REV05042015
Return to:
Rocky Mountain Power
Lisa Louder/Brian Bridge
1407 West North Temple Ste. 110
Salt Lake City, UT 84116

Project Name: Altaview 15 -

WO#:

RW#: 2021LBB053

13926882 B: 11325 P: 5490 Total Pages: 11
04/05/2022 02:30 PM By: asteffensen Fees: \$40.00
EASEMT - EASEMENT OR GRANT OF EASEMENT
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: ROCKY MOUNTAIN POWER
ATTN: LISA LOUDER 1407 W NORTH TEMPLE STE 110 SALT LAKE CITY, UT

### **UNDERGROUND EASEMENT AGREEMENT**

This Underground Easement Agreement is executed this 4Th day of 2022, For the value of \$3,600.00, SANDY CITY ("Grantor"), hereby grants Rocky Mountain Power, an unincorporated division of PacifiCorp, its successors and assigns, ("Grantee"), an easement ("Easement") 20 feet in width and 20 feet in length, more or less, for the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of underground electric power transmission, distribution and communication lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: wires, fibers, cables and other conductors and conduits therefor; and transformers, switches, cabinets, located in underground vaults (together herein called the "Facilities") under the surface of the real property of Grantor in Salt Lake County, State of Utah more particularly described as follows and as more particularly described and/or shown on Exhibit(s) "A", attached hereto and by this reference made a part hereof ("Property").

Together with the right of access to the Property from adjacent lands of Grantor for all activities in connection with the purposes for which this easement has been granted; and together with the present and (without payment therefor) the future right to keep the Property clear of all brush, trees, timber, structures, buildings and other hazards which might endanger Grantee's facilities or substantially impede Grantee's activities. The foregoing right of access shall be exercised in a manner likely to cause the least damage to Grantor's property and improvements, including landscaping. Grantee shall use reasonable efforts to consult with Grantor's authorized agents before exercising its right of access hereunder. Grantor reserves the right to change construct buildings and other improvements on the lands adjacent to the Property provided that Grantee shall at all times have access to the Property for equipment needed to perform the work on the Property.

- 1. **Keep Free from Liens, No Structures**. Grantee shall not permit or suffer any mechanics' liens or similar liens to be enforced against the servient estate (including, without limitation, any landscaping, curbing, gutters or surface) for any work done or materials furnished thereon at the instance or request or on behalf of Grantee. Grantee expressly agrees to indemnify and hold harmless Grantor from any liability for the payment of such liens. Neither Grantor nor Grantee shall build or construct, nor permit to be built or constructed, any building or other structures upon, over or across the Property. Furthermore, Grantee's facilities shall not hinder, impede, or interfere in any way with public outdoor recreation or recreation facilities pursuant to the Land and Water Conservation Fund Grant Agreement, see Paragraph 8, and the rules and regulations of the National Park Service.
- 2. **Assignment Limitations.** The rights granted herein may not be subdivided, assigned, or subleased to another person unless agreed to in writing by the Grantor, or unless to a company that is controlled by, or

under common control with, Grantee, or to an entity succeeding to or acquiring substantially all of the assets of Grantee, in which case Grantor's permission shall not be required.

- 3. **Grantor's Reservation of Right to Use.** Grantor reserves all rights to use and enjoy the area of the Easement except for the purposes for which such Easement is granted; provided that, notwithstanding anything to the contrary in this Agreement, Grantor shall not (i) unreasonably interfere with, disrupt, obstruct or otherwise impede, or authorize any other person to unreasonably interfere with, disrupt, obstruct or otherwise impede the use of the Easement by Grantee, or (ii) construct or maintain, nor permit to be constructed or maintained, any building, structure, retaining walls, rock walls, footings or improvement which substantially impairs the maintenance or operation of the Facilities under, on or over the Easement.
- 4. **Follow Laws.** Grantee, in exercising the privileges granted hereunder, shall comply with the provisions of all federal, Utah State, county, and municipal laws, ordinances, and regulations which are applicable to Grantee in connection with the operations of Grantee on the Property. Grantee shall reimburse Grantor for all costs and expenses incurred by Grantor to cure waste on the Property committed by Grantee or its contractors in the course of the use of the Easement granted herein which has not previously been paid or agreed to as the taking of or damages to improvements, damages, or "cost-to-cure" for Grantee's use of the Easements granted herein, which costs and expenses shall be reimbursed by Grantee within thirty (30) days of Grantor's written demand therefore, which written demand shall include invoices evidence of such costs.
- 5. **Insurance.** Except as otherwise provided in Subsection 5.4 below, at all times while this Agreement is in effect, Grantee shall maintain a policy of commercial general liability insurance in a form reasonably acceptable to Grantor with respect to the Property and Grantee's activities thereon, written on an occurrence-basis and including contractual liability coverage to cover Grantee's indemnity obligations hereunder. Such policy shall have a limit of liability of not less than \$2,000,000.00 combined single limit per occurrence, and shall be placed with an insurer with an A.M. Best rating of A-: IX or better. If A.M. Best no longer publishes ratings of insurers, then the parties shall use the best widely accepted substitute used in rating liability insurers.
- 5.1 CPI **Adjustment.** Inasmuch as this Easement may continue indefinitely or for many years, and the parties intend that Grantee maintain the amount of liability insurance adjusted for inflation, Grantee agrees that the amount of insurance required herein shall be subject to an automatic adjustment in proportion to changes in the Consumer Price Index for the West Region, All Items (base year 1982-84=100), promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. The automatic adjustment shall be calculated by means of the following formula:

