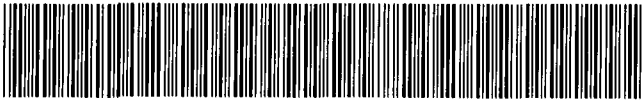




MISC 2017005391



JAN 23 2017 08:13 P 8

8 MISC 01-60000
 FEE 52.00 FB 58-42901
 BKP 10-15-12 C/O COMF
 DEL _____ SCAN _____ FV 60

a

A

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 1/23/2017 08:13:55.65



2017005391

EASEMENT AGREEMENT

THIS AGREEMENT is made effective as of January __, 2017 by and between WESTPLEX LIMITED PARTNERSHIP IV, a Nebraska limited partnership (“Westplex”) successor in interest to Olsen Dodge, Inc., and TKA PROPERTIES, LLP, a Nebraska limited liability partnership (“TKA”), successor in interest to Stan Olsen Pontiac GMC-Trucks, Inc. and Stan Olsen Pontiac, Inc.

RECITALS:

- A. Westplex is the owner of that certain parcel of property described in **Exhibit A** attached hereto and incorporated by reference herein (the “Westplex Property”);
- B. TKA is the owner of that certain parcel of property described in **Exhibit B** attached hereto and incorporated by reference herein (the “TKA Property”);
- C. Westplex and TKA desire to supersede the previous easement agreement (the “Previous Easement”) made by the previous parties, dated October 5, 2004 and recorded October 7, 2004, as Document Number 2004132633, which Previous Easement shall be of no further force or effect; and
- D. Westplex and TKA desire to enter into this Agreement to establish a storm sewer and drainage easement between the Westplex Property and the TKA Property, as described herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the recitals, the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.
2. Grant of Storm Sewer and Drainage Easement. Westplex hereby grants to TKA for the benefit of TKA, its lessees, successors and assigns, and for the benefit of the TKA Property, as an easement appurtenant to the TKA Property, the permanent right in common with Westplex to allow water (including but not limited to rain, snowmelt, carwash or lawn sprinkler runoff), including water originating outside the TKA Property, to flow over and across those portions of the Westplex

TDDII

chg ©

3. Property legally described in **Exhibit C** attached hereto and incorporated herein (the “Spillway”) and to allow water to drain into the inlet located within the Spillway (the “Inlet”). Neither TKA nor Westplex shall make any use of or conduct any activity in or on the Westplex Property, the Spillway or the Inlet which would interfere with the flow of water across the Spillway and into the Inlet. Westplex may relocate the Spillway and Inlet to another location within the Westplex Property so long as such relocation does not materially inhibit the flow of water runoff from the TKA Property.
4. Maintenance of Easement Area. Westplex shall, at its own cost and expense, maintain the Storm Water Inlet in good order and condition, subject to ordinary wear and tear.
5. Default; Remedies. In the event of a default by either of the parties hereto of any of its obligations under this Agreement, then the non-defaulting party may give written notice thereof to the defaulting party. Thereafter, in the event that such default continues for five (5) days after the delivery of such written notice, then (a) the non-defaulting party will have any and all remedies available to it under this Agreement and otherwise at law or in equity; and (b) the non-defaulting party may take such reasonable steps as it deems appropriate to cure such default (including, without limitation, taking the required action on behalf of the defaulting party) and thereafter recover the cost of such cure from the defaulting party. In the event of a default or breach of the provisions of this Agreement, the non-defaulting party will be entitled to recover from the defaulting party reasonable costs and attorneys’ fees incurred by the non-defaulting party as a result of such default or breach.
6. Injunctive Relief. In the event of any violation or threatened violation by either party hereto of its obligations hereunder, the other party shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. This right of injunction shall be in addition to all of the remedies available by statute, at law and in equity.
7. Binding Effect. The easement, rights and restrictions granted herein shall be appurtenant to and shall run with the land, inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns, including without limitation, all such current and future owners of the Westplex Property and the TKA Property. Nothing contained herein shall be deemed to have granted or dedicated a public right-of-way for any general or specific use of any of the easements granted hereunder by the public at large.
8. Amendments. This Agreement may be modified by written amendment executed by both parties and recorded in the Douglas County, Nebraska register of Deeds.
9. Counterparts. This Agreement may be executed in multiple, separate counterparts.
10. Governing Law. This Agreement will be construed and enforceable in accordance with the laws of the State of Nebraska, without application of its choice of law rules.

