

## **PAYMENT IN LIEU OF TAXES AGREEMENT**

**THIS PAYMENT IN LIEU OF TAXES AGREEMENT** (“Agreement”) is made as of the 1st day of February, 2022 by and between **ATWATER CAPITAL, LLC**, a limited liability company duly organized and existing under the laws of the State of Florida and qualified to do business in the State of New York as a foreign limited liability company, having an office at 6181 Hollows Lane, Delray Beach, FL 33484 (the “Company”), and the **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an address at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the “Agency”).

### **W I T N E S S E T H:**

**WHEREAS**, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the “Act”), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project described below;

**WHEREAS**, the Agency on behalf of the Company intends to undertake a project consisting in part of: (A)(1) the acquisition of an interest in a parcel of land located at 6 Stegelske Avenue, City of Dunkirk, Chautauqua County, New York (the “6 Stegelske Parcel” or the “Land”), which Land is more particularly described on Exhibit A attached hereto, (2) the renovation of the existing approximately 500 square foot pump house located on the 6 Stegelske Parcel (collectively, the “6 Stegelske Improvements” or the “Improvements”), and (3) the acquisition and installation of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the “6 Stegelske Equipment” or the “Equipment”), all of the foregoing for use by the Company and/or its affiliates as a pump house facility (the 6 Stegelske Parcel, the 6 Stegelske Improvements and the 6 Stegelske Equipment being referred to herein collectively as the “6 Stegelske Project Facility” or the “Project Facility”); (B) the granting of certain “financial

assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency;

**WHEREAS**, the Company holds fee title to the Land and the Improvements (collectively, the “Facility”);

**WHEREAS**, the Company will lease the Facility to the Agency pursuant to a Company Lease Agreement dated as of the date hereof entered into between the Company, as lessor, and the Agency, as the lessee (as amended, modified, restated or replaced from time to time, the “Company Lease”);

**WHEREAS**, the Agency proposes to undertake the Project as an authorized project under the Act and to sublease the interest of the Agency in the Project Facility to the Company pursuant to an Agency Lease Agreement (Uniform Project Agreement) dated as of the date hereof entered into between the Agency, as sublessor, and the Company, as sublessee (as amended, modified, restated or replaced from time to time, the “Agency Lease”);

**WHEREAS**, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, upon a proper filing, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

**WHEREAS**, the Agency’s grant of real property tax exemptions is guided by its Uniform Tax Exemption Policy and Guidelines (“UTEP”) duly adopted by members of the Agency and the Company’s request for real property tax exemptions represents a deviation from the typical schedules of the Agency’s UTEP;

**WHEREAS**, in response to the proposed deviation from the Agency’s UTEP, (A) the Administrative Director/CEO of the Agency caused notice of a meeting of the Agency (the “IDA Meeting”) with respect to the proposed deviation from the Agency’s UTEP to be mailed on January 6, 2022 to the chief executive officer of each Taxing Entity (as hereinafter defined); (B) the members of the Agency held the IDA Meeting on January 25, 2022, (C) the members of the Agency reviewed and responded to any comments or correspondence received at or before the IDA Meeting regarding the proposed deviation from the Agency’s UTEP, and (D) the members of the Agency passed a resolution on January 25, 2022 approving such proposed deviation (the “Deviation Resolution”); and

**WHEREAS**, by resolution adopted by the members of the Agency on January 25, 2022 (the “Authorizing Resolution”), the Agency determined to proceed with the Project, to grant the Financial Assistance (as defined in the Agency Lease) and to enter into the “straight lease transaction” (as such quoted term is defined in the Act) contemplated by the Agency Lease, this Agreement and the other Transaction Documents (as defined in the Agency Lease);

**NOW, THEREFORE**, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, the Company and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility

(a) Application. The Company shall complete, and the Agency shall endeavor to submit to be filed, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law, with respect to the Facility. Such application shall be submitted to the tax assessor of each of the various taxing entities having jurisdiction over the Facility, including without limitation, the County of Chautauqua, the City of Dunkirk and the Dunkirk Central School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the first taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the holder of a leasehold estate in the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the acceptance of such applications by the appropriate tax assessors (such date, the "PILOT Commencement Date").

(b) Reserved.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Agency Lease, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility, and the Company shall be required to pay the same as they become due on the Facility.

(d) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or the Company on the rents under the Agency Lease or the Company Lease or the occupancy of or any interest of the Agency or the Company in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by the Company. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by the Company and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(a) Tax Payments. Prior to the PILOT Commencement Date, the applicable real estate tax levies on the Facility shall be payable in full by the Company to the applicable Taxing Entity(ies).

