



BK 1467 PG 286-294



MISC 2002 24639

RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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**RECIPROCAL PERMANENT ACCESS
EASEMENT AND MAINTENANCE AGREEMENT**

THIS RECIPROCAL PERMANENT ACCESS EASEMENT AND MAINTENANCE AGREEMENT is made as of this 15th day of October, 2002, (hereinafter referred to as the "Effective Date") by and between KVT No. 2 Limited Partnership, a Nebraska limited partnership ("KVT No. 2") and The Venteicher Limited Liability Company, a Nebraska limited liability company ("VLLC").

RECITALS:

WHEREAS, KVT No. 2 is the lawful owner of Lots 1 through 8, inclusive, West Point Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska;

WHEREAS, VLLC is the lawful owner of Lots 9 through 11, inclusive, West Point Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska;

WHEREAS, by virtue of the recording of this Reciprocal Permanent Access Easement and Maintenance Agreement (the "Agreement"), the above legally described real property (hereinafter referred to individually as a "Lot" and collectively as the "Lots") shall be owned, held, transferred, sold, conveyed, used, and occupied and mortgaged or otherwise encumbered subject to the provisions of this Agreement and every grantee of any interest in any said Lot, by acceptance of a deed or other conveyance of such interest, and every person or entity owning an interest in any portion of any said Lot, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Agreement and shall be deemed to have consented to the terms hereof;

WHEREAS, each party, as grantor, desires to grant to the other party for the benefit of said other party and for the benefit of all future owners, occupants and mortgagees of the Lots or any part thereof and their respective officers, directors, members, partners, employees, tenants, agents, contractors, customers, invitees, licensees, vendors, subtenants or concessionaires ("Permittees"), fire, rescue and other emergency vehicles, and the landowners association formed or to be formed by KVT No. 2, a right-of-way easement (but not parking), over and upon each of the Lots or any portion thereof within the area depicted on Exhibit A (the "Private Drive") for the purpose of providing pedestrian and vehicular ingress and egress to the Lots (but not parking), and intends that all future owners, occupants and mortgagees and any other persons hereafter acquiring any interest in any of the Lots shall hold said interest subject to certain rights, easements and privileges in, over and upon the Lots or any portion thereof for the purpose of providing pedestrian and vehicular ingress and egress, to and from the foregoing described Lots;

WHEREAS, VLLC and Village Development-Maple Street, L.L.C., a Nebraska limited liability company (hereinafter referred to as "Village Development") have entered into a Real Estate Purchase Agreement dated April 29, 1999, as amended (the "Purchase Agreement"), whereunder VLLC agreed to sell and Village Development agreed to purchase Lot 11, West Point Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska ("Lot 11"); and

*Investor Title of NE
Po Box 6234
Lincoln, NE 68506*

WHEREAS, the term "Walgreen" or "Walgreens" shall mean Walgreen Co., an Illinois corporation (or any of its affiliates, subsidiaries, successors or assigns), who shall be deemed a third party beneficiary to this Agreement. The term "Walgreen Lease" or "Walgreens Lease" shall mean that Lease of Lot 11 from Village Development as landlord to Walgreen as tenant, and any amendments, extensions or replacements thereof.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, including the mutual grants and covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto do hereby GRANT, SELL and CONVEY unto each other and the future owners and mortgagees of the Lots and their respective Permittees, fire, rescue and other emergency vehicles, and the landowners association formed or to be formed by KVT No. 2, an easement for the perpetual non-exclusive right for the purpose of providing vehicular and pedestrian ingress and egress (but not parking) over and upon the Private Drive now or hereafter located upon the Lots in the area described on Exhibits A attached hereto; provided, however, that the rights herein granted to any person or entity, or anyone claiming under them, shall terminate and expire at such time as such person or entity ceases to be an owner or mortgagee of the Lots or any portion thereof, as the case may be, and such rights shall thereafter be held by the new owner or mortgagee, or anyone claiming under them.

It is further agreed as follows:

1. Nature of Easements. The foreclosure of any mortgage covering all or a portion of a Lot or Lots shall in no way affect or diminish any easements granted herein, for all such easements shall remain in full force and effect for the benefit of the grantees described herein. The easements hereby created are not public easements, but are permanent, private easements for the use and benefit of the owners, future owners, occupants, mortgagees, and their Permittees, and fire, rescue and other emergency vehicles. The parties hereto expressly disclaim the creation of any rights in or for the benefit of the public generally. It is understood and agreed that the easements shall continue for so long as any Lot remains in existence.

