

Agenda Item: 7.

MEMORANDUM TO: Finance, Expenditure & Legal Subcommittee

SUBJECT: Contact for Professional Services with ReMAX Realty

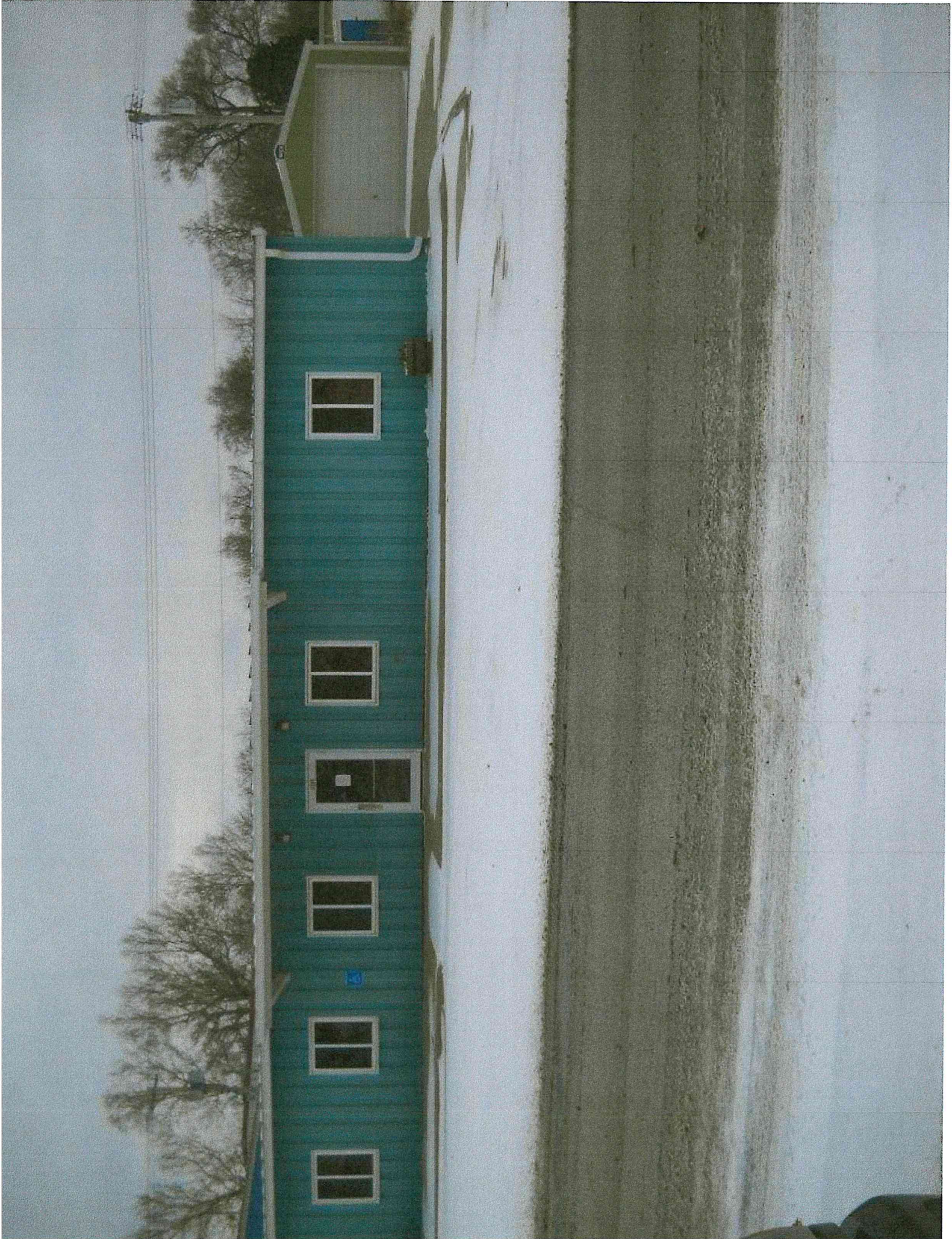
DATE: April 5, 2012

FROM: Dick Sklenar

With the NRD and federal employees having been relocated to the new office in Blair, the time has come to dispose of the District's vacated office in that community. The property for disposal consists of a 6,000 sq. ft. office building, with an 800 sq. ft. garage. An appraisal was done on the property on May 27, 2007, amounting to an estimated value at that time of \$195,000.

