

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING EXCHANGE AGREEMENT WITH CLEAR CREEK
L.L.C. FOR COUNTY ROAD RIGHT OF WAY

WHEREAS, pursuant to Neb. Rev. Stat. §39-1701 to 1702 (Reissue 2008), the County Board of Commissioners, may, when necessary for the safety or convenience of the traveling public, acquire interests in property, by gift or otherwise, deemed to be necessary for present or future county road purposes; and,

WHEREAS, improvements to a portion of Chandler Road require the acquisition of additional permanent right-of-way and a temporary construction easement, the owner of which has agreed to grant to the County in exchange for money and title to the right-of-way of an unimproved alley; and,

WHEREAS, it is the judgment of this Board that it is necessary for the safety or convenience of the traveling public that right-of-way for improvements to Chandler Road, as described on attached Exchange Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that Sarpy County hereby approves the Exchange Agreement with Clear Creek L.L.C. for the acquisition of additional road right-of-way, a copy of which is attached hereto.

BE IT FURTHER RESOLVED that the Chair and Clerk are hereby authorized to sign such documents as necessary to accept the property described herein for the purposes stated in this Resolution.

BE IT FURTHER RESOLVED that the February 2, 2010 action of this Board with Clear Creek LLC, found at Resolution 2010-038 is hereby rescinded.

DATED this 14th day of December, 2010.

Moved by Tom Richards seconded by Rich Jansen, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Signature]

none

none

[Signature]

[Signature]

ABSTAIN:

[Signature]

none

[Signature]



[Signature]
County Clerk

Approved as to form:

[Signature]
County Attorney/Deputy

REAL ESTATE EXCHANGE AGREEMENT

THIS REAL ESTATE EXCHANGE AGREEMENT (hereinafter referred to as "this Agreement") is dated as of this ____ day of _____, 2010, by and between THE COUNTY OF SARPY, NEBRASKA (hereinafter referred to as "the COUNTY") and CLEAR CREEK HOLDINGS, LLC, a Nebraska limited liability company, (hereinafter referred to as "CLEAR CREEK").

A.

The COUNTY hereby agrees to exchange and purchase and CLEAR CREEK hereby agrees to exchange and sell to the COUNTY, certain real" property upon the following terms and conditions:

A1. Clear Creek Property. The property of CLEAR CREEK to be sold to and exchanged with property of COUNTY pursuant to this Agreement consists of two parcels of land in Sarpy County, Nebraska, a permanent right-of-way acquisition, herein known as "Parcel A" as described in the legal description attached hereto and incorporated herein by reference as "Exhibit A"; together with the temporary easement, herein known as "Parcel B," described in the legal description attached hereto and incorporated herein by reference as "Exhibit B." The location of "Parcel A" and "Parcel B" are depicted on the diagram attached hereto as "Exhibit C."

A2. Clear Creek Deed. PARCEL A shall be conveyed by CLEAR CREEK to COUNTY in fee simple by Special Warranty Deed free and clear of all mortgages, liens (including real estate taxes), tenants' rights, and other encumbrances except easements and protective covenants now of record, which easements and covenants are deemed acceptable to COUNTY after it is furnished with a title commitment for PARCEL A. (Such excepted items hereinafter being referred to collectively as "the CLEAR CREEK PERMITTED EXCEPTIONS"). The temporary easement described herein as PARCEL B shall be conveyed by CLEAR CREEK to COUNTY by executing the form attached hereto as "Exhibit E," and shall be subject to the following additional terms and conditions:

1) Possession of said Temporary Easement by the County shall begin immediately upon the delivery of said form by CLEAR CREEK to COUNTY at Closing herein;

2) Said Temporary Easement shall be for the purpose of facilitating improvements to Chandler Road, as well as appurtenant drainage and safety features.

3) COUNTY'S possession of said Temporary Easement area and the terms of the temporary easement shall continue until the earliest of the following date, at which time it shall terminate: (I) June 1, 2011; or (ii) that date which is 90 days after the completion of the Chandler Road improvements.

4) The Temporary Easement Agreement shall not be recorded in the public real estate records.

B.

