

City of Scottsbluff, Nebraska

Monday, May 5, 2014

Regular Meeting

Item Reports5

Council to consider approval of the License Agreement with Duhamel Broadcasting to occupy property containing the Anchor Point and authorize the Mayor to execute the agreement.

Staff Contact: Rick Kuckkahn, City Manager

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into on this ____ day of April, 2014, by and between the City of Scottsbluff, Nebraska, a Municipal Corporation, ("Licensor") and Duhamel Broadcasting Enterprises, ("Licensee").

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Grant of License:

Licensor now grants a license to Licensee to occupy, subject to all of the terms and conditions of this Agreement, the following described property: a single, guy wire anchor point (the "Anchor Point"). Licensor and Licensee mutually acknowledge that the Anchor Point is necessary for the antenna structure of Licensee's television station KDUH-TV (the "Station") which is licensed by the Federal Communications Commission, that the Station is the only full power television station licensed to the City, that the Anchor Point has existed at the current location for approximately thirty-three (33) years without causing any known problems of any kind; and that the FCC has granted its consent to the assignment of license for the Station from Licensee to Rushmore Media Company, Inc. f/k/a New Rushmore Radio, Inc., (the "Transaction"); and that the Transaction is scheduled to close effective April 28, 2014 (the "Licensed Property").

2. Limitation to Described Purpose:

The Licensed Property constitutes an alley and right-of-way owned by the Licensor and contains infrastructure owned by the Licensor, including a sewer main, water main, and storm sewer facilities. Licensee acknowledges that the Anchor Point encroaches into the Licensed Property by approximately two and one half feet, and wishes to continue the use and encroachment as long as it is convenient and not an obstruction or hindrance to the Licensor. Licensee agrees to use the Licensed Property solely for the Anchor Point ("licensee use"). Licensor grants to the Licensee the right to use the Licensed Property for such licensee uses so long as Licensee does not expand or use the Licensed Property for other uses.

3. Termination:

a. Licensors may terminate this Agreement at any time by giving written notice to the Licensee, specifying the date of termination. Such notice shall be given not less than 90 days prior to the date specified in such notice for the date of termination. Upon written notice, Licensee agrees to stop all licensee uses and to remove the Anchor Point encroachment from the Licensed Property; provided, that such stoppage does not pose an imminent danger to the City or the public at large; provided further, that Licensee will take commercially reasonable steps to remove the Anchor Point encroachment upon obtaining any required federal, state and local authorizations relating thereto.

b. Should Licensee expand its use of the Licensed Property or cease using the Licensed Property for licensee use, this Agreement shall immediately terminate. Licensee shall not have the right to rebuild the Anchor Point or build any other encroachment or obstruction or put the Licensed Property to any other uses other than the licensee uses.

4. Use at Licensee's Risk:

The Licensee understands and agrees that the use of the Licensed Property for the purposes set forth in this Agreement are at its own risk. In the event Licensors are required to access all or parts of its infrastructure located in the Licensed Property, or access all of its alley right of way, it has an unlimited right to do so and, if any of the Licensee's property is damaged in any way, Licensee will assume the full risk of replacing or repairing that property for its own use.

5. Agreement to Indemnify:

Licensee shall indemnify and hold Licensors harmless from and against any and all loss or damage that shall be caused by the existence of the rights given under this License Agreement or by any wrongful or negligent act or omission of Licensee, its agents or employees. Licensee agrees to repair any damage to the Licensed Property. The Licensee's right under this License Agreement shall be exercised in a reasonable manner and in such a way that will not interfere with Licensors' use of the Licensed Property.

6. Notices:

Any notice provided for or concerning this Agreement shall be in writing and shall be sufficiently given when sent by United States First Class Postal Service Delivery to the addresses of the parties as listed below:

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361
ATTN: City Manager

Rushmore Media Company, Inc.