The District submitted a request for proposal for professional services to 3 real estate firms. Only 1 firm responded with a written proposal. Carl Lorenzen, of ReMAX Realty in Blair, expressed an interest in listing the property for the District for a commission of 6% of the gross sale price. He indicated he would review the local market of the area to make a recommendation on an initial sale price. Attached is the listing agreement.

Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute a Listing Contract with ReMAX Realty for the vacated Blair Office Building (1245 Lincoln Street, Blair, NE) for 180 days.





COMMERCIAL EXCLUSIVE LISTING AGREEMENT

Papio-Missouri River NRD, John Winkler, General Manager (Seller)
appoint(s) RE/MAX Cornerstone Properties (REALTOR®) as Seller's exclusive agent for the purposes and under the terms set forth below, with my specified limited Seller's Agent to be Carl Lorenzen Broker/Owner. Seller also appoints _____ as limited Seller's

Agents and such other affiliated licensees of REALTOR® as may be assigned by REALTOR®, in writing, if needed, as Seller's exclusive, limited Seller's Agents. The Agents named in this paragraph and the Seller's Agents who may be appointed by the Broker for REALTOR® are collectively referred to in this Listing Agreement as Seller's Agents. The term Seller's Agents as used herein also means Landlord's Agent when leasing.

1. **Purpose of Agency.** The purpose of this sole and exclusive right to sell agency contract (*Listing*) is to engage the efforts of REALTOR® to accomplish the SALE/LEASE of the real property legally described as (please print clearly): BC LOTS 8-11 BLK 53 112 PC 3, Blair, Washington County, Nebraska

also known as 1245 Lincoln Street Blair NE 68008 (Property).
(Street Address) (City) (State) (Zip)

2. **Effect of this Listing.** By appointing REALTOR® as Seller's exclusive agent, Seller agrees to conduct all negotiations for the sale or lease of the Property through REALTOR® and refer to REALTOR® all inquiries as received in any form from any source during the term of this Agreement.

3. **Duties and Obligations of a Seller's Agent.** A REALTOR® representing a Seller as a Seller's Agent shall be a limited agent with the following duties and obligations:

- (a) To perform the terms of any written agreement made with the client;
- (b) To exercise reasonable skill and care for the client;
- (c) To promote the interest of Seller/Lessor with the utmost good faith, loyalty and fidelity including:
 - (i) Seeking the price and terms which are acceptable to Seller/Lessor except that REALTOR® shall not be obligated to seek additional offers to purchase the Property while the Property is subject to a contract for sale or to seek additional offers to lease the Property while the Property is subject to a lease or letter of intent to lease;
 - (ii) Presenting all written offers to and from Seller/Lessor in a timely manner regardless of whether the Property is subject to a contract for sale or lease or letter of intent to lease;
 - (iii) Disclosing in writing to Seller/Lessor all adverse material facts actually known by REALTOR®; and
 - (iv) Advising Seller/Lessor to obtain expert advice as to material matters of that which REALTOR® knows but the specifics of which are beyond the expertise of REALTOR®;
- (d) To account in a timely manner for all money and property received;
- (e) To comply with all requirements of Neb. Rev. Stat. Sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and
- (f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

4. **Duties and Obligations of a Buyer's Agent.** A REALTOR® representing a Buyer as a Buyer's Agent shall be a limited agent with the following duties and obligations:

- (a) To perform the terms of any written agreement made with the client;
- (b) To exercise reasonable skill and care for the client;
- (c) To promote the interests of client with the utmost good faith, loyalty, and fidelity, including:
 - (i) Seeking a price and terms which are acceptable to the client, except that the REALTOR® shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;
 - (ii) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
 - (iii) Disclosing in writing to the client all adverse material facts actually known by REALTOR®; and
 - (iv) Advising the client to obtain expert advice as to material matters about which the REALTOR® knows but the specifics of which are beyond the expertise of REALTOR®;
- (d) To account in a timely manner for all money and property received;
- (e) To comply with all requirements of Neb. Rev. Stat. Sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and
- (f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and/or regulations.

5. **Disclosure of Information.** A REALTOR® acting as a Buyer's Agent or a Seller's Agent, shall disclose to the principal, to a customer or to a buyer all adverse material facts (including but not limited to, structural defects, soil condition, violations of health, zoning or building laws, and nonconforming uses or zoning variances) actually known by REALTOR® but REALTOR® shall not otherwise disclose any confidential information about the Client without the Client's written permission unless disclosure is required by statute, rule, or regulation, or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action shall arise against a REALTOR® acting as a Buyer's Agent or a Seller's Agent for making any required or permitted disclosure. Confidential information is non-public information made confidential by statute, rule, regulation or written instruction from Seller.

