

Agenda Item: 7.

Memorandum

To: FEL Committee
From: Amanda Grint, Water Resources Engineer
Date: March 7, 2013
Re: West Papillion Regional Detention Basin 5 (WP-5) Property Sale

In January 2013, the District was approached by SPW Partners, LLC proposing the purchase of 14.96 acres of the WP-5 project land west of 132nd Street and north of Highway 370. This parcel is located in the upstream reaches of the reservoir project primarily intended for flood pool storage. It was part of an entire parcel (Tract 2) where lands in excess of the project needs were acquired at the request of the land owner. See attached maps showing WP-5 property and the location of the proposed land sale.

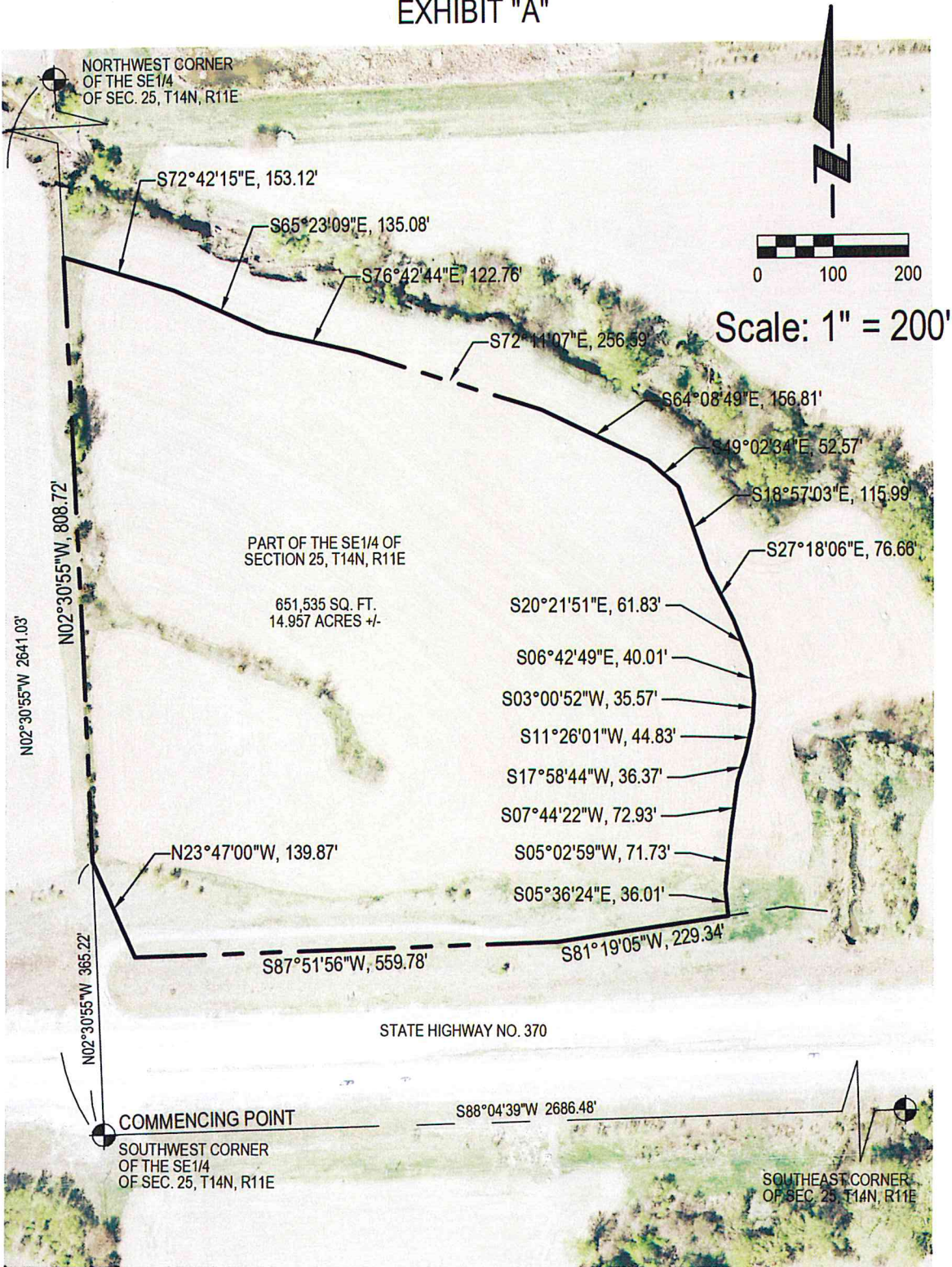
The property was purchased as part of the WP-5 project in 2009 for \$28,000 per acre, the appraised value at the time. Recently, the District had an updated appraisal completed and the appraisal shows a land value for the 14.96 acres at approximately \$35,000 per acre.

