead Transmission Lines.
- H. Title shall be taken subject to the terms and conditions of this Agreement.

The Buyer shall have the right to have the legal description and ownership of the Property confirmed by the title insurance commitment described in paragraph 5 below and/or survey obtained by Buyer as part of its due diligence.

Notwithstanding the above, in order to retain fee title to the South 84th Street ROW, the City reserves the right to require the Property to be final platted. As a condition of approval of such final plat, the City may require the dedication of additional South 84th Street right-of-way abutting the Property, sufficient to provide 60 feet of right-of-way west of the centerline on South 84th Street and to redefine the LES Reserved Easement to include a ten foot easement to LES west of the new right-of-way line for South 84th Street.

2. **Price and Payment.** Buyer agrees to pay Seller for the Property the sum of Seven Hundred Seventy-Five Thousand and No/100 Dollars (\$775,000.00) (the "Purchase Price"), as follows:

- A. **Earnest Deposit.** Within 3 days of execution of the Agreement by Seller, Buyer shall pay the sum of Ten Thousand and No/100 Dollars (\$10,000.00) (the "Earnest Deposit"), to be held by the City or the Title Company (defined below) in accordance with the terms of this Agreement. If the due diligence and government approval requirements described in paragraph 10 below are not satisfied prior to the Closing Date, the Earnest Money Deposit shall be refunded to Buyer.
- B. **Closing Payment.** The balance of the Purchase Price, which is the sum of Seven Hundred Sixty-Five Thousand and No/100 Dollars (\$765,000.00), shall be due on the Closing Date.

3. **Title.** At the closing, Seller will execute and deliver to Buyer a warranty deed (the "Deed") conveying the Property in fee simple free and clear of all liens, encumbrances, encroachments, and special assessments levied or assessed, or special assessment districts that have been created and ordered constructed, as of the date of this Agreement except for the reservations and exceptions provided in Paragraph 1 above.

4. **Closing Costs.** Seller shall be obligated to prepare the Deed and to pay Nebraska Documentary Stamp tax relating to this transfer, if any. Buyer shall be obligated to prepare the Real Estate Transfer Statement and the costs, if any, of filing the Deed. Each party shall pay its own attorney fees. Buyer and Seller agree to retain Union Title Company as the escrow closing agent ("Title Company") to close this transaction and shall execute the Title Company's agreement upon reasonable request. Buyer and Seller agree to equally share the cost for such escrow closing service.

5. **Title Insurance.** Within ten (10) days from the date this Agreement is approved by the City of Lincoln, Buyer shall obtain a title insurance commitment ("Title Commitment") for the Property, issued by the Title Company covering title to the Property and showing the condition of Seller's title to the Property. Buyer and Seller shall each pay one-half (½) the expense of the title insurance policy insuring Buyer for its ownership of the Property for the amount of the Purchase Price. The title insurance commitment shall also confirm the legal description of the Property.

Buyer shall approve or disapprove title to the Property within ten (10) days after receipt of the Title Commitment and the survey (if any) obtained by Buyer as part of its due diligence investigation (the "Survey"). If any objection or defect in title is discovered during the examination of the Title Commitment and the Survey by Buyer, Buyer shall furnish Seller with written notice of such objections and defects. Seller shall have a reasonable time to cure or elect not to cure such objections and defects. If Seller elects to cure such objections and defects, Seller shall bear the expense of curing the same. If Seller elects not to cure such objections and defects, or if Seller's efforts to cure any such defects are not satisfied within the Due Diligence Period, Buyer shall have the option by written notice to the Seller delivered to Seller within 30 days after expiration of the Due Diligence Period to either terminate this Agreement or take title to the Property subject to such objections or defects in which case Buyer shall be entitled to receive a refund of its Earnest Deposit.

6. **Closing Date.** The Closing Date ("Closing Date") for the Property shall be within ten (10) days after the satisfaction of the conditions precedent described in paragraph 10, subject to mutual scheduling by Buyer and Seller.