7. Assignment of Rights:

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity, unless the other party consents in writing to such an assignment or transfer after being given the name and address of the assignee or transferee. The right to occupy the Licensed Property may be terminated at any time by the Licenser following the written notice set forth in Section 3(a) of this Agreement. Any of Licensee's heirs or assigns shall not have the right to rely on the licensee uses set forth in this Agreement on the Licensed Property except as contemplated under Section 1 of this Agreement.

CITY OF SCOTTSBLUFF, NEBRASKA,

ATTEST:

By _____
Mayor

City Clerk

Licensee

STATE OF NEBRASKA, SCOTTS BLUFF COUNTY:

The above and foregoing Licensing Agreement was acknowledged before me on _____, 20____, by _____, Mayor of The City of Scottsbluff, a Nebraska Municipal Corporation, by and on behalf of the Corporation.

Notary Public

STATE OF NEBRASKA, SCOTTS BLUFF COUNTY:

The above and foregoing Licensing Agreement was acknowledged before me on _____, 20____, by _____.

Notary Public

DUHAMEL BROADCASTING

P.O. BOX 1760
RAPID CITY SD, 57709

ALTA/ACSM LAND TITLE SURVEY

LOTS 11 AND 12, BLOCK 9 OF THE ORIGINAL TOWN ADDITION
TO THE CITY OF SCOTTSBLUFF, BEING IN THE SE 1/4 SECTION 23,
TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M.
ALSO BEING IN CITY OF SCOTTSBLUFF IN SCOTTS BLUFF COUNTY NEBRASKA.

Sheet Revisions

Date	Description	Initials
01-31-14	DRAFTED SURVEY	CJG

Baker

Associates

Inc.

www.baker-eng.com

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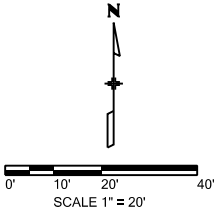
ALTA/ACSM LAND TITLE SURVEY

Plan Sheet

Baker Project Number: 6254-002-13			
Project Location: City of Scottsbluff Nebraska (1523 1st Avenue, Scottsbluff NE)			
Project Code	Last Mod. Date	Subset	Sheet No.
6254	04-23-2014	2 of 2	2



