

NUM PAGES 9
DOC TAX _____ PD _____ CHG _____ RET _____
FEES 45.50 PDX _____ CHG _____ RET _____
TOTAL _____
CK NUM 34243 BY Miller Associates
BY _____
REC'D Miller & Associates
RETURN _____
CITY OF KEARNEY
BOX 1180
KEARNEY, NE 68848

Inst. 2010 - 1397

RECORDED
BUFFALO COUNTY, NE

2010 MR 10 PM 2:27

Kellie John
REGISTER OF DEEDS

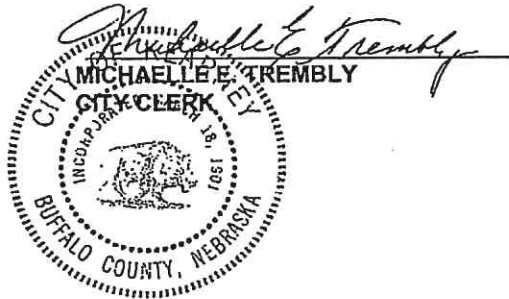
Computer T
Cards _____
Compared W
Scanned T

CERTIFICATE

STATE OF NEBRASKA)
COUNTY OF BUFFALO) SS
CITY OF KEARNEY)

I, Michaele E. Trembly, duly appointed, qualified, and acting City Clerk of the City of Kearney, Nebraska, do hereby certify that the attached is a true and correct copy of Resolution No. 2010-44 as was passed and approved by the City Council of the City of Kearney at its regular meeting held March 9, 2010.

WITNESS MY HAND and official seal this 10th day of March, 2010.



RESOLUTION NO. 2010-44

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land located in the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: considering the north line of the Northwest Quarter of the Northeast Quarter of said Section 10 as assumed bearing S89°27'38"E and with all bearings contained herein and relative thereto: point of beginning being the northeast corner of the Northwest Quarter of said Northeast Quarter; thence S01°00'27"W on the east line of the Northwest Quarter of said Northeast Quarter and said Government Lot 3 a distance of 1402.17 feet; thence N89°05'32"W a distance of 1326.05 feet to the west line of the Northwest Quarter of said Northeast Quarter and said Government Lot 3; thence N00°54'28"E on said west line a distance of 1393.63 feet to the north line of said Northeast Quarter (also being the centerline of 11th Street as platted in the City of Kearney, Buffalo County, Nebraska); thence S89°27'38"E on said north line a distance of 1328.52 feet to the point of beginning, containing 42.59 acres more or less of which 2.56 acres more or less are presently being used for street purposes, all in Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

BE IT FURTHER RESOLVED that the Subdivision Agreement, marked as Exhibit "A" attached hereto and made a part hereof by reference, be and is hereby approved and that the President of the Council be and is hereby authorized and directed to execute said agreement on behalf of the City of Kearney, Nebraska. Said Subdivision Agreement shall be filed with the final plat with the Buffalo County Register of Deeds.

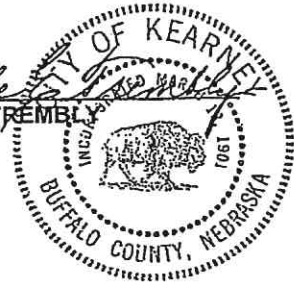
BE IT FURTHER RESOLVED that the President of the Council be and is hereby authorized and directed to execute the final plat on behalf of the City of Kearney, Nebraska.