COUNTY hereby agrees to sell and exchange and CLEAR CREEK hereby agrees to purchase and accept from COUNTY, certain real property upon the following terms and conditions:

B1. County Property. The property of the COUNTY to be sold to and exchanged with property of CLEAR CREEK pursuant to this Agreement consists of the parcel of land in Sarpy County, Nebraska, referred to as "PARCEL C," such PARCEL C being legally described in the legal description attached hereto and incorporated herein by reference as "Exhibit D." and

B2. Valuation/Price. For purposes of this Agreement COUNTY and CLEAR CREEK have determined that the fair market value of PARCEL C (\$7,103.28) is deemed to be less than the fair market value of PARCEL A and PARCEL B combined (\$8,736.30). In consideration thereof, COUNTY agrees to pay to CLEAR CREEK at closing of this transaction the sum One Thousand Six Hundred Thirty-Three Dollars and Two Cents (\$1,633.02), said sum being the difference in the fair market value of the parcels being exchanged herein.

B3. Deed. PARCEL C shall be conveyed by the COUNTY TO CLEAR CREEK in fee simple by Special Warranty Deed free and clear of all mortgages, liens (including real estate taxes), tenants' rights, and other encumbrances except easements and protective covenants now of record which easements and covenants are deemed acceptable to CLEAR CREEK after it is furnished with a title commitment for PARCEL C. (Such excepted items hereinafter referred to collectively as "COUNTY'S PERMITTED EXCEPTIONS").

C.

COUNTY and CLEAR CREEK agree that the following additional provisions shall be applicable to the sale, exchange and purchase of the properties herein described:

C1. Conveyances. COUNTY represents that it has good, valid and marketable title, in fee simple, to PARCEL C free and clear of any liens and encumbrances except COUNTY'S PERMITTED EXCEPTIONS and agrees to convey title to PARCEL C to CLEAR CREEK by Special Warranty Deed to be delivered to CLEAR CREEK at the closing of this transaction. CLEAR CREEK represents that it has good, valid and marketable title in fee simple to PARCEL A and PARCEL B, free and clear of any liens and encumbrances except CLEAR CREEK'S PERMITTED EXCEPTIONS and agrees to convey title to PARCEL A to COUNTY by Special Warranty Deed to be delivered to COUNTY at the closing of this transaction.

C2. Surveys. If COUNTY has any existing surveys of PARCELS A, B and C it shall provide copies of any such surveys to CLEAR CREEK within ten (10) days after the execution of this Agreement. If COUNTY does not have any surveys of PARCELS A, B or C, then in that

event CLEAR CREEK shall be entitled to have PARCELS A, B or C surveyed by a licensed Nebraska surveyor. If there are any differences between the legal descriptions of PARCELS A, B or C as contained in Exhibits "A," "B" and "D" to this Agreement and any such surveys, the parties shall attempt to resolve those differences. If the differences are not resolved prior to Closing, then COUNTY at CLEAR CREEK'S option shall execute and deliver at Closing another Special Warranty Deed containing the legal description of PARCEL C set forth in the survey obtained by CLEAR CREEK as well as the Special Warranty Deed containing the legal description of PARCEL C as set forth in "Exhibit D" to this Agreement. All surveys which a party may require or obtain in connection with the Closing of this transaction shall be at the expense of such party.

C3. Title insurance. Each party shall provide to the other party a current insurance commitment for the property that the party is selling and exchanging to the other party within ten (10) days after execution of this Agreement. Upon receiving each title commitment, each party shall have the opportunity to review whether or not there are any title defects found. If any title defects are found, then that party shall give notice to the other party of such title defects and the other party at its expense must cure them within a reasonable time and prior to the Closing. If the title defects are not cured within a reasonable time period and prior to Closing, the party giving notice of the title defects may, at its option, rescind this Agreement without liability and this Agreement shall have no further force and effect. At the Closing each party will cause the title company issuing the title commitment to the other party to issue an ALTA Owner's Title Policy to the other such party. The cost of the title insurance commitment and the ALTA Owner's Title Policy shall be paid by the party furnishing the title insurance commitment to the other party. Each party agrees to execute an Affidavit and Indemnification Agreement required by the title company issuing the ALTA Owner's Title Policy so as to cause the title company to delete certain printed exceptions from the ALTA Owner's Title Policy.

C4. Closing. This transaction shall be closed upon a date and at a time to be designated in a written notice mailed by CLEAR CREEK to the COUNTY (herein "Closing"), such date of Closing to be not more than 90 days following the date of this Agreement. The transaction shall be closed at such place as may be agreed upon by the COUNTY and CLEAR CREEK after such notice of Closing is given to COUNTY by CLEAR CREEK.

