

**City of Seward, NE**  
**Tuesday, January 5, 2016**  
**Regular Session**

**Item G5**

**CONSIDERATION OF AN ORDINANCE AUTHORIZING THE  
SALE OF LOT 4, REYNOLDS ADDITION TO SCOTT &  
TAMMY KOCIAN - City Atty Hoffschneider**

**Administrative Report: This is one of the five remaining residential lots for sale by the cemetery. Following review and discussion, approval of the purchase agreement and ordinance would be in order.**

**Staff Contact:**

**PUBLIC NOTICE  
OF THE CITY OF SEWARD, NEBRASKA**

In accordance with Neb. Rev. Stat. § 16-201 and Seward Municipal Code § 8-102, public notice is hereby given that the City Council, pursuant to Ordinance 2015-\_\_\_, has authorized the conveyance of the real property by the City of Seward to Scott A. Kocian and Tammy J. Kocian legally described as Lot 4, Reynolds Addition, City of Seward, Seward County, Nebraska.

Registered voters of the City of Seward shall have thirty (30) days from January 27, 2016 to protest the conveyance of the Property in accordance with the procedures set forth in Neb. Rev. Stat. § 16-202 and Seward Municipal Code § 8-102.

/s/Bruce Smith, City Administrator

Publish one time on each of the following dates:

January 13, 20, 27, 2016

One Proof of Publication

**ORDINANCE NO. 2015-\_\_**  
**CITY OF SEWARD, NEBRASKA**

AN ORDINANCE TO DIRECT THE CONVEYANCE OF REAL PROPERTY TO SCOTT A. KOCIAN AND TAMMY J. KOCIAN; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

**SECTION 1.** The City of Seward, Nebraska ("City") owns that certain real property legally described as:

Lot 4, Reynolds Addition, City of Seward, Seward County, Nebraska  
(the "Property").

**SECTION 2.** The City currently owns and maintains the Property, which is adjacent to the City Cemetery.

**SECTION 3.** The City desires to convey the Property to Scott A. and Tammy J. Kocian.

**SECTION 4.** The City hereby approves the conveyance and transfer of the Property to Scott A. and Tammy J. Kocian in accordance with Nebraska law and the Seward Municipal Code.

**SECTION 5.** The Mayor of the City is hereby authorized to execute a Purchase Agreement and warranty deed and to take all actions necessary to effectuate the transfer of the Property to Scott A. and Tammy J. Kocian.

**SECTION 6.** Pamphlet Form; Publication, When Operative. This ordinance shall be published in pamphlet form and shall be in full force and effective from after its passage, approval, and publication or posting as required by law and city ordinance.

Passed and approved this \_\_ day of January, 2016

CITY OF SEWARD, NEBRASKA

ATTEST:

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Bonnie Otte  
Administrator Assistant/  
Clerk-Treasurer

(SEAL)

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made and entered into on January \_\_\_, 2016, by and between City of Seward, Nebraska (the "Seller"), and Scott A. Kocian and Tammy J. Kocian (the "Buyer").

### RECITALS

A. Seller is the owner of certain real property (the "Property") legally described as:

Lot 4 of Reynolds Addition, Seward, Seward County, Nebraska

B. Seller desires to sell and Buyer desires to acquire the property subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

1. Transfer of Property.

1.1 Sale and Purchase. At Closing (as hereinafter defined), Seller shall sell to Buyer, and Buyer shall purchase from Seller the Property.

1.2 Purchase Price and Payment. Buyer shall pay to Seller Forty Two Thousand Dollars (\$42,000) (the "Purchase Price"), of which Five Hundred Dollars (\$500) has been delivered to the Seller, which will be delivered to ("Earnest Money Deposit") Title Services of Blue Valley, LLC ("Title Company"), upon execution of this Agreement, and the balance, without interest, of Forty One Thousand Five Hundred Dollars (\$41,500) shall be payable at Closing, subject to adjustments and prorations as herein provided.

1.3 Closing. The Closing of the purchase and sale of the Property shall take place on February 29, 2016 at the Title Company's office located in Seward, Nebraska or at such other time, date and place as the parties may mutually agree (the "Closing").

1.4 Title and Possession. Seller agrees to deliver at Closing a general warranty deed to the Property conveying to Buyer marketable title to the Property, free and clear of all mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights or covenants, except for easements and restrictions of record that are acceptable to Buyer. Seller shall deliver possession of the Property to Buyer at the time of Closing.

1.5 Title Insurance. Prior to Closing, Seller shall furnish Buyer with a commitment for an owner's policy of title insurance with copies of all easements in the amount of Purchase Price, which insures marketable title to the Property, subject only to easements and restrictions of record that are acceptable or deemed acceptable to Buyer.

Absent timely objection, any easement or restriction identified in the commitment shall be deemed acceptable to Buyer. Seller shall have a reasonable period to cure any unacceptable easement or restriction. The premium for the owner's title insurance policy and the closing fee of the Title Company shall be divided equally between Seller and Buyer.

1.6 Taxes, Assessments, and other Costs. Seller shall be responsible for all taxes relating to the Property for the year preceding Closing and all prior years as well as all special assessments levied prior to Closing. Taxes relating to the Property for the calendar year when Closing occurs shall be pro-rated as of the date of Closing. Buyer shall pay the filing fee which becomes payable upon recordation of the warranty deed.