SPW Partners, LLC originally offered \$29,500 per acre for the property and has since amended their purchase offer to \$33,000 per acre for a total of \$493,680. The proposed purchase agreement is attached for consideration.

The conditions in the purchase agreement that the staff has required are that the property sold be above the 1092.0 elevation, which is the top of dam, and be set back from the existing creek a minimum of 50 feet. These conditions have been met with the proposed legal description for 14.96 acres. There were no plans for recreation in this area per the sub area master plan that was developed with the project stakeholders. Also, the City of Papillion has been notified of the District's possible intent to sell as they will eventually take over the ownership of the WP-5 property.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed purchase agreement to sell 14.96 acres of the WP-5 project lands to SPW Partners, LLC for the amount of \$493,680, subject to such other terms and conditions as the General Manager determines necessary and Legal Counsel approves as to form.

EXHIBIT "A"



PAGE 1 OF 2 - SEE PAGE 2 OF 2 FOR LEGAL DESCRIPTION



E & A CONSULTING GROUP, INC.

Engineering • Planning • Environmental & Field Services

330 North 117th Street Omaha, NE 68154 Phone: 402.895.4700

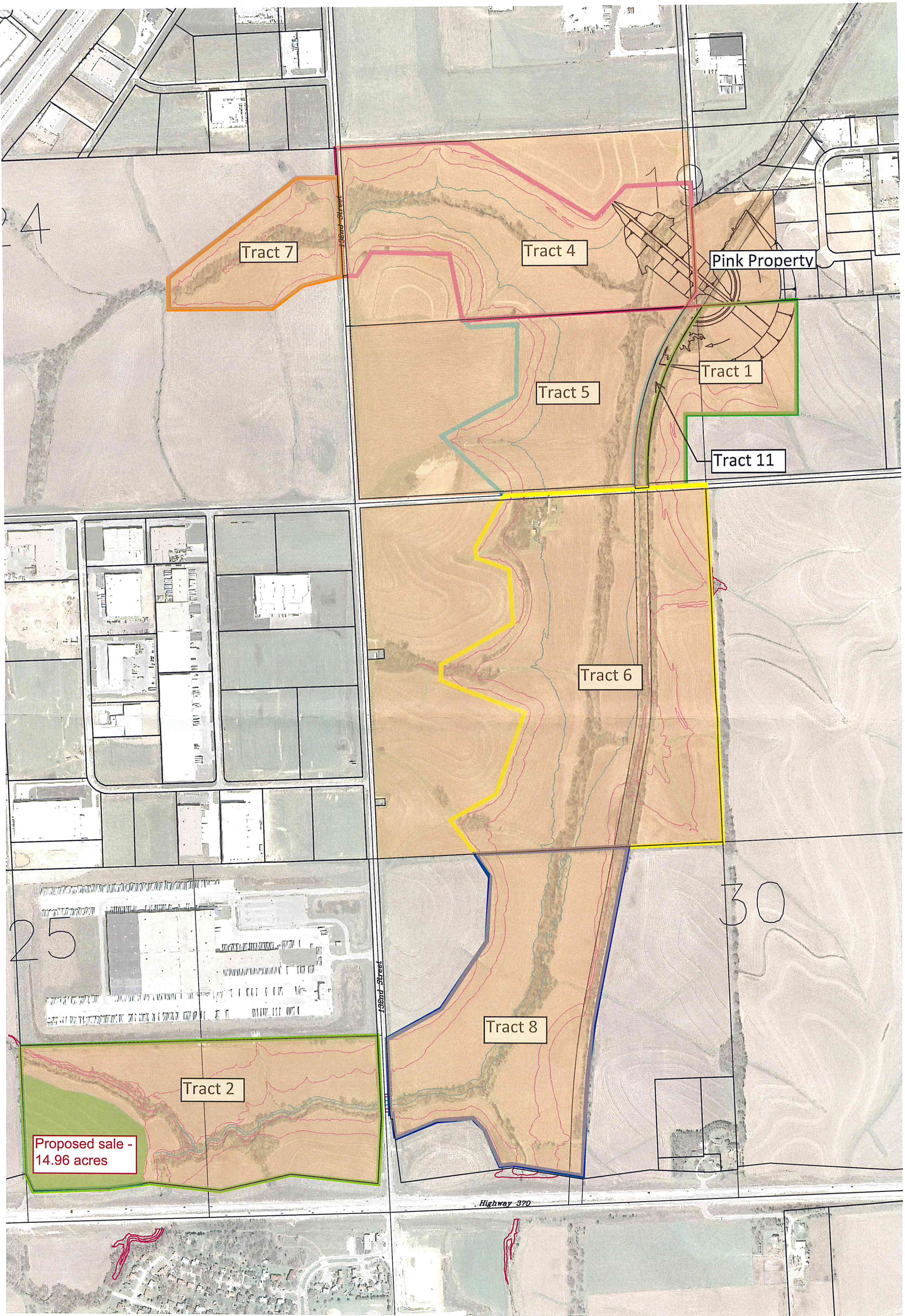
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COMMERCIAL PURCHASE AGREEMENT

