# *Memorandum #10-05*

**To:** Doug Russell, City Manager
**From:** Dave Mingo, Community Development Director
**Date:** January 5 2010
**Subject:** Listing Agreements for City Owned Property

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Attached are three multiple listing agreement proposals that the city has received from the realtors in Yankton to market the identified city owned property. Similar to past agreements, we have not included property in the Fox Run Industrial Park because of the "Spec Building" method of marketing the property.

The proposed agreements are similar to that of previous listing arrangements with the local realtors. You may remember that a few adjustments were made over the past several years. They included:

1. Extending the agreement timeframe. Two years ago we extended the agreement time from six months to a full year.
2. The listings include property that could be used for industrial and heavy commercial types of occupancies. In the past they only included commercial property.
3. The realtors would designate one contact person per agency to deal with the city on marketing the property.
4. The commission payment would be based on 75% of the listed price in instances where incentives were used to enhance the development potential of a project.

The first listing is for the 15 acre industrial area located south of SAPA, north of East 15th Street. The proposed listing price for this land is $10,000 per acre ($153,400).

The second listing is for a 1.48 acre site located southeast of the intersection of Bill Baggs Road and Alumax Road. The proposed listing price for this land is $80,500 which amounts to approximately $1.25 per square foot.

The third listing agreement is for Parcel B in the northwest corner of Fox Run Subdivision. This is the only Fox Run Commercial property that the city has left for sale. Parcel B is approximately 5.8 acres and would be listed for approximately $1.00 per square foot. This amounts to a $250,470 listing price.

Respectfully submitted,

Dave Mingo

Dave Mingo, AICP
Community Development Director

**Recommendation:** It is recommended that the City Commission approve Memorandum #10-05 approving the listing agreements for the three described properties and authorizing the City Manager to sign the agreements.

_X_ I concur with this recommendation.

_____ I do not concur with this recommendation.

Doug Russell, City Manager

Anderson
REALTY, L.L.C.
605-665-7407
yanktonhomes.com

122 West Third, Yankton, SD 57078

Toll Free 1-800-657-5892 Fax 1-605-665-7483

Jan 5, 2010

Mayor Specht
Yankton City Commissioners
Doug Russell, City Manager
Dave Mingo, Community Development Director
416 Walnut
Yankton, S D 57078

Honorable Mayor, City Commissioners, City Manager and Community Development Director.

I respectfully ask you to renew your listings of the three commercial lots with the undersigned REALTORS in Yankton, S D.

For the 6 companies

Sincerely,

Ted P Mickelson

Ted P Mickelson
Anderson Realty LLC
Century-21 Professional Real Estate
Lewis & Clark Realty
America's Best
Conkling Real Estate
Vision Real Estate

# LISTING AGREEMENT

**(This is a legally binding contract. If you do not understand it, seek legal advice.)**

Seller: **City of Yankton** City: **Yankton** State: **S D**
Listing Date: **1-14-10** Expiration Date: **1-14-11**

If a purchase agreement is entered into with Buyers during the term of this agreement, the termination thereof shall extend to and include the date of closing under said agreement as to the purchasers only.

1. In consideration of Broker's efforts to obtain a purchaser and to cooperate with other brokers, Seller(s) hereby grant Broker the exclusive right to sell the following property: **Block 1, East Industrial Subdivision in thhe N 1/2, SW 1/4, of 9-93-55,**
Also known as: **2300 E 15th, , Yankton, S D**
For the sum of: **One Hundred & Fifty-three Thousand & Four Hundred & No/100($153,400.00)**
On the following terms: **Cash, & Commission stated in # 4 & 4A, & Commission based on 75% of Listed price if an incentive sale, one contact person to be named per agency.**
or with Seller's consent, for a lesser sum or on other terms, which price includes all encumbrances, taxes, and assessments.

2. A. Broker will represent Seller/Landlord as outlined in Sections I, II, or III, of the attached Agency Addendum according to the Sellers/Landlords consent as to the type of agency representation desired. Seller/Landlord acknowledges and consents that Broker may represent and/or assist other sellers/landlords of similar properties. Prospective buyers/tenants will be offered the opportunity to inspect Seller's/Landlords property and also any or all similar properties.

