

2012-00636

THE STATE OF NEBRASKA

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HOLT COUNTY, ss

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In book 356 of MTG

Page 252

CATHY PAVEL, County Clerk,

*Cathy Pavel*

CHIEF CLERK

## LEASE SUBORDINATION AGREEMENT

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

G. Mark Rice  
Whitfield & Eddy, PLC  
317 6<sup>th</sup> Avenue, Suite 1200  
Des Moines, IA 50309  
515-288-6041

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**LEASE SUBORDINATION AGREEMENT**  
(Holt County, Nebraska)

This Lease Subordination Agreement (the "Agreement") is made this 5th day of March, 2012 by and among METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation ("Lender"); ELKHORN RIVER FARMS I, dba ELKHORN RIVER FARMS, a Nebraska general partnership ("Tenant") and ELKHORN RIVER HOLDINGS, LLC, a Nebraska limited liability company ("Owner").

WITNESSETH:

WHEREAS, Owner owns the real property located in Holt County, Nebraska more particularly described in Exhibit "A" attached hereto and made a part hereof, which real property is improved with certain buildings and equipment (the real property, buildings and improvements are collectively referred to herein as the "Premises");

WHEREAS, Tenant is the tenant on the Premises pursuant to the terms of a Lease, dated 11-30 2012 between Tenant and Owner (as amended from time to time, the "Lease");

WHEREAS, Lender is prepared to advance a loan in the original principal amount of \$20,400,000.00 (the "Loan") to the Owner (the "Borrower") under the terms of a promissory note, dated March 5, 2012 secured by a certain Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents executed and delivered by the Borrower, of even date therewith (the "Deed of Trust") and other related documents and instruments evidencing, securing and/or relating thereto, all of which encumber and relate to the Premises;

WHEREAS and in connection with the making of said Loan and as a condition to extending said credit under the Loan to Borrower, the Lender requires the full and unconditional subordination of the Tenant's rights under the Lease to the Deed of Trust and related loan and security documents evidencing the Loan and/or encumbering or relating to the Premises;

WHEREAS, Tenant has agreed to fully and unconditionally subordinate its rights under the Lease to the lien of the Deed of Trust and other related loan and security documents evidencing the Loan and/or encumbering or relating to the Premises; and

WHEREAS, the parties hereto desire to more fully set forth herein their respective rights and obligations;

NOW, THEREFORE, in consideration of the respective undertakings herein and other good and valuable consideration received, the parties hereto jointly and severally agree as follows:

**1. Subordination.** Tenant hereby fully and unconditionally subordinates all of its right, title and interest under the Lease, including, without limitation, any options to renew or extend the terms of the Lease, and all other rights, titles or interests in and to the Premises or any portion of the Premises, to any and all of Lender's rights under the Deed of Trust and related security documents (including all increases, renewals, modifications and extensions thereof), as fully to all intents and purposes as if the Deed of Trust and related security documents had been executed and/or recorded and such amounts secured thereby fully disbursed prior to the Tenant and Owner entering into and/or executing the Lease and/or prior to any grant to Tenant of any other right, title or interest in and to the Premises or any portion of the Premises.

**2. Tenant's Warranty of Title.** Tenant warrants that there has been no assignment of Tenant's rights or interests in the Lease or of any other right, title or interest in and to the Premises or any portion of the Premises to any party for any purpose whatsoever, including, without limitation, as collateral for any loan or other extension of credit. Tenant and Owner further represent and warrant to Lender that no other party, whether related to or affiliated with Tenant or otherwise, owns or holds, or otherwise is an assignee of, the Lease or any other similar rights or interests whatsoever upon the Premises or any other right, title or interest in and to the Premises or any portion of the Premises.

**3. Assignment of Rents.** Tenant acknowledges that Owner has granted a security interest in and assigned any and all rents, profits and other amounts which may arise or otherwise be due, including, without limitation, any amounts which may be due Owner under the Lease, to Lender as further security for the Loan. Tenant agrees with Owner and Lender to make any rental or other payments directly to Lender on and after receipt by Tenant of a written notice from Lender that Owner has defaulted under the Deed of Trust and related loan and security documents and that Lender has elected to exercise its right to receive such rents and such other amounts. Owner hereby authorizes Tenant to pay rents and such other amounts to Lender in reliance upon such notice without further inquiry by Tenant or authorization from Owner. Lender shall apply all rents and any other amounts received in the manner provided in the Deed of Trust and related loan and security documents. Tenant and Owner further agree to provide full and complete copies of the Lease and any amendments thereto to Lender from time to time upon request.