A = \$2,000,000 X B/C
Where A = Adjusted Amount of Liability Insurance Required to be Maintained
B = Monthly index for the month prior to the month in which each Liability
insurance adjustment is to become effective
C = Monthly index for the month in which the Agreement becomes
effective

5.2 **Substitute Index.** In the event that the Consumer Price Index for the West Region is not issued or published for the period for which such amount of liability insurance is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the U.S. Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the U.S. Government shall be used, and if none is so published, then another index generally recognized and authoritative as measuring the change in the cost of consumer goods in the Salt Lake City region shall be substituted by Grantor's Director of Public Works.

- 5.3 Name Grantor, Proof of Insurance, Grantor Procure. Such policy shall name Grantor as an additional insured. Within ten (10) days after request by Grantor, Grantee shall provide to Grantor evidence acceptable to Grantor of insurance meeting the requirements of this Section. In the event Grantee fails to obtain and maintain insurance, or to provide evidence thereof as required herein, Grantor shall have the right, but not the obligation, to purchase such insurance in its own name or in the name of Grantee, and Grantee shall reimburse Grantor for the cost of such insurance on demand.
- 5.4 **Self-Insurance**. Grantor in its sole discretion may allow Grantee to self-insure for such risks, provided that the Grantor, even if it has allowed such self-insurance in the past, may from time to time insist upon proof of a policy of insurance meeting the requirements set out in this Section 5. If Grantee self-insures, or wishes to do so, the Grantee shall promptly provide to Grantor such financial statements, balance sheets, and other information as Grantor may request in order to determine if Grantor wishes to allow Grantee to self-insure. Inasmuch as Grantor agrees to allow Grantee to self-insure at the time this Easement becomes effective, Grantor shall notify Grantee in writing if it requires Grantee to maintain a commercial policy meeting the requirements of this Section 5. Grantee is presently a part of Berkshire Hathaway Energy, which is a subsidiary of Berkshire Hathaway, Inc. In the event that Grantee is no longer a part or subsidiary of or owned by Berkshire Hathaway, Inc. or its successor, then Grantee shall promptly give notice of such change to Grantor. Any claims arising under this Easement Agreement may, but are not required to, be sent by Grantor directly to the Grantee's Office of General Counsel.
- 6. Indemnify. Grantee shall indemnify and hold Grantor and its successors and assigns, officers, employees and agents harmless from any and all claims, actions, causes of action, losses, expenses (including reasonable attorneys' fees), damages, and any and all other liabilities of any character whatsoever to the extent arising out of any negligent act and/or omission of Grantee or its agents, representatives or employees occurring, arising or resulting from Grantee's activity on the Property. In cases of concurrent negligence or misconduct by Grantor and Grantee, each party shall be responsible for its respective proportionate share of liability and costs. Notwithstanding the first sentence of this Section 6, Grantee shall not be required to indemnify and hold Grantor and its successors and assigns harmless from claims, actions, causes of action, losses, expenses (including reasonable attorney's fee), damages, or any other liabilities arising out of any pre-existing conditions affecting the Property except to the extent caused by Grantee's failure to comply with the Remediation Plan (as defined below). This section includes, but is not limited to, any release or exacerbation by Grantee of any of the following (collectively, "Hazardous Substances") (i) hazardous materials, pollutants, contaminants, dangerous substances, constituents, toxic substances, hazardous or toxic chemicals, hazardous wastes and hazardous substances as those terms are defined in the following statutes and their implementing regulations:, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act 42 U.S.C. § 9601 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., and any other federal, state or local statute or regulations dealing with similar matters, (ii) petroleum, including crude oil and fractions thereof, (iii) natural gas, synthetic gas and any mixtures thereof, (iv) asbestos and/or asbestos-containing materials, (v) PCBs, or PCB-containing materials or fluids, and (vi) any other substance, including sewage sludge, with respect to which any federal, state or local agency or other governmental entity may require either an environmental investigation or an environmental remediation ("Remediation Plan").
- 7. **Nonexclusive.** It is expressly understood and agreed that the rights herein granted are non-exclusive and Grantor hereby reserves the right, subject to the terms of this Agreement, to issue other non-exclusive easements, leases, or permits on or across the Property, provided that any such easements, leases, or permits shall not substantially interfere with Grantee's effective exercise of its rights under this Agreement.