   B. Seller authorizes Broker, by ***initials*** in the appropriate space, to:
   a) cooperate with brokers who represent buyers. Yes____/____ No____/____ NA____/____
   b) compensate cooperating brokers. Yes____/____ No____/____ NA____/____

3. The term "sale" shall be deemed to include any exchange or trade to which Seller consents. In the event of an exchange or trade, Broker is permitted to represent and receive compensation from both parties.

4. If during the period of this agreement the property is sold by Seller, Broker, a cooperating broker, or anyone else; or should any of the above produce a purchaser ready, willing, and able to purchase the property; or within **365** days after the expiration of this contract, a sale is made to any person to whom the property has been shown during the listing period; Seller agrees to pay a fee for professional services of $____ or **7** % plus appropriate sales tax on the sales price. Seller further agrees that Broker or Broker's authorized representative may act as escrow agent for all money, papers, and documents associated with this transaction. If this property is listed with another licensed real estate broker after expiration of this listing, this contract shall be null and void in its entirety.

5. If earnest money deposited by the Buyer is forfeited, the earnest money, less expenses, shall be equally divided between Broker and Seller. However, in no case may the Broker's share exceed the commission stated herein.

6. The following personal property is included in the stated price: **none**

7. Seller authorizes Broker, by ***initials*** in the appropriate space, to:
   A. place property with the Multiple Listing Service. Yes____/____ No____/____ NA____/____
   B. place a "For Sale" sign on property. Yes____/____ No____/____ NA____/____
   C. install a lockbox on the property. Yes____/____ No____/____ NA____/____
   D. request mortgagee to release information to Broker. Yes____/____ No____/____ NA____/____
   E. request utility companies to release information to Broker. Yes____/____ No____/____ NA____/____
   F. advertise by computerized media. Yes____/____ No____/____ NA____/____
   G. advertise by audio, video, or print media Yes____/____ No____/____ NA____/____

8. This property is offered for sale regardless of sex, race, color, national origin, religion, creed, disability, or familial status.

9. Seller(s) shall complete and submit a property condition disclosure statement as required by SDCL 43-4-38 with this listing agreement.

10. Seller(s) shall complete and submit a lead-based paint disclosure if property is residential and built prior to 1978 as required by federal regulation.

Seller _____ Seller _____

Broker ANDERSON REALTY,L.L.C. _____ Agent ANDERSON REALTY, L.L.C. _____

Receipt of copy acknowledged:_____
Seller

# AGENCY AGREEMENT ADDENDUM

This addendum is attached to and made a part of the agency agreement dated **1-14-10**, between Anderson Realty LLC, C-2l, Lewis & Clark, America's Best, Conkling, & Vision Realty ( Broker) and **City Of Yankton** (Client).

**I. IF THE BROKER REPRESENTS THE ☒ SELLER/LANDLORD OR ☐ BUYER/TENANT:** If a broker enters into an agreement to represent a seller/landlord or buyer/tenant as a client, the broker and all licensees associated with that broker represent the client. An agent/subagent for the owner owes the owner the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting.

**II. IF THE BROKER APPOINTS AN ASSOCIATE LICENSEE TO REPRESENT THE ☒ SELLER/LANDLORD OR ☐ BUYER/TENANT:** If a broker enters into an agreement to represent a seller or buyer as a client, the broker appoints Ted Mickelson as the client's appointed agent. For the purposes of this addendum, the client shall have an agency relationship with ONLY the appointed agent(s) names below and the responsible broker and responsible broker's designee Lisa Noecker. The responsible broker may appoint other affiliated licensees during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the responsible broker and the client. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any duties owed to the client.

**III. IF THE BROKER REPRESENTS BOTH THE SELLER/LANDLORD AND THE BUYER/TENANT:** A real estate broker acting directly or through an associate licensee or appointed agent can legally be the agent of both the seller/landlord and the buyer/tenant in a transaction, but only with the knowledge and written consent of both parties. If a buyer/tenant represented by a broker wants to see a property of a seller/landlord being represented by the same broker, the following provisions will govern the actions of the broker.

