

05R-99

Introduce: 5-16-05

RESOLUTION NO. A- 83360

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the agreement titled West Van Dorn Plaza Conditional Annexation and Zoning
3 Agreement, which is attached hereto, marked as Attachment "A" and made a part hereof by
4 reference, between the City of Lincoln and Stockwell Properties, LLC, outlining certain conditions
5 and understandings relating to the annexation of approximately 5.00 acres of property generally
6 located at West Van Dorn Street and South Coddington Avenue, is approved.

7 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Annexation
8 Agreement on behalf of the City.

9 *6/16* BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully executed
10 copy of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owner.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation
12 Agreement or a summary memorandum thereof with the Register of Deeds, filing fees to be paid
13 by the Owner.

Introduced by:

Ann H. McRoy

AYES: Camp, Eschliman, McRoy
Newman, Svoboda;
NAYS: None;
ABSENT: Cook;
ABSTAINED: Marvin.

Approved as to Form and Legality:

Wanda W. Pope

City Attorney

Approved this 15 day of June, 2005:

Celeste J. Seng

Mayor

ADOPTED

JUN 13 2005

BY CITY COUNCIL

05R-99

6/6/05 COUNCIL PROCEEDINGS:

COOK Moved to delay action for 1 week to 6/13/05.

 Seconded by McRoy & carried by the following vote: AYES: Camp, Cook,
Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

WEST VAN DORN PLAZA
CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This West Van Dorn Plaza Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this 15th day of June, 2005, by and between **Stockwell Properties, L.L.C.**, a Nebraska limited liability company, hereinafter referred to as "Owner," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

RECITALS

A. Owner is the owner of Lot 36, Irregular Tract, located in the Northeast Quarter of Section 4, Township 9 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("Lot 36").

B. The City is the owner of Lot 40, Irregular Tract, located in the Northeast Quarter of Section 4, Township 9 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("Lot 40").

C. The Owner has requested the City to annex Lot 36 and that portion of Lot 40 described in Exhibit A attached hereto and incorporated herein by reference.

D. The Owner has requested the City to dedicate that portion of Lot 40 described in Exhibit B ("Parcel A"), attached hereto and incorporated herein by reference, as SW 19th Street right-of-way and to declare that portion of Lot 40 described in Exhibit C ("Parcel B"), attached hereto and incorporated herein by reference, as surplus property and to convey the same to Owner.

E. Owner has requested the City to approve Use Permit No. 133 for approximately 26,400 square feet of floor area of office and commercial use on Lot 36 and Parcel B, hereinafter collectively referred to as the "Property."

F. Owner has requested the City to approve Change of Zone No. 3419 rezoning Lot 36 from AG Agriculture District and B-1 Local Business District to B-2 Planned Neighborhood Business District and rezoning that portion of Lot 40 described in Exhibit A from AG Agriculture District to B-2 Planned Neighborhood Business District.

G. The City has adopted Ordinance No. 18113, hereinafter referred to as the "Impact Fee Ordinance" based upon an Impact Fee Study prepared by Duncan Associates dated October, 2002, that went into effect on June 2, 2003. This Impact Fee Ordinance enables the City to impose a proportionate share of the cost of improvements to the water and wastewater systems and arterial streets necessitated by and attributable to new development.

H. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prays for judgment of the district court declaring the Impact Fee Ordinance invalid and unenforceable and for injunctive relief enjoining the imposition of impact fees.

I. The City is willing to annex the Property, grant the use permit, and approve the change of zone as requested by Owner, prior to a determination as to the validity and enforceability of the Impact Fee Ordinance, provided Owner agrees to make a guaranteed nonrefundable contribution to the cost of improving the City's Water System, Water Distribution, Wastewater System, and Arterial Street Impact Fee Facilities necessitated by and attributable to the proposed development of the Property in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable.

J. The Property is located in the Southwest Rural Fire District and Neb. Rev. Stat. § 35-514, dealing with the City's annexation of territory from rural fire protection districts, provides in part that: "(7) Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of §31-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated." The City is willing to annex the Property as requested by Owner, provided Owner agrees to pay all costs needed for the City to assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the Property being annexed.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. **Annexation by the City.** The City agrees to annex the Property.
2. **Use Permit.** The City agrees to approve Use Permit No. 133 for approximately 26,400 square feet of office and commercial floor area on the Property.
3. **Change of Zone 3419.** The City agrees to approve Change of Zone No. 3419.

