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Register of Deeds, Douglas County, NE
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Return to: Steven D. Johnson, Stinson Morrison Hecker LLP, 1299 Farnam Street, Omaha, NE 68102 (402) 342-1700

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is made and entered into by and between THE CITY OF OMAHA, NEBRASKA, a municipal corporation (the "City"), and RIVERFRONT PARTNERS, LLC, a Nebraska limited liability company (the "Developer").

INTRODUCTION

Pursuant to that certain Redevelopment Agreement among the City and the Developer dated July 29, 2004 (the "Redevelopment Agreement") the City has replatted certain real estate now known as Lots 1 through 6, inclusive, and Outlots A, B and C, Riverfront Place, a subdivision, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska (the "Real Property"), and the final plat thereof (the "Plat") has been recorded in the office of the Register of Deeds of Douglas County, Nebraska. Various easements are shown on the Plat. The purpose of this Agreement is to grant certain easements affecting the Real Property and to set forth the terms of certain easements provided for in the Redevelopment Agreement. References herein to a "Lot" or "Lots" refer to lots shown on the Plat.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. All locations and dimensions stated herein of the easements are approximate. The exact locations and dimensions of the easements are as shown on the Plat.
2. The City is referred to herein as "Grantor" when granting easements. The rights, interests and duties of the City as Grantor shall remain with the owner of the applicable portion of the Real Property. The rights, interests and duties of the City as grantee of the easements granted herein shall remain with the City irrespective of any transfer of any portion of the Real Property. The City's rights and interests as Grantor and as the grantee shall not merge.

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3. 20' Drainage and Storm Sewer Easement to the City of Omaha located on a portion of Lot 1 and a portion of Outlot B, and 20' Drainage and Storm Sewer Easement to the City of Omaha located on a portion of Lot 5 and a portion of Outlot C.

A. Grantor does hereby grant and convey unto City, and to its successors and assigns, an easement for the right to construct, inspect, maintain, repair and operate a drainage and storm sewer, and appurtenances thereto in, through, and under that portion of Lot 1 and that portion of Outlot B, as shown on Exhibit "A" attached hereto. Grantor does hereby further grant and convey unto City, and to its successors and assigns, an easement for the right to construct, inspect, maintain, repair and operate a drainage and storm sewer, and appurtenances thereto in, through and under that portion of Lot 5 and that portion of Outlot C, as shown on the Plat as the 20' Drainage and Storm Sewer Easement area and as shown on Exhibit "B" attached hereto. To have and to hold unto said City, its successors and assigns, together with the right of ingress and egress from said premises for the purpose of constructing, inspecting, maintaining, repairing or operating said sewers as deemed reasonably necessary or appropriate by the City. The Grantor may, following construction of said sewers, continue to use the surface of the easement strips conveyed hereby for other purposes, subject to the right of the City to use the same for the purposes herein expressed.

B. No buildings, improvements, or other structures, shall be placed in, on, over, or across said easement strips by Grantor, its successors and assigns without express approval of the City, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, approval of the City shall not be required for the installation of signs, driveways, parking lots, landscaping, or structures shown in the Redevelopment Agreement. These improvements and any trees, grass or shrubbery placed on said easements shall be maintained by Grantor, its successors or assigns.

C. City will replace or rebuild any and all damage to improvements caused by City exercising its rights of constructing, inspecting, maintaining, repairing or operating said sewers. City will use its best efforts to avoid or minimize any damage to improvements caused by City exercising its rights of constructing, inspecting, maintaining, repairing or operating said sewers.

D. City shall cause any trench made on said easement strips to be properly refilled and shall cause the premises to be left in a neat and orderly condition. These easements are also for the benefit of any contractor, agent, employee, or representative of the City performing such construction and work.

E. Said easements are granted upon the condition that the City will remove or cause to be removed all presently existing improvements thereon, including but not limited to, crops, vines, and trees within the easement area as necessary for construction, inspection, maintenance, repair and operation of the sewers.