**A.** The broker may not knowingly say anything or do anything which might place one party at a disadvantage, disclose personal confidences of one party or the other party, or any other information a party specifically instructs the broker in writing not to disclose, unless disclosure is required by law.

**B.** The broker may not, without the prior express written consent of the owner, disclose to the buyer/tenant that the seller/landlord might accept a price less than the listing price, nor shall the broker, without the prior express written consent of the buyer/tenant, disclose to the owner that the buyer/tenant may be willing to pay a higher price, or accept terms less favorable to the buyer/tenant than those indicated in the buyer's/tenant's previous offer.

**C.** The broker may not represent the interests of either the seller/landlord or buyer/tenant to the detriment of the other party. The broker is obligated to inform each party of all facts the broker knows which would affect the party's decision to permit the broker to represent both the seller/landlord and the buyer/tenant.

**CONSENT AGREEMENT:** If the seller/landlord elects to negotiate with a buyer/tenant that is a client of the broker, or a buyer/tenant elects to negotiate with an owner that is a client of the broker, it is understood that both parties will be required to confirm, in writing, their election to have broker act as a consensual limited agent.

**AGENT OBLIGATIONS:** Regardless of representation, the broker shall: Disclose all known material facts about the property which could affect the buyer's/tenant's use or enjoyment of the property, disclose information which could have a material impact on either party's ability to fulfill their obligations under the purchase/lease agreement, respond honestly and accurately to questions concerning the property, and deal honestly and fairly with all parties. The duties of the broker in a real estate transaction do not relieve an seller/landlord or buyer/tenant from the responsibility to protect their own interests. You should carefully read all documents to assure that they adequately express your understanding of the transaction. If you have questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding further.

**Having read and understood this information about agency, I instruct Broker as *initialed* below:**

**I agree to an appointed agency relationship as described in section II above.** ____/____**YES** ____/____**NO**

**I agree to a potential limited agency relationship as described in section III above.** ____/____**YES** ____/____**NO**

[ ]**Buyer/Tenant** [ ]**Seller/Landlord** **(date/time)** [ ]**Buyer/Tenant** [ ]**Seller/Landlord** **(date/time)**

Lisa M. Noecker 1/5/10 by

[X]**Broker** 8:00 PM 1-5-10 **(date/time)** [ ]**Agent** **(date/time)**



Harvey Humphrey 2:45 Bill C. 1-5-10

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Listing Date: **1-14-10** Expiration Date: **1-14-11**

If a purchase agreement is entered into with Buyers during the term of this agreement, the termination thereof shall extend to and include the date of closing under said agreement as to the purchasers only.

1. In consideration of Broker's efforts to obtain a purchaser and to cooperate with other brokers, Seller(s) hereby grant Broker the exclusive right to sell the following property: **N 1/2 of the SW 1/4 Lying Northwesterly of the Railroadin 9-93-55, Yankton Co., S D**
   Also known as: **1808 Bill Baggs Road, Yankton, S D**
   For the sum of: **Eighty Thousand & Five Hundred & no/100**($**80,500.00**)
   On the following terms: **Cash**
   or with Seller's consent, for a lesser sum or on other terms, which price includes all encumbrances, taxes, and assessments.

2. A. Broker will represent Seller/Landlord as outlined in Sections I, II, or III, of the attached Agency Addendum according to the Sellers/Landlords consent as to the type of agency representation desired. Seller/Landlord acknowledges and consents that Broker may represent and/or assist other sellers/landlords of similar properties. Prospective buyers/tenants will be offered the opportunity to inspect Seller's/Landlords property and also any or all similar properties.

   B. Seller authorizes Broker, by ***initials*** in the appropriate space, to:
   a) cooperate with brokers who represent buyers. Yes____/____ No____/____ NA____/____
   b) compensate cooperating brokers. Yes____/____ No____/____ NA____/____

3. The term "sale" shall be deemed to include any exchange or trade to which Seller consents. In the event of an exchange or trade, Broker is permitted to represent and receive compensation from both parties.

