

MEMORANDUM

TO: Finance, Expenditures and Legal Subcommittee

FROM: Lori Ann Laster, Stormwater Management Engineer

SUBJECT: Review and Recommendation on Arlington Buyout Purchase Agreement

DATE: October 3, 2018

The District has received grant funding through FEMA's Flood Mitigation Assistance Program to purchase 2 properties in the floodplain in Arlington, Nebraska. The two properties are located in the floodplain of Bell Creek and have been repeatedly flooded.

The District hired Valuation Services to perform appraisals of the properties included in the grant application. Purchase agreements for the appraised value of each property were presented to the property owners.

Kelly and Tiffany Eastwood have accepted the appraisal value of \$110,000 for residential property located at 425 N. 1st Street, Arlington, NE. (see attached purchase agreements).

Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute for and on behalf of the District the Purchase Agreement in the form as presented to this meeting providing for the purchase by the District from Kelly and Tiffany Eastwood, of property located at 425 N. 1st Street, Arlington, Nebraska for the purchase price of \$110,000, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

National Flood Hazard Layer FIRMette



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee, See Notes, Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
		Coastal Transect Baseline
MAP PANELS		Profile Baseline
		Hydrographic Feature
		Digital Data Available
		No Digital Data Available
		Unmapped

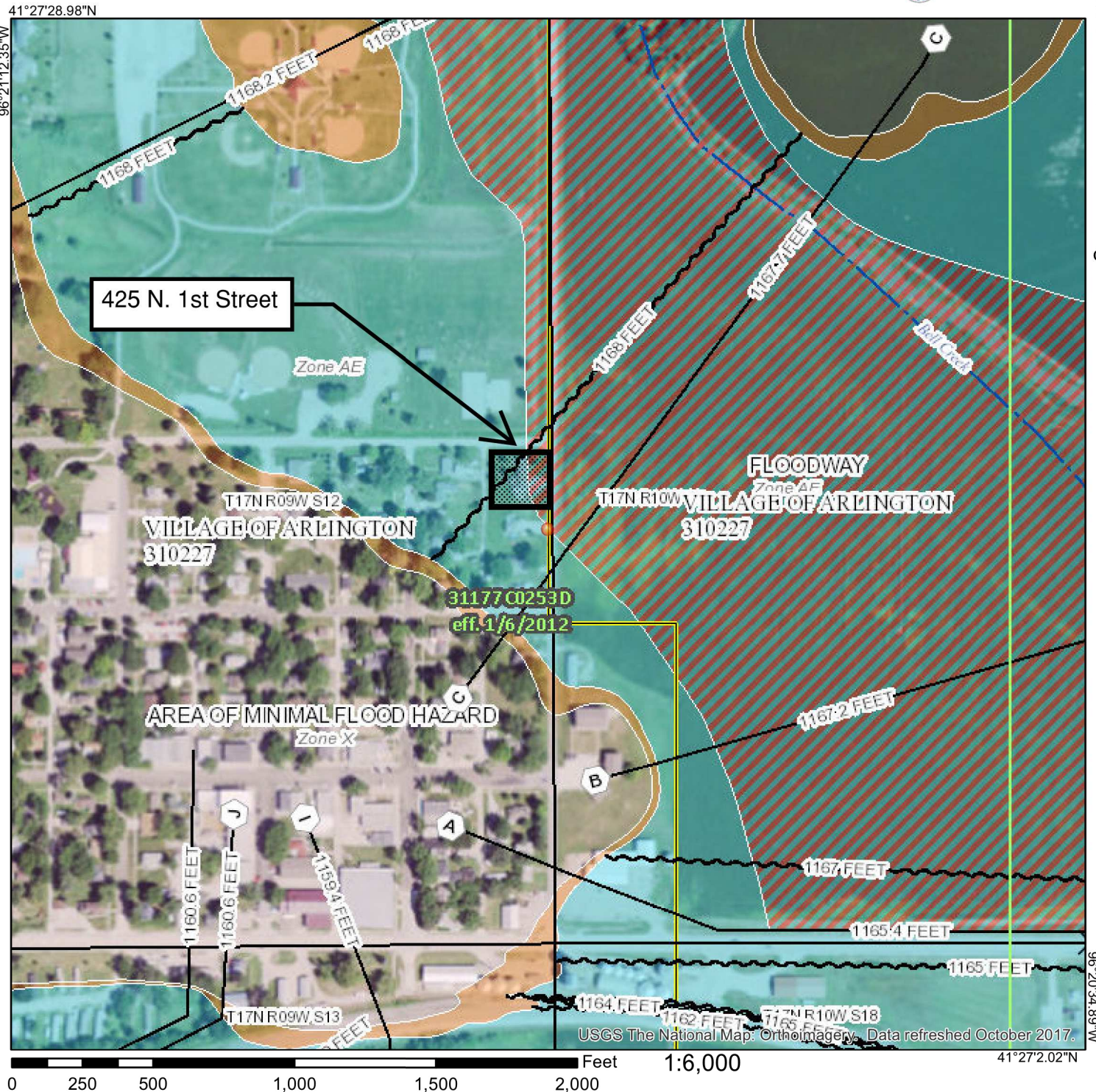


The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 10/3/2018 at 11:16:25 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



**PURCHASE AGREEMENT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
FLOODWAY PURCHASE PROGRAM**

THIS AGREEMENT (hereinafter referred to as "THIS AGREEMENT") is dated as of this 18th day of October, 2018, by and between Kelly and Tiffany Eastwood (collectively hereinafter referred to as "Seller") and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "Purchaser").

RECITALS:

A. Seller is the owner of that certain real estate located in Washington County, Nebraska legally described as Lots 9, 10, 11 and 12, Block 22, Arlington, Nebraska (the "Property").

B. Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller marketable fee simple title to the Property.

C. Purchaser desires to purchase and Seller desires to sell all of said Property for the Purchase Price (as defined below).

AGREEMENT:

NOW, THEREFORE, in consideration of the recitals and the mutual agreements, provisions and covenants herein contained, Seller and Purchaser hereby agree as follows:

SECTION 1. PROPERTY.

Subject to the terms and conditions of this Agreement, Seller agrees to sell, convey, assign, transfer and deliver to Purchaser, and Purchaser shall buy, accept and receive from Seller on the Closing Date (defined below) the Property together with all of the rights, privileges and appurtenances thereunto belonging and all of the rights of Seller in and to all improvements and fixtures thereon, free and clear of all liens, encumbrances, limitations, covenants, reservations, conditions, restrictions and easements except for Permitted Encumbrances (defined below).

SECTION 2. PURCHASE PRICE.

Subject to the terms and conditions of this Agreement, and in reliance upon the representations and warranties of Seller herein contained, and in consideration of the sale, conveyance, assignment, transfer and delivery of the Property by Seller to Purchaser pursuant to the terms hereof, Purchaser agrees to purchase the Property from Seller and pay to Seller a lump sum payment of One Hundred and Ten Thousand and no/100 dollars (\$110,000.00) (the "Purchase Price"). Purchaser shall pay the Purchase Price to Seller by written check on the Closing Date (defined below).

SECTION 3. CLOSING.

Subject to the terms and conditions contained in this Agreement, the transfer of the Property from Seller to Purchaser (the "Closing"), pursuant to a full warranty deed, will take place at the offices of the Title Company (defined below), within thirty (30) days after the expiration of the Inspection Period (defined below) or such other date as mutually agreed to by the parties (the "Closing Date").

SECTION 4. WARRANTIES.

Seller represents, warrants and covenants that:

4.1 (a) Seller has no knowledge that Hazardous Substances (as hereinafter defined) exist or are located on, under or about the Property;

(b) Seller has no knowledge concerning any actual or possible liabilities existing with respect to Hazardous Substances on, under or about the Property;

(c) Seller has no knowledge that any owner of the Property has engaged in any conduct or activities which may have resulted in the release, discharge or contamination of any Hazardous Substance on, under or about the Property;

(d) Seller has not used, generated, stored or disposed of, and will not use, generate, store or dispose of, at any time prior to the Closing, above, in, on, under or upon the Property, any Hazardous Substance; and