- F. The City shall use its best efforts to coordinate its work on the sewers to minimize interference with Grantor's business.
- G. The City shall indemnify, defend and hold the Developer, and all future owners and occupants of any portion of the Real Property (each, an "Indemnified Party") harmless against any loss, liability, damage or expense whatsoever resulting from or arising out of, or which may result from or arises out of, third party claims or causes of action associated with or pertaining to the construction, repair, use or maintenance of the sewers, except for liability resulting from such Indemnified Party's own gross negligence or willful misconduct.
4. The City represents that it is the owner of the Real Property which will be subject to the easements granted herein and that it has the right to grant the easements described herein. The City further agrees that it will warrant and defend the easements granted herein against the lawful claims and demands of all persons or entities.
5. The parties hereto hereby declare and assert that all preconditions, including resolutions or ordinances, have been passed and duly adopted authorizing the implementation and execution of this Agreement.
6. Nebraska law will govern the terms and the performance under this Agreement.
7. This Agreement shall not be merged into any other oral or written contract, lease or deed of any type. This Agreement, along with the Redevelopment Agreement and the Plat, constitute the entire agreement of the parties with respect to the subject matter of this Agreement. To the extent that the Redevelopment Agreement provides for additional easements, those provisions of the Redevelopment Agreement remain in effect and the City remains obligated to grant any such easements.
8. No representations were made or relied upon by any party other than those that are expressly set forth herein. No agent, employee or other representative of any party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of the respective parties.
9. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.
10. Pursuant to Section 8.05 of the Home Rule Charter of the City of Omaha, no elected official or any officer or employee of the City shall have a financial interest, direct or indirect, in any City contract. Any violation of this section with the knowledge of the person or corporation contracting with the City shall render the contract voidable by the Mayor or City Council.
11. No party shall, in the performance, discharge or execution of any right or obligation of this Agreement discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability, political or religious opinions, affiliations or national origin.

12. In the event that any easement, covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such easement, covenant, condition, or provision herein contained shall not affect the validity of the remainder of the easements, covenants, conditions, and provisions of this Agreement which shall in all respects remain a legally binding contract and conveyance with the invalid portion being deleted; provided that the validity of any such easement, covenant, condition, or provisions does not materially prejudice any party in its respective rights and obligations contained in the valid easement, covenants, conditions or provisions of this Agreement.

13. The burdens and benefits of the easements granted herein shall be perpetual, shall run with the land, and shall bind and benefit the parties hereto and their respective successors and assigns. Grantor covenants that the respective grantees, their successors and assigns, may quietly enjoy the easements herein granted for the uses stated in this Agreement, that Grantor has full right and lawful authority to grant the easements contained herein without obtaining the approval or consent of any third party, and that the easements contained herein are enforceable in accordance with their terms.

14. The provisions of this Agreement may be modified or amended in whole or in part, or terminated, only by the written consent of the owners of each of the Lots either benefited or burdened by the easement being modified, along with the grantee of such easement if such grantee is not the owner of a lot benefited or burdened by such easement, evidenced by a document that has been fully executed and acknowledge by all such parties and recorded in the office of the Register of Deeds of Douglas County, Nebraska. Until such time as the City as conveyed all of Lots 1, 2, 3, 4, 5 and 6, and Outlets A, B and C, to the Developer, its successor or assigns, pursuant to the provisions of the Redevelopment Agreement, such modification shall also require the written consent of Developer, its successors and assigns, evidenced by a document that has been fully executed and acknowledged by such parties and recorded in the office of the Register of Deeds of Douglas County, Nebraska.

In witness whereof, the parties hereto have executed this Agreement on the dates set forth beneath their respective signatures, the latter of which shall be considered the date of this Agreement for reference purposes.

THE CITY OF OMAHA, NEBRASKA, in
its capacity as Grantor, Lot Owners, and
grantee of easements to the City.