11. Notices. All notices, demands and requests required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the intended party, (ii) delivered to the then-designated address of the intended party, or (iii) rejected at the then-designated address of the intended party, provided such notice was sent prepaid certified mail, return receipt requested or by overnight courier providing for delivery against receipt. The initial addresses of the parties shall be:

If to TKA: TKA Properties, LLP
 Attn: Mickey Anderson
 17950 Burt Street
 Omaha, NE 68118
 E-mail: manderson@baxterauto.com

If to Westplex: c/o Westplex Development, L.L.C.
 15740 West Center Road
 Omaha, NE 68130

12. Previous Easement. This Agreement shall replace and supersede the previous easement agreement made by the previous parties, dated October 5, 2004, and recorded October 7, 2004, as Document Number 2004132633, which Previous Easement shall be of no further force or effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

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

WESTPLEX LIMITED PARTNERSHIP IV,
a Nebraska limited partnership

By: [Signature]

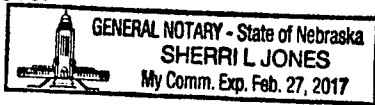
Name: RONALD J CIZEK

Title: GENERAL PARTNER

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this 5 day of JAN., 2017, before me appeared RONALD J CIZEK me personally known, who by being duly sworn, did say that HE is the GEN PART. of WESTPLEX L.P. IV a NE LTD PARTNERSHIP and that said instrument was signed and sealed in behalf of said Ronald J Cizek, and said Ronald J Cizek acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said Ronald J Cizek

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.



[Signature]
Notary Public

My commission expires: 2-27-17

TKA PROPERTIES, LLP

By: _____

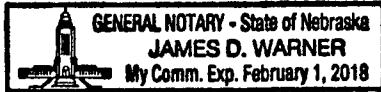
Mickey Anderson

Title: AUTHORIZED AGENT

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this 20 day of JAN., 2017, before me appeared MICKEY ANDERSON to me personally known, who by being duly sworn, did say that HE is the AUTHORIZED AGENT of TKA PROPERTIES, LLP a NEBRASKA LIMITED LIABILITY PARTNERSHIP and that said instrument was signed and sealed in behalf of said TKA PROPERTIES, LLP, and said MICKEY ANDERSON acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said MICKEY ANDERSON

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.



James Warner
Notary Public

My commission expires: _____

EXHIBIT "A"

LOT 5, WESTPLEX, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA.

EXHIBIT "B"

NE SW
SE SW

LEGAL DESCRIPTION

THAT PART OF THE EAST ½ OF THE SW ¼ OF SECTION 16, T15N, R12E OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS, COMMENCING AT THE NE CORNER OF SAID SW ¼;

THENCE SOUTH (ASSUMED BEARING) 869.93 FEET ON THE EAST LINE OF SAID SW ¼; WEST 91.82 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE NE CORNER OF A TRACT OF LAND REFERRED TO AS "PARCEL B" IN A "WARRANTY DEED" RECORDED IN BOOK 1454 AT PAGE 33 OF THE DOUGLAS COUNTY RECORDS, SAID CORNER ALSO BEING ON THE WEST LINE OF 102ND STREET; THENCE CONTINUING WEST 874.74 FEET ON THE NORTH LINE OF SAID "PARCEL B" TO THE NW CORNER THEREOF, SAID CORNER BEING ON THE EAST LINE OF INTERSTATE 680;

THENCE S05°39'19"E 376.00 FEET ON THE EAST LINE OF INTERSTATE 680;

THENCE SOUTHEASTERLY ON THE EAST LINE OF INTERSTATE 680 ON A 1025.92 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING S19°18'30"E, CHORD DISTANCE 201.14 FEET, AN ARC DISTANCE OF 201.46 FEET TO THE SW CORNER OF A TRACT OF LAND REFERRED TO AS "PARCEL A" IN A "WARRANTY DEED" RECORDED IN BOOK 1454 AT PAGE 33 OF THE DOUGLAS COUNTY RECORDS;

THENCE EAST 244.80 FEET ON THE SOUTH LINE OF SAID "PARCEL A";

