



BK 1390 PG 033-043



MISC 2001 10477

REGISTER OF DEEDS
DOUGLAS COUNTY, NE

2001 JUL 17 AM 9:54

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ASSIGNMENT OF LEASES AND RENTS

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THIS ASSIGNMENT is made as of the 10th day of July, 2001, between WARREN DISTRIBUTION, INC. f/k/a WARREN OIL COMPANY, INC., a Nebraska corporation (hereinafter called the "Borrower"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association (hereinafter called the "Lender").

WITNESSETH:

WHEREAS, the Borrower and the Lender have entered into a Credit and Security Agreement, dated as of May 24, 1999, as amended by a First Amendment to Credit and Security Agreement dated October 23, 2000, by a Second Amendment to Credit and Security Agreement dated as of December 4, 2000, and by a Third Amendment to Credit and Security Agreement and Waiver (the "Third Amendment") dated of even date herewith (as so amended, and as it may be further amended, modified or restated, being the "Credit Agreement"; capitalized terms not otherwise herein defined being used herein as therein defined), pursuant to which the Lender has agreed to loan to the Borrower up to \$18,285,000.00;

WHEREAS, to secure payment and performance of the obligations of the Borrower under the Credit Agreement and any Notes, the Borrower has executed and delivered to the Lender a Combination Revolving Credit Deed of Trust, Security Agreement and Fixture Financing Statement of even date herewith (hereinafter called the "Deed of Trust"), covering, inter alia, real estate situated in the City of Omaha, County of Douglas, State of Nebraska, legally described on Exhibit A attached hereto and hereby made a part hereof, and the buildings and improvements and certain furniture, fixtures, furnishings, equipment, machinery and personal property owned by the Borrower now or hereafter located thereon (hereinafter collectively called the "Trust Premises"); and

WHEREAS, the Lender, as a condition to the Third Amendment Effective Date and the making of the Real Estate Loan, has required the execution of this Assignment.

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NOW, THEREFORE, In consideration of the premises, and in further consideration of the sum of One Dollar (\$1.00) paid by the Lender to the Borrower, the receipt and sufficiency of which are hereby acknowledged, the Borrower does hereby grant, transfer, set over, assign and deliver to the Lender all of the Borrower's right, title and interest in, to and under all leases, subleases, licenses, concessions, tenancies, management agreements, operating agreements and any other agreements creating the right of possession or the right of use without a transfer of title, whether written or oral, now or hereafter existing, and covering all or any part of the Trust Premises, together with any and all security deposits made thereunder, all extensions, amendments, modifications, renewals and replacements of any thereof, and any guaranties of the lessee's, sublessee's, licensee's, concessionaire's, tenant's, user's, manager's or operator's (hereinafter collectively called "Lessees") obligations under any thereof, each of said leases, subleases, licenses, concessions, tenancies and agreements now existing and hereafter executed or entered, together with all such deposits, extensions, amendments, modifications, renewals, replacements and guaranties, being hereinafter collectively referred to as the "Leases". In addition to the foregoing, the Borrower does further hereby grant, transfer, set over and assign to the Lender, and does hereby relinquish to the Lender all of the Borrower's right to collect and enjoy, all of the rents, income, revenues, royalties, issues and profits, including, without limitation, all amounts payable to the Borrower on account of maintenance, repairs, taxes, insurance and common area or other charges by any other party to any Lease, and all amounts paid in compromise or for cancellation of any Lease by any party thereto other than the Borrower, now or hereafter accruing or owing under or from Leases or otherwise from the Trust Premises or any part thereof, whether accruing before or after foreclosure of the Deed of Trust or during any period of redemption therefrom (hereinafter collectively called "Rentals"). All of said Leases and Rentals are being hereby granted, transferred, set over and assigned for the purpose of securing:

- (1) Payment of all indebtedness evidenced by any Note and the Credit Agreement (including any amendments, extensions, renewals or replacements thereof), of all other sums secured by the Deed of Trust and of all sums payable by the Borrower hereunder; and
- (2) Performance and discharge of each and every obligation, covenant and agreement of the Borrower contained herein, in any Note, in the Deed of Trust, in the Credit Agreement and in any other instrument which secures or refers to any Note.