C5. Delivery of possession. Exclusive possession of PARCELS A, B and C shall commence immediately upon Closing.

C6. Revenue Stamps. All documentary stamp taxes on all deeds provided by either party shall be paid by the COUNTY to the extent that any of these transactions are not exempt therefrom.

C7. Recordation and Costs. This Agreement shall not be recorded in whole or in part in the public real estate records. At Closing, COUNTY shall pay the costs of recording the deed for PARCEL A. CLEAR CREEK shall pay the costs for recording the deed(s) for PARCEL C.

C8. Entire agreement. This instrument contains the entire agreement between the parties, and each party agrees that neither party, nor any officers, agents, or employees of the parties, have made any representation or promise with respect to, or affecting the properties subject to this Agreement, not expressly contained herein.

C9. Governing law. The provisions of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

C10. 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.

C11. Time. Time is of the essence of this Agreement

C12. Default: specific performance. If either party shall default hereunder, the other non-defaulting party shall be entitled to enforce specific performance of this Agreement or may terminate this Agreement at such non-defaulting party's option. These shall be the exclusive and only remedies that either party shall have.

C13. Notices. All notices herein required shall be in writing and shall be served on the parties at the addresses set out below, or at such other address as either party may hereafter designate in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service.

C14. Survival of conditions. The terms and conditions of this Agreement, and all representations, covenants, warranties, and agreements made herein, shall survive the closing of this transaction, and shall not be deemed to have merged or terminated upon closing.

C15. Binding effect. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

THE COUNTY OF SARPY, NEBRASKA

By Joni Albrecht 12/14/10
Chairperson, Board of Commissioners

STATE OF NEBRASKA)
) SS.
COUNTY OF SARPY)

On this 14th day of December, 2010, before me, a Notary Public in and for said County, personally came Joni Albrecht, Chairperson of the Board of Commissioners of Sarpy County, Nebraska, to me personally known to be the identical person whose name is affixed to the above

C-77(99-4)

#2000026.01

TRACT No. 7

Type: Right of Way Acquisition

Owner: Clear Creek Holdings, LLC

LEGAL DESCRIPTION

A part of Lot 6, Block 13 Chalco, a subdivision located in the W1/2 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of the NW1/4 of said Section 14; thence S89°21'02"W (assumed bearing), along the South line of said NW1/4 of Section 14, a distance of 390.46 feet; thence N00°38'56"W, a distance of 5.12 feet to a point on the North right-of-way line of Railway Street, said point also being the Southeast corner of said Lot 6, Block 13 Chalco, said point also being the point of beginning; thence N61°03'25"W, along said North right-of-way line of Railway Street, said line also being the South line of said Lot 6, Block 13 Chalco, a distance of 146.82 feet; thence N77°59'25"W, along said North right-of-way line of Railway Street, said line also being said South line of said Lot 6, Block 13 Chalco, a distance of 12.11 feet to the point of intersection of said North right-of-way line of Railway Street and the East right-of-way line of Kearney Avenue, said point also being the Southwest corner of said Lot 6, Block 13 Chalco; thence N00°03'49"W, along said East right-of-way line Kearney Avenue, said line also being the West line of said Lot 6, Block 13 Chalco, a distance of 10.39 feet; thence S77°05'25"E, a distance of 143.90 feet to a point on the East line of said Lot 6, Block 13 Chalco; thence S00°05'01"E, along said East line of said Lot 6, Block 13 Chalco, a distance of 51.81 feet to the point of beginning.

The above described tract of land contains an area of 4,102 square feet, more or less.