ATTEST:

Deputy *Shirley L. Hayes*
City Clerk

By *Mike Fahy*
Name: Michael Fahy
Title: Mayor

Date: *May 26*, 2005

Approved as to Form:

City Attorney

Date: 5/25, 2005

RIVERFRONT PARTNERS LLC

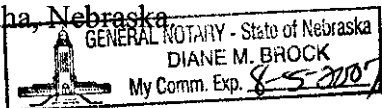
By: Kim R. McGuire
Kim R. McGuire, Manager

By: John C. Kinnear, III
John C. Kinnear, III, Manager

Date: 5/26, 2005

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on May 26, 2005, by Michael Fahey, who is Mayor of the City of Omaha, Nebraska, on behalf of the City of Omaha, Nebraska.



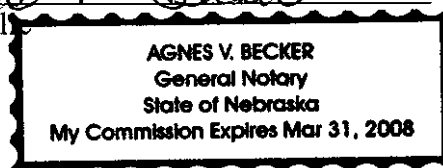
Diane M. Brock
Notary Public

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

Before me, a Notary Public qualified for said county, personally came Kim R. McGuire, as Manager on behalf of RIVERFRONT PARTNERS LLC, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on this on this 26 day of May, 2005.

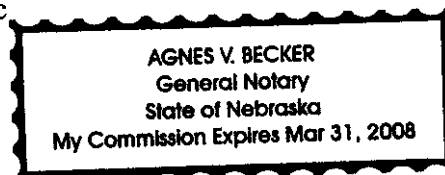
Agnes V. Becker
Notary Public

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)



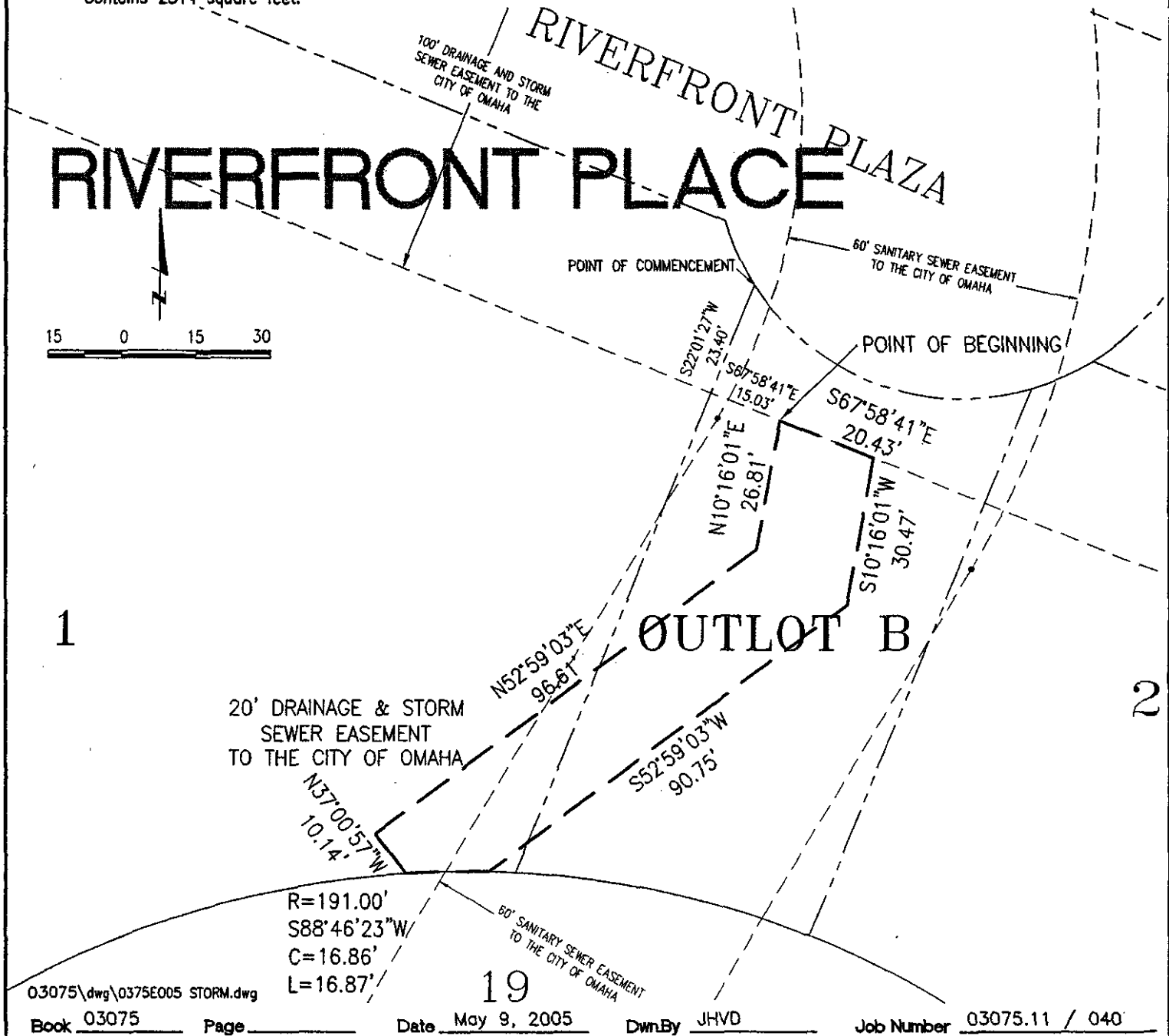
Before me, a Notary Public qualified for said county, personally came John C. Kinnear, III, as Manager on behalf of RIVERFRONT PARTNERS LLC, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on this on this 26 day of May, 2005.