6. **Disclosure of Motivating Factors.** Seller/Lessor authorizes the disclosure of motivating factors unless initialed here (*Seller's initials* _____).

7. **The Listing Period.** This Agreement shall begin April 12, 2012, and shall continue through April 12, 2013.

8. **Price and Terms.** If so offered, Seller/Lessor agrees to sell/lease the property for \$ _____ (the "list price") on the following terms: cash or other terms acceptable to Seller/Lessor. The price and terms shall include all fixtures. The following personal property is also included None Included

_____. Lease terms attached by addendum.

9. **Title.** Seller represents to REALTOR® that marketable title to the Property is solely in Seller's name. Seller agrees to convey marketable title to Buyer by warranty deed evidenced by a policy of title insurance. ☒ (if checked) subject to the rights of persons in possession.

10. **Possession.** Possession of the Property can be delivered to Buyer on At Closing.

11. **Representations and Indemnification.** Seller represents that to the best of Seller's knowledge: there are no termites or wood destroying insects or damage therefrom on the premises or in the buildings thereon; there are no known encroachments, unrecorded assessments, adverse material facts, latent (non-apparent) defects, or, local improvements installed, under construction or ordered constructed by public authority affecting this Property except: No Exceptions

Seller further states that all representations made to the REALTOR® (Listing Company) are accurate. Seller/lessor agrees to indemnify and hold harmless REALTOR® (Listing Company) and any subagents from any claim that may be made against the Listing Company or subagents by reason of the Seller having breached the terms of this paragraph. In addition, Seller/lessor agrees to pay attorney fees and associated costs reasonably incurred by REALTOR® to enforce this indemnity.

12. **Compensation of REALTOR®.** In consideration of services to be performed for Seller by REALTOR®, a fee of Commission Only plus 6.000 percent of the gross sale price of the property shall be payable to REALTOR® upon the happening of any of the following:

- (a) If, during the term of the Listing, Seller/lessor, REALTOR® or any other person:
 - (i) sells/leases the Property; or
 - (ii) finds a Buyer/Tenant who is ready, willing and able to purchase/lease the Property at the above price and terms or for any other price and terms to which Seller/Lessor agrees to accept; or
 - (iii) finds a Buyer/Tenant who is granted an option to purchase or enters into a lease with option of purchase and the option is subsequently exercised; or

- (b) If this agreement is revoked or violated by Seller/Lessor; or
- (c) If REALTOR® is prevented in closing the Sale of this Property by existing claims, liens, judgments, or suits pending against this Property, or Seller/Lessor thereof; or
- (d) If REALTOR® is unfairly hindered by Seller/Lessor in showing or attempting to sell/lease this Property; or
- (e) If within 90 days after the expiration of this Listing Agreement, Seller/Lessor sells/leases this Property to any person found during the term of this listing, or due to REALTOR'S® efforts or advertising, under this listing Agreement, unless this Property is listed with another REALTOR®.

Upon closing of sale/lease for which the REALTOR® earns compensation under this paragraph or the closing of any sale/lease within the listing period set forth in paragraph 7, Seller hereby irrevocably authorizes and directs REALTOR® (if closing is handled by REALTOR®) or Escrow Agent (if closing is handled by Escrow Agent) to pay REALTOR® the commission due as set forth in this agreement from the Seller's proceeds of the sale. Seller/Lessor gives to REALTOR® an assignment of proceeds to the extent of the commission due. Seller/Lessor agrees that the closing of a contract for sale/lease of the Property executed during the listing period is prima facie evidence that REALTOR'S® due compensation under the terms of this agreement.

13. Limitation on REALTOR'S® Compensation. REALTOR® shall not accept compensation from the Buyer, Buyer's Agent, or any entity participating in or providing services for the sale/lease without written disclosure to Seller.

14. Cooperating with other REALTOR'S®. REALTOR® may accept the assistance and cooperation of other brokers who will be acting as subagents of the Seller/Lessor or as agent for a Buyer/Tenant. Seller/Lessor agrees to allow REALTOR® to share his/her compensation with subagents of the Seller/Lessor or agents representing the Buyer/Tenant (Buyer's/Tenant's Agent). If REALTOR® participates in a local multiple listing service, REALTOR® shall submit the Property to such listing service.