(This is a legally binding contract. If not understood, seek legal advice)

CBRE|MEGA, Broker

March _____, 2013

This Purchase Agreement is entered into by and between **SPW Partners, LLC**, a Nebraska limited liability company (Buyer) and **Papio-Missouri River Natural Resources District, a Nebraska governmental agency** (Seller). The undersigned Buyer (whether one or more) agrees to purchase the Property described as follows on the terms contained herein:

1. **Address:** NE Corner of 138th Street and Highway 370, Sarpy County NE, comprised of 14.96 acres (651,657 square feet) of land and any improvements thereto (the "Property").
2. **Legal Description of Property:** In Sarpy County, NE, as more fully described in Exhibit A hereto, including all improvements, easements, hereditaments, rights of way and the like of the Property. The property shall not be below an elevation of 1092.0 ft (NAVD 88) and must be a minimum of 50 ft setback from the creek.
3. **Personal Property:** The only personal property included is as follows: All personal property currently situated at the Property.
4. **Conveyance:** Seller represents that Seller has good, clear, valid and marketable title, in fee simple, and agrees to convey title to Property to Buyer or his nominee by warranty deed free and clear of all liens, encumbrances or special taxes levied or assessed, except NONE subject to all building and use restrictions, restrictive covenants and utility easements abutting the boundary of the Property.
5. **Assessments:** Seller agrees to pay any assessments for public improvements previously constructed by the public authority, but not yet assessed. Seller covenants that Seller is not aware of any public improvements ordered or required to be constructed on or adjoining the Property but not yet constructed for which Seller will be responsible.
6. **Purchase Price:** Buyer agrees to pay for the Property the sum of **FOUR HUNDRED NINETY THREE THOUSAND SIX HUNDRED EIGHTY & No/100 DOLLARS (\$493,680.00)**. **The Purchase Price shall be paid on the following terms: a Security Deposit of Five Thousand & No/100 Dollars (\$5,000.00) (the "Deposit")**, to be paid within 72 hours of receipt by Seller of a fully executed copy of this Purchase Agreement, to be held by Escrow Agent as evidenced by the receipt attached below. In the event this Purchase Agreement is not accepted by the Seller within the time specified, the Deposit shall be refunded in full to Buyer. In the event of refusal or failure of the Buyer to consummate the purchase without just cause, the Seller will retain the Deposit as its liquidated damages for failure to carry out the agreement of sale. The balance of the Purchase Price to be paid in cash or immediately available funds at Closing of the sale.
7. **Applicable Conditions:** This Purchase Agreement is conditioned upon the happening of each of the following events. If each of the same has not occurred within the time stated, this offer shall be null and void, and any Deposit returned to Buyer.
 - Seller shall provide to Buyer any and all documents in its possession related to the condition of the Property, including but not limited to, any environmental reports, surveys, geological and soils composition studies, site or grading plans, drainage or erosion studies, title reports, and the like, all hereinafter "Seller's Due Diligence Materials".
 - Buyer shall have sixty (60) days from the date of receipt of Seller's Due Diligence Materials to review same and also undertake its own studies of the Property to determine its suitability for Buyer's anticipated use, the "Due Diligence Period". Buyer, along with its advisors, shall have the right to enter upon the Property to perform certain inspections, sampling and other studies and analyses upon 24 hours' notice to Seller. Buyer agrees to repair any material damage to the Property occurring during any such visits.
 - Buyer shall have the right at any time to terminate this Purchase Agreement without any further liability or obligation to Seller, for any reason, or no reason at all, in its sole and absolute discretion and upon such termination receive a full refund of the Deposit.
 - At Closing, Buyer shall enter into a mutually agreeable covenant running with the land to include a restriction that subsequent to Closing, Buyer shall not permanently reduce the graded elevation of the Property to less than 1,092 feet above sea level of any portion of the Property currently at an elevation greater than or equal to 1,092 feet above sea level subsequent to Closing to an elevation of less than 1,092 feet above sea level without the written consent of Seller or its successor.
 - Buyer may assign this Purchase Agreement to a third-party successor-in-interest without the consent of Seller. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, heirs and assigns.