PHOTO OF NORTH WEST
BUILDING FRONTAGE



INDICATES FOUND SECTION CORNER

INDICATES FOUND QUARTER CORNER

INDICATES FOUND BAKER & ASSOCIATES
PROPERTY CORNER

INDICATES SET BAKER & ASSOCIATES PROPERTY CORNER
BEING DESCRIBED AS NOTED

FIBEROPTIC LOCATES

OVERHEAD ELECTRIC LINES

CHAIN LINK FENCE

DESIGNATES CONCRETE SURFACE

DESIGNATES BULIDING FOOTPRINT

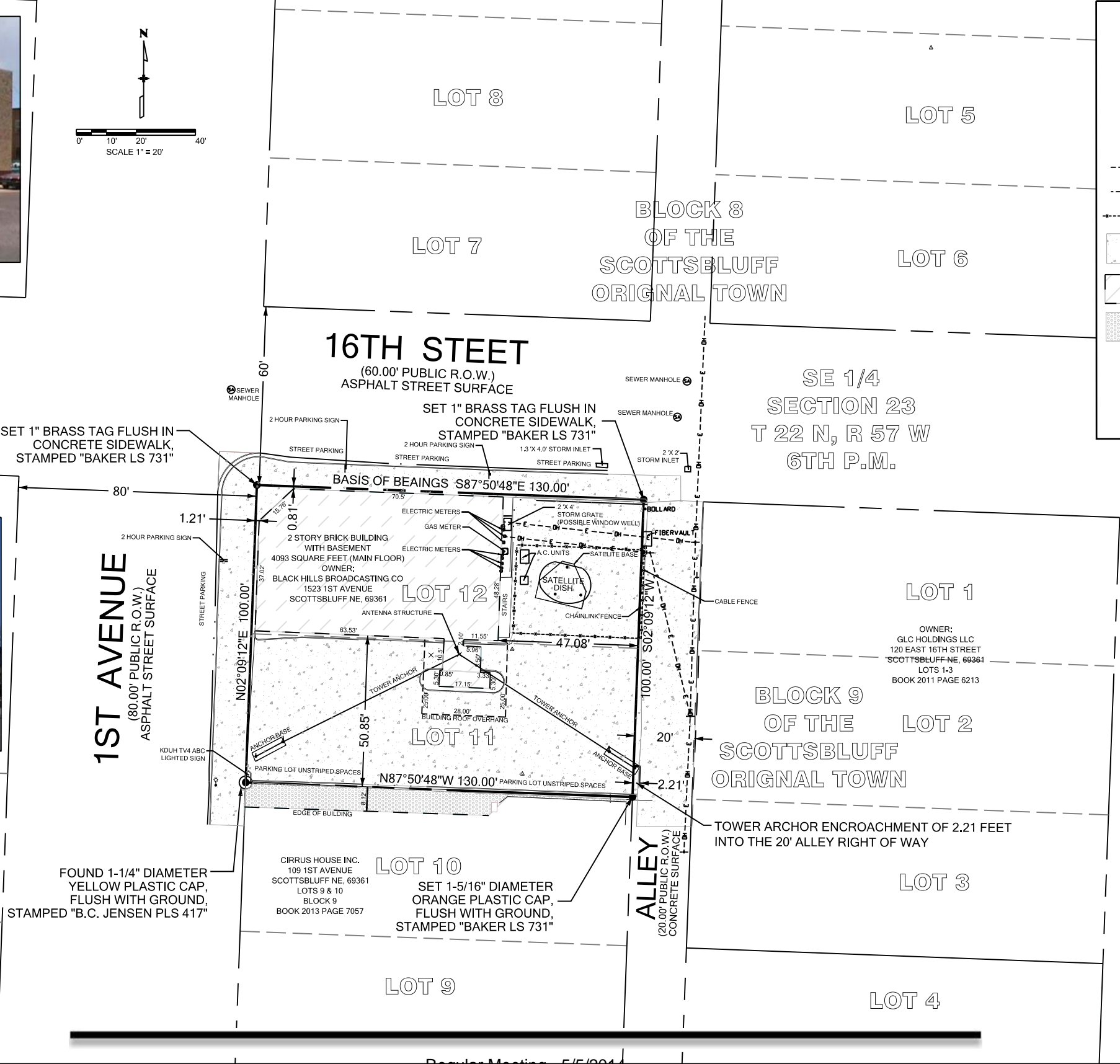
DESIGNATES GRASS OR LAWN AREA

STREET SIGN

SEWER MANHOLE



PHOTO OF WEST
BUILDING FRONTAGE



DUHAMEL BROADCASTING

P.O. BOX 1760
RAPID CITY SD, 57709

ALTA/ACSM LAND TITLE SURVEY