15. Dual Agency Disclosure. Seller/Lessor understands that REALTOR® currently serves as the agent for both Sellers/Lessors and Buyers/Tenants for the purpose of sale/lease of real property, and Seller/Lessor is aware that REALTOR® may be the agent for a Buyer/Tenant of property listed by Seller/Lessor. If Buyer/Tenant becomes interested in a property listed with REALTOR®, REALTOR® shall immediately notify Seller/Lessor that REALTOR® is serving as the agent of the Buyer/Tenant of the property. Seller/Lessor consents that REALTOR® may act as a Dual Agent in the sale/lease of the listed property. If REALTOR® serves as a Dual Agent, REALTOR® shall make no representations to Seller/Lessor of the price Buyer/Tenant is willing to pay for the property except as set forth in the Purchase Agreement submitted by Buyer/Tenant, nor any representation to Buyer/Tenant of the price Seller/Lessor is willing to accept for the property except as set forth in the Listing Agreement. REALTOR® shall not make any other representations to Seller/Lessor that would violate REALTOR'S® agency relationship with Buyer/Tenant, nor any representations to Buyer/Tenant that would violate REALTOR'S® agency relationship with Seller/Lessor. Seller/Lessor acknowledges that if a Dual Agency exists, the ability of REALTOR® to represent either party fully and exclusively is limited. If a Dual Agency situation develops, Seller/Lessor agrees to sign a Consent to Dual Agency. Except for limitations on disclosure of confidential information discussed in paragraph 5, a dual agent has the same duties and responsibilities of a limited agent to a Buyer/Tenant as stated in paragraph 4 and to a seller as stated in paragraph 3.

16. Access to Property and Property Information. Seller/Lessor agrees to give REALTOR® reasonable access to the premises to show it, and consents to property being shown by a buyer's/tenant's agent. Seller/Lessor agrees to provide REALTOR® information regarding the operation of the premises including operating statements and copies of leases.

17. Forfeiture of Earnest Money. In the event of forfeiture of earnest money made by a prospective Buyer/Tenant, the moneys received shall first be used to pay costs incurred on behalf of Seller/Lessor, sums expended by REALTOR® in marketing the premises and the remainder shall be divided between REALTOR® and Seller/Lessor, one-half thereof to REALTOR® but not to exceed the commission agreed upon herein, and the balance to Seller/Lessor.

18. Cost of Services. Except as immediately above, REALTOR® shall bear all expenses incurred by REALTOR® if any, to market the Property and to compensate cooperating brokers, if any. REALTOR® will not obtain or order any products or services to be paid by Seller/Lessor unless Seller/Lessor agrees. REALTOR® shall not be obligated to advance funds for the benefit of Seller/Lessor.

19. Maintenance of the Property. Seller/Lessor agrees to maintain and keep the heating, air conditioning, water heater, sewer, plumbing and electrical systems and any fixtures in good and reasonable working condition until delivery of possession. Seller/Lessor further agrees to hold REALTOR® harmless from any and all causes of action, loss, damage, or expenses REALTOR® may be subjected to arising in connection with this section. Seller/Lessor also agrees that REALTOR® shall not be responsible for maintenance of the Property.

20. Nondiscrimination. Seller/Lessor and REALTOR® agree not to discriminate against any prospective Buyer/Tenant because of Buyer's/Tenant's race, color, sex, religion, familial status, handicap, or national origin.

21. Escrow Closing. Seller agrees that the closing of any sale made by REALTOR® may be handled by an Escrow Agent at Seller's cost or as otherwise set forth in purchase agreement. Seller authorizes the transfer of earnest money to the Escrow Agent.

22. Compliance with Law. Seller/Lessor agrees to bring the property into compliance with the law as required for the sale/lease of the property unless otherwise lawfully delegated to the Buyer/Tenant in the purchase/lease agreement, which includes installing a smoke detector if necessary.

23. "For Sale/Lease" Sign Permitted. Seller/Lessor gives permission to REALTOR® to place a "For Sale/Lease" and a "Sold" sign on the Property and to use a "Lock Box".

24. Modification of this Listing Agreement. No modification of this Listing Agreement shall be valid, unless made in writing and signed by all parties.

25. Protection of Valuables. REALTOR® is not responsible for items which are lost or stolen during showings. Seller is responsible for placing all valuables in a safe and concealed location when preparing the Property for showings.

