

ATTACHMENT "A"

DRAFT

14TH STREET & SALTILLO ROAD CONDITIONAL ANNEXATION AND ZONING AGREEMENT (NEBCO AND WESTERN)

This 14th Street & Saltillo Road Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this ____ day of January, 2007, by and between **NEBCO, Inc.**, a Nebraska corporation, hereinafter referred to as "Nebco"; **Western Hemisphere Holding Company, LLC**, a Nebraska limited liability company, hereinafter referred to as "Western"; and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City." Nebco and Western are hereinafter individually "Owner" and collectively referred to as "Owners."

RECITALS

- A. The Owners own approximately 81.83 acres more or less of land generally located south of Saltillo Road between South 14th Street and South 25th Street.
- B. Nebco is the Owner of that portion of the Property legally described and shown on Exhibit "A", which is attached hereto and incorporated herein by this reference ("Nebco Property"). Western is the Owner of that portion of the Property as legally described and shown on Exhibit "A" ("Western Property"). The Nebco Property and Western Property are hereinafter referred to individually and collectively as the "Property."
- C. The Owners have requested the City to annex the Property legally described and shown on Exhibit "A".
- D. Owners have requested the City to rezone those portions of the Property as legally described in Exhibit "B", which is attached hereto and incorporated herein by this reference, from AG Agriculture District to I-1 Industrial District.
- E. The Property is located within a rural fire protection district. Neb. Rev. Stat. § 35-514, dealing with the City's annexation of territory from rural fire protection districts, provides in part that: "(7) Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of § 3 1-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated." The City is willing to annex the Property as requested by Owners, provided Owners agree to pay all costs needed for the City to assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the Property being annexed.
- F. The Property is located in an area designated Tier II and outside the City's future service limit in the City of Lincoln/Lancaster County Comprehensive Plan and is not expected to be developed before 2025. The Property is not served by water or sewer and the costs to design and construct such infrastructure are not shown in the City's current Capital Improvement Plan and the City is not willing to fund those costs. Therefore, as an inducement for the City to enter into this Agreement, the Owners are willing to agree to not request water and sewer service and to further agree to limit the use of the Property to uses not requiring City water and/or sewer.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. **Annexation by the City.** The City agrees to annex the Property.
2. **Change of Zone.** The City agrees to approve Change of Zone No. 06042 and Change of Zone No. 06043 and rezone the Property from AG Agriculture District to I-1 Industrial District.

3. **Conveyance of Right-of-Way.**

A. Salttillo Road. Owners agree to convey at no cost to the City the right-of-way needed south of the centerline of Salttillo Road to provide right-of-way for Salttillo Road 60 feet in width expanding to 70 feet in width for the right turn lanes at the intersection of Salttillo Road and South 25th Street and the access point intersections labeled B and C at Salttillo Road as shown on Exhibit "C", which is attached hereto and incorporated herein by this reference.

at
B. South 25th Street. Western agrees to convey at no cost to the City the right-of-way needed west of the centerline of South 25th Street to provide right-of-way for South 25th Street 60 feet in width expanding to 70 feet in width for the right turn lanes ~~at the intersection of Salttillo Road and South 25th Street and~~ the access point intersection labeled D at South 25th Street.

C. Permanent Easements. The Owners agree to convey to the City the Salttillo Road and South 25th Street right-of-way described in Paragraph 3A and 3B above within sixty (60) days of the City's approval and execution of this Agreement.

D. Temporary Construction Easements. Owners shall convey at no cost to the City such temporary construction easements over their ownership of the Property abutting the right-of-ways as may be necessary for construction of future street improvements to Salttillo Road and South 24th Street; provided that, the temporary construction easements will permit the Owners to make damage claims caused by future street improvements to any buildings, parking lots, driveways, landscaping materials and irrigation system located on the Property and will not permit the Owners to make damage claims caused by future street improvements to any signage, fencing and architectural entrance features located on the Property.

4. **Access Restrictions and Common Access/Street Stubs.**

A. Nebco. Nebco's access to Salttillo Road shall be limited to the two proposed street stub access point intersections labeled A and B as shown on the attached site plan marked as Exhibit "C". Until the Nebco Property is preliminary platted, the two access point intersections labeled A and B as shown on Exhibit "C" shall be approved and treated as driveway cuts.