2. Improvements and Costs and Expenses. KVT No. 2 shall be responsible for installing and constructing the Private Drive and related improvements, including but not limited to storm sewers and drainage structures, within the area depicted on Exhibit A at its sole cost and expense.

3. Maintenance of the Private Drive. The maintenance, repair, replacement and operation of the Private Drive and related improvements shall be the responsibility of the business owner's association formed or to be formed by KVT No. 2, as Declarant, pursuant to the Declaration of Covenants, Conditions, Restrictions and Easements for West Point (South), as the same may be amended from time to time (the "Association"). The Association shall maintain, repair, operate, replace and otherwise keep the Private Drive and related improvements in good repair in its reasonable judgment and discretion. The maintenance shall include, without limitation, the following:

(1) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability.

(2) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition (including, without limitation, removing graffiti and repair of other damage caused by vandalism).

(3) Inspecting, maintaining, repairing and replacing any storm drainage system installed along the private drive.

(4) Inspecting, maintaining, repairing and replacing the lighting, if any, installed along the drive.

4. Restrictions. No barricades, signs, fences, or other dividers will be constructed and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic through the access easement area.

5. Effect of Covenants. Each owner of a Lot, its successors and assigns, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Agreement or to which this Agreement is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person or entity having at any time any interest of estate in said property, and shall inure to the benefit of such Lot owners on like manner as though the provisions, terms and restrictions of this Agreement were received and stipulated at length in each and every deed of conveyance.

6. Waiver. No covenant, restriction, condition or provision of this Agreement shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

7. Savings Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Agreement herein contained, as the case may be, shall not render the remainder of the Agreement invalid, nor any other part therein contained.

8. Amendment, Modification, Notices.

(a) This Agreement may only be amended by the written consent and agreement of the record owners of the Lots or their successors and assigns and the Association. Any such modification or amendment shall be effective when duly recorded in the office of the Register of Deeds in the county in which said property is situated.

(b) Notwithstanding Subparagraph 8(a) above to the contrary, no termination of this Agreement and no modification or amendment of this Agreement shall be made nor shall the same be effective unless the same has been expressly consented to in writing by Walgreen (during the continuance of the Walgreen Lease).

(c) Wherever in this Agreement the consent or approval of an owner of a Lot is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner of a Lot or Walgreen under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing. During the continuance of the Walgreen Lease, any consent by the Owner of Lot 11, to be effective, shall also require the consent of Walgreen.

(d) Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party and Walgreen may change from time to time their respective address for notice hereunder by like notice to the other party and Walgreen. Notice given by any owner of a Lot hereunder to be effective shall also simultaneously be delivered to Walgreen (during the continuance of the Walgreen Lease). The notice addresses of VLLC Company, KVT No. 2, Village Development and Walgreen are as follows:

Walgreen: Walgreen Co.
Attention: Law Department
Mail Stop No. 2252
200 Wilmot Road
Deerfield, Illinois 60015

VLLC: Frank Kulig
13330 Fort Street
Omaha, Nebraska

KVT No. 2: Frank Kulig
13330 Fort Street
Omaha, Nebraska 68164

Village Development: Tamas R. Allan, Manager
Village Development – 156th Street, L.L.C.
1045 Lincoln Mall, Suite 300
Lincoln, Nebraska 68508

9. Reservation of Utilities Easements. KVT No. 2 hereby reserves for its own use and benefit, and for the use and benefit of all future Owners, the right to grant utility easements within the Private Drive in accordance with Article 6.2 of the Declaration of Covenants, Conditions, Restrictions and Easements for West Point (South), which has been executed simultaneously herewith and will be recorded in the Office of the Register of Deeds of Douglas County, Nebraska, immediately after the recordation of this instrument, as supplemented by a Subsidiary Declaration to be executed contemporaneously herewith, which is to be recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

10. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of Nebraska.

EXECUTED this 15th day of October, 2002.

