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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
7/21/2009 08:07:58.96



2009078200

**INGRESS AND EGRESS AND ACCESS EASEMENT AGREEMENT**

This INGRESS AND EGRESS AND ACCESS EASEMENT AGREEMENT (this "Agreement") is made and entered into this 21<sup>st</sup> day of July, 2009, by and between SPORTSCENTER PROPERTIES, LLC, a Nebraska limited liability company ("Sportscenter"), and BASEBALL LAND, LLC, a Nebraska limited liability company ("Baseball").

**Preliminary Statement**

Sportscenter is the owner of real property in Douglas County, Nebraska, legally described as follows (the "Sportscenter Property"):

Lot 1, Omaha Works Industrial Park, Replat 5 being a replat of Lot 9, Omaha Works Industrial Park, a subdivision to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Baseball is the owner of real property in Douglas County, Nebraska, legally described as follows (the "Baseball Property"):

Lot 2, Omaha Works Industrial Park, Replat 5 being a replat of Lot 9, Omaha Works Industrial Park, a subdivision to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

The Sportscenter Property and the Baseball Property have three (3) common boundaries and, in particular, share a common boundary, extending along the south boundary of the Baseball Property. Sportscenter intends to subdivide and either develop or sell the remaining portions of the Sportscenter Property, which will result in construction of buildings and paved parking and drive areas on the Sportscenter Property. Baseball has improved the Southwest corner of the Baseball Property with a building and the remainder of the Baseball Property primarily with paved parking and drive areas.

Return to:  
Matthew T. Payne  
Pansing Hogan Ernst & Bachman LLP  
10250 Regency Circle, Ste. 300  
Omaha, NE 68114

*B&B 29C 839019*

In connection with improvements constructed or to be constructed on the Sportscenter Property and the Baseball Property and further development thereof, Sportscenter and Baseball want to provide for a common access drive to provide for ingress and egress to the respective properties. Each party believes it is in their best interest to create reciprocal permanent nonexclusive ingress and egress easements to allow each of the other parties and any future owners and occupants of any portion of their respective Properties the right to come upon and travel across the Easement Area defined below.

In consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged and contained herein, Sportscenter and Baseball do hereby agree as follows:

## **ARTICLE I**

### **Definitions**

1.1 Common Drive. The term "Common Drive" shall mean the driveway and any amenities and facilities specifically constructed for such common drive (i.e. street lighting and directional markings and signs) as constructed by Baseball and situated on the Easement Area.

1.2 Easement Area. The term "Easement Area" shall mean the area legally described and depicted on Exhibit "A" attached hereto.

1.3 Owner. The term "Owner" shall mean the then legal owner of fee title to either the Sportscenter Property or the Baseball Property, as applicable, or any portion thereof, as such ownership is reflected by the records of the Douglas County, Nebraska, Register of Deeds and as provided in this Section 1.3.

1.4 Permittee. The term "Permittee" shall mean all Owners, the tenants or licensees of the Sportscenter Property and Baseball Property, and each of their respective officers, directors, employees, agents, contractors, residents, subtenants, customers, vendors, suppliers, visitors, and invitees.

1.5 Person. The term "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.

## **ARTICLE II**

### **Easements**

#### 2.1 Ingress and Egress Easements.

(i) Subject to the terms and conditions hereof, Sportscenter hereby grants and conveys to Baseball, Baseball's successors and assigns, and to all future Owners of any portion of the Baseball Property and their respective Permittees, a nonexclusive perpetual easement for vehicular and pedestrian ingress and egress over and across that portion of the Easement Area situated on the Sportscenter Property to provide access to the Baseball Property.

(ii) Subject to the terms and conditions hereof, Baseball hereby grants and conveys to Sportscenter, Sportscenter's successors and assigns, and to all future Owners of any portion of the Sportscenter Property and their respective Permittees, a nonexclusive perpetual easement for vehicular and pedestrian ingress and egress over and across that portion of the Easement Area situated on the Baseball Property to provide access to the Sportscenter Property.

2.2 Maintenance Easement. Sportscenter hereby grants to the Owner of the Baseball Property a perpetual easement on and across the Easement Area and on and across twenty (20) foot wide strip of Sportscenter Property immediately adjacent to the Easement Area for the purposes of allowing the Owner of the Baseball Property, its employees, agents and contractors to perform the construction and maintenance obligations of Owner as described in Sections 3.1 and 3.2 of this Agreement.