**4. Attornment.** Tenant agrees, in the event of Lender's foreclosure (including by non-judicial sale or acceptance of a deed-in-lieu of foreclosure) of the Deed of Trust, to continue to pay rent and such other amounts which may be due and perform Tenant's other obligations under the Lease, and to attorn to and recognize Lender, any other purchaser at a foreclosure sale or any purchaser from or assignee of Lender (individually and collectively, a "Successor Landlord"), as the successor to Owner under the Lease, if the Successor Landlord in its sole and absolute discretion so elects and notifies Tenant of such election to accept such rents and other amounts and obligations from Tenant in writing. If the Successor Landlord does so elect, the Lease shall remain in full force and effect according to its terms, subject to the limitations set forth in the following paragraph.

Successor Landlords, if they elect to recognize the Lease in their sole and absolute discretion, shall be bound by and perform Owner's obligations under the Lease after succeeding to Owner's interest under the Lease; provided, however, that a Successor Landlord shall not be:

(a) bound by or liable for any Owner's obligation or act arising or occurring prior to the date that a Successor Landlord succeeds to Owner's interest under the Lease, including, without limitation, any offsets or defenses claimed by Tenant to payment of rent or other amounts arising from events occurring prior to the date that such Successor Landlord succeeds to Owner's interest; or

(b) bound by any rent, additional rent or other amounts paid by Tenant for more than one month in advance; or

- (c) responsible for any security or other deposit unless actually received by the Successor Landlord; or
- (d) bound by any modification to or extension of the Lease entered into without Lender's written consent; or
- (e) bound by the provisions of the Lease providing for or an option extend the term of the Lease or an option to purchase or right of first refusal upon the sale or lease of the Premises; or
- (f) bound by any provision of the Lease permitting Tenant to remove any fixtures, equipment or other property from said Premises which may be necessary for or related to the full and efficient operation thereof upon the expiration or termination of the Lease or at any such other time; it being expressly understood and agreed that Owner presently owns, and shall at all times hereafter own, all such real property forming a part of the Premises, and all buildings, structures, fixtures, equipment and other related property located thereon or used in connection therewith (including the "Mortgaged Property" as defined in the Deed of Trust); or
- (g) bound by any provision of the Lease which subjects the terms of any existing or future deed of trust on the Premises by an Owner to the Lease, it being understood and agreed that the Lease shall be fully, unconditionally and absolutely subordinate thereto and Tenant further agrees to attorn to such beneficiary at such beneficiary's option on the same terms as set forth herein.

After a Successor Landlord has conveyed the Premises and ceased to collect rent or such other amounts from Tenant, the Successor Landlord shall not be liable for any Owner obligation thereafter accruing, but shall not be discharged from any unperformed Owner obligation that accrued during the period that such Successor Landlord held the Owner's interest under the Lease.

**5. Estoppel.** Owner and Tenant represent and warrant to Lender that (i) there exists no other agreements whatsoever concerning the Premises between Owner and Tenant or any other party other than the Lease, (ii) the Lease has not been modified except as described in the recitals above and continues in full force and effect and that neither Owner nor Tenant claims any default by, or offset or defense against any obligations owed to the other under the Lease, and (iii) that full and complete copies of the Lease have been provided to Lender prior to the date hereof. Tenant represents that it has not prepaid rents or any other amounts and that there are no rent rebates or rent or other concessions from Owner, except as may be set forth in the Lease.