Agnes V. Becker
Notary Public



LEGAL DESCRIPTION

A permanent easement twenty foot (20') in width for the construction and maintenance of drainageways and storm sewers over that part of Lot 1 and Outlot B, RIVERFRONT PLACE, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows: Commencing at the northwest corner of Outlot B; Thence South 22°01'27" West (bearings referenced to the final plat of RIVERFRONT PLACE) for 23.40 feet along the west line of said Outlot B to the south line of an existing drainage and storm sewer easement; Thence South 67°58'41" East for 15.03 feet along said south line to the TRUE POINT OF BEGINNING; Thence South 67°58'41" East for 20.43 feet along said south line; Thence South 10°16'01" West for 30.47 feet; Thence South 52°59'03" West for 90.75 feet to the south line of said Lot 1; Thence along a curve to the left (having a radius of 191.00 feet and a long chord bearing South 88°46'23" West for 16.86 feet) for an arc length of 16.87 feet along the south line of Lot 1; Thence North 37°00'57" West for 10.14 feet; Thence North 52°59'03" East for 96.61 feet; Thence North 10°16'01" East for 26.81 feet to the Point of Beginning. Contains 2514 square feet.



Lamp, Rynearson & Associates, Inc.

14710 West Dodge Road, Suite 100
Omaha, Nebraska 68154-2027

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(Ph) 402.496.2498

(Fax) 402.496.2730

LEGAL DESCRIPTION

A permanent easement twenty foot (20') in width for the construction and maintenance of drainageways and storm sewers over that part of Lot 5 and Outlot C, RIVERFRONT PLACE, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:

Commencing at the southeast corner of Lot 5;

Thence North 22°01'27" East (bearings referenced to the final plat of RIVERFRONT PLACE) for 4.75 feet along the east line of said Lot 5 to the north line of an existing one hundred foot (100') drainage and storm sewer easement granted in Instrument Number 2004124790 in the Douglas County Register of Deeds Office and the TRUE POINT OF BEGINNING;

Thence North 67°58'41" West for 13.92 feet along said north line;

