

**PUBLIC WORKS DEPARTMENT
MEMORANDUM #2018 - 25**

DATE: April 9, 2018

TO: Honorable Mayor Carol A. Dodge and City Council Members

FROM: James A. Hayes, AICP, City Manager *JH*
Robert Webber, Interim Director of Public Works *RW*

SUBJECT: **CR-54**
Justice Center West Park Land Purchase

PURPOSE

City Council will be considering a Purchase and Sale Agreement between the City of Northglenn and the City of Westminster for the acquisition of a parcel of land located adjacent to the Northglenn Justice Center.

BACKGROUND

The City of Westminster owns a parcel of land located at West 112th Avenue and Cherokee Street (the "Property") in Northglenn. The Property is located west of the new Northglenn Justice Center and the City of Northglenn desires to use it as park and open space.

The city sold the property to the City of Westminster on November 12, 1999 for the total sale price of \$83,700 (appraised value) for the purpose of locating a water tank on the site. However, Westminster built their tank in a different location negating the need for the tank location at this site.

City staff have worked with City of Westminster staff to initiate the sale of the property back to Northglenn. On February 26, 2018, the City of Westminster approved a resolution authorizing the sale of the Property to Northglenn for the amount of \$62,238. The property value was determined by an appraiser hired by the City of Northglenn. The City is acquiring the property for \$21,462 less than what the property was sold to Westminster for in 1999.

BUDGET IMPLICATIONS

This purchase will be funded from the General Fund.

SCHEDULE/TIME IMPLICATION

With Council approval of the Agreement, staff will move to execute the Purchase and Sale Agreement.

STAFF RECOMMENDATION

Attached to this memorandum is a Resolution that, if approved, would authorize the Mayor to execute a Purchase and Sale Agreement between the City of Northglenn and the City of Westminster for the amount of \$62,238.00.

Staff recommends approval of the Resolution.

STAFF REFERENCE

Kent Kisselman, P.E. Engineering Manager kkisselman@northglenn.org 303.450.4005

ATTACHMENTS

Purchase and Sale Agreement with Exhibits

SPONSORED BY: MAYOR DODGE

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-54
Series of 2018

Series of 2018

A RESOLUTION AUTHORIZING THE CITY'S PURCHASE OF PROPERTY GENERALLY LOCATED AT WEST 112TH AVENUE AND CHEROKEE STREET, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS TO COMPLETE THE TRANSACTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council hereby authorizes the purchase of property generally located at West 112th Avenue and Cherokee Street by approving the Purchase and Sale Agreement, attached hereto as **Exhibit 1**, and incorporated herein by this reference between the City of Northglenn and the City of Westminster, for the purchase price of \$62,238.00, and further authorizes the City Manager to execute the necessary documents to complete the transaction, subject to City Attorney approval as to the legal form of such documents.

DATED at Northglenn, Colorado, this ____ day of _____, 2018.

CAROL A. DODGE
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, 2018 (the "Effective Date"), by and between the City of Northglenn, a Colorado home rule municipality with an address of 11701 Community Center Drive, Northglenn, Colorado, 80233 ("Purchaser"), and the City of Westminster, a Colorado home rule municipality, with an address of 4800 W. 92nd Avenue, Westminster, Colorado 80031 ("Seller") (each individually a "Party" and collectively the "Parties").

WHEREAS, Seller owns the real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Seller wishes to sell the Property to Purchaser and Purchaser wishes to purchase the Property from the Seller, on the terms set forth in this Agreement; and

WHEREAS, Seller also wishes to convey to Purchaser a 9,363 square foot easement for access to and from the Property as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Easement").