Inst. 2010 - 1397 3

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:

Michelle E. Tremblay
MICHAELLE E. TREMBLAY
CITY CLERK



Randy Buschkoetter
RANDY BUSCHKOETTER
VICE-PRESIDENT OF THE COUNCIL

Subdivision Agreement
Western Nebraska Property Development Addition
An Addition to the City of Kearney, Buffalo County, Nebraska

WHEREAS, Spencer Land Co., a Nebraska Corporation, being the owner (hereinafter referred to as "Owner"), of a tract of land located in the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) and part of Government Lot Three (3) in Section Ten (10), Township Eight (8) North, Range Sixteen (16) West of the 6th Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: considering the North line of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of said Section Ten (10) as assumed bearing S 89°27'38" E and with all bearings contained herein and relative thereto: point of beginning being the Northeast corner of the Northwest Quarter of said Northeast Quarter; thence S01°00'27"W on the East line of the Northwest Quarter of said Northeast Quarter and said Government Lot Three (3) a distance of 1402.17 feet; thence N89°05'32"W a distance of 1326.05 feet to the West line of the Northwest Quarter of said Northeast Quarter and said Government Lot Three (3); thence N00°54'28"E on said West line a distance of 1393.63 feet to the North line of said Northeast Quarter (also being the centerline of 11th Street as platted in the City of Kearney, Buffalo County, Nebraska); thence S89°27'38"E on said North line a distance of 1328.52 feet to the point of beginning. containing 42.59 acres more or less of which 2.56 acres more or less are presently being used for street purposes; and

WHEREAS, Owner desires to plat a subdivision to be known as Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, public improvements are necessary to allow the development of the property; and

WHEREAS, the Kearney City Code requires that public infrastructure be designed and built in accordance with the City of Kearney Standard Specifications, and

WHEREAS, the City of Kearney desires to maintain the aesthetics and visual quality of land development in proximity to E. K. and Mary Yanney Heritage Park;

NOW, THEREFORE, the undersigned Owner and the City of Kearney, Nebraska (hereinafter referred to as the "City"), in consideration of the mutual covenants and agreements herein contained, agree as follows:

OWNER AGREES AS FOLLOWS:

1. To construct the necessary public improvements including paving, storm sewer, water and sanitary sewer, summarized below, in accordance with the terms and conditions of the City of Kearney Code, Chapter 9, Sections 13-101, through 13-1319, Developer Constructed Infrastructure.

a) Construction of an eight (8) inch diameter vitrified clay pipe sanitary sewer main from the existing sanitary sewer main located in Kea West Avenue westward in an easement to the centerline of 22nd Avenue, then northerly in 22nd Avenue to the southeast corner of Lot 1, Block One including all appurtenances such as sanitary sewer manholes and sanitary sewer service lines to serve each lot abutting the sewer main. Owner estimates the cost of the sanitary sewer main with manholes and sewer services is \$192,305.

Inst 2010 - 1397

b) Construction of a twelve (12) inch diameter ductile iron pipe water main from the existing water main located in Kea West Avenue then westerly in an easement along the south side of Lot 4, Block 2, crossing 22nd Avenue and continuing westerly in an easement along the south side of Lot 1, Block Three to the west line of Lot 1, Block Three. Then northerly in an easement along the west line of Lot 1, Block Three and along the west side of 24th Avenue to the water main located on the north side of 11th Street. AND construction of an eight (8) inch water main from the proposed water main located at the southeast corner of Lot 1, Block Three northerly along the west side of 22nd Avenue to the northerly side of 10th Street then west in 10th Street to the proposed twelve (12) inch water main located on the west side of 24th Street, AND construction of an eight (8) inch water main in 10th Street Place from the existing water main located on the westerly side of 22nd Avenue easterly along the north side of 10th Street Place to the terminus of the cul-de-sac, including all appurtenances including water main connections, fittings, valves, fire hydrants and water services. Owner estimates the cost of the water main with services, fittings and fire hydrants is \$533,673.