7. **Possession.** Seller shall deliver possession of the Property to Buyer on the Closing Date free and clear of any other leases or agreements. No tenants of Seller or other third parties shall have any right to possess the Property or any part thereof as of the Closing Date.

8. **Risk of Loss.** Risk of loss or damage to the Property shall rest with Seller until the Closing Date.

9. **Taxes.** Seller is responsible for real estate taxes, if any, on the Property for all years prior to the year in which closing occurs. Real estate taxes for the calendar year in which the closing occurs shall be the responsibility of the Buyer.

10. **Buyer's Conditions Precedent to Closing.** Buyer's obligation to close on the acquisition of the Property shall be conditioned upon satisfaction of the following contingencies during the Due Diligence Period, as defined below:

- A. **Testing.** Buyer shall have the right to access the Property to conduct, at Buyer's cost, such inspections or tests Buyer deems necessary. All such testing will be completed within the Due Diligence Period. If Buyer conducts any such testing, Buyer shall restore the Property to the condition which existed prior to any such testing. In addition, Buyer shall indemnify and hold Seller harmless from and against any loss, claim, expense, or demand arising out of such inspection or testing. If the test results are unsatisfactory for the Buyer's intended use of the Property for the planned service commercial development under Special Permit No. 14045, Buyer shall have the option by written notice delivered to Buyer within 30 days after expiration of the Due Diligence Period to terminate this Agreement in which case Buyer shall be entitled to receive a refund of its Earnest Deposit.
  
- B. **Survey.** Buyer shall have the right to obtain during the Due Diligence Period a Topographical Survey, as well as an ALTA/ACSM Land Title Survey, reflecting, among other things, the boundary legal descriptions, the quantities of land, and the locations of all easements on the Property including those requested by the City and/or Lincoln Electric System.

11. **Joint Conditions Precedent to Closing.** Seller's and Buyer's obligations to close on the sale and purchase of the Property shall be conditioned upon satisfaction of the following contingencies:

- A. **Governmental Approvals.** The City Council for the City of Lincoln ("City Council") shall have declared the Property to be surplus, vacated View Point Drive, rezoned the Property to H-4 General Commercial District, and approved a special permit for use of the Property under a planned service commercial development consisting of up to 130,000 square feet of mini-warehouses, together with outdoor storage areas for vehicles, provided that parking of vehicles shall only be allowed if in conformance with the National Electric Safety Code within the 110-foot Easement for Overhead Transmission Lines.

Buyer intends to purchase Outlot A, Trendwood 17th Addition, from Lincoln Federal Savings and Loan and has requested that said Outlot A be rezoned to H-4 General Commercial District and included within the boundaries of Special Permit No. 14045 for use of the Property and Outlot A, Trendwood 17th Addition for up to 130,000 square feet of mini-warehouses as provided above. Notwithstanding Buyer's above intention, Buyer affirmatively acknowledges and agrees that Buyer's obligation to close upon Buyer's purchase of the Property is not contingent upon (i) Buyer closing upon the purchase of Outlot A, Trendwood 17th Addition from Lincoln Federal Savings and Loan; (ii) the City rezoning Outlot A, Trendwood 17th Addition to H-4 General Commercial District; and (iii) the City including Outlot A, Trendwood 17th Addition within the boundaries of Special Permit No. 14045 for a planned

service commercial development consisting of up to 130,000 square feet of mini-warehouses, together with outdoor storage areas for vehicles.

- B. **Real Estate Purchase Agreement.** The City Council shall have approved this Agreement and authorized the Mayor to execute the Agreement on behalf of the City.

12. **Due Diligence Period.** The Due Diligence Period shall run for a period of 60 days from the date of this Agreement.

13. **1031 Land Exchange.** Buyer reserves the right to assign this Agreement to a qualified intermediary to utilize a like-kind exchange under Section 1031 of the Internal Revenue Code. Seller agrees to cooperate with the Buyer to effectuate this exchange.

