

## **PROTECTIVE COVENANTS**

### **OGALLALA NORTH BUSINESS PARK**

WHEREAS, the City of Ogallala, Nebraska, a Nebraska municipal corporation, is the record owner of the following described real estate:

Lot 1, Block 1; Lots 1 & 2, Block 2; Lot 1, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 & 12, Block 4; and Lots 1, 2, 3, 4, 5, & 6, Block 5, Ogallala North Business Park Addition located in the NW1/4 of Section 30, Township 14 North, Range 38 West of the 6<sup>th</sup> P.M, in Ogallala, Keith County, Nebraska; and,

WHEREAS, the City of Ogallala, Nebraska intends to develop the Ogallala North Business Park Addition as a regulated business park; and

WHEREAS, the City of Ogallala, Nebraska established the Ogallala North Business Park Addition to implement the policies developed in the Future Land Use Plan portion of the Comprehensive Plan of the City of Ogallala; and

WHEREAS, the City of Ogallala, Nebraska intends to provide a cohesive and properly developed north entrance into the City of Ogallala from the Highway 26/61 Corridor and Lake McConaughy; and

WHEREAS, the City of Ogallala Nebraska depends exclusively on ground water for its drinking water supply and it is the intent of these protective covenants to impose regulations and restrictions upon the use and activities in the Ogallala North Business Park Addition in order to protect the drinking water supply and to promote the public health, safety and general welfare of the residents of the City of Ogallala; and

WHEREAS, the City of Ogallala, Nebraska hereby declares that the Ogallala North Business Park Addition shall be owned, used and conveyed under and subject to the following covenants, conditions and restrictions.

NOW THEREFORE, the following restrictions and protective covenants are hereby accepted, approved and placed on said real estate:

I. **Building Set-Backs:**

Front, side and rear building set-backs are established on the Ogallala North Business Park Addition Plat Map. In addition, the minimum distance between any two buildings on the same lot shall be 20 feet.

II. **Site Coverage:**

The total coverage of buildings and structure shall not exceed 60 percent of the area of each lot, which coverage shall include that required for off-street loading and unloading. The total coverage of parking area shall not exceed 30 percent of the area of each lot.

III. Parking Facilities:

All vehicular parking (customer, visitor, and employee) shall be off-street. The number of vehicular parking spaces shall equal at least 50 percent of the maximum employment on a single shift. Parking areas shall not be used for any purpose other than the parking of automotive vehicles belonging to customers, visitors, and employees. In no case shall any storage, servicing, or dismantling of automobiles or other vehicles, or loading or unloading operations be permitted in the required parking areas. All parking areas shall be hard surfaced with a suitable dust-less material (i.e. concrete paving or crushed rock).

IV. Loading Areas:

All loading and unloading operations shall be off-street, with minimum dimensions of 12 feet by 40 feet and an overhead clearance of 14 feet in height. In no case shall loading and unloading be permitted in the required parking or lawn areas or in a location which will interfere with ingress or egress thereto. All loading areas shall be hard surfaced with a suitable dustless material.

V. Storage Area:

The storage of material, supplies, products, equipment, or other personal property not for sale to the public will not be permitted outside the confines of a walled building, unless screened by fences, walls or plantings at least 6 feet in height.

VI. Maintenance and Landscaping:

Each lot owner will be responsible for the maintenance of his property up to the edge of the property and the abutting street or streets, including all lawn and landscaped areas, walks, drainage ways, driveways and building exterior. That portion of each site which is not improved through the construction of buildings, parking facilities, loading facilities and lawn area shall be seeded to a natural vegetative cover planting which grows to a height not to exceed 18 inches and shall be attractively maintained. In no event and at no time shall any part of the area be planted to cultivated row crops.

All surplus earth, soil and aggregate shall be left in the subdivision so long as there is a designated location provided by the City of Ogallala, Nebraska, its heirs, successors or assigns, where the surplus earth, soil and aggregate may be deposited. If any lot owner has surplus earth, soil or aggregate, the lot owner shall notify the City of Ogallala, its heirs, successors or assigns, which shall remove the same within a reasonable amount of time after said notification. At such time as the City of Ogallala, its heirs, successors or assigns has no further need for the surplus earth, soil and aggregate, the lot owners shall dispose of the same in an appropriate manner.