(e) Seller has not received notice, either orally or in writing, of the existence of any Hazardous Substance of any kind presently existing on, under or about the Property or any property abutting the Property. For purposes of this section, "Environmental Laws" shall refer to the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA") 42 U.S.C. § 4601 et seq., and the Resource Conservation and Recovery Act, as amended ("RCRA") 42 U.S.C. § 6901 et seq., and any other federal, state or local law, ordinance, order, rule, regulation or other governmental restriction or requirement pertaining to environmental matters. For purposes of this section "Hazardous Substance" shall have the same meaning and definition as set forth in CERCLA, provided, however, that as it is used herein, the term "Hazardous Substance" shall also include: (i) any pollutant, contaminant or hazardous material as those terms are defined by CERCLA or any other Environmental Laws; (ii) any solid waste or hazardous constituent as those terms are defined by, or as otherwise identified by RCRA; (iii) crude oil, petroleum and fractions or distillates thereof; and (iv) any infectious waste or medical waste as defined by any applicable Environmental Laws.

4.2 Seller has full right, power and authority to enter into and execute this Agreement, sell the Property and otherwise consummate the transactions contemplated herein in accordance

with the terms and conditions of this Agreement; and the execution, delivery and performance of this Agreement by Seller are duly authorized and constitute legal, valid and binding obligations of Seller enforceable in accordance with their terms; Seller is duly organized, validly existing and in good standing under the laws of the state of its formation;

4.3 There are no unrecorded leases, management agreements, liens, covenants, easements, conditions or restrictions which concern the Property. Any and all leases or other occupancy rights, whether verbal or written, (and any right of occupancy) shall be terminated prior to Closing;

4.4 There is no action, suit or proceeding before any court or governmental body or authority pertaining to the Property or the transaction contemplated by this Agreement or to its consummation that has been instituted or, to Seller's knowledge, threatened or contemplated.

SECTION 5. CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER.

The obligations of the Purchaser to purchase and acquire the Property from Seller is subject to the satisfaction, in Purchaser's sole and absolute discretion, on or before the Closing Date, or earlier date if specified, of all of the following conditions, which conditions may be waived in writing by Purchaser:

5.1 Title. Seller's delivery of good and marketable, insurable title to the Property at Closing, free and clear of all liens (including real estate taxes), leases, mortgages and encumbrances except Permitted Encumbrances.

5.2 Warranties and Covenants. All warranties and representations of Seller set forth herein shall be true and correct in all material respects as of the Closing Date, and Seller shall have complied with all of its covenants and obligations set forth in this Agreement.

5.3 No Termination. Purchaser shall not have terminated this Agreement in accordance with the provisions of this Agreement.

SECTION 6. TITLE INSURANCE.

6.1 Purchaser shall obtain a Commitment for Title Insurance (the "Commitment") from Nebraska Title Company (the "Title Company") within twenty (20) days of the date this Agreement is signed by Seller and returned to Purchaser showing marketable title in Seller. Until the expiration of the day that is thirty (30) days after receipt of such Commitment (the "Inspection Period"), Purchaser shall have the right to specify to Seller any conditions or other matters disclosed in the Commitment or any survey Purchaser obtains that are objectionable to Purchaser. In the event that Seller is unable or unwilling to correct any such objection on or prior to the Closing Date, then Purchaser may cancel or terminate this Agreement. Purchaser

shall have the further option of waiving in writing its objection with respect to all or any objection(s) and closing the transaction contemplated by this Agreement despite such objection(s). Matters disclosed in the Commitment and/or survey to which Purchaser does not object or to which Purchaser objects but subsequently waives such objection in accordance with the terms of this Agreement shall be considered "Permitted Encumbrances"; provided, however, that notwithstanding anything herein to the contrary, in no event shall any of the Schedule B "standard exceptions" to the Commitment be considered a Permitted Encumbrance. The cost of title insurance shall be paid in full by Purchaser.

6.2 As long as this Agreement is in effect, Seller shall not transfer, convey, lease or otherwise dispose of any right, title or interest in the Property except with written consent of Purchaser. Seller further agrees not to consent to or allow any new lien, encumbrance, condition reservation, easement, lease, restriction or covenant against the Property other than the lien for current real estate taxes due but not yet delinquent, except and to the extent that such liens shall be released at Closing.