Tenant further represents and agrees that (i) Tenant will not exercise any option to purchase or otherwise acquire any ownership or equity interest, whether directly or indirectly or pursuant to the terms of the Lease or otherwise, in or to the Premises or any interest in and to the Owner without the prior written consent of Lender, (ii) Tenant will not mortgage, grant a security interest in, assign or otherwise pledge its interest in the Lease or in the Premises, and (iii) Tenant will not permit or suffer to exist any lien or other similar encumbrance whatsoever on the Premises. In furtherance of the foregoing sentence, Tenant hereby agrees to indemnify and hold Lender harmless from any loss, cost or expense, including, without limitation, attorneys' fees and expenses, caused by or related to the existence or foreclosure of any such lien, assignment, encumbrance or otherwise, or Tenant's breach or violation of any of Tenant's covenants and representations herein.

**6. Notices.** All notices, demands, or requests, and responses thereto, required or permitted to be given pursuant to this Agreement shall be in writing and shall be sent postage prepaid by certified, or registered mail return receipt requested, or may be forwarded by United States Express Mail Service, or by Federal Express or other private overnight delivery service or by telex or telegram (but not facsimile) provided that a receipt or proof of delivery thereof can be produced, addressed as follows:

To Lender: Metropolitan Life Insurance Company  
10801 Mastin Blvd., Suite 930  
Overland Park, Kansas 66210  
Attn: Director

To Tenant: Elkhorn River Farms I  
P.O. Box 7160  
Fargo, ND 58106-7160  
ATTN: CFO

To Owner: Elkhorn River Holdings, LLC  
ATTN: P.O. Box 7160  
Fargo, ND 58106-7160  
ATTN: CFO

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or to such other address as the parties may designate in writing. All such notices shall be deemed delivered when actually received or refused by the other party.

7. **Lender's Obligation.** Tenant acknowledges that Lender shall have no obligation whatsoever under the Lease unless and until Lender becomes the owner or otherwise entitled to possession of the Premises and so elects and notifies Tenant, in Owner's sole and absolute discretion, of its acceptance of Tenant's attornment under the Lease as set forth in paragraph 4 above. LENDER MAKES NO COMMITMENT, EXPRESS OR IMPLIED, TO RECOGNIZE THE LEASE IN THE EVENT OF LENDER'S FORECLOSURE (INCLUDING BY NON-JUDICIAL SALE OR ACCEPTANCE OF A DEED-IN-LIEU OF FORECLOSURE) OF THE DEED OF TRUST.

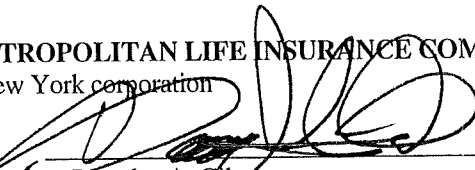
8. **Miscellaneous.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is self-operative. No further documentation or action will be required in the event Lender exercises its rights under the Deed of Trust and related loan and security documents and in the event a Successor Landlord succeeds to Owner's interest in the Agreement.

[NO FURTHER TEXT ON PAGE]

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

**LENDER:**

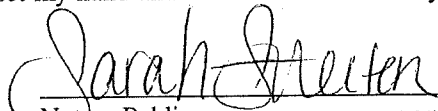
**METROPOLITAN LIFE INSURANCE COMPANY,**  
a New York corporation

By:   
Name: Douglas A. Gibson  
Its: Director

STATE OF IOWA                    )  
  ) SS:  
COUNTY OF POLK                )

On this 5<sup>th</sup> day of March, 2012, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Douglas A. Gibson, Director of Metropolitan Life Insurance Company, a corporation of the State of New York, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

  
Notary Public

My Commission Expires: 2-14-2014

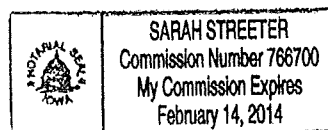








EXHIBIT "A"  
(Premises)

**THE FOLLOWING PARCELS OF LAND LOCATED IN HOLT COUNTY, NEBRASKA:**

IN TOWNSHIP 29 NORTH, RANGE 9, WEST OF THE 6TH P.M.