### ARTICLE III

#### Construction, Maintenance and Repair and Insurance

3.1 Construction of Common Drive. The Common Drive on the Easement Area will provide ingress and egress from the north-south easement access road situated and adjacent to the west boundary line of the Sportscenter Property and the Baseball Property to both the Sportscenter Property and the Baseball Property. Baseball has constructed the Common Drive and has submitted a copy of the construction costs and expenses to Sportscenter (the "Common Drive Construction Costs"). Baseball and Sportscenter have agreed to share in the cost of construction of the Common Drive. Concurrently with the execution and delivery of this Agreement, Sportscenter has paid to Baseball the sum of Thirty Thousand and 00/100 Dollars (\$30,000) that represents payment of Sportscenter's share of the Common Drive Construction Costs and Sportscenter's agreed share of the "Detention Basin Construction Costs" and "Storm Sewer Construction Costs" as hereinafter defined (the "Construction Cost Payment"). For this purpose, "Detention Basin Construction Costs" means construction costs and expenses incurred by Baseball in the construction of the detention basin facilities as required by the Post Construction Stormwater Management Plan Maintenance Agreement and Easement dated January 5, 2009, and filed with the Douglas County Register of Deeds on February 19, 2009 as Instrument Number 2009014490. For this purpose, "Storm Sewer Construction Costs" means the construction costs and expenses incurred by Baseball in the construction of the Utilities as defined and required by the Permanent Storm Sewer and Sanitary Sewer Easement Agreement of even date herewith. For purposes of allocation, Twelve Thousand and no/100 Dollars (\$12,000.00) of the Construction Cost Payment is apportioned to payment of the Common Drive Construction Costs. In addition, Sportscenter has contributed as additional consideration herein the necessary real property used to construct the Detention Basin and Sewer Utilities mentioned herein.

#### 3.2 Maintenance.

(i) The Owner of the Baseball Property shall maintain in good repair and shall repair and replace the Common Drive as necessary or appropriate at its sole expense until such time as any present or future Owner of the Sportscenter Property, or any portion thereof, begins to use

the Common Drive to service or develop (e.g., apply for building permit, etc.) any portion of the Sportscenter Property (referred to herein as the "Joint Use Date"). From and after the Joint Use Date, the Owner of the Baseball Property shall maintain, repair and replace the Common Drive as may be reasonably required to keep the same in good condition and repair. From and after the Joint Use Date, the Owners of the Sportscenter Property and the Baseball Property shall each pay fifty percent (50%) of the cost and expense for the maintenance, repair, and replacement of the Common Drive. In the event that either the Baseball Property or the Sportscenter Property is subdivided and conveyed to other Owners in multiple parcels, the share of such costs to be paid by each such parcel Owner shall be the fifty percent (50%) share allocated to the Baseball Property or the Sportscenter Property, as applicable, multiplied by a fraction, the numerator of which shall be the square footage of the portion of the property owned by such Owner and the denominator of which shall be the square footage of the Baseball Property or the Sportscenter Property, as applicable.

(ii) The maintenance responsibilities for the Common Drive shall include, without limitation, the following:

(a) Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or comparable substituted material as shall in all respects be equal in quality, use, and durability;

(b) Removal of all papers, ice and snow, mud and sand, debris, filth and refuse, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary and appropriate parking area directional signs, markers and lines;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required and at all times in conformance with standards and applicable ordinances and governmental requirements applicable to the Common Drive; and

(e) Maintaining, mowing, weeding, trimming and watering all landscaped areas constructed in the Easement Area and making such replacements of shrubs and other landscaping as is necessary to place such areas in an attractive and thriving condition.

(f) Maintaining, repairing and replacing so as to keep such area at all times in a safe, sightly, good and functional condition to standards of comparable developments, (e.g., L Street Marketplace in the Omaha, Douglas County, Nebraska market area) and in compliance with all applicable governmental laws, rules, regulations and ordinances exercising jurisdiction thereover as well as with the provisions of this Agreement.

(iii) The maintenance responsibilities for the Common Drive shall not include any repairs for "Construction Damage" (defined below) to the Common Drive. For this purpose,

“Construction Damage” shall mean any damage to the Common Drive caused by any Owner in respect to development of or construction of improvements on such Owner’s property. Such Owner shall be solely responsible for the repairs and/or replacements to the Common Drive at its sole expense for such Construction Damage, such repairs and/or replacements to be promptly made and paid for so as not to interfere with or impair the use of the Common Drive.