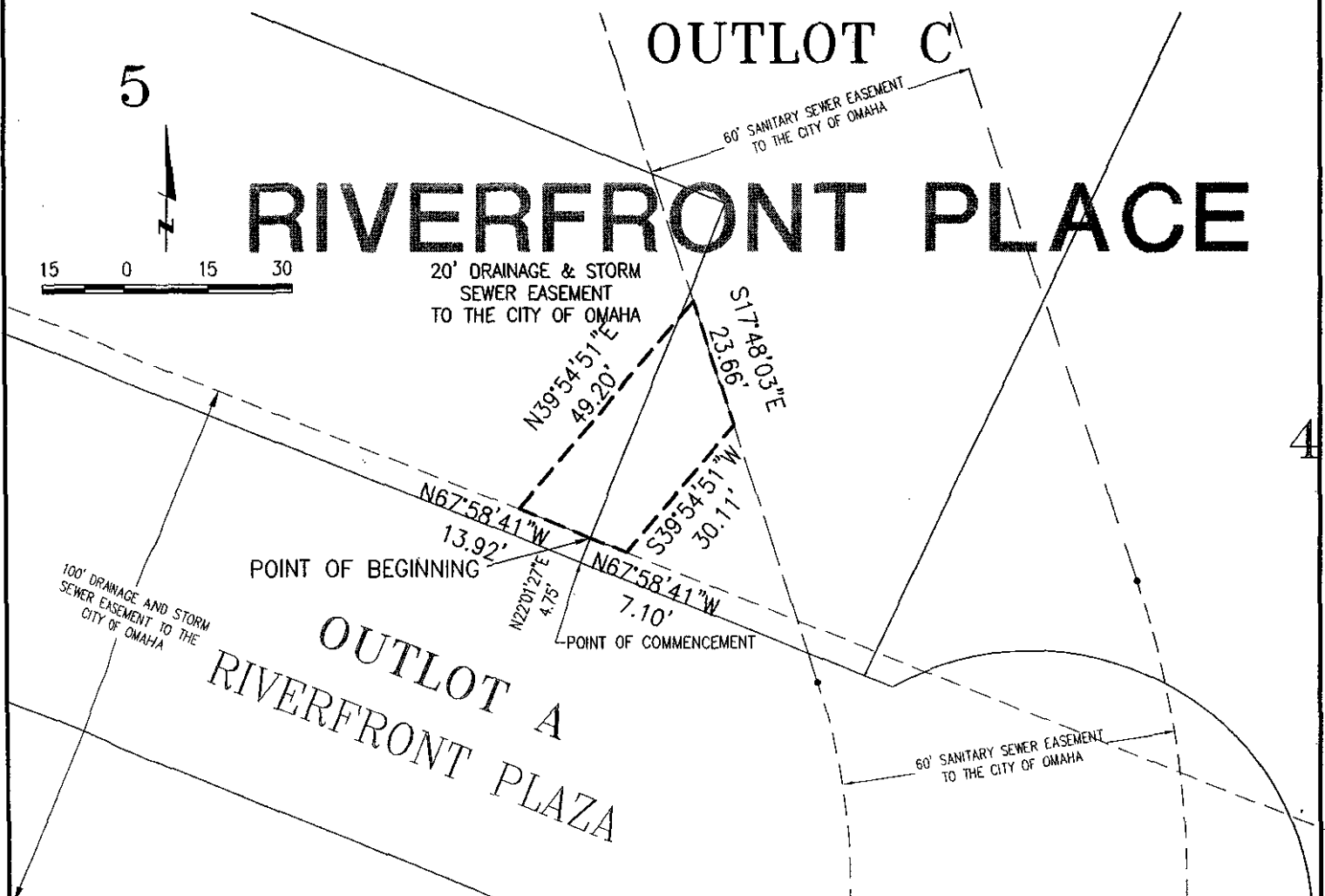
Thence North 39°54'51" East for 49.20 feet to the west line of an existing sanitary sewer easement granted in Instrument Number 2004124790 in the Douglas County Register of Deeds Office;

Thence South 17°48'03" East for 23.66 feet along said west line;

Thence South 39°54'51" West for 30.11 feet to the said north line of the one hundred foot drainage and storm sewer easement;

Thence North 67°58'41" West for 7.10 feet to the Point of Beginning.

Contains 793 square feet.



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Date May 10, 2005

Dwn.By JHVD

Job Number 03075.11 / 040



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