4. Contributions for Impact Fee Facility Improvements.

A. Water Distribution Impact Fee Facility Contribution. Owner agrees to contribute \$6,386.00 toward the cost of making Impact Fee Facility Improvements to the City's Water Distribution Impact Fee Facilities attributable to the proposed development of the Property.

B. Water System Impact Fee Facility Contribution. Owner agrees to contribute \$10,292.00 toward the cost of making Impact Fee Facility Improvements to the City's Water System Impact Fee Facilities attributable to the proposed development of the Property.

C. Wastewater Impact Fee Facility Contribution. Owner agrees to contribute \$8,246.00 toward the cost of making Impact Fee Facility Improvements to the City's Wastewater Impact Fee Facilities attributable to the proposed development of the Property.

D. Arterial Street Impact Fee Facility Contribution. Owner agrees to contribute \$75,161.00 toward the cost of making Impact Fee Facility Improvements to the City's Arterial Street Impact Fee Facilities attributable to the proposed development of the Property.

The Contributions for the above-described Impact Fee Facility Improvements reflect the amounts attributable to 100% development of the proposed development of the Property in 2005 based upon the 2005 Impact Fee Schedules for said Impact Fee Facilities.

5. Contribution for Southwest Rural Fire District Costs. Owner understands and acknowledges that the City may not annex the property lying within the boundaries of the Southwest Rural Fire District except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. Owner desires to be annexed by the City and therefore agrees to pay, prior to annexation, the \$1,644.94 which the City has determined must be paid by the City to the Southwest Rural Fire District in order for the annexation to be complete.

6. Site-Related Street Improvements.

A. West Van Dorn Street. Owner agrees that Owner shall at its own cost and expense design and construct a right-turn lane and a left-turn lane in West Van Dorn Street at its approach to SW 19th Street at a length acceptable to the City's Department of Public Works and Utilities.

B. Coddington Avenue. Owner agrees that Owner shall at its own cost and expense design and construct right-turn and left-turn lanes in Coddington Avenue at its approach

to the east/west driving aisle of West Van Dorn Plaza at a length acceptable to the City's Department of Public Works and Utilities.

C. **Right-of-Way.** Owner agrees to convey by warranty deed at no cost to City the necessary right-of-way to provide sixty feet (60') of right-of-way measured from the centerline of Coddington Avenue and sixty feet (60') of right-of-way measured from the centerline of West Van Dorn Street.

7. **Sidewalks/Street Trees.** Owner agrees, in lieu of installing sidewalks and street trees along South Coddington Avenue and West Van Dorn Street, to pay the City the equivalent cost for installation of said sidewalks and street trees prior to obtaining a building permit for development under Use Permit No. 133.

8. **City Parcels.** The City agrees to dedicate that portion of Lot 40, I.T. (Parcel A) for SW 19th Street right-of-way. The City further agrees to declare that portion of Lot 40, I.T. (Parcel B) as surplus property and agrees to convey the same to Owner as provided in paragraph 8 below.

9. **Conveyance of Parcel B.** The City agrees to convey Parcel B to Owner. In exchange therefor, Owner agrees to design and construct SW 19th Street at Owner's own cost and expense through the City's executive order construction process.

10. **Future Cost Responsibilities.** Owner understands and acknowledges that it is the City's position that the Impact Fee Facility Contributions by Owner under paragraph 4 of this Agreement do not address all the impacts the proposed development of the Property will have on the City's Impact Fee Facilities as set forth in the Impact Fee Study prepared by Duncan Associates dated October, 2002. Therefore, Owner understands that the proposed development of the Property shall be subject to the payment of impact fees.

11. **Guaranteed Payment of Contributions.**

A. **Water Distribution, Water System, Wastewater, and Arterial Street Impact Fee Facility Contributions.** Owner shall, prior to approval of the first final plat of the Property zoned commercial, provide the City a bond, escrow, letter of credit or other security agreement approved by the City Attorney equal to the full amount of the Water Distribution, Water System, Wastewater, and Arterial Street Impact Fee Facility contributions attributable to full commercial development of the Property under this Agreement.