c) Construction of a six (6) inch thick, thirty six (36) feet wide (back of curb to back of curb) 47 B Portland Cement Concrete pavement with storm sewer, as necessary, from the existing pavement located at 11th Street and 22nd Avenue southerly in 22nd Avenue to the south line of Lot 1, Block Three, 10th Street Place from 22nd Avenue northeasterly from 22nd Avenue to the terminus of the 10th Street Place cul-de-sac, 10th Street from 22nd Avenue westerly to 24th Avenue, and 24th Avenue from 10th Street northerly to 11th Street, including storm sewer pipe within street right of way, as necessary and other appurtenances such as storm sewer inlets and pavement removal and replacement and including any intersection improvements that are required for adequate maneuvering now, or in the future, including, but not limited to design and construction of road widening, signalization, median construction, turn lanes, and/or deceleration lanes will be paid for by the developer. Owner estimates the cost of the pavement and storm sewer to serve the development initially is \$480,401.

d) Construction of a storm water management facilities including a detention/retention pond on Lot 1, Block 3 and located in the unplatted area just south of Lot 4, Block Two and any associated piping, culverts, drainage structures, easements or similar appurtenances in accordance with the following requirements:

1. To construct a public storm sewer system based on the approved Public Works Plan and designed to the City of Kearney standards based on engineering calculations.
2. To construct stormwater detention facilities based on the approved Public Works Plan and designed to the City of Kearney standards for a 10-year storm in compliance with the policies of the City of Kearney and subject to the approval of the City Engineer.
3. To maintain said stormwater detention facilities in perpetuity with all such maintenance costs borne collectively and proportionally by each Owner of each lot of the subdivision in the drainage basin served by the detention facilities. This obligation shall attach to all lots in the present subdivision and run with the land. This agreement will be filed with the Buffalo County Register of Deeds office duly noting this obligation for all property owners in this subdivision. Should the owners of property within this subdivision fail to maintain the stormwater detention facilities, the City of Kearney is hereby granted the right to enter upon the property where the stormwater detention facility is located and provide for such maintenance and shall charge the property owners within this subdivision proportionally for any and all costs relating to said maintenance. The minimum charge for maintenance by the City of Kearney shall be five hundred dollars (\$500.00) for a mobilization fee and hourly thereafter at a rate of one hundred dollars (\$100.00) per hour or fraction thereof, said fees being subject to change

Inst. 2010 - 13 97

6

in the future to account for inflation. Owner further agrees that the Final Plat for this subdivision shall include a written notation dedicating the detention facilities to the use and benefit of each owner of each lot in this subdivision and that said owners collectively and proportionally shall be responsible for all ongoing maintenance costs required by said stormwater facilities in perpetuity.

4. To allow the City access to said stormwater facilities in the event of an emergency or in the event that the owner fails to maintain the detention facilities as required in this agreement. Owner further agrees in the event the City shall have cause to maintain the stormwater facilities, any and all costs incurred by the City due to maintenance of the stormwater facility shall be paid by the property owners of this subdivision on a collective and proportional basis.

5. To comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) and to submit all required NPDES documentation to the City.

Owner estimates the cost to construct the storm water detention pond is \$16,200.

2. To pay connection fees associated with Water Connection District 2001-1 in the amount of \$24,973.66 before connecting to the water main located in Kea West Avenue.

3. To pay the connection fees associated with Sanitary Sewer Connection District 2001-2 in the amount of \$52,329.67 before connecting to the sanitary sewer main located in Kea West Avenue.

4. To pay the paving assessments associated with Paving District 2001-865 that were previously deferred due to an agricultural exemption, in the amount of \$106,042.21. Assessments can be made in annual payments with interest accruing at 6% per annum over a 10 year period. First installment will be due fifty days after the effective date of the ordinance rezoning the property, and the remaining nine installments will be due annually thereafter.

5. The owner agrees that site grading for the subdivision will be extensive. The owner agrees that all site grading associated with the public improvements will be performed at his cost and that the City will not issue building permits for any lot until the plans for all of the public improvements required to serve the lot are approved by the City of Kearney, Certificate of Occupancy permits will not be issued until the public infrastructure is accepted by the City of Kearney.