KVT NO. 2 LIMITED PARTNERSHIP,
a Nebraska limited partnership,

By: 
George W. Venteicher, General Partner

THE VENTEICHER LIMITED LIABILITY
COMPANY, a Nebraska limited liability company,

By: *George W. Venteicher*
George W. Venteicher, Managing Member

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

Before me, a Notary Public qualified for said County and State, personally came George W. Venteicher, General Partner of KVT No. 2 Limited Partnership, a Nebraska limited partnership, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of said limited partnership.

WITNESS my hand and Notary Seal on this 15 day of October, 2002.

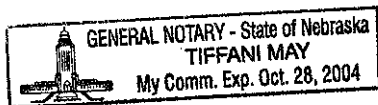


Tiffani May
Notary Public

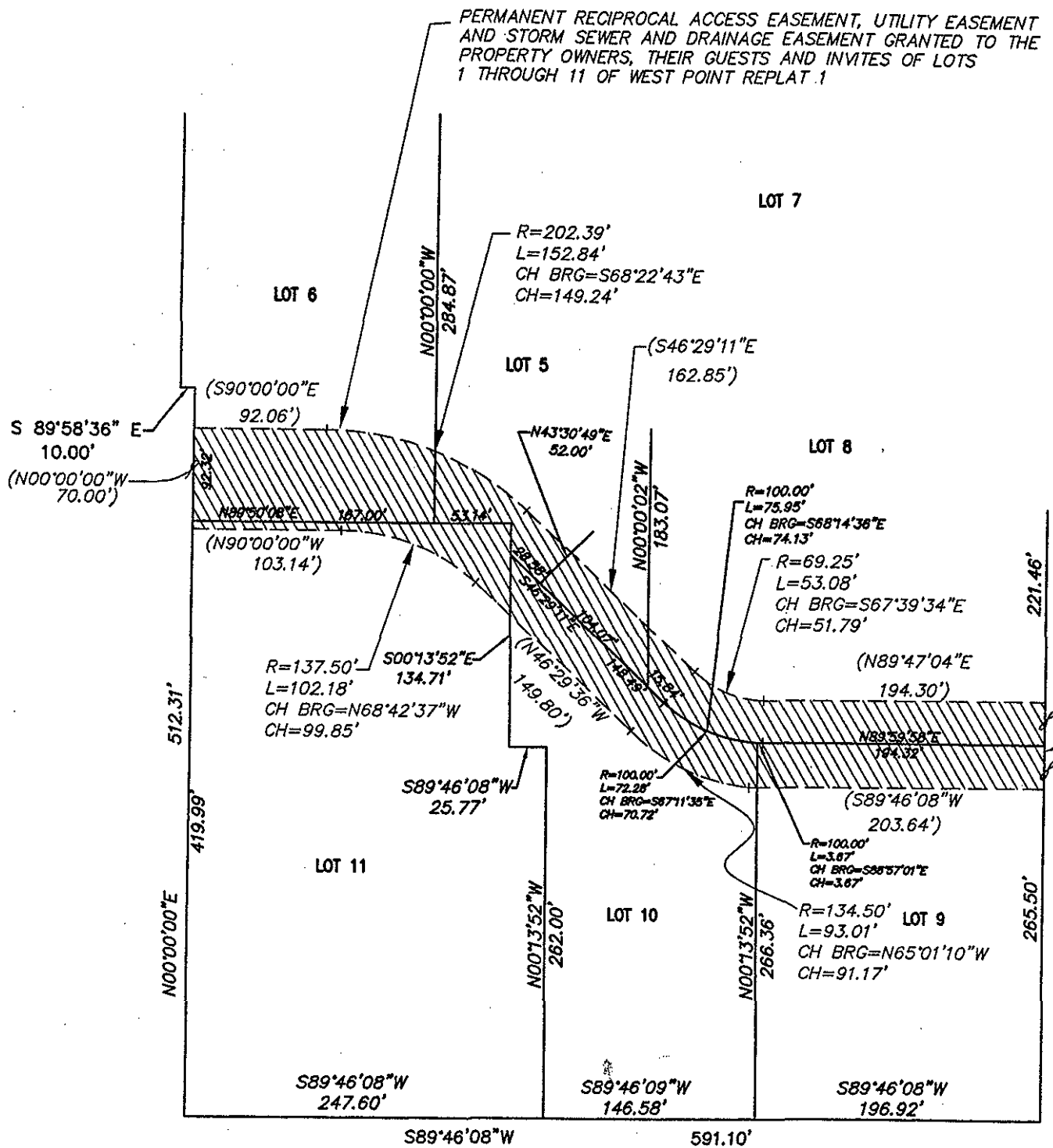
STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

Before me, a Notary Public qualified for said County and State, personally came George W. Venteicher, Managing Member of The Venteicher Limited Liability Company, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of said limited liability company.