C-77(99-4)

#2000026.01

TRACT No. 7

Type: Temporary Easement

Owner: Clear Creek Holdings, LLC

LEGAL DESCRIPTION

A part of Lot 6, Block 13 Chalco, a subdivision located in the W1/2 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of the NW1/4 of said Section 14; thence S89°21'02"W (assumed bearing), along the South line of said NW1/4 of Section 14, a distance of 390.46 feet; thence N00°38'56"W, a distance of 5.12 feet to a point on the North right-of-way line of Railway Street; said point also being the Southeast corner of said Lot 6, Block 13 Chalco; thence N00°05'01"W, along the East line of said Lot 6, Block 13 Chalco, a distance of 51.81 feet to the point of beginning; thence N77°05'25"W, a distance of 143.90 feet to a point on the East right-of-way line of Kearney Avenue, said line also being the West line of said Lot 6, Block 13 Chalco; thence N00°03'49"W, along said East right-of-way line of Kearney Avenue, said line also being said West line of said Lot 6, Block 13 Chalco, a distance of 17.45 feet; thence S37°49'34"E, a distance of 12.66 feet; thence S77°05'25"E, a distance of 135.94 feet to a point on said East line of said Lot 6, Block 13 Chalco; thence S00°05'01"E, along said East line of said Lot 6, Block 13 Chalco, a distance of 9.22 feet to the point of beginning.

The above described tract of land contains an area of 1,325 square feet, more or less.

And also together with a part of Lot 3, Block 13 Chalco, a subdivision located in the W1/2 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of the NW1/4 of said Section 14; thence S89°21'02"W (assumed bearing), along the South line of said NW1/4 of Section 14, a distance of 370.51 feet; thence N00°05'01"W, a distance of 52.99 feet to a point on the North right-of-way line of Railway Street, said point also being the Southwest corner of said Lot 3, Block 13 Chalco, said point also being the point of beginning; thence continuing N00°05'01"W, along the West line of said Lot 3, Block 13 Chalco, a distance of 11.94 feet; thence S81°41'41"E, a distance of 81.25 feet to a point on said North right-of-way line of Railway Street, said line also being the South line of said Lot 3, Block 13 Chalco; thence S89°51'26"W, along said North right-of-way line of Railway Street, said line also being said South line of said Lot 3, Block 13 Chalco, a distance of 80.38 feet to the point of beginning.

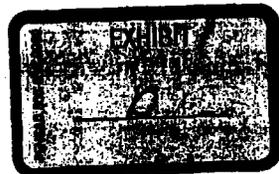
The above described tract of land contains an area of 480 square feet, more or less.



VACATE RIGHT-OF-WAY

A portion of the alley in Block 13, together with a portion of vacated Pitman Street, original town of Chalco, as surveyed, platted and recorded in Sarpy County, Nebraska, more particularly described as follows:

All of the existing alley adjoining Lots 1 through 3 and Lots 6 and 7, Block 13, extending from a line between the Southwest corner of said Lot 3 along the new ROW of Chandler Road to the Southeast corner of said Lot 6, thence Northerly to the South ROW of vacated Pitman Street. Together with a portion of the South 1/2 of vacated Pitman Street adjoining Lots 1 and 7, Block 13, being the extension of said alley North to the center line of said vacated Pitman Street. Said tract containing 3,481.9 sqft±.



COPIES TO:

- 1.
- 2. Owner
- 3. Buyer

SARPY COUNTY
RIGHT OF WAY CONTRACT
TEMPORARY EASEMENT

Project No. C-77(99-04)
 Tract No. 7

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between CLEAR CREEK HOLDING, LLC

Address: PO. BOX 45672 OMAHA, NE. 68145
 hereinafter called the OWNER, and _____, hereinafter called the BUYER.

WITNESSETH: In consideration of the payment or payments as specified below, the Owner hereby grants to the Buyer a temporary easement for _____ purposes to certain real estate described from the centerline of the proposed highway as follows:

From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____
From Sta. _____	to Sta. _____	, a strip _____	ft. wide _____	side _____

SEE ATTACHED LEGAL DESCRIPTION

said temporary easement for ROAD CONSTRUCTION purposes will be utilized more specifically as follows:

and as shown on approved plans and situated in the A PART OF LOT 6, BLOCK 13, CHALCO, A SUBDIVISION IN THE WEST 1/2
 of Section 14, Township 14N, Range 11E, of the 6th P.M. in SARPY County, Nebraska.

It is agreed and understood that the Buyer is hereby granted an immediate right of entry upon the premises described above.

The Buyer agrees to pay for the use of the above described real estate as specified below. If the owner so desires he/she shall have the right to receive 100% of the payments due under this contract prior to the county's use thereof.