6.3 Notwithstanding anything herein to the contrary, as of the Closing Date, no portion of the Property will be subject to any agreement, right of first refusal, lease or other undisclosed or unrecorded interest, right or restriction. Seller hereby certifies that as of the Closing Date, there will be no claims for labor performed, and no claim for materials furnished to the Property, by any person or entity, who has not been paid in full, for at least one hundred twenty (120) days prior to the Closing Date. Seller hereby agrees to indemnify and hold Purchaser harmless from and against any such claims.

SECTION 7. INSPECTIONS; SURVEY.

Purchaser and its representatives, at its expense, until the expiration of the Inspection Period, shall have the right to enter upon the Property to conduct studies and tests, including the ALTA or other survey, or for any other purpose which may assist Purchaser to determine the suitability of the Property for Purchaser's desired purposes. If, within the Inspection Period, in Purchaser's sole discretion, the Property is not suitable for Purchaser's desired purposes, then, Purchaser either may: (i) complete the purchase of the Property in the existing condition; or (ii) declare this Agreement null and void at any time prior to the expiration of the Inspection Period. If Purchaser shall notify Seller in writing within the Inspection Period of its election to terminate this Agreement, then this Agreement shall be null and void. If Purchaser shall fail to notify Seller of its election to terminate this Agreement within the Inspection Period, Purchaser shall be deemed to have waived the right to terminate this Agreement for the reasons specified in Section 7 hereof.

SECTION 8. EXPENSES; PRORATIONS.

Seller shall pay all costs associated with the transfer of the Property and curing title objections. Purchaser shall bear all expenses associated with its inspection of the Property. Each party shall pay its own attorney's fees. Ad valorem real estate taxes that become delinquent in the year in which the Closing occurs shall be prorated between Purchaser and Seller. Seller shall pay

all real estate taxes for years prior to Closing. All special assessments approved, assessed, or levied by any authority which affect the Property on or prior to the Closing Date shall be paid by Seller, but Seller shall not be responsible for any special assessments approved, assessed, or levied by any authority after the Closing Date. Purchaser shall pay for the ALTA or other survey.

SECTION 9. POSSESSION.

Possession of the Property shall be delivered to Purchaser at Closing.

SECTION 10. DEFAULT.

10.1 Default by Seller. In the event of Seller's failure to complete the transaction contemplated by this Agreement, Purchaser, at its option, may (i) terminate this Agreement by written notice to Seller and both parties shall be discharged from all duties of performance hereunder; or (ii) enforce this Agreement by action for specific performance of this Agreement or by an action for damages.

10.2 Default by Purchaser. In the event of Purchaser's failure to complete the transaction contemplated by this Agreement, Seller, at its option, may (i) terminate this Agreement by written notice to Purchaser and both parties shall be discharged from all duties of performance hereunder, or (ii) enforce this Agreement by an action for specific performance of this Agreement or by an action for damages.

10.3 Remedies Exclusive. The remedies provided in this Section 10 are exclusive and noncumulative, and Seller and Purchaser each hereby waives the right to pursue any and all other remedies for default not expressly provided for in this Agreement, and Purchaser and Seller each acknowledge that the provision of this Section 10 is a material inducement to each of them to enter the transaction contemplated hereby.

SECTION 11. EMINENT DOMAIN.

It is agreed among the parties that this Agreement is entered into voluntarily, Seller having been informed that this is a voluntary program and that Purchaser will not use, and has not threatened to use, its power of eminent domain (condemnation) to acquire the Property.

SECTION 12. MISCELLANEOUS.

The following miscellaneous provisions shall apply to this Agreement:

12.1 Agent's Commission. The parties hereto acknowledge that no agents or brokers have been retained to represent either party in this transaction, and each party hereto agrees to indemnify and hold harmless the other party from any claims asserted by any other agent or broker

or other person arising out of any act by such party as a result of the consummation of this transaction.

12.2 Waivers. Seller and Purchaser may, by mutual agreement and written notice to the other, (a) extend the time for performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations and warranties of the other contained in this Agreement or in any documents delivered pursuant to this Agreement; (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement; or (d) waive or modify performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement. Any waiver by Seller or Purchaser of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Seller hereby waives compliance by Purchaser with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Neb. Rev. Stat. Secs. 25-2501, *et seq.*).