(iv) In the event that the Owner of the Baseball Property fails or refuses to maintain the Easement Area as required in this Section 3.2, any Owner of any portion of the Sportscenter Property may maintain the same, and the reasonable cost thereof shall be allocated among the Owners of the Sportscenter Property and of the Baseball Property in the manner set forth in Section 3.3 hereof.

### 3.3 Assessment Matters.

(i) From and after the Joint Use Date, the Owner of the Baseball Property shall fix, levy and charge the Owner of the Sportscenter Property with an annual assessment (the annual assessment, and any supplemental assessment as referenced hereafter, are collectively called the “Assessment”) which shall represent such property Owner’s representative share of the Common Drive obligations under this Article III, including expenses for the fixing, levying, collecting and enforcement of all Assessments. The annual Assessment date shall be on the 15<sup>th</sup> day of June each year. The Owner of the Baseball Property shall be responsible for providing the Owners a report that details the calculation of the Assessment, and will make available to the Owner of the Sportscenter Property such information as will permit such Owner to reasonably determine the accuracy of the costs and expenses reported in the Assessment. In all events and from and after the Joint Use Date, the Owner of Baseball Property shall provide each Owner of the Sportscenter Property with copies of any contracts, proposals, estimates for any repair or replacement work in excess of Five Thousand and 00/100 Dollars (\$5,000.00) prior to the incurrence of any such expense (the “Original Proposal”) unless an emergency situation arises making it necessary for the Owner of the Baseball Property to immediately incur such reasonable expense to satisfy and to make such emergency repairs. In the event Owner(s) of at least eighty percent (80%) of the square footage of the Sportscenter Property do not object to the estimated costs reflected in any Original Proposal in writing within ten (10) business days from its receipt of the Original Proposal, then said Original Proposal shall be deemed approved by the Owner(s) of the Sportscenter Property. In the event of a valid, written objection by the Owner(s) of at least eighty percent (80%) of the square footage of the Sportscenter Property, the Owner(s) of the Sportscenter Property may provide other written estimates for such repair or replacement, as applicable, to the Owner of the Baseball Property (the “Counter Proposal”) within fifteen (15) business days from its receipt of the Original Proposal from the Owner of the Baseball Property, with failure to provide a Counter Proposal constituting acceptance of the Original Proposal. Thereafter, if the Owner(s) of the Sportscenter Property provide valid, written Counter Proposals, the Owner(s) of the Baseball Property and the Owner(s) of the Sportscenter Property shall negotiate which contractor and estimate to accept and hire for the repair or replacement, as applicable. In the event that the annual Assessment amount is not sufficient to pay for the maintenance costs in any year, or in the event that an Owner of the Sportscenter Property maintains the Easement Area as permitted in Section 3.2 (iv) hereof, a supplemental Assessment can be made to pay such additional costs.

(ii) All Assessments, together with interest thereon, costs and reasonable attorney fees shall be the personal obligation of the Owner of each respective property at the time when the Assessment first becomes due and payable. The Assessments, together with interest thereon, costs and reasonable attorney fees, shall also be a charge and continuing lien against the property for which the Assessments are charged.

(iii) All Assessments shall be determined and assessed against the Sportscenter Property and Baseball Property as provided in this Article III, which proportion shall be multiplied times the total Common Drive expenses to be allocated among the Owners of such properties.

(iv) Any installment of Assessments which is not paid within thirty (30) days following delivery of notice of Assessment shall be delinquent. Delinquent Assessments shall bear interest from the date when due at the rate of sixteen percent (16%) per annum. The Owner of the Baseball Property may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the property, or pursue any other legal or equitable remedy. The Owner of the Baseball Property shall be entitled to recover as a part of the action and shall be indemnified against the interest, cost and reasonable attorney fees incurred by the Owner of the Baseball Property with respect to such action. The mortgagee of any property shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Owner of the Baseball Property shall assign to any mortgagee who cures such a delinquency, all of its rights with respect to such lien and the right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Owner of the Baseball Property. Any Owner of the Sportscenter Property providing maintenance of the Easement Area as permitted in Section 3.2 (iv) shall be entitled to exercise the same remedies as are allowed herein to the Owner of the Baseball Property to recover unpaid Assessments for such maintenance.