WITNESS my hand and Notary Seal on this 15 day of October, 2002.



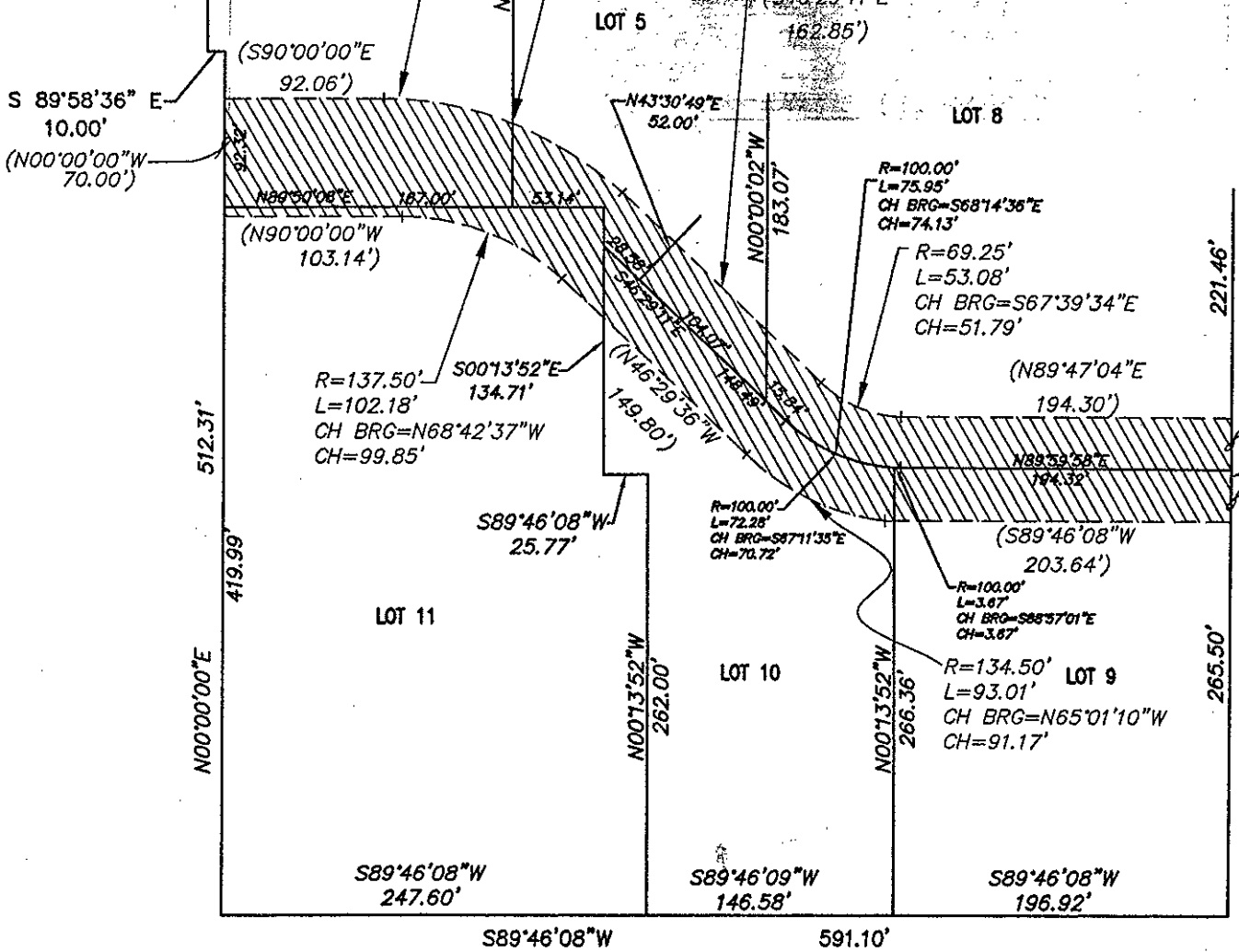
Tiffani May
Notary Public



LEGAL DESCRIPTION

A STRIP OF LAND FOR PERMANENT RECIPROCAL ACCESS EASEMENT, UTILITY EASEMENT AND STORM SEWER AND DRAINAGE EASEMENT PURPOSE; BEING PART OF LOTS 1 THROUGH 11, WEST POINT REPLAT 1, A PLATTED AND RECORDED MAP IN THE SW1/4 OF SECTION 2, T15N, R11E OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 9, THENCE S 00°00'02" E, 26.88 FT. ON THE EAST LINE OF SAID LOT 9; THENCE S 89°46'08" W, 203.64 FT.; THENCE WESTERLY ON A 134.50 FT. RADIUS CURVE TO THE RIGHT, 93.01 FT. (LONG CHORD BEARS N 65°01'10" W, 91.17 FT.); THENCE N 46°29'36" W, 149.80 FT.; THENCE WESTERLY ON A 102.18 FT. RADIUS CURVE TO THE LEFT, 102.18 FT. (LONG CHORD BEARS N 68°42'37" W, 99.85 FT.); THENCE N 90°00'00" W, 70.00 FT. ON THE WEST LINE OF SAID LOTS 11 & 10; THENCE N 00°00'00" W, 70.00 FT. ON THE WEST LINE OF SAID LOTS 11 & 10; THENCE EASTERLY ON A 202.39 FT. RADIUS CURVE TO THE RIGHT, 152.84 FT. (LONG CHORD BEARS S 68°22'43" E, 149.24 FT.); THENCE S 46°29'11" E, 162.85 FT.; THENCE EASTERLY ON A 69.25 FT. RADIUS CURVE TO THE LEFT, 53.08 FT. (LONG CHORD BEARS S 67°39'34" E, 51.79 FT.); THENCE S 89°46'08" W, 25.77 FT.; THENCE S 89°46'09" W, 146.58 FT.; THENCE S 89°46'08" W, 196.92 FT. TO THE SOUTHWEST CORNER OF SAID LOT 9.