14. **Default and Remedies.** Time is agreed to be of the essence. In the event that Buyer fails to close on this transaction after all the conditions have been satisfied, Seller, as its sole and exclusive remedy, shall be entitled to a release of all the Earnest Deposit plus interest held by the Title Company to Seller. The parties agree that such sum fairly represents the damage that would be occasioned by Seller in the event of a Buyer default.

15. **Lien Affidavit.** Seller shall execute on the Closing Date an affidavit on the Title Company's form which will remove all standard exceptions to Buyer's title insurance policy (excepting the standard survey exception which is only removable if Buyer obtains a survey), as may be required by the Title Company.

16. **Further Assurances.** Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

17. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

18. **Assignment.** Neither Buyer, nor Seller, shall assign this Agreement without prior written consent of the non-assigning party. Buyer reserves the right to assign this Agreement to an affiliate prior to closing.

19. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and it is expressly agreed that any prior oral or written agreements between the parties hereto are superseded by this Agreement and are no longer of any effect whatsoever. This Agreement cannot be

modified or altered unless reduced to writing and consented to by all the undersigned parties.

20. **Notice and Demands**. Notice, demand, or other communication mandated to be given by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested or delivered personally. For such purposes, addresses for notice purposes are:

A. Buyer: Krueger Development  
c/o Rick Krueger  
8200 Cody Drive, Suite F  
Lincoln, NE 68512

with a copy to: Mark A. Hunzeker  
Baylor Evnen Law Firm  
600 Wells Fargo Center  
1248 O Street  
Lincoln, NE 68508

B. Seller: City of Lincoln  
Attn: Mayor  
555 South 10<sup>th</sup> Street, Suite 301  
Lincoln, NE 68508

with a copy to: City Attorney's Office  
Attn: Rick Peo, Chief Assistant City Attorney  
555 South 10<sup>th</sup> Street, Suite 300  
Lincoln, NE 68508

21. **Exhibits**. The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

Exhibit "A"	-	Legal Description
Exhibit "B"	-	Retained Utility Easements
Exhibit "C"	-	Site Plan

22. **Execution in Counterparts**. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

[SIGNATURE PAGES TO FOLLOW]



**“SELLER”**

CITY OF LINCOLN, NEBRASKA, a  
municipal corporation

By: \_\_\_\_\_  
Chris Beutler, Mayor

ATTEST

By: \_\_\_\_\_  
City Clerk

STATE OF NEBRASKA        )  
  ) ss  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

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

**RECEIPT OF EARNEST DEPOSIT**

\_\_\_\_\_, "title company" or the "City of Lincoln, Nebraska," acting as the escrow agent of the Earnest Deposit, pursuant to the foregoing Real Estate Purchase Agreement, hereby acknowledges receipt of the sum of Ten Thousand and No/100 Dollars, (\$10,000.00), and agrees to hold such Earnest Deposit pursuant to the terms of and conditions of the Real Estate Purchase Agreement.

**"TITLE COMPANY"**

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

Or:

**CITY OF LINCOLN, NEBRASKA**, a  
municipal corporation

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

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

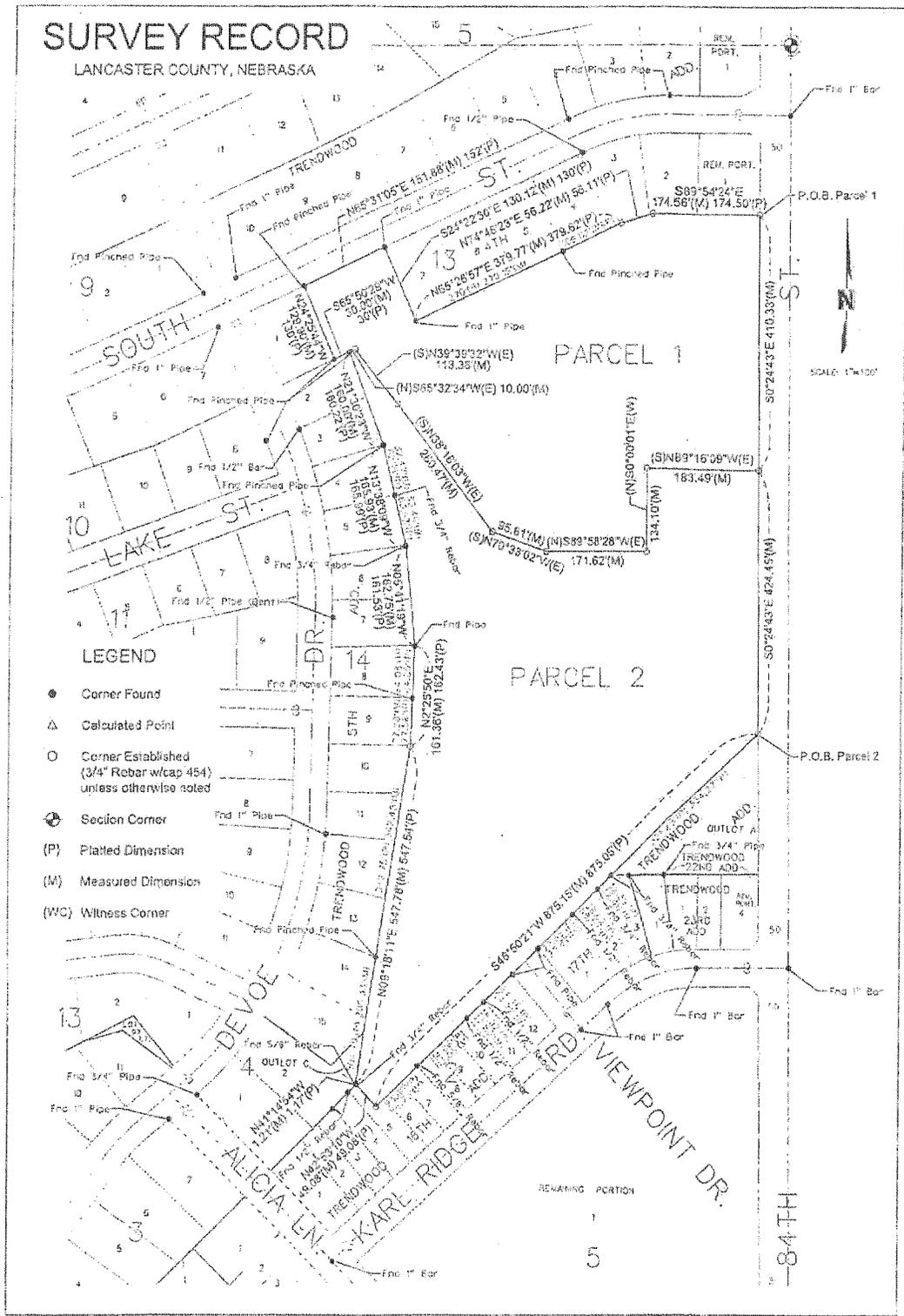
PARCEL 2

A PARCEL OF LAND COMPOSED OF A PORTION OF LOT 51 I.T., LOCATED IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHEASTERLY CORNER OF SAID LOT 51 I.T., SAID POINT ALSO BEING THE NORTH CORNER OF OUTLOT "A" TRENDWOOD 17TH ADDITION, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE ON AN ASSUMED BEARING OP SOUTH 46 DEGREES 50 MINUTES 21 SECONDS WEST, ALONG THE SOUTHEASTERLY LINE OF SAID LOT 51 I.T., A DISTANCE OF 875.15 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT 51 I.T.; THENCE NORTH 42 DEGREES 53 MINUTES 10 SECONDS WEST, ALONG THE SOUTHWESTERLY LINE OF SAID LOT 51 I.T., A DISTANCE OF 49.08 FEET TO THE NORTHEAST CORNER OF LOT 5, BLOCK 2, TRENDWOOD 16TH ADDITION; THENCE NORTH 41 DEGREES 14 MINUTES 54 SECONDS WEST, ALONG THE EAST LINE OF LOT 2, BLOCK 4, TRENDWOOD 14TH ADDITION, A DISTANCE OF 1.21 FEET TO THE MOST SOUTHERLY CORNER OF OUTLOT "C", TRENDWOOD 14TH ADDITION; THENCE NORTH 09 DEGREES 18 MINUTES 11 SECONDS EAST, ALONG THE EAST LINE OF SAID OUTLOT "C" AND THE EAST LINE OF TRENDWOOD 5TH ADDITION, SAID LINE ALSO BEING THE WEST LINE OF SAID LOT 51 I.T., A DISTANCE OF 547.78 FEET TO A POINT OF DEFLECTION; THENCE NORTH 02 DEGREES 25 MINUTES 50 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 51 I.T., A DISTANCE OF 161.36 FEET TO THE NORTHEAST CORNER OF LOT 8, BLOCK 14, TRENDWOOD 5TH ADDITION; THENCE