B. Western. Western's access to Salttillo Road and South 25th Street shall be limited to a single proposed street stub access point on Salttillo Road and the single proposed southern street stub access intersection point on South 25th Street labeled D as shown on the attached site plan (Exhibit "C"); provided that, until South 25th Street is paved to the satisfaction of the Public Works Director, there shall be no access (access points labeled D or E) from the Western Property to South 25th Street. Until the Western Property is preliminary platted, the Salttillo Road access intersection point labeled D as shown on Exhibit "C" shall be approved and treated as driveway cut. The City and Western agree that the proposed northern street stub access intersection point labeled E on South 25th Street as shown on the attached site plan (Exhibit "C") is not approved as part of this Agreement, but that this access point labeled E may be revisited and further discussed at the time of a preliminary plat for the Western Property.

C. Final Design. The actual geometric and final designs of the street stub access points shall be subject to the approval of the City's Public Works Director.

5. **Street Improvements.**

A. Salttillo Road. As part of the South Beltway Project, the State of Nebraska is scheduled to construct, at its expense, the left-turn lane and related intersection improvements at the Salttillo Street intersection/driveway stub labeled A for the Nebco Property and the property to the west of the Nebco Property. Nebco, at its expense, shall construct the temporary left-turn lanes, right turn lanes and related intersection

improvements at the intersection/driveway stub labeled B as shown on Exhibit "C", serving the Nebco Property. Western, at its expense, shall construct the temporary left-turn lane, right turn lane and related intersection improvements at the proposed Saltillo Street intersections/driveways stub labeled C as shown on Exhibit "C", serving the Western Property. Said left turn lanes, right turn lanes and any related reconstruction of Saltillo Road shall be designed to the satisfaction of the City's Public Works Director and constructed pursuant to the City's Executive Order process in conjunction with the final building permit for the applicable Property. Said reconstruction of Saltillo Road will be constructed within the right-of-way comprising the existing north half of Saltillo Road right-of-way and the new south half of the Saltillo Road right-of-way conveyed pursuant to Paragraph 3 above.

B. South 25th Street. The South 25th Street cross section and timing of construction shall be determined by the City at the earlier time of (i) the preliminary plat approval of the Western Property, or (ii) the City's approval of a City Road Impact Fee Facility for South 25th Street.

6. **Phasing of Development.** Nebco understands and agrees that Nebco shall be limited to using the Nebco Property as a single premises restricted to a single primary land use (with permitted accessory uses) or a concrete facility with permitted accessory storage, sales and uses until such time as the Nebco Property preliminary plat has been approved. Western understands and agrees that Western shall be limited to using the Western Property as a single premises restricted to a single primary land use (with permitted accessory uses) until such time as the Western Property preliminary plat has been approved.

7. **Land Use Restrictions.** Each Owner agrees that notwithstanding the City's rezoning the Property to I-1 Industrial District, the development of the Property will be subject to the following restrictions:

A. Prohibited Uses:

- (1) Until the City's public sanitary sewer system is available to the Property, land uses which require an open water discharge sewer treatment system are prohibited. In other words, the only permitted sewer system would be a non-discharge sewer treatment system (i.e., lagoon or septic system) as regulated by the County-City Health Department and the Nebraska Department of Environmental Quality.
- (2) The refining, distillation or manufacturing of: (a) acids or alcohols; (b) ammonia bleach or chlorine; (c) cement, lime, gypsum, or plaster of paris; (d) disinfectants; (e) dye stuffs; (f) fertilizer; (g) glue, sizing, or gelatin; (h) oil cloth, linoleum, oiled rubber goods; (i) paint, shellac, turpentine, or oils; (j) rubber, gutta-percha, balata, creosote, or products treated therewith; or (k) shoe polish.
- (3) The operation of: (a) bag cleaning works; (b) blast furnaces, coke ovens, smelting or ore reduction works; (c) boiler works; (d) forges; (e) rolling mills; and (f) yeast plants.
- (4) Production, manufacturing, processing, distribution, storage, ware-housing, or transportation of toxic, radioactive, flammable, or explosive materials, except that any of the above referenced materials may be stored or used in connection with a permitted use as allowed by any ordinance or regulation of the City of Lincoln as incidental to the permitted use.
- (5) Tanning, curing, or storage of raw hides or skins; stockyards or slaughter of animals or fowl; rendering fat; distillation of bones, coals or wood.
- (6) Dumping or reduction of garbage, offal, or dead animals.
- (7) Mining, quarrying.