VII. Signs:

The only signs permitted on any lot shall be signs designating the business enterprise or describing the product or service sold or produced on that site. All signs shall conform to the Ogallala Zoning Regulations. No sign affixed to the façade shall project more than 18 inches therefrom or extend above the dominant roof line of the main structure. No free standing pedestal-mounted signs shall be



mounted no less than 10 feet from a property line abutting on any street. Flashing, rotating, animated or intermittent illuminated type signs shall be prohibited.

One temporary sign may be erected on a site to offer the property for sale or lease, the size of which shall not exceed 40 square feet in area.

VIII. Site Use Limitations:

A. PERMITTED USES. The following uses are permitted within the Ogallala North Business Park Addition:

1. Parks and playgrounds, provided there are no on-site waste disposal or storage of hazardous and/or toxic materials.
2. Residential, commercial and/or industrial uses, as allowed by zoning code, contained in the Ogallala Municipal Code, except those listed as Prohibited Uses.
3. Public Utilities to include electric and telephone substations, gas regulator and meter station buildings, police and fire stations that do not contain maintenance facilities and electric transmission towers.

B. PROHIBITED USES. The following uses are prohibited within the Ogallala North Business Park Addition. These uses are prohibited based upon the high probability that activities routinely associated with these uses (storage, use and handling of potential pollutants) will cause ground water contamination. Uses not listed shall not be automatically considered permitted uses:

1. Underground storage tanks of any size
2. Septic and/or sludge spreading
3. Animal waste land spreading
4. Animal waste facilities
5. Animal confinement facilities
6. Gas stations
7. Vehicle repair establishments, including auto body repair
8. Printing and duplicating businesses
9. Bus or truck terminals
10. Landfills or waste disposal facilities
11. Wastewater treatment facilities
12. Spray wastewater facilities
13. Junk yards or auto salvage yards
14. Bulk fertilizer and/or pesticide facilities. Pesticide and fertilizer storage is permitted at the location of retail sales of these products, provided that the products are delivered in retail quantity containers and no repackaging and/or mixing is done on-site.
15. Asphalt products manufacturing
16. Dry cleaning businesses
17. Salt storage
18. Electroplating facilities
19. Exterminating businesses
20. Paint and coating manufacturing
21. Hazardous and/or toxic materials storage, as defined by federal, state or local laws or regulations as may be amended
22. Hazardous and/or toxic waste facilities, as defined by federal, state or local laws or regulations as may be amended

23. Radioactive waste facilities
24. Recycling facilities
25. Cemeteries
26. Petroleum refining
27. Wood preserving operations
28. Battery recycling and reprocessing

- C. **DESIGN STANDARDS.** The following standards and requirements shall apply to all uses permitted:
1. All uses are allowed a maximum of 50 percent of the lot area to be maintained in manicured lawn or grass. However, the area of the lot in manicured lawn or grass shall not exceed the area of impervious surfaces on the lot.
  2. Natural vegetative covers, not requiring the use of pesticides or fertilizers after initial establishment, are encouraged as an alternative to manicured lawn or grass.
  3. All storm drainage shall be discharged to a municipally operated storm drain. The use of drywells or other subsurface drains for stormwater drainage is prohibited.

IX. Construction Standards:

All buildings erected shall create a creditable and acceptable appearance on all four sides. The front of the primary building on a tract shall finish a minimum of 25% of the façade with either brick, block, stone or rock materials, or composite materials that give the appearance of brick, block, stone or rock surfaces. Buildings, including ancillary buildings, shall not be constructed of unfinished galvanized steel or sheet aluminum for exterior walls. All appurtenant equipment, including roof mounted units, shall be screened from view from any public street.

Any fence on the front of any lot shall be constructed of cedar or redwood, wrought iron, brick, P.V.C. vinyl or other composite material.

X. Compliance with Government Regulations:

The owner of any lot shall at all times keep the premises, buildings, improvements and appurtenances in a safe and clean condition, free of nuisances and shall comply in all respects with all Government, health, fire and police requirements and regulations. In addition, the building and use regulations imposed by the provisions of the zoning and building chapters of the City of Ogallala Municipal Code, as may be modified from time to time shall apply throughout the addition.