The above required payments of the Water Distribution, Water System, Wastewater, and Arterial Street Impact Fee Facility Contributions shall be paid to City within thirty days written notice from the City that the following two events have occurred: (i) the City has constructed or awarded a bid and entered into a contract for the improvement of an eligible Water Distribution, Water System, Wastewater, and/or Arterial Street Impact Fee Facility Improvement, and (ii) a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance invalid and unenforceable.

B. In the event a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance valid and enforceable, the City agrees to (i) release the bond, escrow, letter of credit, or other security agreement provided by Owner to guarantee the above-described Contributions; or (ii) refund the above-described contributions if they have been paid to the City.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

13. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

14. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

15. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

16. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

17. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

18. **Relationship of Parties.** Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Owner, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

19. **Assignment.** In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

20. **Default.** Owner and City agree that the annexation, use permit, and change of zone promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rescind said use permit and rezone the Property to its previous designation or such other designations as the City may deem appropriate under the then existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

21. **Definitions.** For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases "building permit", "development", "Impact Fee Facility", "Impact Fee Facility Improvement", and "site-related improvements" shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

22. **Fair Share.** The City believes that it has a legitimate interest in the public health, safety and welfare and in providing for the safe and efficient movement of vehicles on the public arterial streets and the provision of adequate water and wastewater service and adequate neighborhood parks and trails as provided for in the Impact Fee Ordinance which is promoted by requiring Owner to pay his fair share of the cost to construct such Impact Fee Facilities and that an essential nexus exists between the City's legitimate interests and the conditions placed upon Owner under this Agreement. In addition, City has made an individualized determination and found that

the conditions placed upon Owner under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects full development of the Property under the annexation and Use Permit No. 133 and Change of Zone No. 3419 would have on the City's Impact Fee Facilities.

23. Reservation of Rights and Waivers. Notwithstanding any other provision of this Agreement, Owner reserves the right to sue the City to determine the validity of the provisions of this Agreement which relate to Impact Fee Facilities. No provision of this Agreement which recites Owner's understanding that Owner's development will be subject to payment of impact fees, or acknowledges that Impact Fee Facility Contributions required by this Agreement do not address all the impacts the proposed development of the Property will have on Impact Fee Facilities, shall have the effect of waiving Owner's rights to a judicial determination of the essential nexus, rough proportionality or other issue of federal or state constitutionality of such requirements and/or the procedure by which Owner's applications were approved, or the validity of such requirements under the Statutes of Nebraska, the Lincoln City Charter, or Lincoln Municipal Code. In consideration of the foregoing reservation of rights, and notwithstanding such reservation, Owner releases and discharges the City, all past, present and future members of the City Council of the City, in their official and individual capacities, the past or present Mayor or any department director, and all other officers agents, and employees of the City in their official and individual capacities from any and all causes of action for money damages, penalties or attorneys fees which Owner may now have with respect to or arising from Owner's request for annexation and applications for use permit and change of zone approval described in Recitals C, E and F of this Agreement and the City's negotiations, considerations and actions taken thereon, including but not limited to: a) claims for violation of Owner's rights under the United States Constitution, under 42 U.S.C. Section 1983 and attorneys fees under 42 U.S.C. Section 1988; b) claims for just compensation for a temporary taking of the Property pursuant to the Fifth Amendment of the United States Constitution and Article I, Section 21 of the Nebraska Constitution; and c) claims under the City's home rule charter, ordinances and regulations.

City acknowledges that City has included substantially identical provisions regarding Impact Fee Facilities in other "Conditional Annexation and Zoning Agreements" which also included this reservation of rights to sue the City to determine the validity of such provisions. If a lawsuit is brought challenging such provisions under any other "Conditional Annexation and Zoning

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 13 day of May, 2005, by John Sampson, managing member of Stockwell Properties L.L.C., a Nebraska limited liability company, on behalf of said company.