LOTS 11 AND 12, BLOCK 9 OF THE ORIGINAL TOWN ADDITION
TO THE CITY OF SCOTTSBLUFF, BEING IN THE SE 1/4 SECTION 23,
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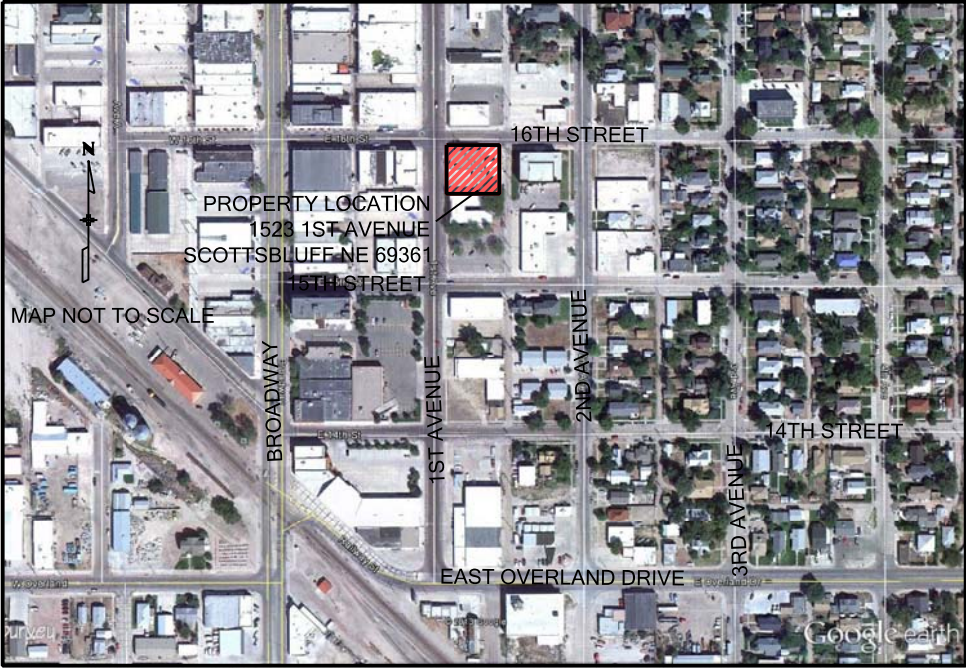
ALTA/ACSM LAND TITLE SURVEY				
Title Sheet				
Baker Project Number: 6254-002-13				
Project Location: City of Scottsbluff Nebraska (1523 1st Avenue, Scottsbluff NE)				
Project Code	Last Mod. Date	Subset	Sheet No.	
6254	04-23-2014	1 of 2	1	

RECORD PROPERTY DESCRIPTION
LOTS 11, 12, BLOCK 9, ORIGINAL TOWN ADDITION TO THE CITY OF SCOTTSBLUFF, SCOTTS BLUFF COUNTY, NEBRASKA; EXCEPT THE WEST 10 FEET THEREOF.