XI. Exceptions and Modifications:

Amendments, modifications and exceptions to these protective covenants may be made with the written approval of 75% of the owners within the Ogallala North Business Park Addition and the City of Ogallala.

XII. Enforcement:

If any lot owner, or their heirs, representatives, successors or assigns, violate any of these protective covenants, it shall be lawful for any person or persons owning any lot covered by these covenants, to prosecute any proceeding at law or in equity against the person so violating or attempting such violation either to prevent him or her from so doing or to recover damages or other dues for violation, or both.

XIII. Utilities: All utilities in the subject premises, including but not limited to gas, electric, water, telephone and cable television shall be located underground.

XIV. Severability:

If any paragraph or any part thereof of this instrument shall be invalid, illegal, or inoperative for any reason, the remaining parts so far as possible and reasonable, shall be effective and fully operative.

XV. Scope:

These Protective Covenants contained herein shall apply to all of the real estate contained in the Ogallala North Business Park Addition, as set forth above, except Lot 1, Block 4, which is specifically excepted from the restrictions due to its size, shape, and because the property shall remain owned by the City of Ogallala and contain wells and well houses for supplying drinking water to the citizens of Ogallala.

CITY OF OGALLALA, NEBRASKA

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Leonard D. Johnson  
Mayor/Council President

ATTEST:

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Jane M. Skinner, City Clerk

protective covenants



## **FIRST AMENDED PROTECTIVE COVENANTS**

The City of Ogallala, Nebraska, a Nebraska municipal corporation and Keith County Area Development, Inc., a Nebraska nonprofit corporation, (hereinafter sometime referred to as "KCAD"), being the record owners of all of the real estate contained within the Ogallala North Business Park Addition to the City of Ogallala, Keith County, Nebraska, said real estate being legally described as:

Lot 1, Block 1; Lots 1 & 2, Block 2; Lot 1, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, & 12, Block 4; and Lots 1, 2, 3, 4, 5, & 6, Block 5 Ogallala North Business Park Addition located in the NW1/4 of Section 30, Township 14 North, Range 38 West of the 6<sup>th</sup> P.M., in Ogallala, Keith County, Nebraska;

do hereby amend the Protective Covenants dated July 9, 2002, and recorded of record in Book 78, Page 32 of the miscellaneous records of Keith County, Nebraska, on August 14, 2002, as follows:

1. Paragraph 2 of Article IX is hereby amended to add the following at the end thereof: "Interior boundary or security fences may be constructed of the same materials or of chain link or woven wire. Any lot owner who owns a lot abutting a frontage road or a lot, which is on the perimeter of the Ogallala North Business Park, may construct a fence along the border of the frontage road or on the perimeter. Such frontage road fence or perimeter fence shall be constructed of a material as approved by Keith County Area Development, Inc."

2. Article XI is hereby amended to read as follows: "Amendments, modifications and exceptions to these Protective Covenants may be made with the written approval of seventy-five percent (75%) of the lot owners within the Ogallala North Business Park addition to the City of Ogallala. For purpose of approval each lot shall have one (1) vote, regardless of the number of owners of said lot."

3. Article XII is hereby amended to read as follows: "If any lot owner or their heirs, representatives, successors or assigns, violate any of these Protective Covenants, any lot owner may prosecute any proceeding at law or in equity against the lot owner so violating or attempting such violation either to prevent the lot owner from so doing or to recover damages or other dues for violation, or both."

4. New Article XVI shall read as follows:

[illegible]

The foregoing instrument was acknowledged before me on this 8<sup>th</sup> day of October 2002, by Leonard D. Johnson, Mayor/Council President, City of Ogallala, Nebraska.

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Notary Public

State of Nebraska     )  
                                  ) ss.  
County of Keith       )

The foregoing instrument was acknowledged before me on this 28<sup>th</sup> day of October 2002, by John W. Plunkett, President of Keith County Area Development, Inc., a Nebraska non-profit corporation, on behalf of the corporation.