NORTH 05 DEGREES 41 MINUTES 19 SECONDS WEST, ALONG THE WEST LINE OF SAID LOT 51 I.T., A DISTANCE OF 162.75 FEET TO THE NORTHEAST CORNER OF LOT 6, BLOCK 14, TRENDWOOD 5TH ADDITION; THENCE NORTH 13 DEGREES 38 MINUTES 09 SECONDS WEST, ALONG THE WEST LINE OF SAID LOT 51 I.T., A DISTANCE OF 165.93 FEET TO THE NORTHEAST CORNER OF LOT 4, BLOCK 14, TRENDWOOD 5TH ADDITION; THENCE NORTH 21 DEGREES 30 MINUTES 23 SECONDS WEST, ALONG THE WEST LINE OF SAID LOT 51 I.T., A DISTANCE OF 160.00 FEET TO THE NORTHEAST CORNER OF LOT 2, BLOCK 14, TRENDWOOD 5TH ADDITION; THENCE NORTH 65 DEGREES 32 MINUTES 34 SECONDS EAST, ALONG THE NORTH LINE OF SAID LOT 51 I.T., A DISTANCE OF 10.00 FEET TO A POINT; THENCE SOUTH 39 DEGREES 39 MINUTES 32 SECONDS EAST, A DISTANCE OF 113.36 FEET TO A POINT; THENCE SOUTH 38 DEGREES 16 MINUTES 03 SECONDS EAST, A DISTANCE OF 260.47 FEET TO A POINT; THENCE SOUTH 70 DEGREES 33 MINUTES 02 SECONDS EAST, A DISTANCE OF 95.61 FEET TO A POINT; THENCE NORTH 89 DEGREES 58 MINUTES 28 SECONDS EAST, A DISTANCE OF 171.62 FEET TO A POINT; THENCE NORTH 00 DEGREES 00 MINUTES 01 SECONDS WEST, A DISTANCE OF 134.10 FEET TO A POINT; THENCE SOUTH 89 DEGREES 16 MINUTES 09 SECONDS EAST, A DISTANCE OF 183.49 FEET TO A POINT ON THE EAST LINE OF SAID LOT 51 I.T.; THENCE SOUTH 00 DEGREES 24 MINUTES 43 SECONDS EAST, ALONG THE EAST LINE OF SAID LOT 51 I.T., SAID LINE BEING 50.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 424.45 FEET TO THE POINT OF BEGINNING, CONTAINING A CALCULATED AREA OF 408,072 SQUARE FEET, (9.37 ACRES) MORE OR LESS.