6. Owner agrees that a concept Landscape Plan shall be prepared and submitted as part of the Development Plan package for Lot 1, Block 3 and for the seventy five-foot (75') wide no-build landscape buffer strip along the east side of Lots 2, 3, and 4 of Block 2 abutting the right-of-way of Kea West Avenue. This plan will establish the location and functional type of all required tree plantings and will show the general location of shrub beds, flower gardens, foundation plantings, and other landscape improvements. A subsequent fully developed and detailed Landscape Master Plan with all plant locations, species and sizes shall be prepared based on the concept plan and submitted with the individual building permit applications for Lot 1, Block 3 and Lots 2, 3, and 4, Block 2. Landscape construction and installation in conjunction with each building permit for these lots shall be based on the approved Landscape Master Plan.

7. The owner agrees that the seventy five-foot (75') wide no-build landscape buffer abutting the right-of-way of Kea West Avenue along the east side of Lot 2, Lot 3, and Lot 4, of Block 2 will be developed in phases in accordance with the approved concept landscaping plan. All required

Inst. 2010 - 1397

7

street trees shall be installed in the seventy five-foot (75') buffer strip for the length that the buffer strip abuts Kea West Avenue as part of the requirements of the building permit for any building on any lot within the subdivision. All trees must meet minimum City size requirements for commercial development and provisions shall be made to provide water and routine maintenance to said trees. Any tree that dies must be replaced. The land area contained within the seventy five-foot (75') wide buffer area and the abutting right-of-way for Kea West Avenue for the length of said buffer shall be planted to warm season native grasses or an alternative approved by the City. As building permits are issued for lots 2, 3, and 4 of Block 2, a complete master plan for landscaping of the entire lot, including the buffer area, as reference under paragraph 6 above, shall be submitted and the landscape improvements shall be constructed in accordance with the approved plan.

8. To indemnify and hold harmless the City of Kearney and its agents and employees and against all claim, damages, loses, or expenses, including reasonable attorneys fees that arise or allegedly arise out of the design or construction of the public improvements and the stormwater management facilities, not due to the negligence or omissions on the part of the City of Kearney, its agents and employees. Further, Owners agree to indemnify the City of Kearney for any claims, damages, or expenses, including reasonable attorney's fees, that arise out of or allegedly arise out of the design or construction of said stormwater management facilities, such as damaging stormwater runoffs, that are caused by Owner's negligence or omission, or that of its agents or employees.

9. The owner agrees to install the thirty two-foot (32') wide strip of irrigated turf grass measured from the back of curb into the property and also to install two-inch (2") minimum caliper street trees as specified in the landscape requirements, said trees contained in the ten-foot (10') wide strip furthest from the curb within the thirty two-foot (32') strip as shown on the approved concept Landscape Plan along the entire length of the west side of 22nd Avenue as the street abuts Lot 1 of Block 3, Western Nebraska Property Development Addition.

10. The owner agrees to install the twenty five-foot (25') wide strip of irrigated turf grass measured from the back of curb into the property and also to install two-inch (2") minimum caliper street trees as specified in the landscape requirements, said trees contained in the ten-foot (10') wide strip furthest from the curb within the twenty five-foot (25') strip as shown on the approved Landscape Plan along the entire length of the south side of 10th Street as the street abuts Lot 1 of Block 3, Western Nebraska Property Development Addition.

11. The owner agrees to install a four-foot wide public sidewalk, constructed to City standards, setback from the curb, but within the public right-of-way, along the entire length of street frontage for 22nd Avenue and 10th Street as the streets abut Lot 1, Block 3, Western Nebraska Property Development Addition as part of the requirements of the building permit for any building on Lot 1, Block 3. Final location of said sidewalks must be approved by the City Public Works Department prior to construction.