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Notary Public

State of Nebraska     )  
                                  ) ss.  
County of Keith       )

The foregoing instrument was acknowledged before me on this 29<sup>th</sup> day of October 2002, by Caleb W. Johnson, Vice-President of Keith County Area Development, Inc., a Nebraska nonprofit corporation, on behalf of the corporation.

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Notary Public



## **SECOND AMENDED PROTECTIVE COVENANTS**

The City of Ogallala, Nebraska, a Nebraska municipal corporation and Keith County Area Development, Inc., a Nebraska nonprofit corporation, (hereinafter sometime referred to as "KCAD"), being the record owners of all of the real estate contained within the Ogallala North Business Park Addition to the City of Ogallala, Keith County, Nebraska, said real estate being legally described as:

Lot 1, Block 1; Lots 1 & 2, Block 2; Lot 1, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, & 12, Block 4; and Lots 1, 2, 3, 4, 5, & 6, Block 5 Ogallala North Business Park Addition located in the NW1/4 of Section 30, Township 14 North, Range 38 West of the 6<sup>th</sup> P.M., in Ogallala, Keith County, Nebraska;

do hereby amend the Protective Covenants dated July 9, 2002, and recorded of record in Book 78, Page 32 of the miscellaneous records of Keith County, Nebraska, on August 14, 2002, as follows:

1. Paragraph 2 of Article IX is hereby amended to add the following at the end thereof: "Interior boundary or security fences may be constructed of the same materials or of chain link or woven wire. Any lot owner who owns a lot abutting a frontage road or a lot, which is on the perimeter of the Ogallala North Business Park, may construct a fence along the border of the frontage road or on the perimeter. Such frontage road fence or perimeter fence shall be constructed of a material as approved by Keith County Area Development, Inc."

2. Article XI is hereby amended to read as follows: "Amendments, modifications and exceptions to these Protective Covenants may be made with the written approval of seventy-five percent (75%) of the lot owners within the Ogallala North Business Park addition to the City of Ogallala. For purpose of approval each lot shall have one (1) vote, regardless of the number of owners of said lot."

3. Article XII is hereby amended to read as follows: "If any lot owner or their heirs, representatives, successors or assigns, violate any of these Protective Covenants, any lot owner may prosecute any proceeding at law or in equity against the lot owner so violating or attempting such

violation either to prevent the lot owner from so doing or to recover damages or other dues for violation, or both."

4. New Article XVI shall read as follows:

"For so long as KCAD owns any lot within the Ogallala North Business Park Addition to the city of Ogallala, any lot sold by KCAD shall be subject to the following conditions which shall also be specifically set forth in each deed delivered by KCAD:

A. The Grantee shall commence construction of the improvements identified in the Building Permit within twelve (12) months of the date of the deed.

B. In the event that the Grantee fails to comply with any of the conditions contained in this Article, then the KCAD shall have the option and the right to purchase the real estate from the Grantee for the price upon the terms and conditions as originally set forth in the Purchase Agreement executed by KCAD and the Grantee, less a ten percent (10%) discount from the original purchase price. KCAD shall exercise said option by delivering written notice to Grantee within ten (10) months of the date of the deed, and the closing shall occur within thirty (30) days of said written notice. KCAD reserves the right, in KCAD's sole and absolute discretion, to grant any Grantee a written extension due to unforeseen circumstances. In the event such extension is granted, then KCAD's option and right to purchase shall be automatically extended for an additional sixty (60) days after the lapse of said written extension."

5. All other terms and provisions of the Protective Covenants shall remain in full force and effect.

Dated this 8<sup>th</sup> day of October, 2002.

Amended on November 2, 2005.