# SURVEY RECORD

LANCASTER COUNTY, NEBRASKA



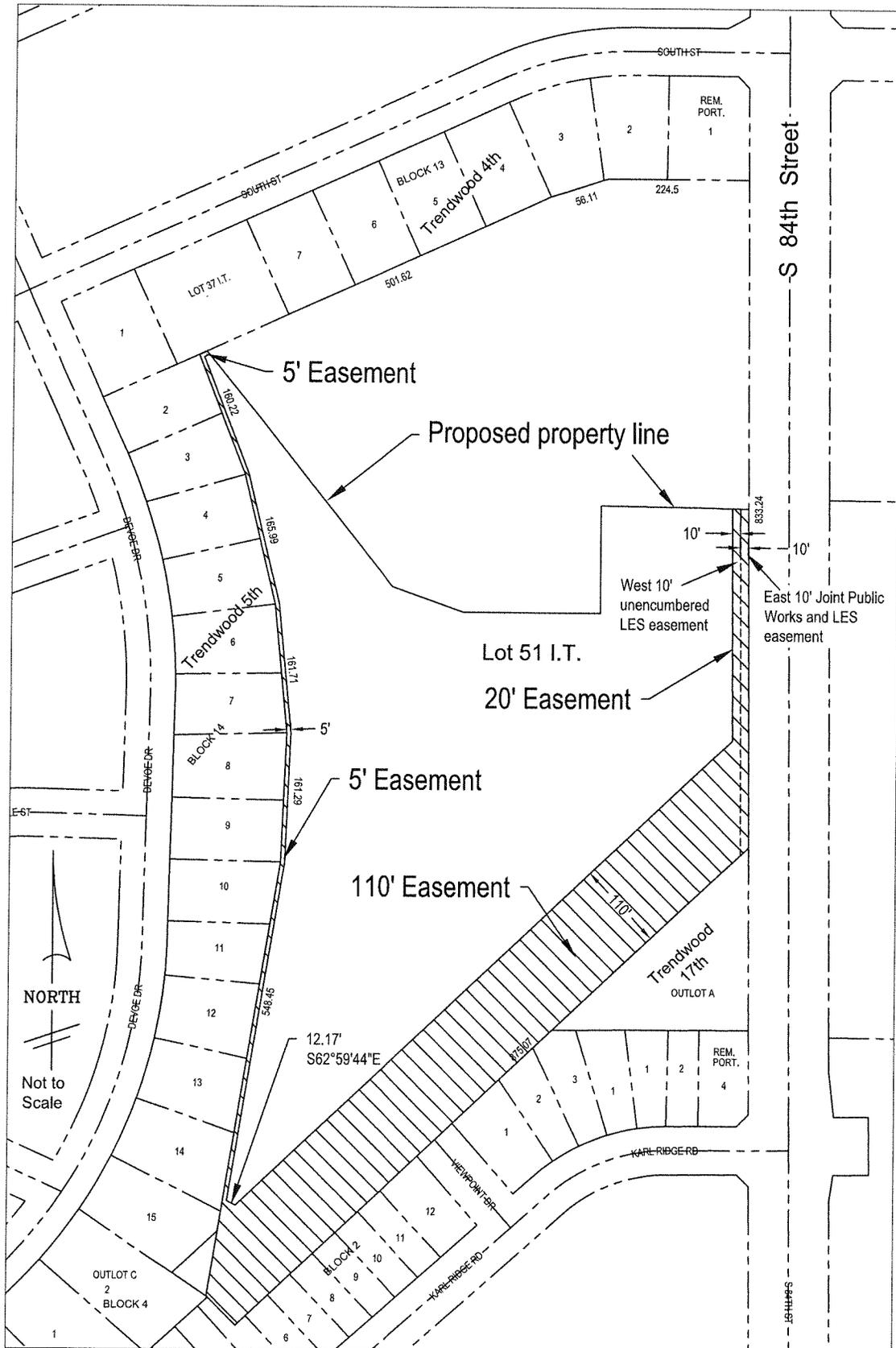
## LEGEND

- Corner Found
- △ Calculated Point
- Corner Established (3/4" Rebar w/cap 454) unless otherwise noted
- ⊙ Section Corner
- (P) Platted Dimension
- (M) Measured Dimension
- (WC) Witness Corner



# EXHIBIT "B"

## RETAINED UTILITY EASEMENTS



Location of Utility Easement to be retained in part of Lot 51 of Irregular Tracts, in the SE 1/4, Section 34, Township 10 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.