4. If during the period of this agreement the property is sold by Seller, Broker, a cooperating broker, or anyone else; or should any of the above produce a purchaser ready, willing, and able to purchase the property; or within **365** days after the expiration of this contract, a sale is made to any person to whom the property has been shown during the listing period; Seller agrees to pay a fee for professional services of $_____ or **7** % plus appropriate sales tax on the sales price. Seller further agrees that Broker or Broker's authorized representative may act as escrow agent for all money, papers, and documents associated with this transaction. If this property is listed with another licensed real estate broker after expiration of this listing, this contract shall be null and void in its entirety.

5. If earnest money deposited by the Buyer is forfeited, the earnest money, less expenses, shall be equally divided between Broker and Seller. However, in no case may the Broker's share exceed the commission stated herein.

6. The following personal property is included in the stated price: **none**

7. Seller authorizes Broker, by ***initials*** in the appropriate space, to:
   A. place property with the Multiple Listing Service. Yes____/____ No____/____ NA____/____
   B. place a "For Sale" sign on property. Yes____/____ No____/____ NA____/____
   C. install a lockbox on the property. Yes____/____ No____/____ NA____/____
   D. request mortgagee to release information to Broker. Yes____/____ No____/____ NA____/____
   E. request utility companies to release information to Broker. Yes____/____ No____/____ NA____/____
   F. advertise by computerized media. Yes____/____ No____/____ NA____/____
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8. This property is offered for sale regardless of sex, race, color, national origin, religion, creed, disability, or familial status.

9. Seller(s) shall complete and submit a property condition disclosure statement as required by SDCL 43-4-38 with this listing agreement.

10. Seller(s) shall complete and submit a lead-based paint disclosure if property is residential and built prior to 1978 as required by federal regulation.

Seller Carol Brock — Seller

Lisa M. Mocker

Broker ANDERSON REALTY,L.L.C. — Agent ANDERSON REALTY, L.L.C.

1-5-10

Receipt of copy acknowledged: _____ Seller

1/5/10 1-5-2010

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**Having read and understood this information about agency, I instruct Broker as *initialed* below:**

**I agree to an appointed agency relationship as described in section II above.** ____/____**YES** ____/____**NO**

**I agree to a potential limited agency relationship as described in section III above.** ____/____**YES** ____/____**NO**

[ ]Buyer/Tenant [ ]Seller/Landlord (date/time) [ ]Buyer/Tenant [ ]Seller/Landlord (date/time)

Lisa M. Noecker 1/5/10 by

[ ]Broker (date/time) [ ]Agent (date/time)