STATE OF NEBRASKA }  
County of Keith }  
Filed in this office of County Clerk  
the 28 day of May  
2019 at 10:46 AM  
and recorded as Instrument No.  
2019-00671  
Sandra Olson  
(4) County Clerk  
cmc

WHEN RECORDED RETURN TO:

Michael J. McQuillan  
McQuillan & Wendell, P.C., L.L.O.  
P O Box 478  
Ogallala, NE 69153  
(308)284-4058

**THIRD AMENDED PROTECTIVE COVENANTS**

The undersigned, representing seventy-five percent (75%) or more of the record owners of all of the real estate contained within the Ogallala North Business Park Addition to the City of Ogallala, Keith County, Nebraska, and the City of Ogallala, Nebraska, a municipal corporation, do hereby amend the Protective Covenant dated July 9, 2002, and recorded of record in Book 78, Page 32 of the Miscellaneous Records of Keith County, Nebraska, on August 14, 2002, and First Amended Protective Covenants, filed in Keith County Real Estate Records on October 29, 2002 in Book 78, Page 115 of Miscellaneous, as to Lots 3 and 6 in Block 5 only, and Second Amended Protective Covenant dated May 13, 2014, and recorded of record as Instrument 2014-00973 in the Real Estate Records of the County Clerk of Keith County, Nebraska as follows:

1. The real estate to which this instrument applies is legally described as follows:

See Attached Exhibit "A"

2. Paragraph VII of the Protective Covenants is hereby amended by deleting the last sentence thereof in its entirety and replacing the same with the following:

"All free standing property signage must be approved by Keith County Area Development, Inc. before being erected on any property located in the Ogallala North Business Park."

3. Subparagraph B1 of Paragraph VIII of the Protective Covenants is hereby amended to read as follows:

2019-00671

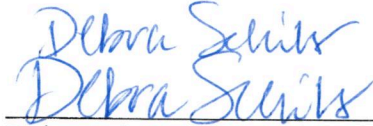


"Underground storage tanks of any size unless otherwise approved by the Ogallala City Council."

4. Subparagraph B6 of Paragraph VIII of the Protective Covenants is hereby revoked in its entirety.

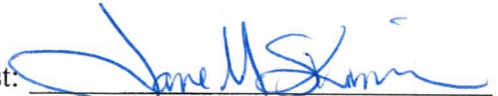
Dated this 17<sup>th</sup> day of May, 2019.

By:



Debra Schilz,  
City of Ogallala Council President

Attest:



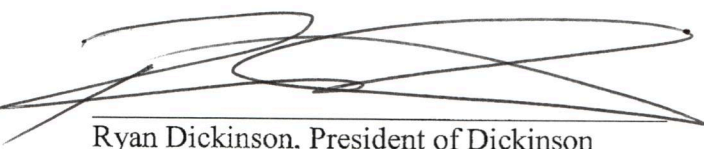
Jane M. Skinner,  
City of Ogallala Clerk

By:



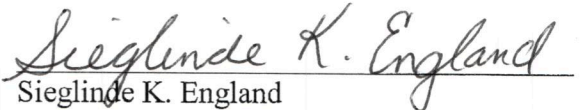
Laci Mueller, President  
of Keith County Area  
Development, Inc.

Walter Scott England



Ryan Dickinson, President of Dickinson  
Land Surveyors, Inc.

Sieglinde K. England

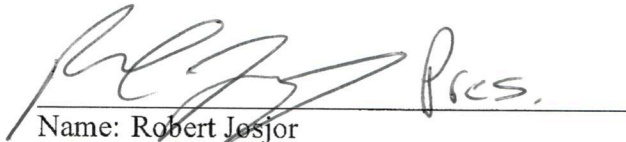


Name: Ross Brinkema

Title: Manager of RallyB, LLC


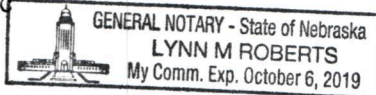
Name: Robert Josjor

Title: President of Western  
Resources Group, Inc.



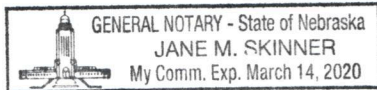
STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF KEITH        )


The foregoing instrument was acknowledged before me on this 21 day of May, 2019,  
by Debra Schilz, City of Ogallala Council President.

  
\_\_\_\_\_  
Notary Public 

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF KEITH        )

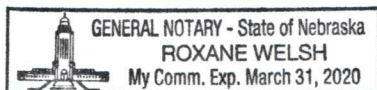
The foregoing instrument was acknowledged before me on this 21<sup>st</sup> day of May, 2019,  
by Laci Mueller, President of Keith County Area Development, Inc., a Nebraska Non-Profit  
Corporation, on behalf of the corporation.