- (8) Extraction of sand, gravel, or soil.
- (9) The milling, processing, refining, or distillation of agricultural crops.
- (10) Billboards.

8. **Public Sanitary Sewer.** Owners understand and acknowledge that the Property is not presently sewerable by the City's public sanitary sewer system and that the costs to design and construct such infrastructures are not shown in the City's current Capital Improvement Plan. Owners further understand that the City does not intend to extend its public sanitary sewer system to serve the Property within the next one to twenty-five years. Notwithstanding the lack of sewerability, Owners desire that the Property be immediately annexed into the City of Lincoln. Therefore, as an inducement for the City to enter into this Agreement, Owners agree that Owners shall not request the City to provide Owners with sanitary sewer earlier than contemplated in the City of Lincoln/Lancaster County Comprehensive Plan, as may be amended. In addition, as an inducement for the City to enter into this Agreement, Owners agree to restrict Owners' use of the Property to uses not requiring the City's public sanitary sewer until such City public sanitary sewer is made available to the Property.

9. **Public Water System.** Owners understand and acknowledge that the Property is not presently served by the City's public water system and that the costs to design and construct such infrastructures are not shown in the City's current Capital Improvement Plan. Owners further understand that the City does not intend to extend its public water system to serve the Property within the next one to twenty-five years. Notwithstanding the lack of public water, Owners desire that the Property be immediately annexed into the City of Lincoln. Therefore, as an inducement for the City to enter into this Agreement, Owners agree that Owners shall not request the City to provide Owners with public water earlier than contemplated in the City of Lincoln/Lancaster County Comprehensive Plan, as may be amended. In addition, as an inducement for the City to enter into this Agreement, the Owners agree to hold the City harmless for any loss Owners may incur as the result of a fire due to the fact that the City's public water system is not available to provide fire protection services. In addition, as an inducement for the City to enter into this Agreement, Owners agree to restrict Owners' use of the Property to uses not requiring City's public water system until such City's public water system is made available to the Property.

10. **Contribution for Rural Fire District.** Owners understand and acknowledge that the City may not annex the Property lying within the boundaries of the Southwest Rural Fire District except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. Owners desire to be annexed by the City and therefore Nebco agrees to pay the amount of \$49.63 and Western agrees to pay the amount of \$49.64 which must be paid to the Southwest Rural Fire Protection District in order for the annexation to be complete.

11. **Future Cost Responsibilities.** Owners understand and acknowledge that the proposed development of the Property shall be subject to the payment of impact fees and Owners agree to pay said impact fees if development occurs. The Owners shall have no obligations or liabilities for any Impact Fee Facilities (public street, public water or public sanitary) under this Agreement.

12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

13. **Amendments.** This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

14. **Further Assurances.** Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all 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.

15. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

16. **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.

17. **Construction.** Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

18. **Relationship of Parties.** Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Owners, or by any third person to create the relationship of partnership, joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

19. **Assignment.** In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

20. **Default.** Owners and City agree that the annexation and change of zones promote the public health, safety, and welfare so long as Owners fulfill all of the conditions and responsibilities set forth in this Agreement. In the event an Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the applicable party's Property to its previous designations or such other designations as the City may deem appropriate under the then existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

21. **Definitions.** For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases "building permit", "development", "Impact Fee Facility", "Impact Fee Facility Improvement", and "site-related improvements" shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

22. **Recordation.** This Agreement or a Memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner's cost and expense.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

THE CITY OF LINCOLN, NEBRASKA, a
municipal corporation

City Clerk

By: _____
Mayor Coleen J. Seng

STATE OF NEBRASKA)

COUNTY OF LANCASTER)

) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2007 by Coleen J. Seng, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

Notary Public

NEBCO, Inc., a Nebraska corporation

By: _____
President

Exhibit "A"