A. To protect the security of this Assignment, the Borrower agrees as follows:

1. The Borrower agrees to promptly, faithfully and diligently observe, perform and discharge each and every term, condition, obligation, covenant and agreement which the Borrower is now, or hereafter becomes, liable to observe, perform or discharge under any Note, the Deed of Trust and the Leases; to give prompt written notice to the Lender of any notice of default under any Lease on the part of the Borrower received from a Lessee thereunder, or on the part of any Lessee given by the Borrower thereunder, together with an accurate, complete copy of any such notice; and, at the sole cost and expense of the Borrower, to enforce or secure the performance of each and every

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obligation, covenant, condition and agreement to be performed by the Lessees under the Leases.

2. The Borrower shall, at the Borrower's sole cost and expense, appear in and defend any dispute, action or proceeding arising under, growing out of or in any manner connected with or affecting any of the Leases or the obligations, duties or liabilities of the Borrower or any Lessee thereunder, and indemnify Lender against, to hold Lender harmless from and to pay all costs and expenses of the Lender, including attorneys' fees (prior to trial, at trial, and on appeal), in connection with any such dispute, action or proceeding in which the Lender may appear or with respect to which it may otherwise incur costs or expenses, whether or not the Lender prevails therein.

3. Should the Borrower fail to make any payment or to do any act as herein provided, then the Lender may, but without obligation to do so, without notice or demand to or upon the Borrower, and without releasing the Borrower from any obligation hereof, make or do the same in such manner and to such extent as the Lender may deem necessary or desirable to protect the security thereof, including specifically, without limiting its general powers, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights or powers of the Lender, and observing, performing and discharging all or any of the obligations, covenants and agreements of the Borrower in the Leases contained. In exercising any such powers, the Lender may pay its costs and expenses, employ counsel and incur and pay attorneys' fees (prior to trial, at trial and on appeal). The Borrower hereby grants to the Lender an irrevocable power of attorney, coupled with an interest, to perform all of the acts and things provided for in this section and in section C.2 hereof as the Borrower's agent and in the Borrower's name.

4. The Borrower agrees to reimburse the Lender, upon demand, for all sums expended by the Lender under the authority hereof, together with interest thereon at the Default Rate specified in the Credit Agreement from the date expended, and the same shall be added to the indebtedness of the Borrower to the Lender and shall be secured hereby and by the Deed of Trust.

5. Until the indebtedness secured hereby shall have been paid in full, the Borrower covenants and agrees not to enter into any Lease without the prior written approval thereof by the Lender, to provide the Lender with executed copies of all Leases, to assign to the Lender any and all subsequent Leases upon all or any part of the Trust Premises upon the same or substantially the same terms and conditions as are herein contained, and to make, execute and deliver to the Lender, upon demand, any and all instruments that may be necessary or desirable therefor or otherwise effectuate the terms of this Assignment. The terms and conditions of this Assignment shall, however, apply to any such subsequent Leases, whether or not such instruments are executed or delivered by the Borrower.

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6. The Borrower agrees not to modify, amend, extend, waive or in any manner alter the terms of any Lease or reduce the Rental payable thereunder; not to waive, excuse or condone any default by a Lessee under a Lease; not to in any manner release or discharge any Lessee of or from any obligation, covenant, condition or agreement by said Lessee to be performed under a Lease, including the obligation to pay the Rental called for thereunder in the manner and at the places and times specified therein; not to grant any concession to a Lessee; not to cancel or terminate the term of any lease or accept a surrender thereof; not to consent to any assignment or sublease by any Lessee of its rights under any Lease; and not to enter into any new Lease. The Borrower does by these presents expressly release, relinquish and surrender unto the Lender all of the Borrower's right, power and authority to modify, amend, extend, waive or in any manner alter the terms and provisions of the Leases, to reduce Rentals, to waive, excuse or condone a default by a Lessee, to release or discharge any Lessee, to grant concessions to any Lessee, to cancel or terminate the term of a Lease or to accept a surrender thereof, to consent to an assignment or a sublease by a Lessee, and to enter into any new Lease. Any attempt on the part of the Borrower to exercise any such right, power or authority, without the prior written consent of the Lender, shall be a nullity and shall be a default hereunder.