- Upon acceptance of this Purchase Agreement by Seller, Buyer shall contract for and agree to pay the cost of a land survey to be prepared by a mutually agreed Nebraska registered surveyor to identify the Property boundaries, set corner markers, prepare the Property legal description for the deed of conveyance and determine the size of the Property for calculating the Purchase Price. Said surveyor shall also prepare the legal description(s) to be included in any restrictive covenant or access easement as contemplated forth above.
- Subject to Buyer's application to the State of Nebraska for full commercial access to the Premises from the existing, adjoining roadway(s) at the existing entrance to the Property within fifteen (15) days of full and final execution of this Purchase Agreement, Buyer shall be granted the right and option, in its sole and absolute discretion, to extend the Due Diligence Period up to three (3) times for thirty (30) days for each such extension, pending the approval of such access application by the State of Nebraska.
- **Seller discloses and Buyer acknowledges that certain members and affiliates of Seller entity are licensed Nebraska real estate brokers selling for their own account. The members are Dean T. Hokanson, Jr., and Dennis Hoth.**

8. **Notices:** Any notices arising hereunder shall be delivered to the parties as follows:

BUYER: SPW Partners, LLC

**ATTN: Dean Hokanson & Dennis Hoth
11213 Davenport Street, Suite 300
Omaha, NE 68154**

SELLER: Papio-Missouri River Natural Resources District

**ATTN: John G. Winkler, General Manager
8901 South 154 Street
Omaha, NE 68138-3621**

9. **Taxes:** ☒ **Urban Taxes:** All consolidated real estate taxes which become delinquent in the year in which closing takes place shall be treated as though all are current taxes, and those taxes shall be prorated as of the date of closing, and all the prior years' taxes, interest, and other charges, if any, will be paid by Seller.
- ☐ **Rural Taxes:** All consolidated real estate taxes for the year in which closing takes place (based on current assessment and tax rate) shall be prorated as of date of closing, and Seller shall, also, pay all prior years' taxes, interest, and other charges.

10. **Rents, Deposit and Leases, If Rented:** Any tenant deposits and leases shall be assigned to Buyer at no cost. All collected rents shall be prorated to date of closing. Copies of all current leases shall be provided to the Buyer at Closing.

11. **Conveyance of Title:** Seller shall furnish a current title insurance commitment to Buyer as soon as practical. If title defects are found, Seller shall endeavor to cure same within a reasonable time, but in no case more than 60 days from the date of delivery of the title insurance commitment. If title defects are not cured within the time set forth herein, Buyer may, at its sole and absolute discretion, rescind this Purchase Agreement and the Deposit shall be refunded. Closing date to be within sixty (60) days after the end of Buyer's due diligence period at a time and place as mutually agreed. Possession shall be delivered to Buyer at Closing. The cost of an Owner's title insurance policy shall be equally divided between Buyer and Seller.