Approximately <u>1,805</u> at \$ <u>2.04</u> per <u>X 10%</u> Sta. _____ to Sta. _____	\$ <u>368.22</u>
Approximately _____ at \$ _____ per _____ Sta. _____ to Sta. _____	\$ _____
Approximately _____ at \$ _____ per _____ Sta. _____ to Sta. _____	\$ _____
Moving and replacing approximately _____ rods of fence at \$ _____ per rod	\$ _____
Moving and replacing approximately _____ rods of fence at \$ _____ per rod	\$ _____

Dated this _____ day of _____, 20 _____
On the above date, before me a General Notary Public duly commissioned and
qualified, personally came _____

_____ to me known to be the identical person _____ whose name _____ affixed to the
foregoing instrument as grantor _____ and acknowledged the same to be a
voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year above written.

Notary _____

My commission expires the _____ day of _____, 20 _____

STATE OF NEBRASKA

ss.

SARPY COUNTY

Dated this _____ day of _____, 20 _____
On the above date, before me a General Notary Public duly commissioned and
qualified, personally came _____

_____ to me known to be the identical person _____ whose name _____ affixed to the
foregoing instrument as grantor _____ and acknowledged the same to be a
voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year above written.

Notary _____

My commission expires the _____ day of _____, 20 _____

STATE OF NEBRASKA

ss.

SARPY COUNTY

MEMORANDA

PLEASE PRINT ALL NAMES

Exact and full name of OWNER, as same appears of record _____

If married, full name of spouse _____

If unmarried, show "single," "widower," "widow" _____

If mortgage or other liens, show names of holders, amounts, dates and book page of record _____

If an estate, give the names of all the heirs, with the share of each. Show names of spouses of those married _____

Name of executor or administrator _____

If any of the owners or heirs are minors, give their names and ages _____

Name of guardian _____

TENANT - Exact and full names. Rent Agreement _____

REMARKS

TRACT No. 7

Type: Temporary Easement

Owner: Clear Creek Holdings, LLC

LEGAL DESCRIPTION

A part of Lot 6, Block 13 Chalco, a subdivision located in the W1/2 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