SURVEY NOTES

1. THIS SURVEY RELIES ON THALKEN TITLE CO., ORDER NO.: 2140017, EFFECTIVE DATE OF APRIL __, 2014 AT 8:00 A.M. FOR ALL TITLE INFORMATION. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY BAKER AND ASSOCIATES INC. TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS-OF-WAY AND TITLE OF RECORD, REFERENCE THE COMMITMENT NUMBER LISTED ABOVE.
2. THE MONUMENTATION RECOVERED WAS LOCATED BY A COMBINATION OF GLOBAL POSITIONING SYSTEM (GPS) FAST STATIC, RTK AND RTK DATA LOGGING TECHNIQUES. CONVENTIONAL SURVEY METHODS WERE APPLIED WHEN REQUIRED.
3. BASIS OF BEARINGS: ALL BEARINGS ARE BASED ON THE LINE CONNECTING THE NORTHWEST CORNER OF LOT 12, BLOCK 9, OF THE SCOTTSBLUFF ORIGINAL TOWN ADDITION AND THE NORTHEAST CORNER OF SAID BLOCK 9, BEING GRID BEARING OF SOUTH 87°50'48" EAST, A DISTANCE OF 130.00 FEET AS OBTAINED FROM A GLOBAL POSITIONING SYSTEM (GPS) SURVEY BASE ON THE NEBRASKA HIGH ACCURACY REFERENCE NETWORK (NHARN), SAID BEARING IS NAD 83 (2011) NEBRASKA STATE PLANE ZONE 2600.
4. ALL DIMENSIONS SHOWN HEREON ARE U.S. SURVEY FEET.
5. NOTICE YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE (3) YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION, BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN (10) YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
6. SAID DESCRIBED PROPERTY IS LOCATED WITHIN AN AREA HAVING ZONE "C" LISTED ZONE DESIGNATION OR A "MINIMAL FLOODING" DESIGNATION BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE PROGRAM. SEE MAP OR COMMUNITY PANEL NUMBER 310206 0010C FOR THIS AREA WITHIN THE CITY OF SCOTTSBLUFF NEBRASKA.
7. UTILITY INFORMATION SHOWN HEREON IS FROM READILY APPARENT EVIDENCE FOUND ON THE SURFACE OF THE SITE DURING THE FIELD SURVEY PERFORMED BY BAKER AND ASSOCIATES. NO UTILITY LOCATION SERVICE WAS UTILIZED FOR THIS SURVEY. FOR THE EXACT LOCATION OF ALL UNDERGROUND UTILITIES, CONTACT THE UTILITY NOTIFICATION CENTER OF NEBRASKA AND THE APPROPRIATE UTILITY COMPANY PRIOR TO CONSTRUCTION.
8. TOTAL AREA OF THE SURVEYED PARCEL =13,000 SQUARE FT (0.298) ACRES.
9. NO APPARENT EVIDENCE FOUND ON THE SURFACE OF THE SITE DURING THE FIELD SURVEY PERFORMED BY BAKER AND ASSOCIATES INC. REVEALED CEMETERIES, GRAVE SITES OR FAMILY BURIAL GROUNDS ON THE PREMISES
10. NO EVIDENCE OF CURRENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WERE OBSERVED BAKER AND ASSOCIATES INC. WHILE PERFORMING THE FIELD SURVEY.
11. THE SUBJECT PROPERTY ADDRESS FOR THIS PROPERTY IS:
1523 1ST AVENUE
SCOTTSBLUFF, NE 69361
12. THE SUBJECT PROPERTY IS ZONE (C-1) CENTRAL BUSINESS DISTRICT IN THE SCOTTS BLUFF COUNTY ASSESSOR RECORDS.
13. NO EVIDENCE OF PROPOSED CHANGES IN CITY STREET RIGHT OF WAYS WERE OBSERVED. NO PROPOSALS WERE FOUND AT SCOTTS BLUFF COUNTY OR IN THE CITY OF SCOTTSBLUFF PLANNING AGENDA IN THE UPCOMING LIST OF PROJECTS. NO CURRENT CONSTRUCTION OF THE ROADS OR RIGHT OF WAYS WERE OBSERVED BY BAKER AND ASSOCIATES INC. WHILE PERFORMING THE FIELD SURVEY.
14. NO EVIDENCE OF SOILD WASTE DUMPING OR A SUMP OR SANITARY LANDFILL WAS OBSERVED BY BAKER AND ASSOCIATES INC. WHILE PERFORMING THE FIELD SURVEY.
15. ALL BUILDING OUTLINES DEPICTED ON THIS SURVEY ARE BASED ON SURVEYED INFORMATION. DIMENSIONS DEPICTING DISTANCES FROM THE PROPERTY LINES TO BUILDING CORNERS ARE MEASURED FROM THE FOUNDATION OF EACH BUILDING.
16. THE TOWER ANCHOR IN THE SOUTHEAST CORNER OF THE SUBJECT PROPERTY IS ENCROACHING INTO THE CITY OF SCOTTSBLUFF ALLEY RIGHT OF WAY. NO EASEMENTS OR AGREEMENTS WERE FOUND IN THE TITLE SEARCH OR BY A SEARCH BY BAKER AND ASSOCIATES INC. OF THE SCOTTS BLUFF COUNTY RECORDS.

PROPERTY SITE MAP
TOWNSHIP 22 NORTH, RANGE 55 WEST, OF THE 6TH P.M.
CITY OF SCOTTSBLUFF NEBRASKA.



SURVEY NOTES (CONTINUED)

17. UTILITY LINES, UTILITY STRUCTURES AND UTILITY VAULTS DEPICTED HEREON, WITHIN THE ALLEY AND STREET RIGHT OF WAYS ARE NOT TO BE REFLECTED AS ENCROACHMENTS BY THE CURRENT PROPERTY OWNER. POWER, COMMUNICATION, SEWER, AND GAS LINE INFASUTRUTURE WITHIN THE CITY OF SCOTTSBLUFF RIGHT OF WAYS WOULD HAVE EASEMENTS AND AGREEMENTS NOT APART OF THE SUBJECT PARCEL.