#### **ARTICLE IV Miscellaneous**

4.1 Enforcement. In the event of a breach or threatened breach of this Agreement, only an Owner shall be entitled to institute proceedings for full and adequate relief from consequences of such breach or threatened breach. Time is of the essence for purposes hereof.

4.2 Perpetual Duration. This Agreement and the covenants, conditions, restrictions and easements shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the parties hereto, and their respective heirs, representatives, lessees, successors and assigns. This Agreement shall be perpetual, provided, however, that this Agreement may be modified, amended or terminated by written instrument signed by the Owners of not less than eighty percent (80%) of the square footage of the Baseball Property and the Owners of not less than eighty percent (80%) of the square footage of the Sportscenter Property. Any such modification, termination or amendment shall be effective when such written instrument is recorded with the Douglas County, Nebraska, Register of Deeds.

4.3 Survival. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

4.4 Authority. The individuals executing this Agreement warrant and represent that they are duly authorized to execute this Agreement on behalf of Baseball or Sportscenter, as the case may be, and that no other act, signature, or authorization is necessary to bind such entity to the provisions of this Agreement.

4.5 Square Footage. For purposes of this Agreement, the parties agree and acknowledge that the Baseball Property consists of 174,244 total square feet and the Sportscenter Property consists of 694,216 total square feet.

**[Space Below Intentionally Left Blank –  
Signature Pages to Follow]**

IN WITNESS WHEREOF, this Agreement is made to be effective as of the date and year first above written.

SPORTSCENTER PROPERTIES, LLC, a  
Nebraska limited liability company

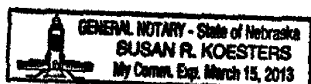
By: Russell J. Kreikemeier  
Russell J. Kreikemeier, Its Managing Member

BASEBALL LAND, LLC, a Nebraska limited  
liability company

By: Bradley J. Perreault  
Bradley J. Perreault, Manager

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of July, 2009, by Bradley J. Perreault, Manager of BASEBALL LAND, LLC, a Nebraska limited liability company, on behalf of the company.



Susan R. Koesters  
Notary Public

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of July, 2009, by Russell J. Kreikemeier, one of the Managing Members of SPORTSCENTER PROPERTIES, LLC, a Nebraska limited liability company, on behalf of the company.



Linda K. Sexton  
Notary Public



CONSENT OF BENEFICIARY

The undersigned, United Republic Bank, a state chartered financial institution, as beneficiary under a recorded Deed of Trust, hereby consents to the foregoing grant of easement rights.

Dated this 17<sup>th</sup> day of July, 2009.