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8. No Warranty. Grantee accepts the area within the Easement and all aspects thereof "AS IS," "WHERE IS," without warranties, except as to title of the Property with respect to claims arising by, through or under Grantor, either express or implied, "with all faults", including but not limited to both latent and patent defects, and the existence of Hazardous Substances, if any. Grantee hereby waives all warranties, express or implied, regarding the condition and use of the Property, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the Easement is granted to Grantee subject to: (a) any state of facts which an accurate ALTA/ASCM survey or physical inspection of the Property might show, (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) all reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity, including but not limited to the Land and Water Conservation Fund Grant Agreement described more particularly in the Notice of Land and Water Conservation Fund Grant Agreement, recorded in Salt Lake County on February 21, 2020 as Entry No. 13199182. Grantee shall have no claim for damages or refund against Grantor for any claimed failure or deficiency of Grantor's title unless such claim arises by, through or under Grantor.

#### 9. Termination.

- 9.1 The Grantee's rights in the Easement and the Property shall terminate under the following conditions:
  - 9.1.1 By mutual written agreement of the parties; or
- 9.1.2 If the Grantee fails to use the easement for the transmission of more than a nominal amount of digitized voice or other data for a period of one year for any reason other than due to war, civil unrest, order of a court or governmental authority which has the authority to make such order, or act of God.
- 9.2 Upon the request of Grantor, Grantee shall execute and deliver such instruments, suitable for recording, as may be requested to confirm such termination.
- 9.3 Upon written request of the City's Director of Parks and Recreation, or his or her designee, Grantee shall, after termination of the Easement herein granted, promptly remove the Facilities from the Property.
- 10. **Taxes on Easement.** Grantee alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against Grantee's improvements or interest in the Property.
- 11. **Diligent Work**. All activities by or at the direction of Grantee in or upon the Property granted herein shall be pursued diligently to completion.
- 12. **Default by Grantee**. In the event that Grantee is in default of this Agreement, Grantor shall have the following rights in addition to other remedies provided herein:
- 12.1 In the event that a dangerous or harmful hazard or condition exists on the Property as a result of Grantee's breach of its obligations under this Agreement which would put Grantor, Grantee, other users or persons, including the respective employees, contractors or agents of Grantor or Grantee in material risk of imminent harm, then on an emergency basis, Grantor may immediately provide written and/or oral notice to Grantee, and Grantee shall promptly undertake any and all commercially reasonable

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actions under the circumstances to remedy such harmful hazard or condition in accordance with applicable law, or, if no applicable law governs such hazard or condition, to the reasonable satisfaction of Grantor. If Grantee fails to promptly undertake any and all actions necessary to remedy and correct such harmful hazard or condition in accordance with the foregoing sentence, Grantor may thereafter exercise any and all rights and remedies herein.

- 12.2 In the event a breach by Grantee of its obligations under this Agreement materially interferes with the access, use or enjoyment of the Property by Grantor or its lessees, agents or contractors, Grantor may provide written notice to Grantee of such breach. If Grantee fails to cure such breach within ten (10) business days of receipt of such written notice, or if the breach cannot reasonably be cured within ten days, such longer time as is reasonably needed to do so, Grantor may thereafter exercise any and all rights and remedies herein.
- 12.3 In the event of a breach of this Agreement (other than those circumstances identified in Subsections 12.1 or 12.2 above), Grantor may provide written notice to Grantee describing such breach, and Grantee shall promptly discontinue the activities resulting in the breach. If Grantee fails to discontinue the breach and cure any default condition within thirty (30) days of receipt of written notice from Grantor, then Grantor may exercise any and all rights and remedies herein; provided, however, that if the nature of the breach or default condition is such that a cure of the default condition cannot be accomplished within the 30-day notice period, then Grantee shall have such additional time as may be reasonably required to cure such default condition so long as Grantee begins efforts to cure the default promptly after receiving notice and diligently continues to pursue efforts to complete the cure of the default.
- 13. **Notices.** All notices required to be given under this Agreement shall be in writing and shall be transmitted either by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and seventy-two (72) hours after dispatch, if mailed in accordance with the above. Notices to the respective parties shall, except as provided in Section 5.4 above in respect to claims which may be sent by Grantor to the Grantee's Office of General Counsel, be sent to the following addresses, or to such other address as designated in writing by a party to the other party:

If to Grantor:
Director of Parks and Recreation
440 East 8680 South
Sandy, Utah 84070
Telephone: (801) 568-2910

With a copy to: Sandy City Attorney 10000 S. Centennial Pkwy Suite 301 Sandy, Utah 84070

If to Grantee:
Rocky Mountain Power
Real Estate Division
1407 West North Temple, Suite 110
Salt Lake City, Utah 84116

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### 14. Grantor's Obligations.

- 14.1. **No Structures.** Grantor shall not build or construct, nor permit to be built or constructed, over or across the Easement, any building, retaining walls, rock walls, footings or improvement which impairs the maintenance or operation of the Facilities.
- 14.2. **Contour of Land.** Grantor shall not change the contour of the land within the Easement without prior written consent of Grantee.
- 14.3. **Personal Property.** Grantor shall not place personal property within the Easement that impairs the maintenance or operation of the Facilities.
- 15. **Grantee's Right to Remove Trees, Brush, Improvements.** Grantee shall have the right to cut and remove timber, trees, brush, overhanging branches, landscaping and improvements or other obstructions of any kind and nature which injure or interfere with Grantee's use, occupation or enjoyment of this easement, and on lands of Grantor adjacent to the Property where no other access to the Property is available, provided that the right of access and foregoing right to remove obstructions shall be exercised in a manner likely to cause the least damage to Grantor's property and improvements, including landscaping without liability to Grantor, and without any obligation of restoration or compensation, provided that Grantee shall first give Grantor ten business days' written notice of its intent to remove any such item before Grantee removes the item, except that in cases of emergency, no such notice shall be necessary. As used herein, the term "emergency" means any unforeseen circumstance or occurrence, the existence of which constitutes an immediate and substantial risk of personal injury or substantial damage to property, or which causes or is likely to cause interruption of utility, telecommunications or public services.
- 16. **Restore Easement.** Grantee, following the installation or maintenance, of the Facilities, shall restore the surface of the right-of-way and easement, and any improvements, to, as near as practicable, the condition of such improvements and the surface, prior to said installation or maintenance.
- 17. Entire Agreement, No Waiver. This Agreement constitutes the sole agreement between the parties and supersedes any and all other agreements, whether oral or written, with respect to the obligations identified herein. The parties acknowledge that no representations, inducements, promises, or agreements, whether oral or otherwise, have been made by any party or anyone acting on behalf of any party which is not embodied herein; and that no other agreement, statement, or promise not contained in this Agreement regarding the provisions of this Agreement shall be valid or binding. No failure by either party to insist on the strict performance of any covenant, duty or condition of this Agreement or to exercise any right or remedy consequent on a breach of this Agreement shall constitute a waiver of any such breach or of such or any other covenant, duty or condition.
- 18. **Estoppel Certificate.** Grantee shall, within ten (10) days after the Grantor's request, execute and deliver to Grantor an estoppel certificate in favor of Grantor and such other persons as Grantor shall request setting forth any reasonably requested information regarding this Underground Easement Agreement and the servient estate, and Grantor and such other persons shall be entitled to rely on any such estoppel certificate.
- 19. **No Partnership or Agency.** The parties shall not, by virtue of this Agreement nor by the act of any party, be deemed principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of theft respective businesses, or otherwise.
- 20. **No Third-Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended to confer any rights upon any person or entity other than the parties and their successors and assigns.

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Without limiting the generality of the foregoing, nothing contained in this instrument shall be deemed or considered to be a dedication of all or any part of the Property for the general public.