LIST OF SCHEDULE B-2 OF EXCEPTIONS FROM TITLE COMMITMENT
REFERENCED IN NOTE 1. (EXCEPTIONS 1-6 ARE STANDARD EXCEPTIONS)

GENERAL EXCEPTIONS NOT SHOWN HEREON:

- 1 DEFECTS, LIENS, ENCUMBRANCES, ADVERSE CLAIMS OR OTHER MATTERS, IF ANY, CREATED, FIRST APPEARING IN THE PUBLIC RECORDS OR ATTACHING SUBSEQUENT TO THE EFFECTIVE DATE BUT PRIOR TO THE DATE THE PROPOSED INSURED ACQUIRES FOR VALUE OF RECORD THE ESTATE OR INTEREST OR MORTGAGE THEREON COVERED BY THIS COMMITMENT.
- 2 RIGHTS OR CLAIMS OF PARTIES IN POSSESSION NOT SHOWN BY THE PUBLIC RECORDS.
- 3 EASEMENTS OR CLAIMS OF EASEMENTS, NOT SHOWN BY THE PUBLIC RECORDS.
- 4 ANY ENCROACHMENT, ENCUMBRANCE, VIOLATION, VARIATION, OR ADVERSE CIRCUMSTANCE AFFECTING THE TITLE THAT WOULD BE DISCLOSED BY AN ACCURATE AND COMPLETE LAND SURVEY OF THE LAND.
- 5 ANY LIEN OR RIGHT TO A LIEN, FOR SERVICES, LABOR, OR MATERIAL HERETOFORE OR HEREAFTER FURNISHED, IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.
- 6 TAXES OR SPECIAL ASSESSMENTS WHICH ARE NOT SHOWN AS EXISTING LIENS BY THE PUBLIC RECORDS.

LIST OF SCHEDULE B-2 OF EXCEPTIONS FROM TITLE COMMITMENT
REFERENCED IN NOTE 1. (SPECIAL EXCEPTIONS)

- TAXES FOR 2014 AND SUBSEQUENT YEARS
(NOTHING TO SHOW ON THIS SURVEY)

SURVEYOR'S CERTIFICATE

I, CARL JOHN GILBERT, A DULY REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NEBRASKA, DO HEREBY CERTIFY TO DUHAMEL BROADCASTING ENTERPRISES, RUSHMORE MEDIA, INC., A SOUTH DAKOTA CORPORATION AND TO THALKEN TITLE INSURANCE COMPANY THAT THIS ALTA TRULY AND CORRECTLY REPRESENTS THE RESULTS OF A SURVEY MADE IN JANUARY 2014, BY ME OR UNDER MY DIRECT SUPERVISION AND THAT ALL MONUMENTS EXIST AS SHOWN HEREON; THAT MATHEMATICAL CLOSURE ERRORS ARE LESS THAN 1:100,000 AND THAT SAID ALTA HAS BEEN PREPARED IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS OF THE STATE OF NEBRASKA DEALING WITH MONUMENTS AND SURVEYING OF LAND AND ALL APPLICABLE PROVISIONS AND THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 6(a),7(a), 8, 11(a),13, 14, 16,17 AND 18 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON JANUARY 27, 2014, AND A SITE UPDATE SURVEY WAS PERFORMED ON APRIL 16, 2014 TO VERIFY THE JANUARY SURVEY NO CHANGES HAVE BEEN MADE TO THE SITE SINCE JANUARY 2014 SURVEY.

I ATTEST THE ABOVE ON THIS ____ DAY OF _____, 2014.

CARL JOHN GILBERT
NEBRASKA PROFESSIONAL LAND SURVEYOR NO. 731
FOR AND ON BEHALF OF BAKER AND ASSOCIATES INC.
PHONE : 308-632-3123