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Conveyance.** Seller agrees to convey, sell, transfer and assign to Purchaser, and Purchaser agrees to purchase from the Seller, on the terms and conditions of this Agreement, the Property, all improvements thereon and any appurtenant rights now owned by the Seller, and the Easement.
2. **Purchase Price.** The Purchase Price to be paid by Purchaser to Seller for the sale and conveyance of the Property and the Easement is Sixty-Two Thousand, Two Hundred Thirty-Eight Dollars (\$62,238.00), to be paid by the Purchaser at closing in funds which comply with applicable Colorado law, including electronic transfer funds, certified check and cashier's check, as directed by the Seller.
3. **Evaluation Period.** Purchaser shall have the period commencing on the Effective Date and continuing for 30 days thereafter (the "Evaluation Period") in which to determine whether the Property is satisfactory for Purchaser's proposed use, in Purchaser's sole and absolute discretion.
 - a. Within 10 days after the Effective Date, Purchaser, at its expense, may obtain a commitment (the "Title Commitment") for an ALTA owner's coverage title insurance policy on the Property, issued by the Title Company, in the amount of the Purchase Price, together with copies of all items referred to therein, covering title to the Property on or after the Effective Date, and a survey (the "Survey").
 - b. Within 10 days after the Effective Date, Seller shall further make available to Purchaser for inspection and copying all reports and other documents in the Seller's possession or under its control which affect the value of the Property or otherwise relate to the Property, except any such document which is confidential or proprietary to a third party, including, without limitation, environmental reports, soil reports, engineering drawings, utility plans, road plans easements, rights of way, signage licenses and easements.

c. If, after review of the matters submitted pursuant to this Section 3 and inspection of the Property through the Evaluation Period, Purchaser determines in its sole discretion that the Property is unsatisfactory for Purchaser's desired purposes in any respect, Purchaser may terminate this Agreement by written notice delivered to Seller and the Title Company within the Evaluation Period.

4. Title Matters.

a. Purchaser shall be entitled to object to any matters shown in the Title Commitment or the Survey by a written notice of objections delivered to Seller within 20 days of Purchaser's receipt of the Title Commitment, the Survey and related documents. Seller may, but is not required to, respond to Purchaser's objections in writing within 30 days, proposing to take actions to satisfy any or all of such objections or declining to take action to satisfy any of such objections.

b. Purchaser may waive or approve a title objection by providing written notice of the waiver or approval prior to the end of the Evaluation Period. If Purchaser fails to deliver a notice of objections to Seller prior to the end of the Evaluation Period, then Purchaser shall be deemed to have waived objection to all matters shown or noted on the Survey or appearing as exceptions to title on the Title Commitment, and all such matters shall be deemed to be "Permitted Exceptions."

c. If Seller declines to satisfy any of Purchaser's stated objections and Purchaser does not terminate this Agreement at the end of the Evaluation Period, any matters previously listed in a notice of objections to title hereunder and not removed or otherwise eliminated shall also be deemed to be Permitted Exceptions.

5. Inspection. Purchaser and its employees, designated agents, representatives, consultants, prospective lenders and tenants, and independent contractors will have the right to enter the Property, the Easement, and any other common areas of the Property for the purposes of preparing, conducting and performing surveys, site plans, inspections, environmental reports, studies, testing and other similar matters. Purchaser shall be responsible for all costs of such investigations and inspection, and shall not allow any mechanics liens to be placed against the Property as a result of Purchaser's access, entry or inspections.

6. Closing. The closing will occur at the office of the Title Company, or at such other mutually agreeable location. The date of closing shall be 15 days after the Evaluation Period has ended, or by mutual agreement, at a later or earlier date. Purchaser shall pay closing costs and all other items required to be paid at closing, except as otherwise provided herein. Seller and Purchaser shall sign and complete all customary or required documents at or before closing.

7. Possession. Possession of the Property and access to the Easement shall be delivered to Purchaser at closing.

8. Seller's Deliverables. On or prior to closing, Seller shall deliver to Purchaser a bargain and sale deed duly executed and acknowledged by the Seller, conveying title to the Property to Purchaser, and such other instruments of transfer, certificates and additional documents as may be required hereunder or reasonably required by Purchaser or the Title Company, subject only to the Permitted Exceptions. In addition, on or prior to closing, Seller shall deliver to Purchaser a deed, in a form acceptable to Purchaser, conveying the Easement.

9. Purchaser's Deliverables. On or prior to closing, Purchaser shall deliver to Seller the Purchase Price and other funds required to be paid or provided by Purchaser under this Agreement, and such other documents as may be required hereunder or reasonably required by Seller or the Title Company.

10. Seller's Representations and Warranties. Seller hereby represents and warrants that the following statements are now, and will be as of the closing date, true and correct, to the best of Seller's knowledge.

a. There is no action, suit or proceeding pending, or to the best of Seller's knowledge threatened, against or otherwise affecting Seller, the Property, or the Easement in any court of law or equity, or before any governmental authority, in which an adverse decision might materially impair the Seller's ability to perform its obligations under this Agreement.

b. There is no pending or threatened condemnation or similar proceeding affecting the Property or the Easement.

c. The Property is being sold free and clear of all service contracts, agreements, leases and other occupancy rights.

d. Seller has not received any notice of any violations of any applicable law related to the Property.

e. Seller is not aware of any special assessments to be levied against the property after its acquisition by Purchaser.

f. Seller shall give Purchaser prompt written notice if any of the representations or warranties made by Seller in this Agreement are no longer true or correct in any material manner.