7. Each Lease shall remain in full force and effect despite any merger of the interest of the Borrower and any Lessee thereunder; the Borrower shall not transfer fee title to the Trust Premises to any Lessee, without the prior written consent of the Lender; and no such transfer shall relieve the Borrower of any liability to the Lender, unless the Lender specifically agrees otherwise in writing.

8. The Borrower shall deliver to the Lender, promptly upon request by Lender a duly executed estoppel certificate from any Lessee, on Lender's form.

9. The Borrower shall deliver to the Lender, promptly upon request by the Lender, all security deposits held by the Borrower pursuant to the terms of the Leases, which the Lender shall hold and disburse in accordance with the terms of the Leases.

B. The Borrower hereby covenants and represents and warrants to the Lender that:

1. The Borrower has good right and lawful authority to grant, transfer, set over and assign, and, other than the Deed of Trust, has not executed any prior assignment or alienation of its rights, title and interest in, to and under the Leases and to and in the Rentals, or otherwise encumbered the same.

2. The Borrower has not performed or committed any act or executed any instrument, and is not bound by any law, statute, regulation, order, mortgage, indenture, contract or agreement, which might prevent the Lender from operating under any of the terms and conditions hereof, or which would limit the Lender in such operation.

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3. No Rental has been or will be paid by any Lessee, nor has been or will be collected or accepted by the Borrower, for more than one (1) month in advance, and the payment of none of the Rentals to accrue for any portion of the Trust Premises has been or will be in any other manner anticipated, waived, released, excused, reduced, discounted, or otherwise discharged, altered or compromised by the Borrower. The Borrower hereby waives any right of set off against any person in possession of any portion of the Trust Premises. The Borrower has not incurred and shall not incur any indebtedness to any Lessee.

4. The Borrower has not executed or agreed to, shall not execute or agree to, and shall not permit to occur by operation of law any other assignment, alienation, pledge, encumbrance or transfer of any of its right, title or interest in, to or under the Leases or Rentals, except as provided for in the Deed of Trust.

5. The Leases which have been executed on or before the date hereof are in full force and effect; the Leases have not been amended or modified; the Borrower has granted no concession and no waiver, release, reduction, postponement or alteration of rental to the Lessees under said Leases; and there is no default now existing under the said Leases, nor has any event occurred which, with the passage of time and/or the giving of notice, would constitute a default thereunder.

6. The Borrower shall not permit any of the Leases to become subordinate to any lien other than the liens hereof and of the Deed of Trust.

C. It is mutually agreed that:

1. This is a present, absolute, effective, irrevocable and completed assignment by the Borrower to the Lender of the Leases and Rentals and of the right to collect and apply the same, which is not contingent upon Lender being in possession of the Trust Premises. However, so long as there exists no event of default under any Note, under the Deed of Trust, under the Credit Agreement, or under any other instrument which secures or refers to any Note (hereinafter called "Other Security Instrument"), and no default exists in the performance of any obligation, covenant or agreement herein contained (hereinafter called "event of default"), the Borrower shall have a conditional opportunity to collect, but not more than (1) month in advance, all Rentals from the Trust Premises, in trust for the Lender, and to use the same for payment of Impositions (as that term is defined in the Deed of Trust), debt service, operating expenses, insurance premiums which the Borrower is required to pay under Section 1.8 of the Deed of Trust, all other costs and expenses which the Borrower is required to pay under and pursuant to any Note, to the Deed of Trust, to the Credit Agreement and to this Assignment, and the indebtedness secured hereby, as and when due, before using said Rentals for any other purposes, and the excess only shall be the Borrower's absolute property.