1.7 Purchase Agreement Preparation and Legal Representation. The cost of preparation of this Purchase Agreement shall be paid for by Seller, which shall be prepared by the law firm of Mattson Ricketts Law Firm. Should Buyer choose to be represented by legal counsel, Buyer shall be responsible for all of Buyer's own attorney fees and costs charged to Buyer by Buyer's attorney.

1.8 Remonstrance Contingency. The Closing of this sale is contingent upon the City of Seward not receiving a remonstrance against this sale within 30 days from January 26, 2016 in accordance with the procedures set forth in Neb. Rev. Stat. 16-202 and Seward Municipal Code 8-102. If the City receives such a remonstrance, this Agreement shall be null and void and the Buyer shall be entitled to a full refund of Buyer's Earnest Money Deposit as Buyer's sole recourse against the City for its inability to convey the Property to the Buyer.

## 2. Representations and Warranties.

2.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

2.1.1 Hazardous Substances. Seller hereby represents that the Property does not contain any known substances deemed hazardous under any applicable Local, State and Federal laws and regulations. Seller specifically grants Buyer the right to conduct an environmental study at any time prior to Closing to determine whether any environmental hazards exist. Seller acknowledges that it has made such representations and that such representations are a material inducement to Buyer to enter into this Agreement. In the event hazardous substances are discovered on the Property, Buyer may terminate this Agreement by written notice to the Seller, and the Buyer shall receive a refund of all money deposited with the Title Company

2.1.2 Maintenance of the Property. Until possession is given to Buyer, Seller will keep and maintain the Property in as good condition as it now is, reasonable wear and tear excepted.

2.1.3 No Brokerage Agreement. Seller has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Buyer to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby. Seller acknowledges that Kelly R. Hoffschneider of Mattson Ricketts Law Firm is a licensed real estate broker in the State of Nebraska, but has not been retained in that capacity.

2.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

2.2.1 No Brokerage Agreement. Buyer has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Seller to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby. Buyer acknowledges that Kelly R. Hoffschneider of Mattson Ricketts Law Firm is a licensed real estate broker in the State of Nebraska, but has not been retained in that capacity.

3. Default

3.1 Default of Seller. If Buyer shall perform all of its obligations and terms of this Agreement, and Seller shall default in the performance of any of the terms and conditions of this Agreement, Buyer may elect to terminate this Agreement, and shall be entitled to a return of the Earnest Money Deposit under Paragraph 1.2 of this Agreement, and to pursue any other legal or equitable remedies against Seller, including, without limitation, a suit for specific performance.

3.2 Default of Buyer. If Seller shall perform all its obligations and terms of the Agreement, and Buyer shall default in the performance of any of the terms and conditions of this Agreement, the Seller may, at their option, elect to terminate the Agreement and receive and retain the Earnest Money Deposit under Paragraph 1.2 of this Agreement, and pursue any other legal or equitable remedies against Buyer, including, without limitation, a suit for specific performance.

4. Miscellaneous.

4.1 Binding Effect; Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

4.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

4.3 Further Assurances. Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents and take such other

action, whether prior to or subsequent to Closing, as may be necessary to more effectively consummate the intent and purpose of this Agreement.

4.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

4.5 Notices. All notices, requests, demands, objections and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or 48 hours after being mailed registered or certified mail, return receipt requested, postage prepaid, to the party at the following address or to such other address as any party hereto may from time to time in writing designate to the other parties:

If to Seller: City of Seward  
P.O. Box 38  
537 Main Street  
Seward, NE 68434

With a Copy to: Kelly R. Hoffschneider  
Mattson Ricketts Law Firm  
134 South 13<sup>th</sup> Street Suite 1200  
Lincoln, NE 68508  
krh@mattsonricketts.com  
(402) 475-8433

If to Buyer: Scott A. and Tammy J. Kocian  
547 West Jennifer Drive  
Lincoln, NE 68521

4.6 Survival and Nonmerger. All terms, conditions, obligations, representations and warranties contained in this Agreement shall survive the execution hereof and the Closing hereunder, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder and shall not merge into any deed.

4.7 Time is of the Essence. For purposes of the respective obligations of the parties hereto, the parties agree that time is of the essence in the performance of their respective obligations hereunder.

4.8 Risk of Loss. All risk of loss and damage to the Property or other casualty until Closing is assumed by the Seller.

4.9 Severability. If for any reason whatsoever any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid, as applied to any particular case or in all cases, such circumstance shall not have

the effect of rendering such provision invalid in any case as of rendering any other provision of this Agreement inoperative, unenforceable, or invalid.

4.10 Captions. The captions in this Agreement are inserted only as matters of convenience and for reference and in no way define or limit the scope or intent of the various provisions therein, or conditions thereof.

The rest of this page is left intentionally blank. The signatures of the parties are on the following pages.

**SELLER:**

City of Seward, Nebraska

By: \_\_\_\_\_  
Joshua Eickmeier, Mayor

STATE OF NEBRASKA    )  
                                  )  
                                  )    ss.  
COUNTY OF SEWARD    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2016,  
by Joshua Eickmeier, Mayor of the City of Seward, Seller.

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

**BUYER:**

\_\_\_\_\_  
Scott A. Kocian

\_\_\_\_\_  
Tammy J. Kocian

STATE OF NEBRASKA    )  
                                  )  
                                  )    ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2016,  
by Scott A. Kocian, Buyer.

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

STATE OF NEBRASKA    )  
                                  )  
                                  )    ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2016,  
by Tammy J. Kocian, Buyer.

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