Susan R Navratil
Notary Public

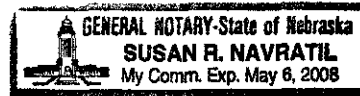


EXHIBIT A

CODDINGTON AND VAN DORN
LEGAL DESCRIPTION

CHANGE OF ZONE: AG TO B2

PARCEL "C"- CITY OF LINCOLN, PARKS AND RECREATION DEPARTMENT

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 4,
TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY,
NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER:
THENCE ON THE WEST LINE OF SAID NORTHEAST QUARTER, ON AN ASSUMED
BEARING OF S 00°00'05" W, A DISTANCE OF 50.00 FEET;
THENCE N 89°33'51" E, A DISTANCE OF 300.00 FEET,
THENCE N 84°42'54" E, A DISTANCE OF 187.30 FEET TO THE POINT OF BEGINNING:

THENCE CONTINUING N 84°42'54" E, A DISTANCE OF 13.81 FEET,
THENCE N 89°33'51" E, A DISTANCE OF 104.66 FEET,
THENCE S 00°26'09" E, A DISTANCE OF 478.49 FEET,
THENCE S 89°33'51" W, A DISTANCE OF 575.56 FEET,
THENCE N 00°00'05" E, A DISTANCE OF 25.00 FEET,
THENCE N 89°33'51" E, A DISTANCE OF 453.51 FEET,
THENCE N 00°00'05" E, A DISTANCE OF 452.34 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINING AN AREA OF 1.581 ACRES, MORE OR LESS.

RECEIVED

JUL 22 2004

PLANNING DEPARTMENT

EXHIBIT B

CODDINGTON AND VAN DORN
LEGAL DESCRIPTION

TO BE DEDICATED AS SW 19TH STREET RIGHT-OF-WAY:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 4,
TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY,
NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER:
THENCE ON THE WEST LINE OF SAID NORTHEAST QUARTER, ON AN ASSUMED
BEARING OF S 00°00'05" W, A DISTANCE OF 50.00 FEET; THENCE N 89°33'51" E, A
DISTANCE OF 300.00 FEET; THENCE N 84°42'54" E A DISTANCE OF 187.30 FEET TO THE
POINT OF BEGINNING:

THENCE CONTINUING N 84°42'54" E A DISTANCE OF 13.81 FEET;
THENCE N 89°33'51" E, A DISTANCE OF 49.34 FEET;
THENCE S 00°26'09" E, A DISTANCE OF 32.00 FEET TO A POINT OF CURVATURE;

THENCE ON A CURVE TO THE LEFT, HAVING A RADIUS OF 417.00 FEET, A CENTRAL
ANGLE OF 20°00'00", A CURVE LENGTH OF 145.56 FEET, A CHORD LENGTH OF 144.82
FEET AND A CHORD BEARING OF S 10°26'09" E TO A POINT OF REVERSE CURVATURE,

THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 183.00 FEET, A CENTRAL
ANGLE OF 20°00'00", A CURVE LENGTH OF 63.88 FEET, A CHORD LENGTH OF 63.56
FEET AND A CHORD BEARING OF S 10°26'09" E TO A POINT OF TANGENCY;

THENCE S 00°26'09" E, A DISTANCE OF 156.19 FEET,
THENCE S 89°33'51" W, A DISTANCE OF 66.00 FEET,
THENCE N 00°26'09" W, A DISTANCE OF 156.19 FEET TO A POINT OF CURVATURE,