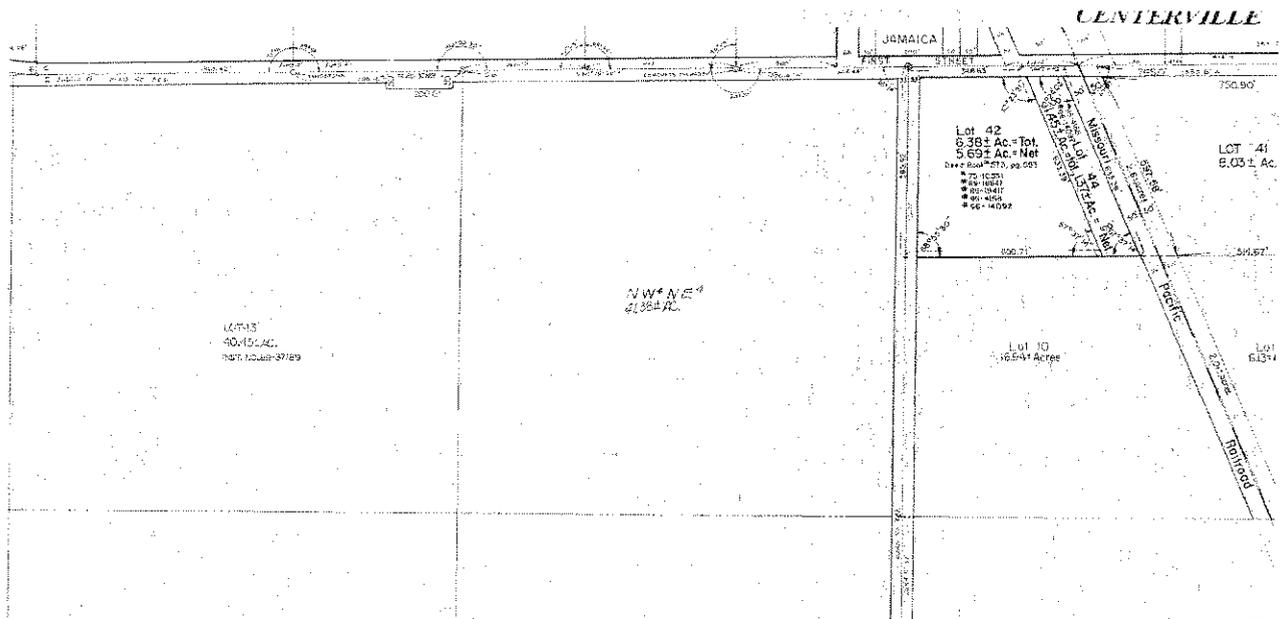
Property
Legal Description

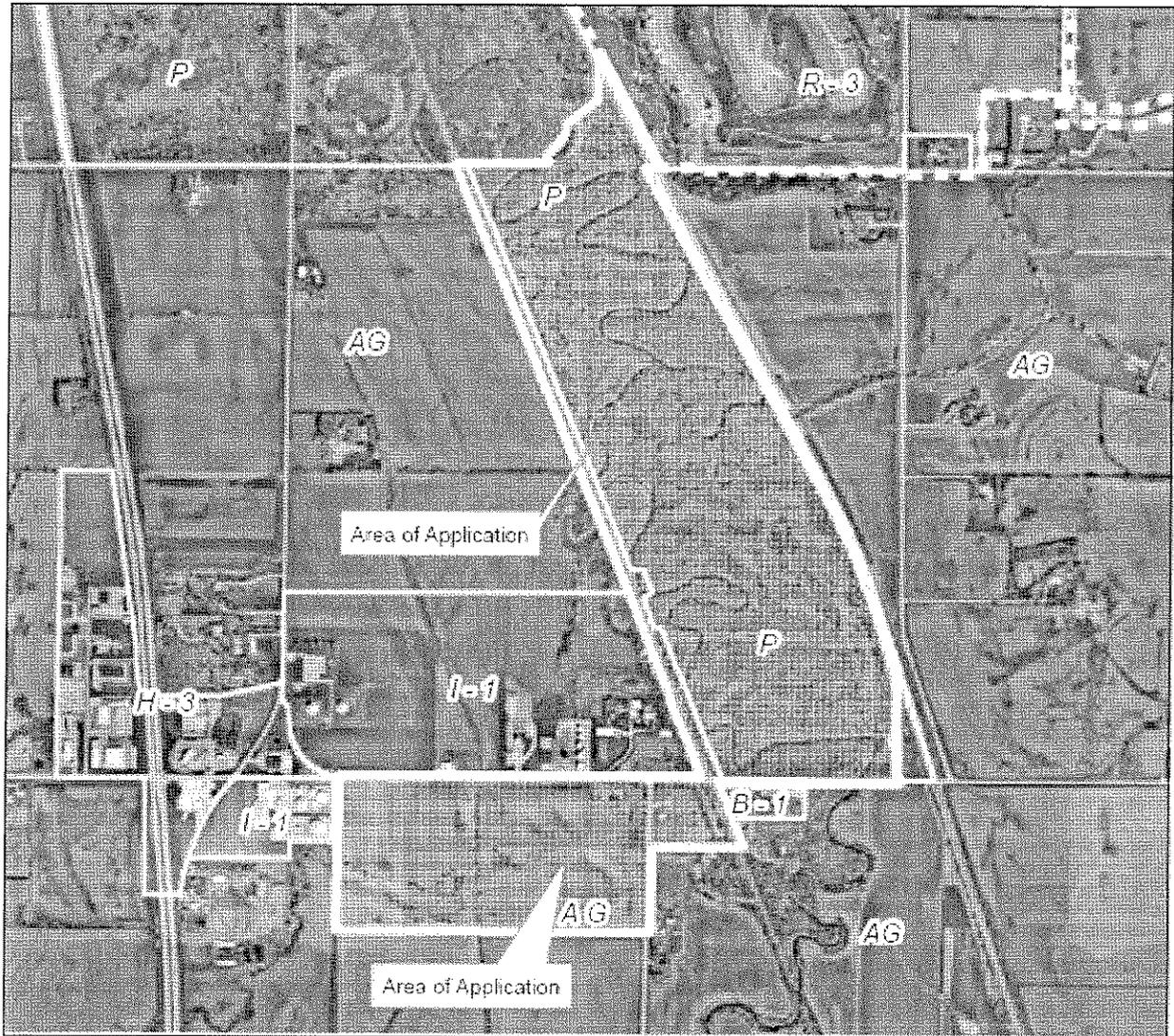
Nebco Property

LOT 43, Section 1, Township 8N, Range 6E, 6th Principal Meridian, Lancaster County, Nebraska (40.45 acres, more or less)

Western Property

NW Quarter of the NE Quarter, Section 1, Township 8N, Range 6E, 6th Principal Meridian, Lancaster County, Nebraska (41.38 acres, more or less)





Annexation #06012
S. 14th St. and Saltillo Rd.
Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conversion District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

Two Square Miles
 Sec. 36 T09N R06E
 Sec. 01 T08N R06E



2005 aerial

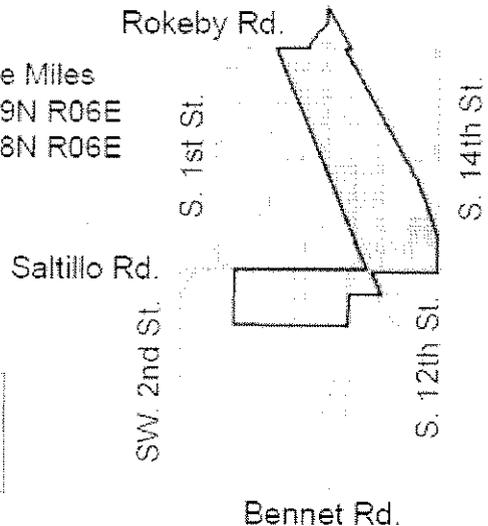


Exhibit "B"

Property Rezoned From AG Agriculture District to I-1 Industrial District
Legal Description

NW ¼ of the NE ¼ of Section 1-8-6, Lancaster County, Nebraska;

A portion of Lot 43, located in the NE ¼ of Section 1-8-6, Lancaster County, Nebraska, more particularly described on attachment Exhibit "B-1".