11. Condition of Property. Except as provided herein, Purchaser understands that it is purchasing the Property in its existing condition, "as is." Except for those warranties expressly set forth herein, Seller makes no warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever. Without limiting the generality of the preceding sentence, Purchaser acknowledges and agrees that neither Seller nor anyone acting for or on behalf of Seller makes or has made any statements, promises, warranties or representations, either express or implied, with respect to the absence or presence of any hazardous substance, material or condition affecting the Property, the soil condition, geologic condition or other physical aspect of the Property or the accuracy or completeness of any reports or information pertaining to such matters.

12. Remedies.

a. Seller's Remedies. If the closing does not occur by reason of a breach of the Purchaser, Seller shall have all remedies available at law or equity for such breach, excluding the remedy of specific performance.

b. Purchaser's Remedies. If the closing does not occur by reason of a breach of the Seller, and Purchaser has complied with the terms of this Agreement, Purchaser shall have all remedies available at law or equity for such breach, excluding the remedy of specific performance.

13. Miscellaneous.

a. Entire Agreement. This Agreement contains the entire agreement of the Parties. There are no other agreements, oral or written, and this Agreement can be amended only by written agreement signed by the Parties.

b. Agreement Binding; Assignment. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties. Purchaser shall have the right to assign this Agreement without the Seller's consent to an entity affiliated with or formed by one or more principals of Purchaser.

c. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

d. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Adams County, Colorado.

e. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

f. Third Parties. There are no intended third-party beneficiaries to this Agreement.

g. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Parties not performed during the current fiscal year is subject to annual appropriation by the respective governing bodies, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

h. Governmental Immunity. The Parties and their respective officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Parties and their respective officers, attorneys or employees.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the Effective Date.

CITY OF NORTHGLENN, COLORADO

ATTEST:

Johanna Small, City Clerk

CITY OF WESTMINSTER, COLORADO

ATTEST:

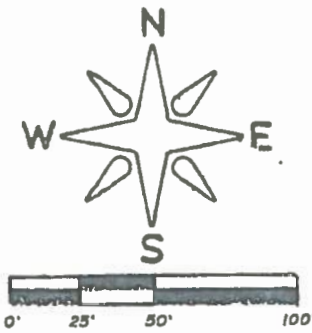
Michelle Parker, City Clerk

EXHIBIT A
Legal Description and Map of the Property

R.W. BAYER & ASSOCIATES, INC.
 2090 EAST 104TH AVENUE, SUITE 200
 THORNTON, COLORADO 80233 452-4433

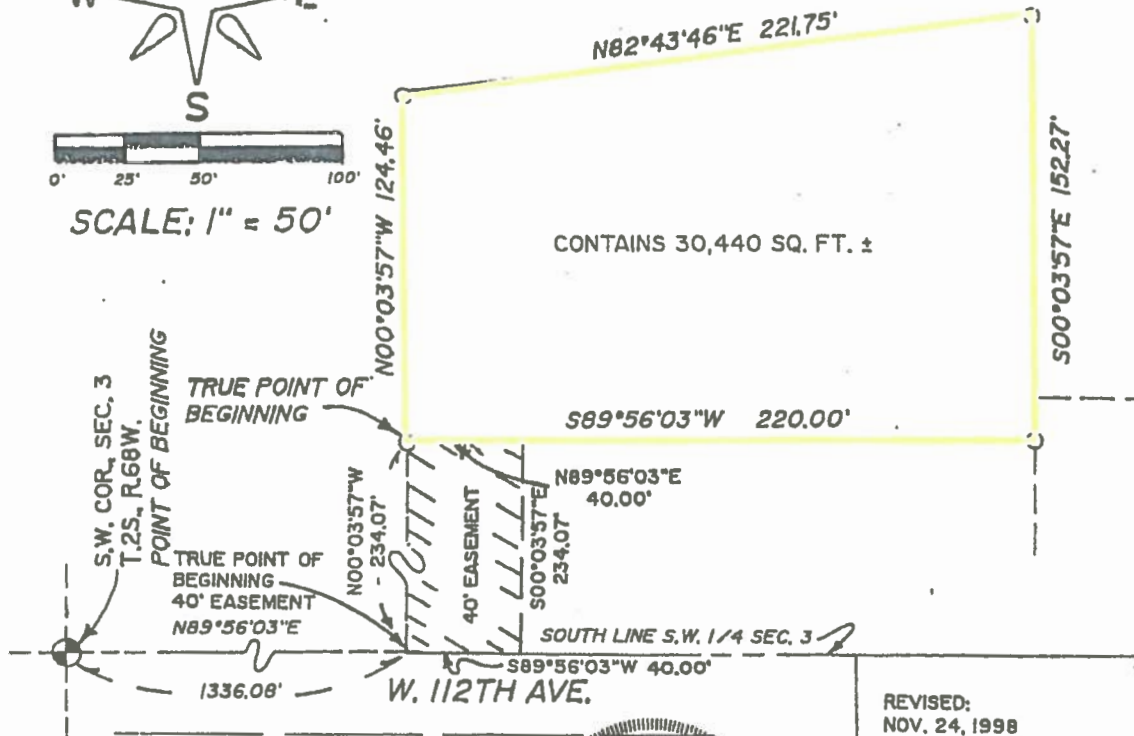
SURVEYORS

MAP & LEGAL DESCRIPTION



SCALE: 1" = 50'

S.W. 1/4, SEC. 3
 T.2S., R.68W.



REVISED:
 NOV. 24, 1998
 SHOW 30' EASEMENT
 AUGUST 20, 1999
 SHOW 40' EASEMENT

PROJ. NO. 99167
 FILE NO. 3-28-2145



LEGAL DESCRIPTION: (PARCEL OF INTEREST)

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SECTION 3; THENCE N89°56'03"E ALONG THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER, A DISTANCE OF 1336.08 FEET TO A POINT; THENCE N00°03'57"W, A DISTANCE OF 234.07 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING N00°03'57"W, A DISTANCE OF 124.46 FEET TO A POINT; THENCE N82°43'46"E, A DISTANCE OF 221.75 FEET TO A POINT; THENCE S00°03'57"E A DISTANCE OF 152.27 FEET TO A POINT; S89°56'03"W, A DISTANCE OF 220.00 FEET TO THE TRUE POINT OF BEGINNING. CONTAINS 0.699 ACRES OR 30,440 SQUARE FEET MORE OR LESS.

LEGAL DESCRIPTION (40 FOOT EASEMENT)

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 3; THENCE N89°56'03"E ALONG THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 3, A DISTANCE OF 1336.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE N00°03'57"W, A DISTANCE OF 234.07 FEET TO A POINT; THENCE N89°56'03"E, A DISTANCE OF 40.00 FEET TO A POINT; THENCE S00°03'57"E, A DISTANCE OF 234.07 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTHWEST ONE-QUARTER OF SAID SECTION 3; THENCE S89°56'03"W, ALONG SAID SOUTH LINE A DISTANCE OF 40.00 FEET TO THE TRUE POINT OF BEGINNING. CONTAINS 0.215 ACRES OR 9,363 SQUARE FEET MORE OR LESS.