12.3 Notices. All notices which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be sufficient in all respect if given in writing, and if delivered in person, effective the date of delivery, or if mailed by registered, certified or express mail, postage prepaid, effective the day after depositing the notice in the U.S. Mail service or an overnight express mail carrier, as follows:

If to Seller: Kelly and Tiffany Eastwood
425 N. 1st St.
Arlington, NE 68002

If to Purchaser: Papio-Missouri River National Resources District
Attn: John Winkler
8901 S. 154th Street
Omaha, Nebraska 68138

or at such other address as any party hereto shall have designated by notice in writing to the other parties hereto.

12.4 Amendments and Supplements; Survival. At any time before the Closing Date, this Agreement, or any other agreement relating to this Agreement, may be amended or supplemented by additional agreements, articles or certificates as may be determined by Seller and Purchaser to be necessary, desirable or expedient to further the purposes of this Agreement or to clarify the intention of the parties hereto, or to add to or modify the covenants, terms or conditions hereof or to effect or facilitate any approval or acceptance of the transactions contemplated by this Agreement or the

consummation of the transaction contemplated hereby. All representations, warranties and covenants made in or pursuant to this Agreement shall survive the Closing hereunder.

12.5 Entire Agreement: Time of Essence. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the parties with respect to the subject matter of this Agreement. Time is of the essence of this Agreement.

12.6 Applicable Law; Binding Effect. This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Nebraska applicable to contracts made and performed in Nebraska. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

12.7 Captions. The captions contained in this Agreement are for convenience only and are not intended to limit or define the scope or effect of any provision of this Agreement.

12.8 Payment in Full. The Purchase Price shall constitute payment in full for the Property and for any and all damages and diminishment in the value, if any, of Seller's remainder or other severance damages that may be sustained by Seller by reason of any severance of the Property from other property of Seller.

12.9 Memorandum of Purchase Agreement; Notice of Interest. Purchaser and Seller shall, if requested by Purchaser, execute a Memorandum of Purchase Agreement in a form reasonably satisfactory to the Parties which shall be recorded at Purchaser's expense with the Register of Deeds of Washington County, Nebraska. At Purchaser's election, a Notice of Interest may be recorded with the Register of Deeds of Washington County, Nebraska.

12.10 Salvage. After the execution of this Agreement and by the Closing Date provided herein, Seller shall have the right, at Seller's cost, to remove from the Property and convert to Seller's own use any and all personal property, including but not limited to any garage, shed and/or residential dwelling on the Property, including contents of structures and fences. Until the Closing, Seller shall bear the risk of loss of all structures or other improvements on the Property and shall have an insurable interest therein. Seller shall not commit waste as to any other structure or improvement on the Property. Any partial salvage of a building or other structure on the Property by Seller shall be done in a good and workmanlike manner so as not to impair the structural integrity of the building or structure. Seller agrees to indemnify, hold harmless and defend Purchaser from any and all claims, actions, or damages resulting from Seller's salvage as described herein with the exception of those claims, actions, or damages caused by the sole negligence of the Purchaser. Prior to removing any garage, shed and/or residential dwelling on the Property, Seller shall submit to Purchaser for Purchaser's approval a detailed plan outlining Seller's salvage plan. The proposed plan shall include a list of what is to be salvaged and the location of any real estate intended as a permanent site for any structure salvaged from the Property. As soon as such salvage is completed according to the approved

plan, Seller shall notify the Purchaser and an agent of Purchaser will conduct a final inspection of the Property.

12.11 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one agreement. This Agreement, to the extent signed and delivered by means of a facsimile machine or other electronic transmission, shall be treated in all manner and respects as an original and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto, at the place and date specified immediately adjacent to their respective names.

SELLER:

KELLY EASTWOOD

Date:

10-1-2018

Handwritten signature of Kelly Eastwood in blue ink, written over a horizontal line.

TIFFANY EASTWOOD

Handwritten signature of Tiffany Eastwood in blue ink, written over a horizontal line.

PURCHASER:

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

Date:

By:

JOHN WINKLER, GENERAL MANAGER