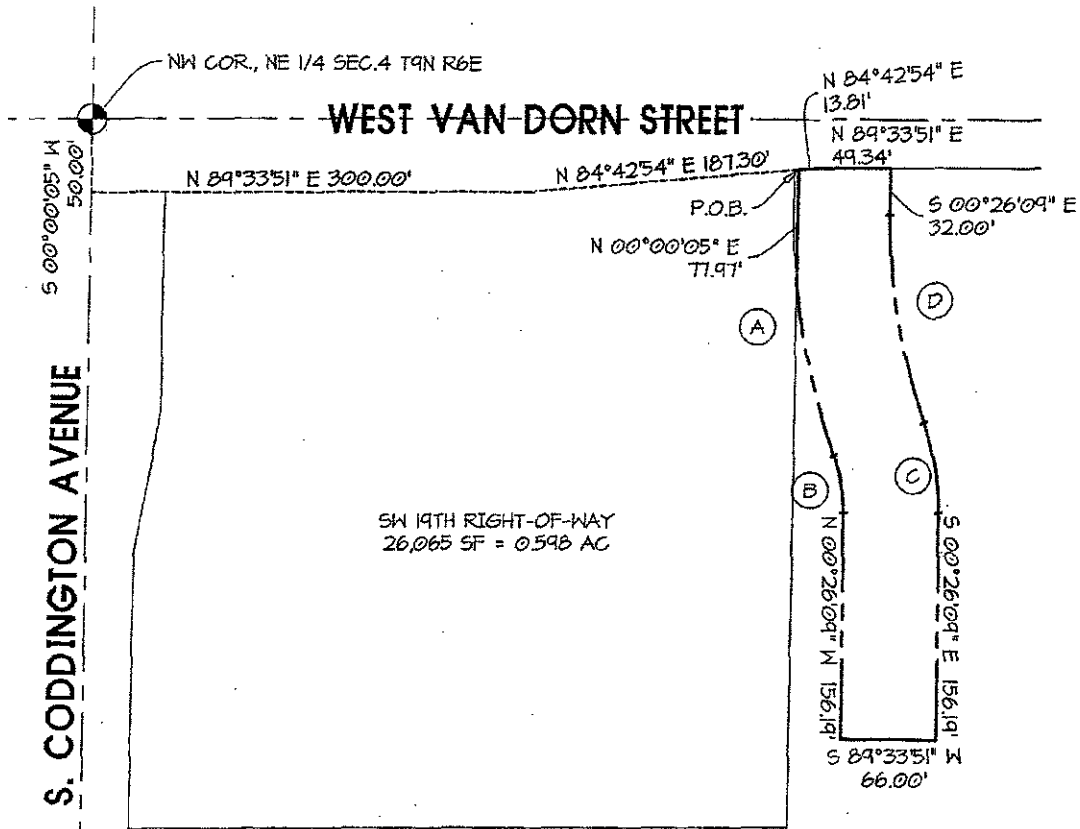
THENCE ON A CURVE TO THE LEFT, HAVING A RADIUS OF 117.00 FEET, A CENTRAL
ANGLE OF 20°00'00", A CURVE LENGTH OF 40.84 FEET, A CHORD LENGTH OF 40.63
FEET AND A CHORD BEARING OF N 10°26'09" W TO A POINT OF REVERSE
CURVATURE;

THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 483.00 FEET, A CENTRAL
ANGLE OF 14°23'57", A CURVE LENGTH OF 121.38 FEET, A CHORD LENGTH OF 121.06
FEET AND A CHORD BEARING OF N 13°14'10" W;

THENCE N 00°00'05" E, A DISTANCE OF 77.97 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINING AN AREA OF 0.598 ACRES, MORE OR LESS.

PARCEL 'A'



(A)	(B)	(C)	(D)
R=483.00'	R=117.00'	R=183.00'	R=417.00'
L=121.38'	L=40.84'	L=63.88'	L=145.56'
T=61.01'	T=20.63'	T=32.27'	T=73.53'
$\Delta=14^{\circ}23'57''$	$\Delta=20^{\circ}00'00''$	$\Delta=20^{\circ}00'00''$	$\Delta=20^{\circ}00'00''$
CL=121.06'	CL=40.63'	CL=63.56'	CL=144.82'
CB=N 13°14'10" W	CB=N 10°26'09" W	CB=S 10°26'09" E	CB=S 10°26'09" E

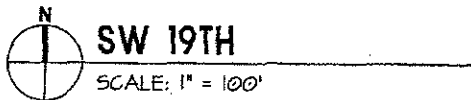


EXHIBIT C

CODDINGTON AND VAN DORN
LEGAL DESCRIPTION

SURPLUS PROPERTY:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 4,
TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY,
NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER:
THENCE ON THE WEST LINE OF SAID NORTHEAST QUARTER, ON AN ASSUMED
BEARING OF S 00°00'05" W, A DISTANCE OF 50.00 FEET; THENCE N 89°33'51" E, A
DISTANCE OF 300.00 FEET; THENCE N 84°42'54" E, A DISTANCE OF 187.30 FEET;
THENCE S 00°00'05" W, A DISTANCE OF 77.97 FEET TO THE POINT OF BEGINNING:

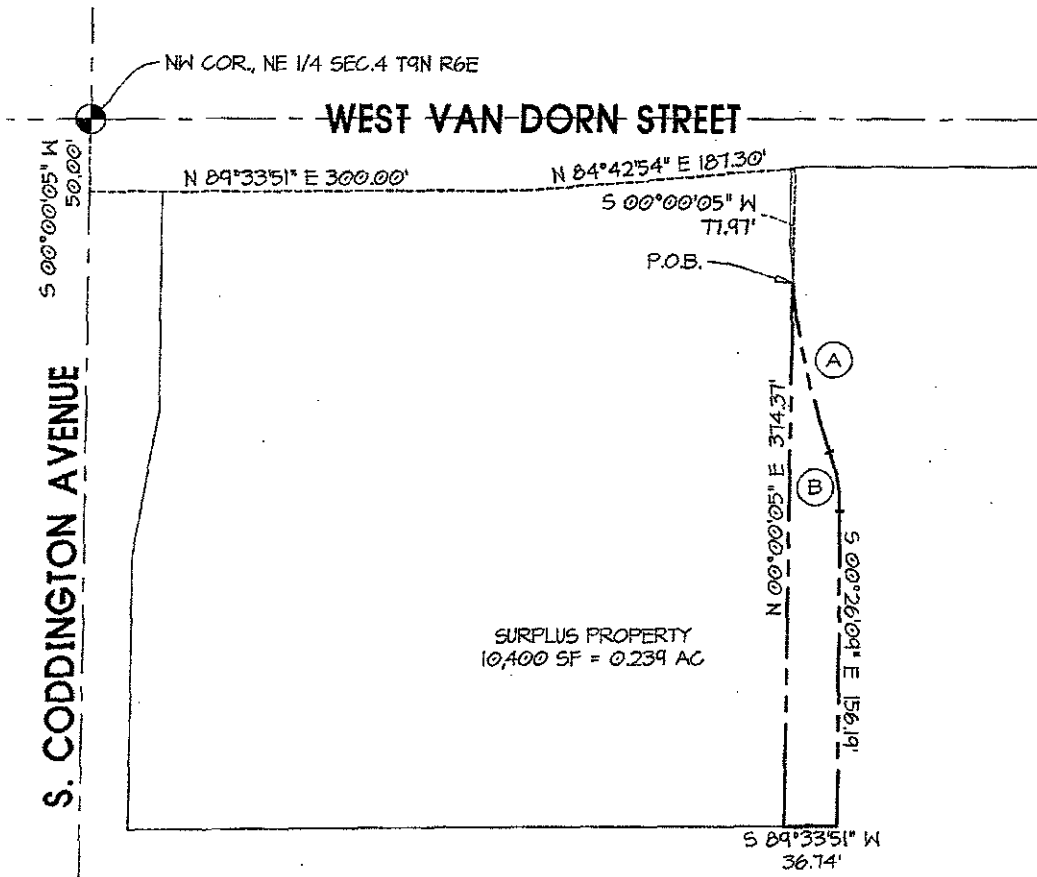
THENCE ON A CURVE TO THE LEFT, HAVING A RADIUS OF 483.00 FEET, A CENTRAL
ANGLE OF 14°23'57", A CURVE LENGTH OF 121.38 FEET, A CHORD LENGTH OF 121.06
FEET AND A CHORD BEARING OF S 13°14'10" E TO A POINT OF REVERSE CURVATURE,

THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 117.00 FEET, A CENTRAL
ANGLE OF 20°00'00", A CURVE LENGTH OF 40.84 FEET, A CHORD LENGTH OF 40.63
FEET AND A CHORD BEARING OF S 10°26'09" E TO A POINT OF TANGENCY,

THENCE S 00°26'09" E, A DISTANCE OF 156.19 FEET,
THENCE S 89°33'51" W, A DISTANCE OF 36.74 FEET,
THENCE N 00°00'05" E, A DISTANCE OF 374.37 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINING AN AREA OF 0.24 ACRES, MORE OR LESS.

PARCEL R

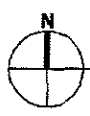


(A)

R=483.00'
L=121.38'
T=61.01'
Δ=14°23'57"
CL=121.00'
CB=S 13°14'10" E

(B)

R=117.00'
L=40.84'
T=20.63'
Δ=20°00'00"
CL=40.63'
CB=S 10°26'09" E



SURPLUS PROPERTY

SCALE: 1" = 100'