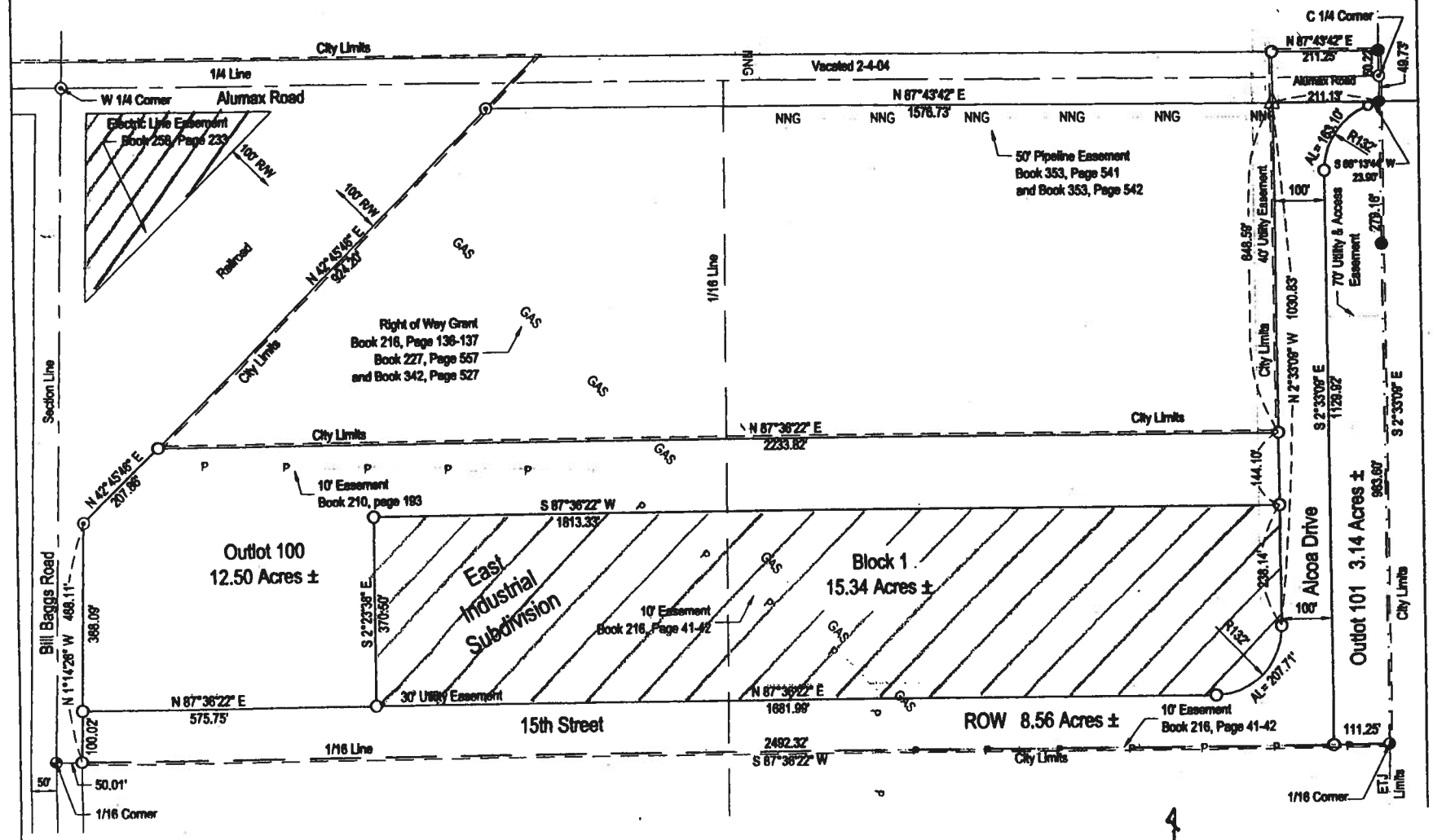
Carol Brock 1:00 pm 1-5-10



1-5-10 2:20

1-5-10 1/10/10 Bill C 1-5-10

# January 2010 Listing Agreement Map




Property Listed in 2010 Agreement

# LISTING AGREEMENT

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Listing Date: **1-14-10** Expiration Date: **1-14-11**

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   Also known as: **1201 West 31st St, Yankton S d**
   For the sum of: **Two Hundred & Fifty Thousand & Four Hundred & Seventy & No/100($250,470.00)**
   On the following terms: **Cash, & Commission stated in 4 & 4a, & Commission based on 75% of listed price if an incentive sale, & one contact person to be named per agency.**
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Seller _____ Seller _____

Lisa J. Noecker

Broker ANDERSON REALTY,L.L.C. Agent ANDERSON REALTY, L.L.C.

Carol Brock

Receipt of copy acknowledged:_____
Seller

1-5-10

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**Having read and understood this information about agency, I instruct Broker as *initialed* below:**

**I agree to an appointed agency relationship as described in section II above.** ____/____YES ____/____NO

**I agree to a potential limited agency relationship as described in section III above.** ____/____YES ____/____NO

[ ]Buyer/Tenant [ ]Seller/Landlord (date/time) [ ]Buyer/Tenant [ ]Seller/Landlord (date/time)