UNITED REPUBLIC BANK, a  
state chartered financial institution

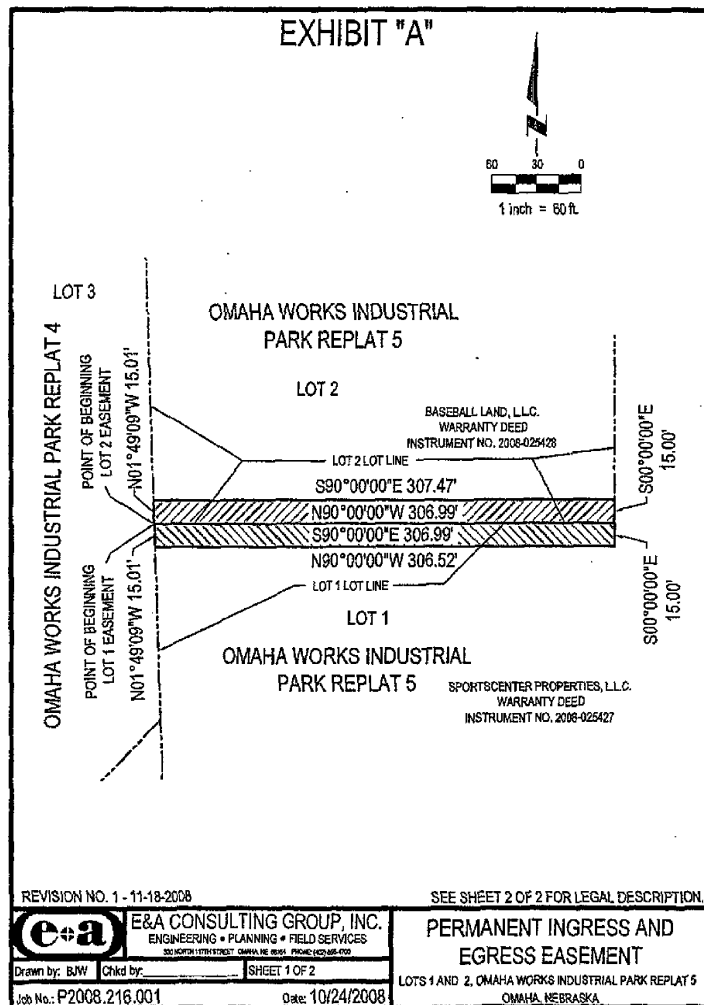
By:   
Michael Pate, President

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 17 day of July, 2009, by Michael Pate, the President of UNITED REPUBLIC BANK, a state chartered financial institution, on behalf of the institution.

  
Notary Public





### EXHIBIT "A"

**LEGAL DESCRIPTION**  
PERMANENT INGRESS AND EGRESS EASEMENT  
LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5

**LEGAL DESCRIPTION: LOT 1 EASEMENT.**

A PERMANENT INGRESS AND EGRESS EASEMENT LOCATED IN LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, A SUBDIVISION LOCATED IN THE NE1/4 OF SECTION 6, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2, SAID OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID POINT ALSO BEING ON THE WESTERLY LINE OF LOT 1, SAID OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID POINT ALSO BEING ON THE EASTERLY LINE OF LOT 3, OMAHA WORKS INDUSTRIAL PARK REPLAT 4, A SUBDIVISION LOCATED IN SAID NE1/4 OF SECTION 6; THENCE S90°00'00"E (ASSUMED BEARING) ALONG THE SOUTHERLY LINE OF SAID LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, A DISTANCE OF 306.99 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5; THENCE S00°00'00"E, A DISTANCE OF 15.00 FEET; THENCE N80°00'00"W, A DISTANCE OF 306.62 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID LINE ALSO BEING SAID EASTERLY LINE OF LOT 3, OMAHA WORKS INDUSTRIAL PARK REPLAT 4; THENCE N01°49'09"W ALONG SAID WESTERLY LINE OF LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID LINE ALSO BEING SAID EASTERLY LINE OF LOT 3, OMAHA WORKS INDUSTRIAL PARK REPLAT 4, A DISTANCE OF 15.01 FEET TO THE POINT OF BEGINNING.

SAID PERMANENT INGRESS AND EGRESS EASEMENT CONTAINS AN AREA OF 4,601 SQUARE FEET OR 0.106 ACRES, MORE OR LESS.

**LEGAL DESCRIPTION**  
PERMANENT INGRESS AND EGRESS EASEMENT  
LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5

**LEGAL DESCRIPTION: LOT 2 EASEMENT.**

A PERMANENT INGRESS AND EGRESS EASEMENT LOCATED IN LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, A SUBDIVISION LOCATED IN THE NE1/4 OF SECTION 6, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID POINT ALSO BEING ON THE WESTERLY LINE OF LOT 1, SAID OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID POINT ALSO BEING ON THE EASTERLY LINE OF LOT 3, OMAHA WORKS INDUSTRIAL PARK REPLAT 4, A SUBDIVISION LOCATED IN SAID NE 1/4 OF SECTION 6; THENCE N01°49'09"W (ASSUMED BEARING) ALONG THE WESTERLY LINE OF SAID LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID LINE ALSO BEING SAID EASTERLY LINE OF LOT 3, OMAHA WORKS INDUSTRIAL PARK REPLAT 4, A DISTANCE OF 15.01 FEET; THENCE S90°00'00"E, A DISTANCE OF 307.47 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5; THENCE S00°00'00"E, ALONG SAID EASTERLY LINE OF LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, A DISTANCE OF 15.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5; THENCE N90°00'00"W ALONG THE SOUTHERLY LINE OF SAID LOT 2, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, A DISTANCE OF 306.99 FEET TO THE POINT OF BEGINNING.

REVISION NO. 1 - 11-18-2008

SEE SHEET 1 OF 2 FOR DRAWING.



**E&A CONSULTING GROUP, INC.**  
ENGINEERING • PLANNING • FIELD SERVICES  
3830 S. 173RD STREET, CHERRY, NE 68017

**PERMANENT INGRESS AND  
EGRESS EASEMENT**

LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5  
OMAHA, NEBRASKA

Drawn by: **BW** Chkd by: \_\_\_\_\_ SHEET 2 OF 2  
Job No.: **P2008.218.001** Date: **10/24/2008**

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