12. **Escrow Closing:** Buyer and Seller acknowledge and understand that the closing of the sale will be handled by First American Land Title and Escrow, ATTN: Debbie Saxton, and that the Broker is authorized to transfer the Deposit or any other funds it receives to said Security Land Title and Escrow. After said transfer, Broker shall have no further responsibility or liability to Buyer or Seller for the accounting for said funds. First American Land Title and Escrow's charge for the escrow closing shall be equally divided between Buyer and Seller.

13. **State Documentary Tax:** The State Documentary Tax on the deed shall be paid by the Seller.

14. **Insurance:** Any risk of loss to the Property shall be borne by the Seller until title has been conveyed to the Buyer. In the event, prior to closing, the structures on the Property are materially damaged by fire, explosion or any other cause, Buyer shall have the right to rescind this agreement, and Seller shall refund the Deposit to Buyer. Buyer agrees to provide his own hazard insurance.

15. **Condition of Property:** Seller represents to the best of Seller's knowledge, information and belief, there are no latent defects in the Property.

16. **Environmental:** Seller represents to the best of the Seller's knowledge, information and belief, there are no conditions present or existing with respect to the Property which may give rise to or create Environmental Hazards or Liabilities and there are no enforcement actions pending or threatened with respect thereto.
17. **THIS OFFER IS BASED UPON BUYER'S PERSONAL INSPECTION OR INVESTIGATION OF THE PROPERTY AND NOT UPON ANY REPRESENTATION OR WARRANTIES OF CONDITION BY THE SELLER OR SELLER'S AGENT.**

NO WARRANTIES PARAGRAPH

Condition of Property: The parties hereto acknowledge that if Buyer proceeds to close on the purchase of the Property, then Buyer represents that it has had sufficient access to the Property and has determined for itself that the Property is satisfactory to Buyer for Buyer's intended uses and purposes, in which case, Buyer shall be conclusively presumed to have satisfied itself as to the usefulness and legal limitations to the Property, and to its condition and the environmental condition of the Property and further, Buyer takes Property in its present condition, "AS IS" without reliance upon any representation, warranty, opinion or statement of Seller or any agent of Seller, except as specifically set forth herein.

18. **Agency:** The real estate brokers involved in this transaction are:
- [X] Dean T. Hokanson, Jr., and Dennis J. Hoth are acting as agent for the Buyer.
- [] _____ is acting as limited agent for Seller.
- [] _____ is acting as limited dual agent representing both Buyer and Seller.
19. **Broker Compensation:**
- [X] Buyer and Seller acknowledge that NO ONE is being paid a real estate brokerage fee by Seller.
- [] Buyer and Seller will each compensate their respective Brokers.

20. **Offer Expiration:** This offer to purchase is subject to acceptance by Seller on or before February 28, 2013, __at _____o'clock (AM_____/ PM_____.)

BUYER: SPW Partners, LLC

BY _____

WITNESS: _____

SS#/FED. ID# _____

ADDRESS: 11213 Davenport Street, Suite 300 Omaha, NE 68154

TELEPHONE: 402-334-8877

RECEIPT

(NAMES FOR DEED) RECEIVED FROM: SPW Partners, LLC the sum of Five Thousand & No/100 DOLLARS (\$ 5,000.00), via check, to apply to the purchase price of the Property on terms and conditions as stated herein. This receipt is not an acceptance of the above offer to purchase.

AUTHORIZED SIGNATURE TITLE

ACCEPTANCE

_____, 2013

SELLER: Papio-Missouri Natural Resources District SS#/FED.ID#: _____

ATTEST: _____
Title

ADDRESS: 8901 South 154 Street, Omaha, NE 68138-3621

TELEPHONE: _____

Buyer acknowledges a fully executed copy of this agreement and accepts Counter Proposal as set out above, if any.

SPW Partners, LLC

DATE: _____ BUYER: _____