LEGAL DESCRIPTION

A STRIP OF LAND FOR PERMANENT RECIPROCAL ACCESS EASEMENT, UTILITY EASEMENT AND STORM SEWER EASEMENT PURPOSE; BEING PART OF LOTS 1 THROUGH 11, WEST POINT REPLAT 1, A PLATTED AND RECORDED MAP IN THE SW 1/4 OF SECTION 2, T15N, R11E OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, BEING MORE OR LESS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 9, THENCE S 00°00'02" E, 26.88 FT. ON THE EAST LINE OF SAID LOT 9, THENCE S 89°46'08" W, 203.64 FT.; THENCE WESTERLY ON A 134.50 FT. RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS N 65°01'10" W, 91.17 FT.); THENCE N 46°29'36" W, 149.80 FT.; THENCE WESTERLY ON A 137.50 FT. RADIUS CURVE TO THE LEFT 102.18 FT. (LONG CHORD BEARS N 68°42'37" W, 99.85 FT.); THENCE N 90°00'00" W, 70.00 FT. ON THE WEST LINE OF SAID LOT 11, THENCE N 00°00'00" W, 70.00 FT. ON THE WEST LINE OF SAID LOTS 11, THENCE N 90°00'00" E, 92.06 FT.; THENCE EASTERLY ON A 202.39 FT. RADIUS CURVE TO THE RIGHT, 152.84 FT. (LONG CHORD BEARS S 68°22'43" E, 149.24 FT.); THENCE S 46°29'11" E, 162.85 FT.; THENCE EASTERLY ON A 69.25 FT. RADIUS CURVE TO THE LEFT, 53.08 FT. (LONG CHORD BEARS S 67°39'34" E, 51.79 FT.); THENCE N 89°47'04" E, 194.30 FT. ON THE EAST LINE OF SAID LOT 8, THENCE S 00°00'00" E, 34.12 FT. ON THE EAST LINE OF SAID LOT 8, TO THE POINT OF BEGINNING, BEING MORE OR LESS 0.95 ACRES MORE OR LESS.