2. Upon or at any time after the occurrence of an event of default hereunder, under any Note, under the Deed of Trust, under the Credit Agreement or under any Other

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Security Instrument, or if any representation or warranty be made by the Borrower to the Lender in connection with the Loans is untrue in any material respect, the Lender may, at its option, but without obligation to do so, without notice to or consent of the Borrower, either in person or by agent, without regard for the adequacy of the security for the indebtedness secured hereby, the commission of waste or the solvency of the Borrower, with or without bringing any action or proceeding, or by a receiver or trustee to be appointed by a court, enter upon, take possession of, maintain, manage and operate the Trust Premises, make, execute, enforce, modify, alter, cancel and accept the surrender of Leases (whether or not the same extend beyond the term of the Deed of Trust), obtain or evict tenants, fix or modify Rentals, refund and collect security deposits, and do any acts which the Lender deems proper to protect the security hereof, and either with or without taking possession of the Trust Premises, in its own name or in the name of the Borrower, sue for or otherwise demand, collect, receive, and give receipts for all Rentals, and apply the same upon the costs of collection thereof, including the fees and costs of agents and attorneys employed by the Lender; upon the costs of managing, operating and leasing the Trust Premises, including taxes, insurance, maintenance, repairs, improvements, the fees of professional managing agents, architects, engineers, and appraisers, license and permit fees, leasing fees and commissions, and Lender's out-of-pocket expenses, and upon any indebtedness secured hereby, in such order as the Lender may determine, subject to applicable statutory requirements, if any, and to the requirements of Section 1.13 of the Deed of Trust.

The Lender or such a receiver shall be entitled to remain in possession of the Trust Premises and to collect the Rentals throughout any statutory period of redemption from a foreclosure sale. The entering upon and taking possession of the Trust Premises, the collection of such Rentals and the application thereof as aforesaid shall not cure or waive any event of default or waive, modify or affect any notice of default under any Note, under the Deed of Trust, under the Credit Agreement, under any Other Security Instrument or hereunder, or invalidate any act done pursuant to such event of default or notice of default. The Lender may, without entering into possession or pursuing any other remedy as provided in this section or at law or in equity, or in conjunction with such possession or pursuit of other remedy, give notice to any or all Lessees authorizing and directing said Lessees to pay Rentals directly to the Lender. If a Lessee receives such a notice, the Borrower hereby directs such Lessee to make payment pursuant thereto, and it shall be conclusively presumed, as between the Borrower and such Lessee, that the Lessee is obligated and entitled to make such payment to the Lender, and that such payment constitutes payment of Rentals under the Lease in question. Such notice may be given either in the Lender's or in the Borrower's name. The Borrower shall in every way facilitate the payment of Rentals to the Lender, when the Lender has the right to receive the same hereunder. The Lender shall be accountable only for Rentals actually collected hereunder and not for the rental value of the Trust Premises. The Lender shall not be liable for any security deposit made by any Lessee unless and until the Lender comes into actual, physical possession and control thereof. Failure of the Lender to collect, or discontinuance by the Lender from collecting, at any time, and from time to time, any

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Rentals, shall not in any manner affect the rights of the Lender to thereafter collect the same.

3. The Lender shall have the right, under this Assignment, to take possession of and use, without rental or charge, any fixtures, equipment, furniture, appliances, personal property, books of account and records of the Borrower or its agents located in or constituting a part of the Trust Premises in connection with the Lender's occupancy, management and operation of the Trust Premises. The Lender shall be deemed to be the creditor of any Lessee in respect of any assignment for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceeding affecting such Lessee; provided, however, that the Lender shall not be obligated to file timely claims in such proceedings or to otherwise pursue any creditor's rights therein.