The Northwest Quarter of Section 3;

The North Half of Section 8:

IN TOWNSHIP 29, RANGE 10, WEST OF THE 6TH P.M.,

The Northeast Quarter of Section 1;

The Northeast Quarter of Section 9; EXCEPT that portion thereof described as follows: Beginning at the Southwest Corner of the Northeast Quarter of said Section 9; thence North 89°02'09" East (assumed bearing) 780.85 feet on the South line of said Northeast Quarter; thence North 51°26'42" West 268.91 feet; thence North 53°49'39" West, 267.09 feet; thence North 40°08'19" West, 510.74 feet; thence North 74°22'59" West 27.57 feet to the West line of said Northeast Quarter; thence South 00°04'24" East, 736.26 feet on the West line of said Northeast Quarter to the point of beginning.

The Southwest Quarter of Section 15;

The East Half of Section 17; EXCEPT that portion the Northeast Quarter of said Section 17, described as follows: Beginning at the Northeast Corner of said Northeast Quarter; thence South 89°59'18" West (assumed bearing) 775.97 feet on the North line of said Northeast Quarter; Thence South 04°22'52" East, 93.63 feet; Thence South 60°02'15" East 456.63 feet; thence South 35°07'36" East 515.32 feet; thence South 88°10'49" East 76.22 feet, more or less to the East line of said Northeast Quarter; Thence Northerly 745.45 feet, more or less on the East line of said Northeast Quarter to the point of beginning.

All of Section 19; excepting therefrom a tract of land described as follows: Beginning at the Southwest corner of the Southeast one Quarter of said Section 19; thence North 700 feet to a point; thence Southeasterly to a point which is 700 feet East of the Southwest Corner of Said Southeast one Quarter; thence West 700 feet to the point of beginning.

Southeast Quarter of Section 20, except that part thereof deeded to the State of Nebraska by Warranty Deed filed in Book 125, Page 419;

The Northwest Quarter of Section 22.

IN TOWNSHIP 30, RANGE 10, WEST OF THE 6TH P.M.

The Northeast Quarter of Section 35.

IN TOWNSHIP 29, RANGE 11, WEST OF THE 6TH P.M.

The Northeast Quarter of Section 24;

All of Section 26 EXCEPT that portion thereof described as follows: An irregular tract of land located in the Northwest Quarter of Section 26, Township 29 North, Range 11 West of the 6th P.M., in Holt County, Nebraska, described as follows: Beginning at the Northwest corner of said Northwest Quarter; thence S 90°00'00" E (assumed bearing) on the north line of said Northwest Quarter, 845.00 feet; thence S 00°00'00" W, 33.00 feet to the south right-of way line of Highway 108; thence southwesterly on a non-tangential curve concave southwesterly, with a radius of 1598.22 feet, an arc distance of 111.66 feet; thence continuing on said curve, an arc distance of 200.00 feet; thence continuing on said curve, an arc distance of 200.00 feet; thence continuing on said curve, and arc distance of 200.00 feet; thence continuing on said curve, an arc distance of 200.00 feet; thence continuing on said curve, an arc distance of 200.00 feet to the east right-of-way line of a public road; thence S 89°37'35" W, 33.00 feet to the west line of said Northwest Quarter; thence N 00°22'25" W on the west line of said Northwest Quarter 765.00 feet to the point of beginning, of which the north 33.00 feet and the west 33.00 feet is occupied by a public road.

IN TOWNSHIP 29, RANGE 13, WEST OF THE 6TH P.M.

The Northeast Quarter of Section 10;

IN TOWNSHIP 30, RANGE 13, WEST OF THE 6TH P.M.

The Southwest Quarter of Section 18; excepting therefrom a tract described as follows: Commencing at the SE corner of said SW 1/4 of Section 18; running thence North 700 feet; thence West 225 feet; thence Southwesterly to a point which is 900 feet West and 275 feet North of the point of beginning at the SE corner of said SW 1/4 of Section 18; running thence south 275 feet, to the section line, running thence East 900 feet, to the point of beginning.

Also except that portion thereof described as an irregular tract of land located in Government Lot 4 of the fractional Southwest Quarter of said Section described as Beginning at the Southwest Corner of said Government Lot 4 (commonly known as the Southwest Corner of said Section 18) thence North 00°10'00" West (assumed bearing) 900.90 feet on the West line of said Government Lot 4; thence South 37°31'10" East 642.16 feet; thence South 58°28'22" East, 228.30 feet; thence

South 65°56'19" East, 311.45 feet; thence North 89°52'11" East 342.89 feet; thence South 04°15'02" East 155.82 feet, to the South line of said Government Lot 4; thence North 89°33'33" West, 1,221.93 feet, on the South line of said Government Lot 4, to the point of beginning, of which the West 33 feet and the South 33 feet are occupied by a public road.