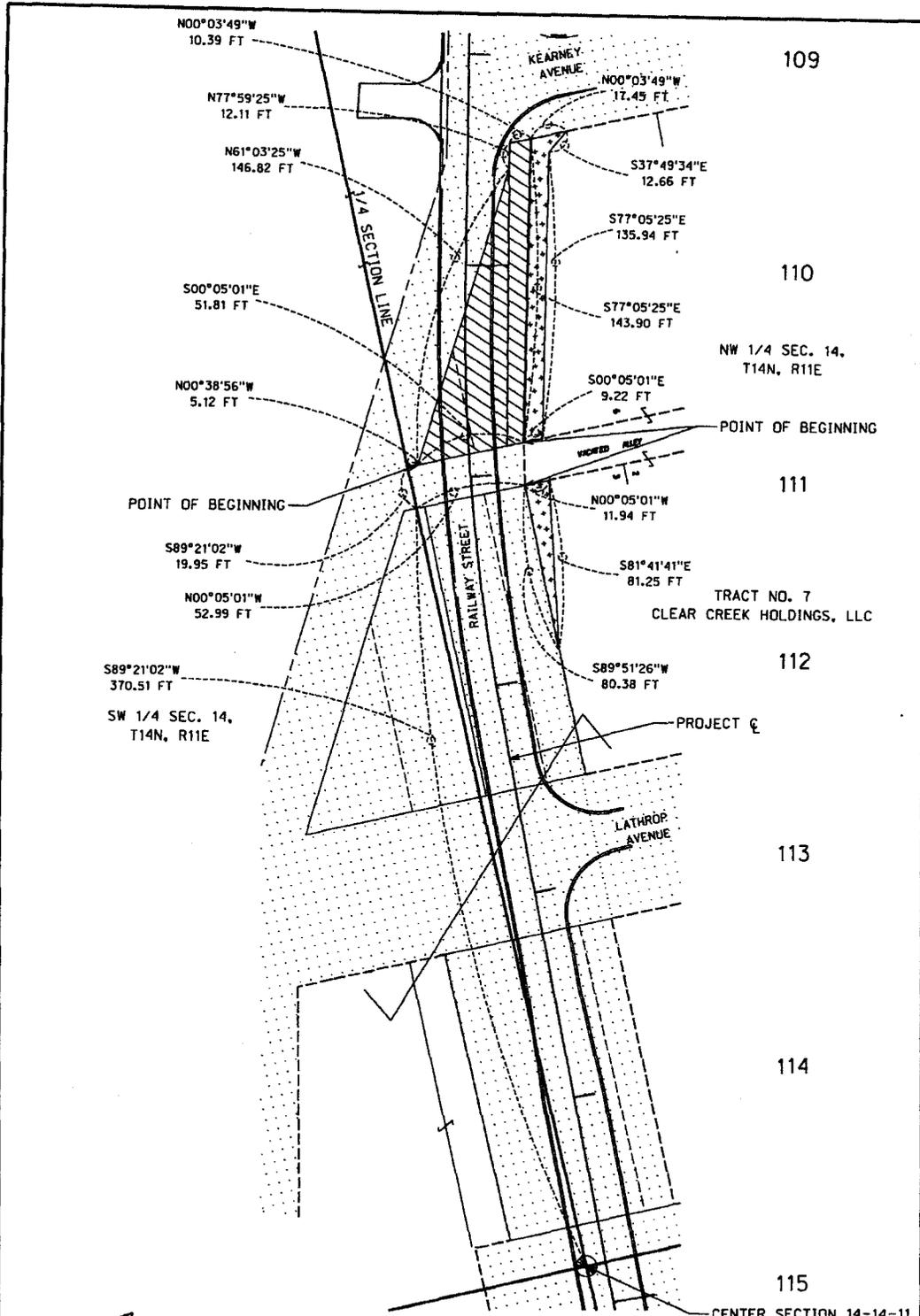
Commencing at the Southeast corner of the NW1/4 of said Section 14; thence S89°21'02"W (assumed bearing), along the South line of said NW1/4 of Section 14, a distance of 390.46 feet; thence N00°38'56"W, a distance of 5.12 feet to a point on the North right-of-way line of Railway Street, said point also being the Southeast corner of said Lot 6, Block 13 Chalco; thence N00°05'01"W, along the East line of said Lot 6, Block 13 Chalco, a distance of 51.81 feet to the point of beginning; thence N77°05'25"W, a distance of 143.90 feet to a point on the East right-of-way line of Kearney Avenue, said line also being the West line of said Lot 6, Block 13 Chalco; thence N00°03'49"W, along said East right-of-way line of Kearney Avenue, said line also being said West line of said Lot 6, Block 13 Chalco, a distance of 17.45 feet; thence S37°49'34"E, a distance of 12.66 feet; thence S77°05'25"E, a distance of 135.94 feet to a point on said East line of said Lot 6, Block 13 Chalco; thence S00°05'01"E, along said East line of said Lot 6, Block 13 Chalco, a distance of 9.22 feet to the point of beginning.

The above described tract of land contains an area of 1,325 square feet, more or less.

And also together with a part of Lot 3, Block 13 Chalco, a subdivision located in the W1/2 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of the NW1/4 of said Section 14; thence S89°21'02"W (assumed bearing), along the South line of said NW1/4 of Section 14, a distance of 370.51 feet; thence N00°05'01"W, a distance of 52.99 feet to a point on the North right-of-way line of Railway Street, said point also being the Southwest corner of said Lot 3, Block 13 Chalco, said point also being the point of beginning; thence continuing N00°05'01"W, along the West line of said Lot 3, Block 13 Chalco, a distance of 11.94 feet; thence S81°41'41"E, a distance of 81.25 feet to a point on said North right-of-way line of Railway Street, said line also being the South line of said Lot 3, Block 13 Chalco; thence S89°51'26"W, along said North right-of-way line of Railway Street, said line also being said South line of said Lot 3, Block 13 Chalco, a distance of 80.38 feet to the point of beginning.

The above described tract of land contains an area of 480 square feet, more or less.



SEE ATTACHED SHEET FOR LEGAL DESCRIPTION #2000026.002 NO SCALE

NEW R.O.W. ACQUISITION  4102 SF	TRACT NO. <u>7</u>
PERMANENT EASEMENT 	EXHIBIT NO. _____
TEMPORARY EASEMENT  1805 SF	PROJECT NO. <u>C-77(99-4)</u>
EXISTING R.O.W. 	DATE: <u>10/22/2009</u>
OWNER: CLEAR CREEK HOLDINGS, LLC	LEAD AGENCY: SARPY COUNTY