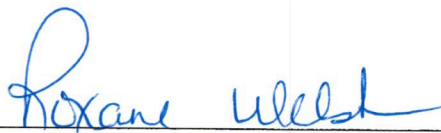


  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF KEITH        )

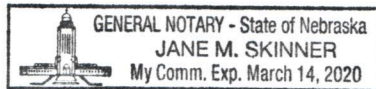
The foregoing instrument was acknowledged before me on this 24<sup>th</sup> day of May, 2019,  
by Ryan Dickinson, President of Dickinson Land Surveyors, Inc., on behalf of the corporation.

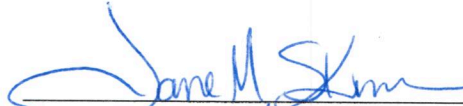


  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF KEITH        )

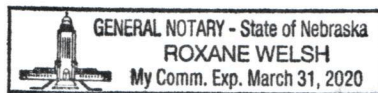
The foregoing instrument was acknowledged before me on this 21<sup>st</sup> day of May, 2019,  
by Walter Scott England and ~~Sieglinde K. England~~, husband and wife.




  
Notary Public

STATE OF Nebraska     )  
  )ss.  
COUNTY OF Keith        )

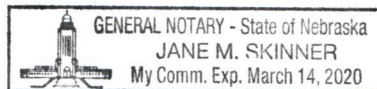
The foregoing instrument was acknowledged before me on this 21<sup>st</sup> day of May, 2019,  
by Ross Brinkema, Manager of RallyB, LLC, on behalf of the company.

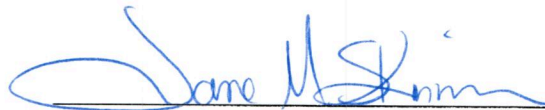


  
Notary Public

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF KEITH        )

The foregoing instrument was acknowledged before me on this 21<sup>st</sup> day of May, 2019,  
by Robert Josjor, President of Western Resources Group, Inc, on behalf of the corporation.



  
Notary Public

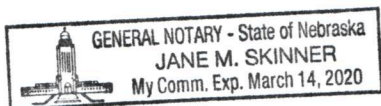
City of Ogallala/5mm-tapc

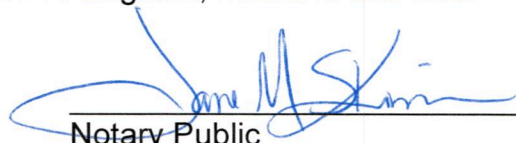
2019-00671



STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF KEITH     )

The foregoing instrument was acknowledged before me on this 24<sup>th</sup> day of May, 2019, by ~~Walter Scott England~~ and Sieglinde K. England, ~~husband~~ and wife.



  
\_\_\_\_\_  
Notary Public

### **EXHIBIT "A"**

Lots 1, 2 and 3, Block 1, Ogallala North Business Park Replat No. 1, located in Lots 1 and 2, Block 2 and Lot 1, Block 3 of Ogallala North Business Park Addition to the City of Ogallala, Keith County, Nebraska

Lots 1, 2, 3, 4, 5 and 6, Block 1, of Brinkema Replat of Lot 2, Block 4, Ogallala North Business Park Addition to Ogallala, Keith County, Nebraska

Lots 1 and 2, of Dickinson Replat an administrative replat of Lot 10, Block 4, Ogallala North Business Park Addition, being a tract of land in the NW $\frac{1}{4}$  of Section 30, Township 14 North, Range 38 West of the 6th P.M., Keith County, Nebraska

Lot 1 of Block 1, Lots 1, 3, 4, 5, 6, 7, 8, 9, 11 and 12 of Block 4, and Lots 1, 2, 3, 4, and 5 of Block 5, Ogallala North Business Park Addition, being a tract of land in the NW $\frac{1}{4}$  of Section 30, Township 14 North, Range 38 West of the 6th P.M., Keith County, Nebraska

City of Ogallala/5mm-tapc

2019-00671