(b) Pilot Payments. From the PILOT Commencement Date through and including the last day of the tenth (10th) fiscal tax year thereafter (such date, the “Abatement Expiration Date” and such period, the “PILOT Term”), the Company shall make payments in lieu of general real estate taxes to the Agency for the account and benefit of each Taxing Entity with respect to the Facility as follows (collectively, the “PILOT Payments”):

<b>PILOT Year</b>	<b>Annual PILOT Payment</b>
1	\$920
2	\$920
3	\$920
4	\$920
5	\$920
6	\$920
7	\$920
8	\$920
9	\$920
10	\$920

(c) Maximum Payment. Notwithstanding anything to the contrary herein, each PILOT Payment shall not exceed the amount the Company would pay under normal calculations for any tax year with respect to the Facility. Hence, if the general real estate tax (calculated as if the Company were the record owner of the Facility and the Agency held no interest therein, and the Facility was assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(b) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(b) above. Except as set forth in this paragraph, once the PILOT Payments are calculated in accordance with Section 2(b) above, such PILOT Payments shall not be reduced during the PILOT Term, regardless of any reduction in the underlying assessment for the Facility.

(d) Payments to Agency. All PILOT Payments shall be made by the Company directly to the Agency promptly upon receipt of billings from the Agency at the address set forth in such billings, or at such other address as the Agency may specify in writing to the Company. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to each such Taxing Entity within thirty (30) days after receipt thereof. All PILOT Payments hereunder shall be allocated among the Taxing Entities in proportion to the amount of real property and other taxes and assessments that would have been received by each Taxing Entity had the Facility not been tax exempt due to the status of the Agency as of the Closing Date. This provision constitutes the formula for the calculation of the amounts of the PILOT Payments for each Taxing Entity as required by Section 859-a(6) of the General Municipal Law.

(e) Due Dates; Interest; and Penalties. The Agency will bill the Company for the respective PILOT Payments as if the Facility was on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and the unpaid amount(s) shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Entities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for a late charge equal to five (5%) percent of the unpaid amount for the first month, and for each month, or part thereof, that the payment is delinquent beyond the first month, interest shall accrue to and be paid to the Taxing Entities on the total amount due plus an additional late charge equal to one (1%) percent per month of the total amount payable. The Company agrees to pay all such late charges, interest and penalties when due.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

County Taxes:	January 30th
School Taxes:	September 30th
City Taxes:	April 30th

(f) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Agency's interest in any portion of the Facility is sold or disposed of by the Agency, the transferees thereof will thereafter pay the real property taxes on the portion of the Land (including the existing improvements thereon) and the Improvements as may be located on the portion of the Land sold as may be required by applicable law.

(g) Sale; the Company's Obligation. In the event that the Agency terminates its interest in the Facility in accordance with the provisions of the Agency Lease, the Company's obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of the Company for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than the Company to assure that each of the Taxing Entities shall suffer no loss of revenue until the Facility can be placed back on the tax rolls and taxes levied and billed therefor.

(h) PILOT Payments after PILOT Term. From and after the Abatement Expiration Date, and until the Agency's interest in the Facility is conveyed to the Company pursuant to the terms of the Agency Lease and the Facility has been returned to the tax rolls as fully taxable property, the Company shall make PILOT Payments equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against or with respect to the Facility as if the Facility was owned by the Company and the Agency was not otherwise involved in the Project.

Section 3. Reserved.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the delivery of the Agency Lease and the Company Lease by the Company and the Agency and shall continue in effect until the earlier of (i) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(b) above, or (ii) the date on which the Agency's interest in the Facility is terminated pursuant to the Agency Lease or this Agreement.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

- (a) failure by the Company to make any payment specified herein and the continuance of such failure for a period of ten (10) days following written notice from the Agency or any Taxing Entity;
- (b) failure by the Company to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice thereof by the Agency to the Company; and/or
- (c) default in the terms of or the occurrence of an Event of Default under any agreement entered into between the Agency and the Company (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, the Company shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility (or those portions of the Facility then exempt) as if it were owned by the Company and the Agency held no interest therein, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is (or those portions of the Facility then exempt are) located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from the Company, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorney's fees and expenses) and interest at the rate specified in Section 2(e) above. In addition, the Agency shall have the right to terminate the Agency Lease and the Company Lease at any time.

The Agency, in enforcing payment by the Company of said amounts, may take whatever lawful action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. The Company irrevocably agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York located in

Chautauqua County, or the courts of the United States District Court for the Western District of New York, consents to the jurisdiction of each such court in any such suit, action, or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the Agency. Further, no payment by the Company or receipt by the Agency or a Taxing Entity of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency and/or any Taxing Entity may accept any check or payment as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not the Company makes such payments. The Company hereby agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges or payments on the Project or the Company's subleasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as the Company and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency  
201 West Third Street, Suite 115  
Jamestown, NY 14701  
Attention: Administrative Director

With a Copy to: Phillips Lytle LLP  
201 West Third Street, Suite 205  
Jamestown, NY 14701  
Attention: Milan K. Tyler, Esq.