12. The owner agrees to install a four-foot wide public sidewalk, constructed to City standards, setback from the curb, but within the public right-of-way, along the entire length of all street frontages within the subdivision on both sides of the street and for Kea West Avenue as the street abuts Lots 2, 3, and 4, Block 2, and 11th Street as the street abuts Lot 1, Block 1 and Lot 1, Block 2, Western Nebraska Property Development Addition in the future as part of the requirements of the building permit for each Lot. Final location of said sidewalks must be approved by the City Public Works Department prior to construction. Owner further agrees that said sidewalks or portions thereof can be ordered to be installed at any time by the City Council at the owner's sole expense, if the Council determines the need for such walks to provide

Inst 2010 - 1397

8

adequate infrastructure for the community and protect the health safety and welfare of residents and visitors.

13. To indemnify and hold harmless the City of Kearney and its agents and employees and against all claim, damages, loses, or expenses, including reasonable attorneys fees that arise or allegedly arise out of the design or construction of the public improvements and the stormwater management facilities, not due to the negligence or omissions on the part of the City of Kearney, its agents and employees. Further, Owners agree to indemnify the City of Kearney for any claims, damages, or expenses, including reasonable attorney's fees, that arise out of or allegedly arise out of the design or construction of said stormwater management facilities, such as *damaging* stormwater runoffs, that are caused by Owner's negligence or omission, or that of its agents or employees.

CITY AGREES AS FOLLOWS:

1. To comply with the Kearney City Code, Chapter 9, Section 13-101 through 13-1319 as it applies to the public improvements for the subdivision set forth in this agreement.
2. To own, operate and maintain the water, sanitary sewer, storm sewer and paving as described in this agreement after the infrastructure has been accepted as part of the City water, sanitary sewer and street system.
3. To accept the public components of the storm sewer system contained within public street right-of-ways or easements dedicated to the City. All other components of the storm drainage system, including stormwater management facilities, such as detention basins, retention ponds, bio-swales, infiltration trenches, sediment basins, underground water storage, and similar facilities shall not be the responsibility of the City and shall be maintained in perpetuity as specified in the "Owner Agrees" section of this agreement.
4. That the landscaping of Lot 1, Block Three and the landscaping of the seventy five-foot (75') wide no-build landscape buffer along the east side of Lot 2, Lot 3, and Lot 4, of Block Two will be phased as set forth in paragraphs 6, 7, 8, 9 and 10 under the "Owner Agrees" section of this agreement.

THE PARTIES AGREE AS FOLLOWS:

1. This instrument is the final expression of the agreement between the parties hereto and such agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between the parties that allegedly exists.
2. This instrument contains the entire agreement between the parties, and no statements, promises or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; this contract may not be enlarged, modified, or altered except in writing signed by both parties and endorsed on this agreement.
3. This agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and shall be binding upon heirs, executors, administrators, and subsequent title owners in interest, devisees, assignees, and successors of the Owner hereto.

Inst. 2010 - 13 97

Dated this 4th day of MARCH, 2010.

Spencer Land Co., a Nebraska Corporation

By [Signature]

Name TIMOTHY E LOWE
print

Title PRESIDENT
print

STATE OF NEBRASKA)
) ss
COUNTY OF BUFFALO)

Before me a Notary Public qualified for said County, personally came Timothy E. Lowe of Spencer Land Co., a Nebraska Corporation, known to me to be the President and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of the corporation.

Witness my hand and notarial seal this 4th day of March, 2010.



[Signature]
Notary Public

Dated this 9 day of March, 2010.

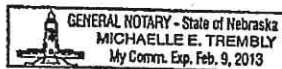
CITY OF KEARNEY, NEBRASKA

By [Signature]
Stanley A. Clouse Randy Buschkaetter
Vice President of the Council and ~~Ex-Officio~~ Mayor

STATE OF NEBRASKA)
) ss
COUNTY OF BUFFALO)

The foregoing instrument was acknowledged before me this 9 day of March, 2010, by Stanley A. Clouse, President of the City Council of the City of Kearney, Nebraska, a Municipal Corporation, known to me to be the identical person who signed the foregoing signature to be his voluntary act and deed and that its municipal corporate seal was thereto affixed by proper authority.

Witness my hand and notarial seal this 9 day of March, 2010.



[Signature]