26. Authorization of Advertising and Release of Photographic Information. REALTOR® and its agents may advertise/market the property in any media, including radio, newspaper, TV, the Internet, electronic media and computer information networks and may use digital, video or photographic images and/or representations of the Property (along with incidental images of personal property therein) for the purpose of advertising or sales promotion. Seller forever releases REALTOR® and its employees and agents from all claims of any kind and nature which arise out of or are connected to such use and grants REALTOR® and its employees and agents a reasonable time to remove such advertising after termination of listing or closing.

27. Release of Information. Seller agrees to provide and authorizes REALTOR® to obtain any information relating to rents, operating income or expenses, utility expenses and all pertinent information regarding the present mortgage(s) or Deed(s) of Trust on this Property including existing balance, interest rate, monthly payment, balance in escrow account and pay off amount. Seller authorizes the dissemination of sales information including selling price and terms after closing of the transaction. Seller's Loan Company N/A Loan Number N/A

28. Entire Agreement. This Listing Agreement constitutes the entire agreement between the parties and any prior negotiations or agreements, whether oral or written, are not valid unless set forth in this Agreement.

29. Copies of Agreement. This Listing Agreement is executed in multiple copies and Seller/Lessor acknowledges receipt of a copy signed by the REALTOR® or REALTOR® agent.

30. ☐ IF CHECKED SEE ATTACHED DOCUMENT.

31. Other: RE/MAX Cornerstone Properties to pay all advertising expense.

Signed this 12th day of April, 2012.

RE/MAX Cornerstone Properties
(Name of REALTOR® or Firm)

1143 South Hwy 30, Blair, NE 68008
(Address)

(402) 426-9222
(Phone Number)

By _____
(Agent's Signature) (Date)
Carl Lorenzen Broker/Owner

John Winkler, General Manager
Papio-Missouri River NRD

(Name of Seller(s) / Lessor(s) Typed or Printed)

(Seller/Lessor Signature) (Date)

(Seller/Lessor Signature) (Date)

8901 South 154th Street
(Seller(s)/Lessor(s) Address)

Omaha NE 68138-3621
(City) (State) (Zip)

N/A (402) 444-6222
(Home Phone) (Work Phone)

Estimated Real Estate Closing Statement
Seller's Settlement Sheet



Date Prepared April 4, 2012 Property 1245 Lincoln Street, Blair, NE 68008
Name of Seller Papio-Missouri River NRD, John Winkler, General Manager Estimated Closing Date May 5, 2012

SALES PRICE \$ TBD

LESS SELLING EXPENSES:

Discount Points - Fees	\$	
Cost of Title Insurance		<u>TBD</u>
Recording Fees - Mortgage Release		<u>35.00</u>
State Documentary Tax (\$ <u>2.25</u> /1000)		
Deed Preparation		<u>75.00</u>
Escrow Closing Fee		<u>150.00</u>
Termite Inspection Fee (VA Loan)		
Termite Treatment		
Prepayment Penalty		
Warehouse & Tax Service Fees (NIFA Loan)		
Home Warranty		
Seller Repairs		
Homeowner's Assn Fee (_____ days at \$ _____ /day)		
Other		
Other		

PROFESSIONAL SERVICE FEES:

Listing Broker Carl Lorenzen Broker/Owner

Selling Broker _____

TOTAL SELLING EXPENSES \$ 260.00

OTHER COSTS:

Mortgage Balance _____

Interest to Closing (_____ days at \$ _____ /day) _____

TOTAL MORTGAGE PAYOFF \$ _____

TAXES:

Prior Years EXEMPT

Current Year (_____ days at \$ _____ /day) EXEMPT

Special Assessments _____

TOTAL _____

(Escrow refund may be direct from loan company after closing.)

TOTAL TAXES & OTHER LIENS \$ _____

APPROXIMATE FINAL NET \$ (260.00)

Remarks: Seller agrees to pay all outstanding utility bills. Seller authorizes Listing Firm to disclose pertinent details of the above transaction. The above estimated closing statement, prepared by the Listing Firm, has been received, read and approved by the undersigned.

Copy received by:

Prepared by:

John Winkler, General Manager Date _____

Carl Lorenzen Date _____

Date _____

(RETAIN FOR INCOME TAX PURPOSES)

RE/MAX Cornerstone Properties 1143 S. Highway #30 Blair, NE 68008
Carl Lorenzen

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