Lisa J. Noecker 1/5/10 by

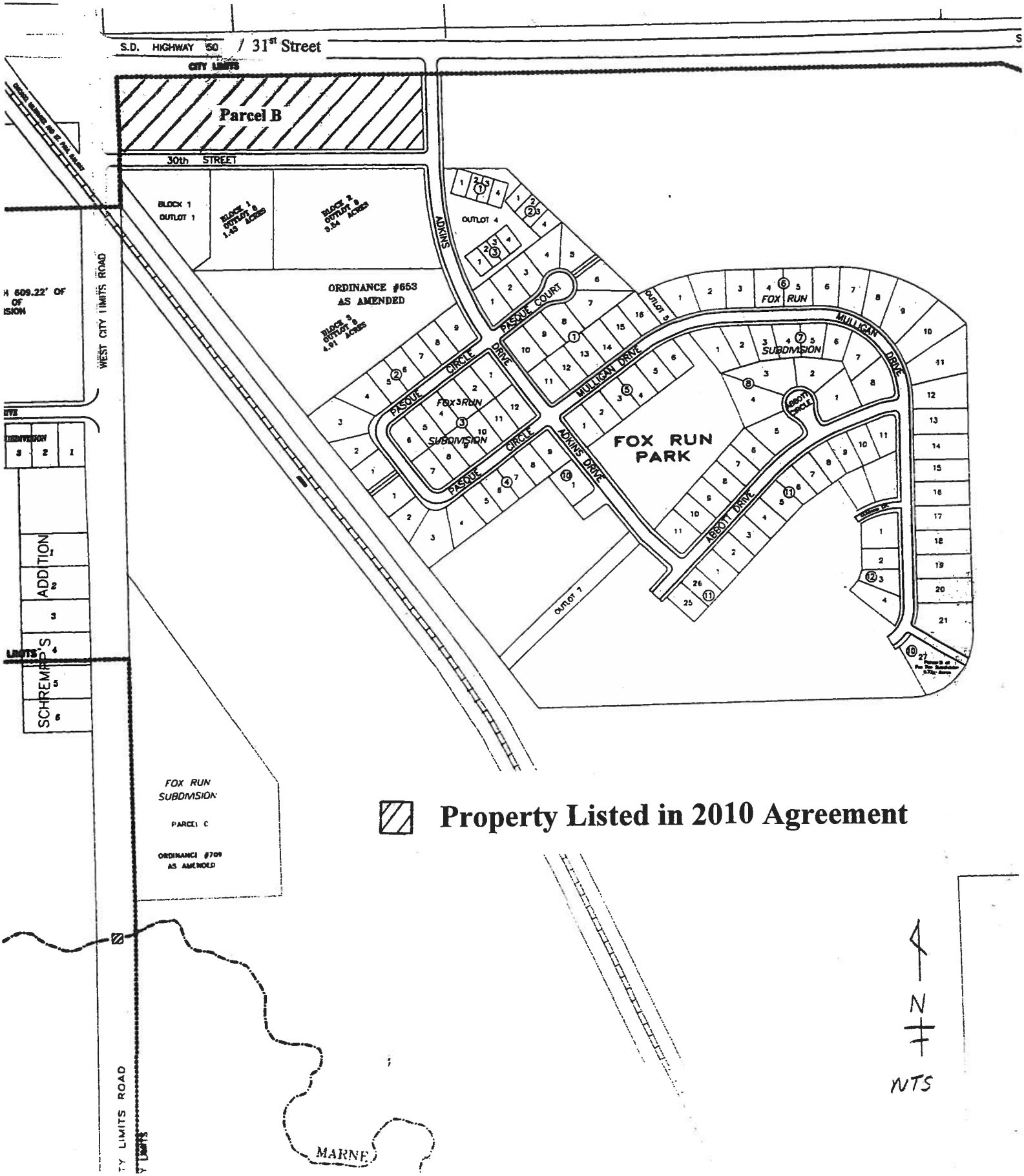
[ ]Broker Carol Brock 2:00 pm 1-5-10 (date/time) [ ]Agent (date/time)

2:30



1-5-10 Nancy Yaeyley 2:45 Bill Oz 1-5-10

# January 2010 Listing Agreement Map




Property Listed in 2010 Agreement