IN TOWNSHIP 30, RANGE 13, WEST OF THE 6TH P.M.  
The Southeast Quarter of Section 34.

IN TOWNSHIP 30, RANGE 15, WEST OF THE 6TH P.M.  
The Northwest Quarter of Section 14;  
The Northeast Quarter of Section 15;  
All that part of the Southeast Quarter of Section 24, lying and being North of the right-of-way of the Chicago and Northwestern Railroad and U.S. Highway No. 20.

IN TOWNSHIP 29 NORTH, RANGE 10, WEST OF THE 6th P.M.  
All of Section 21, EXCEPT that portion thereof deeded to the State of Nebraska for roads, in Book 125 at Pages 417 and 419.

IN TOWNSHIP 29 NORTH, RANGE 9, WEST OF THE 6<sup>TH</sup> P.M.  
The West Half and the Southeast Quarter of Section 9,

IN TOWNSHIP 28 NORTH, RANGE 10, WEST OF THE 6<sup>TH</sup> P.M.  
A tract of land located in Section 6, described as follows: Beginning at the Northwest Corner of said Section 6; thence North 90°00'00" East (assumed bearing) on the North line of said Section 6, a distance of 5183.21 feet to the Northeast Corner of said Section 6; thence South 01°20'35" West on the East line of said Section 6, a distance of 2290.04 feet to the East Quarter Corner of said Section 6; thence South 01°10'48" West on the East line of said Section 6, a distance of 2364.71 feet to the Nebraska Northeastern Railway Company northerly right of way line; thence North 72°13'39" West on said Northerly right of way line, a distance of 5334.27 feet to the West line of said Section 6; thence North 00°01'17" West on the West line of said Section 6, a distance of 3025.40 feet to the point of beginning, of which the North 33 feet and the West 33 feet are occupied by a public road.

IN TOWNSHIP 30 NORTH, RANGE 13, WEST OF THE 6<sup>TH</sup> P.M.  
The Southwest Quarter of Section 34,

IN TOWNSHIP 28 NORTH, RANGE 10, WEST OF THE 6<sup>TH</sup> P.M.  
The North Half of Section 21, EXCEPT that part beginning at the Northwest corner of Section 21, thence South 1,452 feet, thence East 600 feet, thence North 1,452 feet to the North Section line, thence West 600 feet to the place of beginning; AND EXCEPT A part of the Southeast Quarter of the Northeast Quarter of said Section 21, described as follows: Commencing at the Southeast corner of the Northeast Quarter of said Section 21, running thence west 10 chains and 30 links, thence North 9 chains and 80 links, thence East 10 chains and 30 links, thence South 9 chains and 80 links to the place of beginning; AND EXCEPT A tract of land located in the Northwest Quarter of Section 21, Township 28 North, Range 10, West of the 6th P.M., Holt County, Nebraska, described as follows: Commencing at the northwest corner of said Northwest Quarter; thence N 89°46'33" E (assumed bearing), 600.00 feet on the north line of said Northwest Quarter, to the true point of beginning; thence S 00°31'28" E, 651.31 feet, parallel with the west line of said Northwest Quarter; thence N 43°21'38" E, 408.32 feet; thence N 42°47'15" E, 486.22 feet, to the north line of said Northwest Quarter; thence S 89°46'33" W, 616.59 feet on the north line of said Northwest Quarter to the point of beginning, of which the north 33 feet is occupied by a public road.

A tract of land located in the Northwest Quarter of Section 21, Township 28 North, Range 10, West of the 6th P.M., Holt County, Nebraska, as being a part of a tract of land as recorded in Book 152 of Deeds on Page 139, described as follows: Commencing at the northwest corner of said Northwest Quarter; thence N 89°46'33" E (assumed bearing), 600.00 feet on the north line of said Northwest Quarter; thence S 00°31'28" E, 651.31 feet, parallel with the west line of said Northwest Quarter, to the true point of beginning; thence S 43°21'38" W, 172.94 feet; thence S 02°01'48" W, 675.93 feet; thence N 89°46'33" E, 150.01 feet, parallel with the north line of said Northwest Quarter; thence N 00°31'28" W, 800.69 feet, parallel with the west line of said Northwest Quarter, to the point of beginning.