Exhibit "B-1"
LEGAL DESCRIPTION

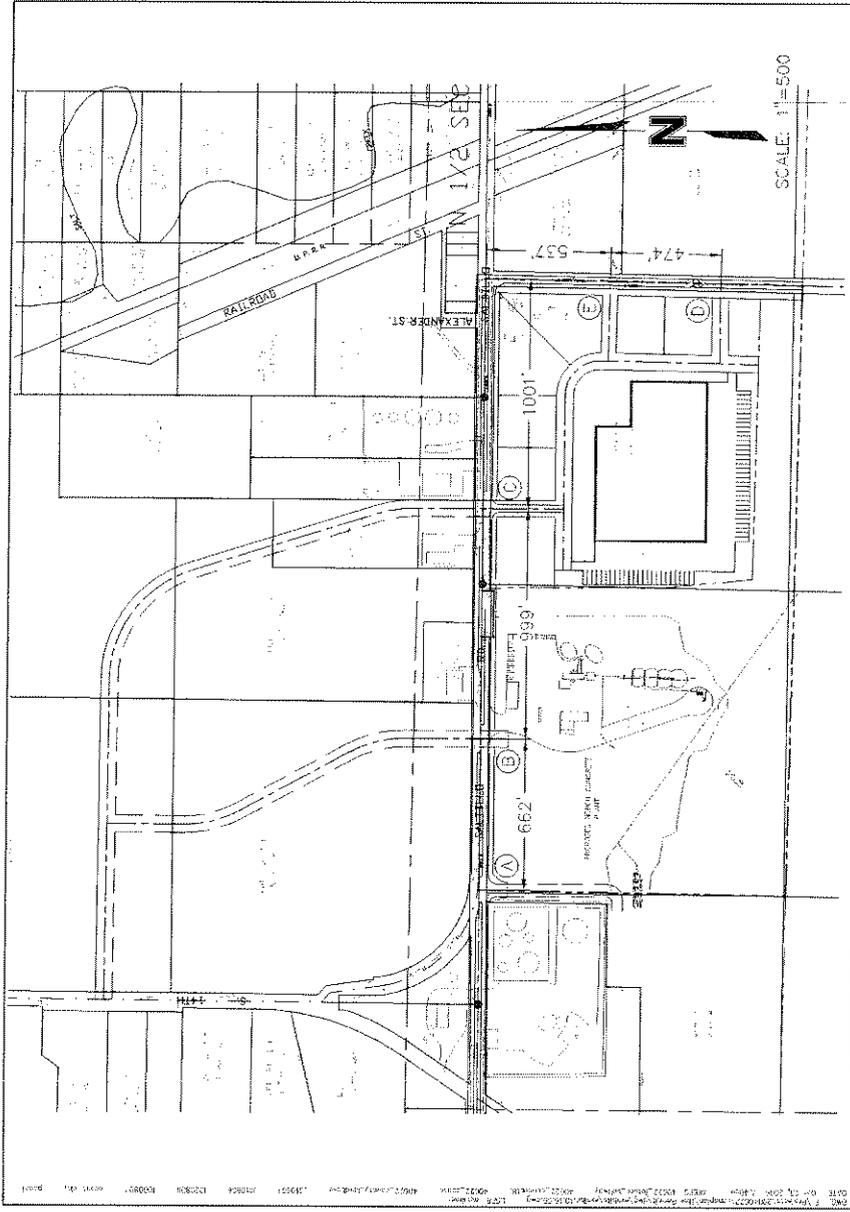
JUN 22 2006

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF A PORTION OF GOVERNMENT LOT 3, LOCATED IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 8 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, STATE OF NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER, SAID POINT BEING THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3, THENCE WESTERLY ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID NORTHWEST QUARTER, SAID LINE BEING A NORTH LINE OF SAID GOVERNMENT LOT 3, ON AN ASSUMED BEARING OF NORTH 89 DEGREES 55 MINUTES 02 SECONDS WEST, A DISTANCE OF 29.27 FEET TO NORTHWEST CORNER OF SAID GOVERNMENT LOT 3, THENCE SOUTH 00 DEGREES 04 MINUTES 58 SECONDS WEST ALONG A WEST LINE OF SAID GOVERNMENT LOT 3, A DISTANCE OF 50.00 FEET TO NORTH CORNER OF SAID GOVERNMENT LOT 3, THENCE NORTH 89 DEGREES 55 MINUTES 02 SECONDS WEST ALONG A NORTH LINE OF SAID GOVERNMENT LOT 3, A DISTANCE OF 112.13 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 28 MINUTES 30 SECONDS EAST, A DISTANCE OF 741.78 FEET TO A POINT, THENCE SOUTH 27 DEGREES 36 MINUTES 58 SECONDS WEST, A DISTANCE OF 60.87 FEET TO A POINT, THENCE SOUTH 77 DEGREES 10 MINUTES 03 SECONDS WEST, A DISTANCE OF 124.68 FEET TO A POINT, THENCE SOUTH 32 DEGREES 49 MINUTES 53 SECONDS WEST, A DISTANCE OF 114.08 FEET TO A POINT, THENCE SOUTH 63 DEGREES 18 MINUTES 24 SECONDS WEST, A DISTANCE OF 81.47 FEET TO A POINT, THENCE SOUTH 46 DEGREES 40 MINUTES 41 SECONDS WEST, A DISTANCE OF 79.80 FEET TO A POINT, THENCE NORTH 87 DEGREES 34 MINUTES 17 SECONDS WEST, A DISTANCE OF 53.29 FEET TO A POINT, THENCE NORTH 57 DEGREES 48 MINUTES 52 SECONDS WEST, A DISTANCE OF 71.13 FEET TO A POINT, THENCE NORTH 66 DEGREES 40 MINUTES 13 SECONDS WEST, A DISTANCE OF 133.99 FEET TO A POINT, THENCE NORTH 06 DEGREES 10 MINUTES 31 SECONDS WEST, A DISTANCE OF 48.39 FEET TO A POINT, THENCE NORTH 52 DEGREES 03 MINUTES 18 SECONDS WEST, A DISTANCE OF 40.71 FEET TO A POINT, THENCE NORTH 