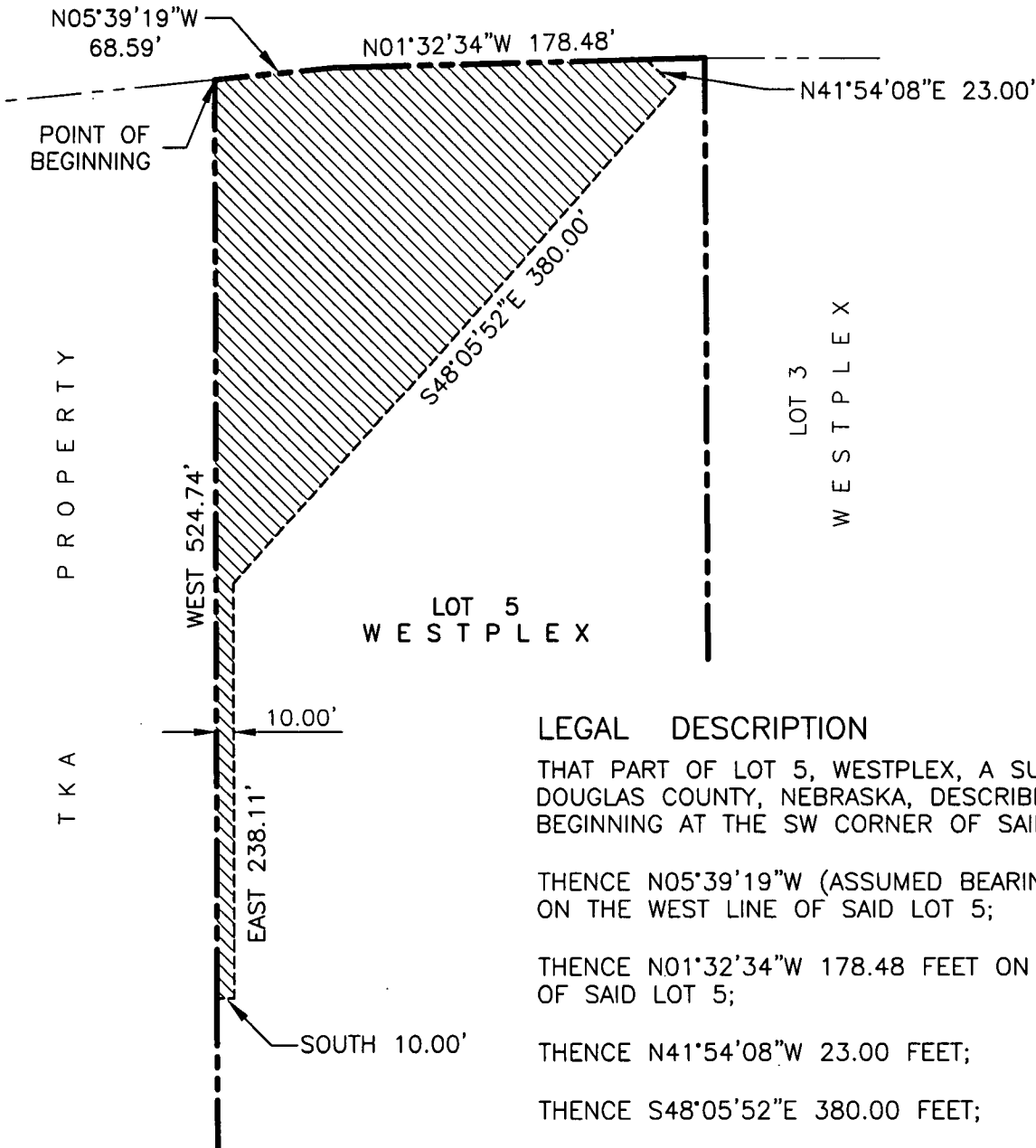
THENCE SOUTH 180.00 FEET;

THENCE EAST 535.00 FEET TO THE WEST LINE OF 102ND STREET;

THENCE NORTH 680.61 FEET ON A LINE 83.20 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SW ¼ AND ON THE WEST LINE OF 102ND STREET;

THENCE NORTHWESTERLY ON THE WEST LINE OF 102ND STREET ON A 237.50 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N07°44'23"W, CHORD DISTANCE 63.97 FEET, AN ARC DISTANCE OF 64.15 FEET TO THE POINT OF BEGINNING.

INTERSTATE NO. 680



LEGAL DESCRIPTION

THAT PART OF LOT 5, WESTPLEX, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS, BEGINNING AT THE SW CORNER OF SAID LOT 5;

THENCE N05°39'19"W (ASSUMED BEARING) 68.59 FEET ON THE WEST LINE OF SAID LOT 5;

THENCE N01°32'34"W 178.48 FEET ON THE WEST LINE OF SAID LOT 5;

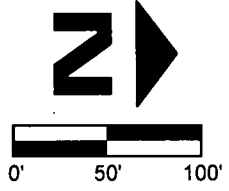
THENCE N41°54'08"W 23.00 FEET;

THENCE S48°05'52"E 380.00 FEET;

THENCE EAST 238.11 FEET ON A LINE 10.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 5;

THENCE SOUTH 10.00 FEET TO THE SOUTH LINE OF SAID LOT 5;

THENCE WEST 524.74 FEET ON THE SOUTH LINE OF SAID LOT 5 TO THE POINT OF BEGINNING.



Job Number: 1767-16-64(EX1)
 thompson, dreessen & dorner, inc.
 10836 Old Mill Rd
 Omaha, NE 68154
 p.402.330.8860 f.402.330.5866
 td2co.com

Date: JANUARY 19, 2017
 Drawn By: RJR
 Reviewed By: JDW
 Revision Date:

EXHIBIT " C "
 DRAKE DEVELOPMENT, INC. Book Page