IN TOWNSHIP 28 NORTH, RANGE 11, WEST OF THE 6<sup>TH</sup> P.M.

The Southeast Quarter of the Northeast Quarter and all of that part of the Southeast Quarter of Section 1, laying North of the Railroad Right of Way.

IN TOWNSHIP 30 NORTH, RANGE 13, WEST OF THE 6<sup>TH</sup> P.M.

An irregular tract of land located in Government Lot 4, of the fractional Southwest Quarter of Section 18, Township 30 North, Range 13, West of the 6th P.M., Holt County, Nebraska, described as follows: Beginning at the Southwest Corner of said Government Lot 4 (commonly known as the Southwest Corner of said Section 18); thence North 00°10'00" West (assumed bearing), 900.90 feet on the West line of said Government Lot 4; thence South 37°31'10" East, 642.16 feet; thence South 58°28'22" East, 228.30 feet; thence South 65°56'19" East, 311.45 feet; thence N 89°52'11"E 342.89 feet; thence South 04°15'02" East, 155.82 feet, to the South line of said Government Lot 4; thence North 89°33'33" West, 1,221.93 feet, on the South line of said Government Lot 4, to the point of beginning, of which the West 33 feet and the South 33 feet are occupied by a public road.

IN TOWNSHIP 28 NORTH, RANGE 11, WEST OF THE 6<sup>TH</sup> P.M.

A tract of land located in Section 1, described as follow: Beginning at the northeast corner of said Section 1; thence S 00°00'00" (assumed bearing) 3,025.43 feet on the east line of said Section 1 to the north right of way line of the railroad; thence N 72°11'25" W, 3,478.94 feet on the north right of way line of said railroad; thence N 27°38'17" W, 547.22 feet; thence N 07°10'37" W, 339.90; thence N 07°25'06" E, 395.18 feet; thence N 31°18'08" E, 534.95 feet; thence N 58°11'34" E, 554.47 feet, to the north line of said Section 1; thence S 89°53'14" E, 1,132.02 feet on the north line of said Section 1, to the southeast corner of Section 36, Township 29 North, Range 11 West; thence N 89°59'11" E, 1,676.36 feet, to the point of beginning of which the north and east 33.0 feet are occupied by a public road EXCEPT the Southeast Quarter of the Northeast Quarter of said Section 1 and the North Half of the Southeast Quarter, lying north of the railroad right of way in said Section 1, and EXCEPT a tract of land Deeded to the County of Holt, located in the Northeast Quarter of Section 1 described as follows: Commencing at the Northeast corner of said Section 1 said point being the point of beginning; thence South 00°00'00" East (an assumed bearing) along the East line of said Quarter Section, a distance of 524.00 feet; thence North 89°53'49" West, a distance of 37.94 feet; thence Northwesterly on a 482.92 foot radius curve to the left, an arc distance of 759.58 feet, with a chord bearing North 44°57'23" West, a chord distance of 683.67 feet; thence North 00°00'57" West, a distance of 40.00 feet to a point on the North line of said Quarter Section, thence North 89°59'03" East, a distance of 521.01 feet along the North line of said Quarter Section to the point of beginning and EXCEPT a tract of land deeded to Niobrara Valley Electric Membership Corporation located in Government Lot 1 of said Section 1 described as follows: Commencing at the Northeast corner of said Government Lot 1; thence South 00°00'00" East (assumed bearing), 428.25 feet on the East line of said Government Lot 1, to the true point of beginning; thence South 90°00'00" West, 220.00 feet; thence South 00°00'00" East 198.00 feet; thence South 90°00'00" East, 220.00 feet, to the East line of said Government Lot 1; thence North 00°00'00" East 198.00 feet on the East line of said Government Lot 1, to the point of beginning, of which the East 33 feet in occupied by a public road.

\*\*Note: Exceptions to Holt County and Niobrara Valley Electric overlap.