To the Company: Atwater Capital, LLC  
6181 Hollows Lane

Delray Beach, FL 33484  
Attn: William Cocose

With a copy to: Wright Calimeri, PLLC  
525 Fairmount Avenue  
Jamestown, NY 14701  
Attention: Joseph M. Calimeri, Esq.

The Agency or the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of the Company, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency. The rights and obligations of the Company hereunder may not be assigned except in connection with a permitted assignment of the Company's interest in and to the Agency Lease. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto, their permitted assigns and the Taxing Entities.

Section 9. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Agency Lease and Company Lease executed between the parties hereto shall be separate and independent documents from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Agency Lease and the Company Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Agency Lease and the Company Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

Section 10. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency, the Company and any Taxing Entity which is affected by the amendment.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Prior Agreements; Counterparts. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



Section 13. Delivery of Agreement. The Agency agrees to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

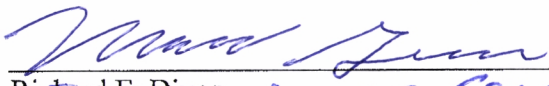
Section 14. Applicable Law. This Agreement shall be governed and construed under the internal laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of law.

Section 15. WAIVER OF JURY TRIAL. THE AGENCY AND THE COMPANY HEREBY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THIS AGREEMENT.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Agency and the Company have executed this Agreement as of the date first above written.

**COUNTY OF CHAUTAUQUA INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
~~Richard E. Dixon~~ **MARK GEISE**  
Chief Financial Officer  
*Exec.*

**ATWATER CAPITAL, LLC**

By: \_\_\_\_\_  
Name: William Cocose  
Title: Manager

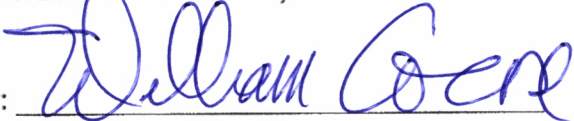
[Signature Page to PILOT Agreement]

**IN WITNESS WHEREOF**, the Agency and the Company have executed this Agreement as of the date first above written.

**COUNTY OF CHAUTAUQUA INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Richard E. Dixon  
Chief Financial Officer

**ATWATER CAPITAL, LLC**

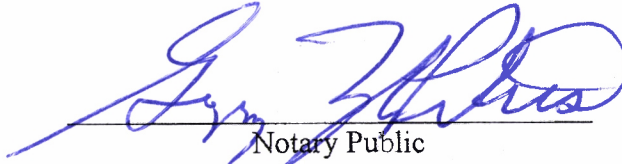
By:   
Name: William Cocose  
Title: Manager

[Signature Page to PILOT Agreement]

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF CHAUTAUQUA )

MARK GETSG

On the 23 day of FEB, 2022, before me, the undersigned, a notary public in and for said state, personally appeared ~~Richard E. Dixon~~, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

STATE OF FLORIDA )  
 ) ss.:  
COUNTY OF PALM BEACH )

GREGORY LYLE PETERSON. #02PE4645823  
Notary Public, State of New York  
Qualified in Chautauqua County  
My Commission Expires June 30, 2023

On the \_\_\_ day of February, 2022, before me, the undersigned, personally appeared William Cocose, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of Delray Beach, Florida.

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

[Acknowledgment Page to PILOT Agreement]


STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF CHAUTAUQUA )

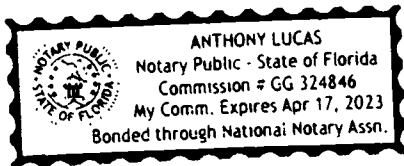
On the \_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, a notary public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

STATE OF FLORIDA )  
 ) ss.:  
COUNTY OF PALM BEACH )

On the 22 day of February, 2022, before me, the undersigned, personally appeared William Cocose, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of Delray Beach, Florida.

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



[Acknowledgment Page to PILOT Agreement]

## **EXHIBIT A**

### **LAND**

All that tract or parcel of land, situated in the City of Dunkirk, County of Chautauqua and State of New York and further described as follows: Commencing at the point of intersection of the easterly line of Stegelske Avenue and the northerly line of Chestnut Street; thence northerly along said easterly line of Stegelske Avenue a distance of 940 feet to the true point of beginning; thence easterly along the southerly boundary of the lands conveyed to Great Lakes Color Printing Corporation, by deed recorded in the Chautauqua County Clerk's Office in Liber 1196 of Deeds at page 272, a distance of 95 feet to a point; thence southerly and parallel to the easterly line of Stegelske Avenue a distance of 90 feet to a point; thence westerly and parallel to the aforementioned southerly boundary of Great Lakes Color Printing Corporation, a distance of 95 feet to a point on the easterly line of Stegelske Avenue; thence northerly along said easterly line of Stegelske Avenue a distance of 90 feet to the true point of beginning.