4. The Lender shall not be deemed to be a partner of, or a joint venturer with, the Borrower with respect to the Trust Premises or to be a participant of any kind in the management or operation of the Trust Premises. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Lease, or with respect to the Trust Premises or the inspection, maintenance or repair thereof, under or by reason of this Assignment, and the Borrower shall and does hereby agree to defend and indemnify the Lender against, and to hold it harmless from, any and all liability, loss or damage which the Lender may or might incur under the Leases, by reason of any death, personal injury or property damage occurring on or about the Trust Premises, or otherwise under or by reason of this Assignment and against and from any and all claims and demand whatsoever which may be asserted against the Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease, or by reason of any such death, personal injury or property damage. Should the Lender incur any such liability, loss or damage under any Lease, by reason of any such death, personal injury or property damage, or under or by reason of this Assignment, or as a result of or in defending against any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees (including such costs, expenses and fees prior to trial, at trial and on appeal), together with interest thereon at the Default Rate specified in the Credit Agreement from the date incurred, shall be secured hereby and by the Deed of Trust, and the Borrower shall reimburse the Lender therefor immediately upon demand. Neither this Assignment, nor the exercise by the Lender of its rights hereunder, shall be deemed to constitute the Lender a mortgagee in possession of the Trust Premises, unless the Lender elects in writing to be so constituted.

5. If any event of default shall occur under any Note, under the Deed of Trust, under the Credit Agreement, under any Other Security Instrument or hereunder, or if any representation or warranty made by the Borrower to the Lender in connection with the Loans is untrue in any material respect, then the Lender may, at its option, declare all sums secured hereby immediately due and payable, and, in addition to making available to the Lender any remedies for default herein set forth, such event of default or breach of

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representation or warranty shall, at the Lender's sole option, constitute and be deemed to be an event of default under the Deed of Trust, entitling the Lender to every and all rights and remedies therein contained, in addition to those rights and remedies herein set forth. without regard to the adequacy of security for the indebtedness secured hereby, the commission of waste or the insolvency of the Borrower.

6. Upon the payment in full of all indebtedness secured hereby, as evidenced by the recording or filing of any instrument of satisfaction or full release of the Deed of Trust, unless there shall have been recorded another mortgage in favor of the Lender covering all or any portion of the Trust Premises, this Assignment shall become and be void and of no further effect.

7. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and they are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the other terms hereof shall be in no way affected thereby. The Lender shall be entitled to all rights and remedies available hereunder, under any Note, under the Deed of Trust, under the Credit Agreement, under any Other Security Instrument, at law, in equity or under statute now and/or at the time of exercise thereof, even though such rights and remedies were not available on the date first above written, and all such rights and remedies may be exercised at any time and from time to time concurrently, separately, successively and in any order of preference, at the Lender's sole discretion.

8. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, executors, administrators, personal representatives, legal representatives, successors and assigns of the Borrower and the Lender; provided, however, that nothing in this section is intended to be or shall be construed as a waiver of the rights of the Lender under Section 1.12 of the Deed of Trust.

9. This Assignment is given as security in addition to the security of the Deed of Trust, and not as part of the security of the Deed of Trust. All rights and remedies herein conferred may be exercised whether or not foreclosure proceedings are pending under the Deed of Trust and during any statutory period of redemption. The Lender shall not be required to resort first to the security of this Assignment or of the Deed of Trust before resorting to the security of the other, and the Lender may exercise the security hereof and of the Deed of Trust concurrently or independently and in any order of preference, all rights and remedies of the Lender set forth herein, in any Note, in the Deed of Trust, in the Credit Agreement, in the Other Security Instruments, at law, in equity, under statute and by contract being cumulative. No failure by the Lender to avail itself of any of the terms, covenants or conditions of this Assignment for any period of time shall be deemed to constitute a waiver thereof. The Lender shall have the right to assign the Borrower's rights, title and interests in, to and under any Leases and in and to

the Rentals to any other or subsequent holder of any Note or any participant therein, or to any person, party or entity which acquires title to the Trust Premises through foreclosure or otherwise, and any such assignees shall have all of the rights, remedies and powers provided to the Lender herein. All words and phrases used herein shall be construed to include the singular or plural number and the masculine, feminine or neuter gender, as may be appropriate under the circumstances.

10. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing, and shall be deemed given or served when personally delivered or when deposited in the U.S. Mail, registered or certified mail, return receipt requested, postage prepaid, or deposited with Federal Express, Airborne or another reputable overnight courier, addressed as follows:

If to the Borrower: Warren Distribution, Inc.
727 South 13th Street
Omaha, NE 68102
Attention: Mr. Chuck Downey

If to the Lender: U.S. BANK NATIONAL
ASSOCIATION
U.S. Bank Place
601 Second Avenue South
Minneapolis, Minnesota 55402
Attention: Business Finance Division

With a copy to: Fabyanske, Westra & Hart, P.A.
1100 Kinnard Financial Center
920 Second Avenue South
Minneapolis, Minnesota 55402
Attention: Frederick H. Ladner, Esq.

Each party hereto may change its above-stated address from time to time by serving written notice of the change upon the other party hereto as above provided at least ten (10) days prior to the effective date of said change.

11. This Assignment, and the interpretation and enforcement thereof, shall be governed by the laws of the State of Nebraska.

12. ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION RELATING TO OR ARISING FROM THIS ASSIGNMENT. AT THE OPTION OF ASSIGNOR, THIS ASSIGNMENT MAY BE ENFORCED IN ANY UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA OR THE STATE COURT SITTING IN DOUGLAS COUNTY, NEBRASKA; ASSIGNOR CONSENTS TO THE JURISDICTION AND VENUE OF ANY SUCH

COURT AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT PROPER OR CONVENIENT. IN THE EVENT AN ACTION IS COMMENCED IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS ASSIGNMENT, ASSIGNEE, AT ITS OPTION, SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO ONE OF THE JURISDICTIONS AND VENUES ABOVE DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE.

IN WITNESS WHEREOF, the Borrower has caused this Assignment to be duly executed as to the day and year first above written.

WARREN DISTRIBUTION, INC. f/k/a WARREN OIL COMPANY, INC., a Nebraska corporation

By Charles P. Downey
Its President/CFO

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 10 day of July, 2001, by Charles P. Downey, the President/CFO of, WARREN DISTRIBUTION, INC. f/k/a WARREN OIL COMPANY, INC., a Nebraska corporation, on behalf of said corporation.

Deborah Sherman
Notary Public



THIS INSTRUMENT WAS PREPARED BY:

Fabyanske, Westra & Hart, P. A. (FHL)
Suite 1100
920 Second Avenue South
Minneapolis, MN 55402

EXHIBIT A

LEGAL DESCRIPTION

PARCEL A:

The West 8 feet of the North one-half and the South half of Lot Three (3) and all of Lot Four (4), in Block One Hundred Ninety-Four (194), in the CITY OF OMAHA, in Douglas County, Nebraska AND Lots One and Two (1 &2), in Block One Hundred Ninety-four (194) in the CITY OF OMAHA, in Douglas County, Nebraska.

PARCEL B:

Beginning at a point formed by the intersection of the easterly line of 13th Street with the northerly line of Leavenworth Street; thence in a northerly direction along the easterly line of 13th Street 132 feet to a point on the southerly line of a public alley; thence in an easterly direction along the southerly line of the said public alley 132 feet to a point; thence at right angles in a southerly direction 68.6 feet to a point; thence at right angles in a westerly direction 11.95 feet to a point; thence at right angles in a southerly direction 63.4 feet to a point on the northerly line of Leavenworth Street; thence in a westerly direction 120.05 feet to the point of beginning, being all of Lot Five (5) and part of Lot Six (6), in Block One Hundred Ninety-four (194), in the CITY OF OMAHA, in Douglas County, Nebraska.