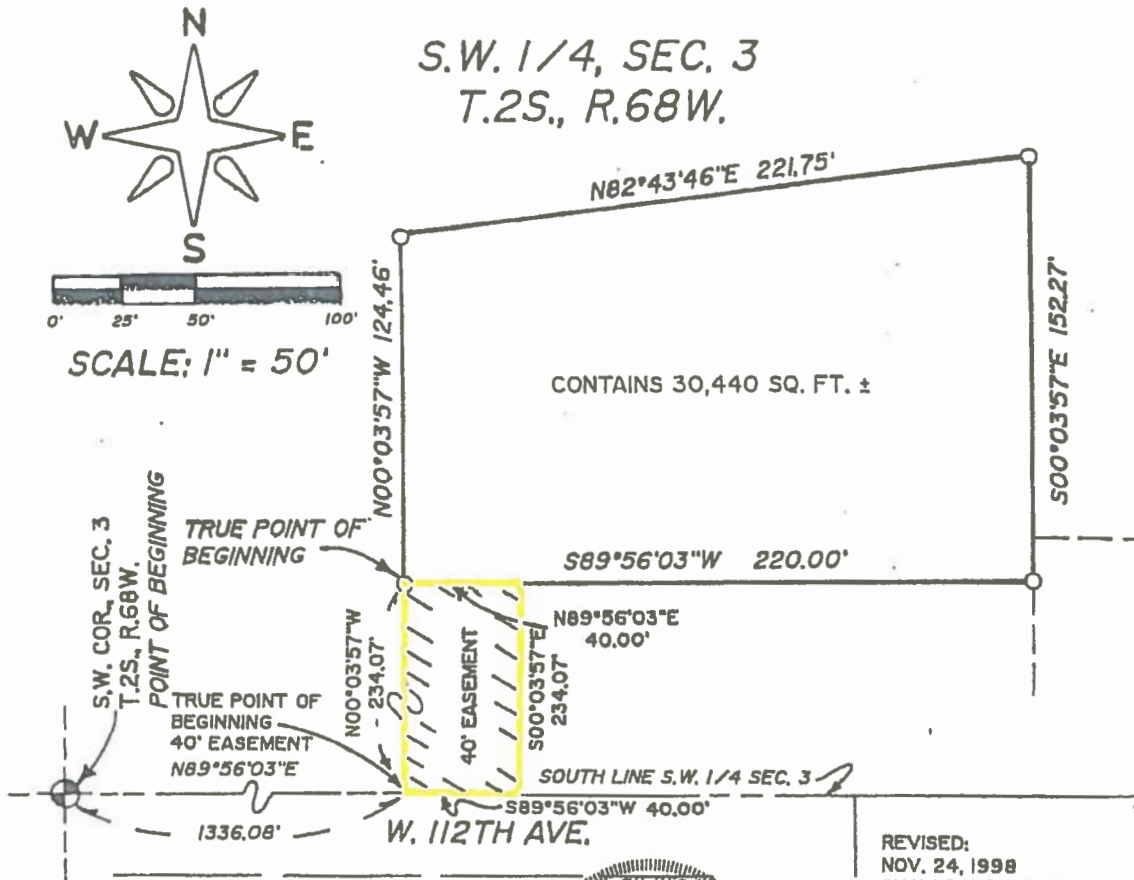
EXHIBIT A

EXHIBIT B
Legal Description and Map of the Easement

R.W. BAYER & ASSOCIATES, INC.
 2090 EAST 104TH AVENUE, SUITE 200
 THORNTON, COLORADO 80233 452-4433

SURVEYORS

MAP & LEGAL DESCRIPTION



REVISED:
 NOV. 24, 1998
 SHOW 30' EASEMENT
 AUGUST 20, 1999
 SHOW 40' EASEMENT

PROJ. NO. 99167
 FILE NO. 3-28-2145



LEGAL DESCRIPTION: (PARCEL OF INTEREST)

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, DESCRIBED AS:
 BEGINNING AT THE SOUTHWEST CORNER OF SECTION 3; THENCE N89°56'03"E ALONG THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER, A DISTANCE OF 1336.08 FEET TO A POINT; THENCE N00°03'57"W, A DISTANCE OF 234.07 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING N00°03'57"W, A DISTANCE OF 124.46 FEET TO A POINT; THENCE N82°43'46"E, A DISTANCE OF 221.75 FEET TO A POINT; THENCE S00°03'57"E A DISTANCE OF 152.27 FEET TO A POINT; S89°56'03"W, A DISTANCE OF 220.00 FEET TO THE TRUE POINT OF BEGINNING.
 CONTAINS 0.699 ACRES OR 30,440 SQUARE FEET MORE OR LESS.

LEGAL DESCRIPTION (40 FOOT EASEMENT)

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, DESCRIBED AS:
 BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 3; THENCE N89°56'03"E ALONG THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 3, A DISTANCE OF 1336.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE N00°03'57"W, A DISTANCE OF 234.07 FEET TO A POINT; THENCE N89°56'03"E, A DISTANCE OF 40.00 FEET TO A POINT; THENCE S00°03'57"E, A DISTANCE OF 234.07 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTHWEST ONE-QUARTER OF SAID SECTION 3; THENCE S89°56'03"W, ALONG SAID SOUTH LINE A DISTANCE OF 40.00 FEET TO THE TRUE POINT OF BEGINNING.
 CONTAINS 0.215 ACRES OR 9,363 SQUARE FEET MORE OR LESS.

EXHIBIT B