- 21. **Modifications in Writing.** No modification of this Agreement shall be made or effective unless and until such modification is executed by Grantee and Grantor, or their successors or assigns.
- 22. **Arbitration, Meet and Discuss.** In the event of any dispute arising under this Agreement, the parties shall first attempt to resolve the matter through direct negotiation between the representatives of the parties. If the representatives are unable to resolve the issue within ten (10) days after presentation of the dispute, then each of the parties hereto agree to <u>non-binding arbitration</u>. Such arbitration shall be in accordance with the rules and procedures of the American Arbitration Association (AAA). Notwithstanding any AAA rules and procedures or any other provisions or any state or federal laws, the parties agree that the arbitrators shall not consider or award punitive damages as a remedy. Upon the Grantee's request, AAA shall provide the parties a list of arbitrators each of whom has experience and expertise with respect to easements and property matters. Upon each of the party's receipt of such list, each party shall have ten (10) days to select an arbitrator. The two selected arbitrators shall then select a third arbitrator within thirty (30) days from the date the initial two arbitrators were selected and the matter subject to arbitration shall be arbitrated within sixty (60) days after the selection of the third arbitrator.
- 23. Courts of Utah, Governing Law. Any claim, controversy or dispute arising under or related to this confirmation shall be governed by the laws of the State of Utah without giving effect to any of the conflicts of law provisions, rules or principles which would result in the application of the substantive law of another jurisdiction. The parties hereto irrevocably submit to the exclusive jurisdiction of the courts of the State of Utah and the United States District Court located in Salt Lake County, Utah, in connection with all matters relating hereto, and waive any objection to the laying of venue in, and any claim of inconvenient forum with respect to, these courts.
- 24. **Authorization.** Each individual executing this Agreement for Grantee represents and warrants: (i) that he or she is authorized to do so on behalf of Grantee, but is without authority to make any representations, covenants or agreements not herein expressed; (ii) that he or she has full legal power and authority to bind Grantee in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority; and (iii) that the execution, delivery, and performance by Grantee of this Agreement will not constitute a default under any agreement to which such party is a party.
- 25. **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part of parts hereof.

**SANDY CITY** 

Monica Zoltanski,/Mayor

ATTEST:

City Recorder (SEAL)

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STATE OF UTAH ) ; ss.
COUNTY OF SALT LAKE )
On the leady of March, 2022 personally appeared before me Monica Zoltanski and Wendy Downs who, being duly sworn, did say that they are the Mayor and Gandy City Recorder, respectively, of Sandy City, and that the foregoing instrument was signed on behalf of said city.  Notary Public
BARBARA TAGOAI Notary Public State of Utah My Commission Expires on: March 9, 2025 ROCKY MOUNTAIN POWER
Comm. Number: 717228  Rivan Bridge
STATE OF UTAH )
On the 4 day of Avi , 2022, personally appeared before me Brian Briage and , who, being by me duly sworn on oath did say that he is the of the corporation named above, who is personally known to me,
whose identity I verified on the basis of whose identity I verified on the oath/affirmation of credible witness, to be the signer of the foregoing document, who duly acknowledged to me that he executed the same as an authorized representative of the corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors; and said person acknowledged to me that said corporation executed
NOTARY PUBLIC, Residing at  NOTARY PUBLIC, Residing at  BRIAN A. YOUNG  Comm. #707854
Satt Lake City, Utah  My Commission Expires

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# EXHIBIT A

## ROCKY MOUNTAIN POWER ELECTRICAL EASEMENT DESCRIPTION

### LOCATED IN:

SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SANDY CITY, SALT LAKE COUNTY, UTAH

A PERMANENT AND PERPETUAL ELECTRICAL POWER EASEMENT SITUATE UPON A PORTION OF SALT LAKE COUNTY PARCEL NUMBER 22-33-451-002, SAID PARCEL (PARCEL 1) DESCRIBED IN A WARRANTY DEED, ENTRY NUMBER 2954215, AS RECORDED IN THE SALT LAKE COUNTY RECORDER'S OFFICE, SAID EASEMENT LOCATED IN THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SANDY CITY, SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 2.5 INCH BRASS CAP RING AND LID MONUMENT MARKING THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 33, THENCE SOUTH 89°57' 08" EAST 414.48 ALONG THE SOUTH LINE OF SAID SECTION 33, THENCE NORTH 38.80 FEET TO A POINT ON THE NORTH LINE OF 8600 SOUTH STREET, THE NORTH SIDE OF AN EXISTING 4 FOOT WIDE CONCRETE SIDEWALK AND THE POINT OF BEGINNING; THENCE NORTH 01°50'28" WEST 29.05 FEET; THENCE NORTH 87°00'58" EAST 20.00 FEET; THENCE SOUTH 01°50'28" EAST 29.41 FEET TO A POINT ON SAID NORTH LINE OF 8600 SOUTH STREET; THENCE SOUTH 88°02'47" WEST 20.00 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

CONTAINS: 584 S.F. / 0.01 AC +/-