82 DEGREES 33 MINUTES 03 SECONDS WEST, A DISTANCE OF 84.04 FEET TO A POINT, THENCE NORTH 74 DEGREES 58 MINUTES 40 SECONDS WEST, A DISTANCE OF 55.04 FEET TO A POINT, THENCE NORTH 81 DEGREES 31 MINUTES 40 SECONDS WEST, A DISTANCE OF 131.40 FEET TO A POINT, THENCE NORTH 85 DEGREES 21 MINUTES 28 SECONDS WEST, A DISTANCE OF 53.33 FEET TO A POINT, THENCE NORTH 26 DEGREES 08 MINUTES 43 SECONDS WEST, A DISTANCE OF 63.25 FEET TO A POINT, THENCE NORTH 81 DEGREES 55 MINUTES 37

SECONDS WEST, A DISTANCE OF 106.35 FEET TO A POINT, THENCE NORTH 57 DEGREES 16 MINUTES 46 SECONDS WEST, A DISTANCE OF 61.90 FEET TO A POINT, THENCE NORTH 83 DEGREES 47 MINUTES 18 SECONDS WEST, A DISTANCE OF 86.76 FEET TO A POINT OF INTERSECTION WITH THE WEST LINE OF SAID GOVERNMENT LOT 3, SAID POINT BEING ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER, THENCE NORTH 00 DEGREES 56 MINUTES 16 SECONDS EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 3, SAID LINE BEING THE WEST LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER, A DISTANCE OF 732.65 FEET TO THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3, SAID POINT BEING THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER, THENCE SOUTH 89 DEGREES 55 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3, SAID LINE BEING A NORTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER, A DISTANCE OF 1,101.44 FEET TO A NORTHEAST CORNER OF SAID GOVERNMENT LOT 3, THENCE SOUTH 00 DEGREES 04 MINUTES 58 SECONDS WEST ALONG A EAST LINE OF SAID GOVERNMENT LOT 3, A DISTANCE OF 50.00 FEET TO A NORTH CORNER OF SAID GOVERNMENT LOT 3, THENCE SOUTH 89 DEGREES 55 MINUTES 02 SECONDS EAST ALONG A NORTH LINE OF SAID GOVERNMENT LOT 3, A DISTANCE OF 87.87 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 1,066,663.88 SQUARE FEET OR 24.49 ACRES, MORE OR LESS.

Exhibit "C"



1111 Lincoln Ave., Suite 111
 Union, NE 68048-4808
 TEL 402.474.8111
 FAX 402.474.9300

OLSSON
 ASSOCIATES

TEMPLETON PROPERTY

PROJECT NO. 2664-0622
 DRAWN BY: KAJE
 DATE: 10/16/00

EXHIBIT
 1