

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
**2006-18123**  
2006 JUN -2 A 11:50 AM  
*Lloyd J. Dowding*  
REGISTER OF DEEDS

COUNTY ah  
VERIFIED ah  
PROOF ah  
FEES \$ 46.50  
CHECK# 1071  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_



**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

**LLOYD J. DOWDING**  
SARPY COUNTY REGISTER OF DEEDS  
1210 GOLDEN GATE DRIVE, STE 1109  
PAPILLION, NE 68046-2895  
402-593-5773

A

**FOURTH AMENDMENT TO SUBDIVISION AGREEMENT**  
**(Southport East Subdivision)**  
**(Replat of Lot 10A into Lots 1 and 2, Southport East Replat Four)**

THIS FOURTH AMENDMENT, made this 30 day of MAY, 2006, to that certain Commercial Subdivision Agreement dated April 19, 2001 and original plat thereto, among other lots, Lot 10 has heretofore been replatted in an Administrative Lot Split as Lot 10A and Lot 10B, Southport East, and said Lot 10A is to be replatted herewith as Lots 1 and 2, Southport East Replat Four of this Subdivision.

**WITNESSETH:**

WHEREAS, City and R.S. Land, Inc., a Nebraska corporation, and Southpointe Partners I, LLC (herein collectively referred to as the "Initial Developer") entered into a Commercial Subdivision Agreement with the City of La Vista dated April 19, 2001 (herein the "Subdivision Agreement" or the "Agreement"), setting forth certain agreements, conditions and covenants running with the land in respect to the development of land within the Subdivision; and

WHEREAS, R.S. Land, Inc. did via an Administrative Lot Split create from the original Lot 10 of Southport East Subdivision two lots, i.e. Lot 10A and Lot 10B, Southport East Subdivision; and

WHEREAS, Southport 10 LLC (herein "Subdivider") is the owner of said Lot 10A of Southport East which is the subject of this Fourth Amendment, which Lot 10A is subject to the terms of the Subdivision Agreement; and

WHEREAS, Subdivider herein wishes to subdivide said Lot 10A, Southport East into Lots 1 and 2, Southport East Replat Four (herein the "Replat" or the "Replatted Area"), same being a part of the Subdivision as shown on replat drawing attached as Exhibit "A" hereto and consisting of approximately 4.409 acres, more or less, per Surveyor's Certificate attached as Exhibit "B" hereto and being more specifically shown on the "Final Plat" of the Replatted Area dated 8/15/05 as Exhibit "C" hereto; and

WHEREAS, the parties wish to amend the Subdivision Agreement by this Amendment entered into between them to include the specific understandings and agreements pertaining to this replatting.

NOW, THEREFORE, IT IS AGREED by Subdivider and City as follows:

1. Replattings. Subject to the terms of this Amendment, Lot 10A of Southport East Subdivision shall be replatted as Lots 1 and 2 of Southport East Replat Four, as more fully shown on Exhibit "C" (herein the "Replat" or "Replatted Area").
2. Drainage Calculations and Map. Developer shall provide drainage calculations and a drainage map for the Replatted Area for review and approval by the City's Engineer prior to execution of the final Replat demonstrating what easements may be needed to convey major storm sewer events (hundred year flood) over the surface of the property, in a form satisfactory to the City's Engineer.

B

3. Perimeter Sidewalks. Developer, or its assigns, shall, at their cost, install and maintain perimeter sidewalks abutting the Replatted Area. Said sidewalks shall be installed prior to the opening of any place of business within the Replatted Area.
4. Commercial Building Design Guide and Criteria. City's Commercial Building Design Guide and Criteria ("Commercial Criteria") dated September 15, 1999, and the Southport East Design Guidelines, the specific design criteria to be utilized within the Southport East Subdivision, all of which are incorporated into this amendment by reference and shall be applicable to commercial development within the Replatted Area. Developer agrees to abide by the provisions thereof as they may have or shall be from time to time amended or modified by the City.
5. Grading Plan. The Grading Plan for each individual lot of the Replat is to be submitted with the development plan of each individual lot.
6. Site Approval Precondition to Building Permit. Nothing herein shall be deemed a waiver or lessening of any of City's requirements for City approved site plan for any building prior to the issuance of a building permit therefor.
7. Public Access Roads or Driveways. Direct vehicular access to abutting streets shall be limited as indicated on the Replat. Any publicly used roads and driveways within the Replat shall be constructed to City approved specifications and shall not be less than seven inches (7") P.C. concrete paving or ten inches (10") asphalt, as may be approved by the City Engineer. The City shall have access to and over such roadways and driveways for any purpose it deems appropriate in the exercise of its general governmental powers, including but not limited to, inspection, police, fire and rescue and other public safety purposes, and the exercise of all rights granted to City by the terms of the Subdivision Agreement as amended by this Fourth Amendment.
8. Staking Bond. Developer shall provide the City a staking bond satisfactory to City Engineer prior to City's release of the final plat of the Replatted Area.
9. Tract Sewer Connection Fees. Developer agrees that the terms and conditions for the benefit of the City that are contained in the Subdivision Agreement and the separate Sewer Connection Agreement pertaining to the sanitary sewer system shall be equally applicable to the private sanitary sewer provided for herein and enforceable by City in respect thereto to the same extent as though the private sewer had originally been incorporated and made a part of said agreements. Tract sanitary sewer connection fees shall be due and payable to the City in the following amounts prior to the issuance of a building permit for a particular lot:

Lot 1, Southport East Replat Four	2.259 acres @ \$5,484/Ac. =	\$12,388
Lot 2, Southport East Replat Four	2.150 acres @ \$5,484/Ac. =	<u>11,791</u>
<b>Total</b>		<b><u>\$24,179</u></b>

The aforesated fee of \$5,484 per acre is the rate now in effect and is subject to increase. The rate in effect at time of connection to the sanitary sewer system will be the rate paid.

10. Infrastructure to be at Private Expense. The cost of all infrastructure, improvements and easements within and serving the Replatted Area, including but not limited to parking

C

improvements, ingress and egress, sanitary sewer, storm sewer, power, CATV, gas, water and cost of connection to external infrastructure shall be constructed and maintained at private expense and no part thereof shall be the responsibility of or at the expense of the Sanitary and Improvement District No. 218 of Sarpy County or of the City.

11. Specific Requirements of City Engineer for Replat Approval. Attached hereto as Exhibit "D" is a copy of the City Engineer's comments concerning Subdivider's Application for Replat. Subdivider, its successors and assigns in title, agree to fully comply with all such requirements within the applicable time or times therein designated.

12. Common Improvements/Maintenance. For purposes hereof, the following provisions shall be applicable:

a. Common Area Improvement Defined. The term Common Area Improvement shall mean all infrastructure and improvements constructed on, or to be constructed within or benefiting any two or more lots, or combination of lots, within the Replatted Area. Said Common Area Improvements shall include, but not be limited to, ingress and egress, storm drainage, sanitary sewer, public utility infrastructure or services and other infrastructure needs for more than a single lot.

b. Common Area Expense Defined. Common Area Expense shall include all engineering expense, including engineering costs, the costs of construction, reconstruction, modification, repair, maintenance (including clean up and clean out) and replacement of any such items or services, together with the City's engineering cost of inspection, review and design.

c. Sharing of Common Area Expense. Common Area Expense shall be shared as follows:

c-1. Initial Cost Sharing Ratio. The owners, their successors and assigns, of the replatted lots shall be responsible for and defray the Common Area Expense in the same ratio that each of their replatted lots bears to the total land area of lots served by the improvement, to wit:

Replat Lot No.	Acres	Percent of Common Area Expense
1	2.259	51.24%
2	2.150	48.76%
TOTAL	4.409	100.00%

The foregoing percentages of Common Area Expense shall prevail unless adjusted pursuant to subparagraph 12.c-2 hereof.

c-2. Adjustment of Common Area Cost Sharing Ratios. The method of sharing Common Area Expense as set forth in subparagraph 12.c-1 above may be modified by the owners of all replatted lots agreeing to a different cost sharing as among themselves and filing with the City an application executed by all property owners within the Replatted Area to allow sharing in the designated different ratio. If the City Administrator, in consultation with the City Engineer, determines the original cost allocation

D

is to be unfair and such requested change, if approved, will not be adverse to the City's or to the public interest, then the City Administrator may approve such application. Approval shall be discretionary. If approved, the property owners, at their expense, shall file the modification with the appropriate written approval of the City Administrator and City Engineer endorsed thereon.

- d. Filing of Record. The Subdivider, at its expense, shall record this Fourth Amendment in the land records of the Office of the Register of Deeds of Sarpy and shall cause a recorded copy thereof to be transmitted to the City Administrator. Any adjustment under subparagraph 12.c-2 above shall be similarly recorded and transmitted at Subdivider's expense. Such recordings shall include lot specific recorded notice.
- e. City Engineer to be Determiner. The City Engineer shall be the determiner of which improvements are required and which are Common Area Expense and which are not Common Area Expense, and which, if any, are not being properly constructed, repaired or maintained or in are in need of replacement.
- f. City Access/Repair, Etc. The City, its employees and agents, shall have right of full access to any and all areas and improvements within the Replatted Area for purposes of inspection. In the event City determines construction, repair or maintenance is not progressing or not being performed satisfactorily, City may, at its sole option, decide to undertake construction, repair and/or maintenance of any such Common Area Improvements and to assess the cost, including engineering costs and legal costs, together with interest at the rate of twelve percent (12%) per annum until paid, and City shall have a foreclosable lien therefor against the lots benefited.
- g. City's Exercise of Rights Discretionary. City's and/or City Engineer's exercise of any or all of the authority herein given shall be at City's sole and absolute discretion, and City, City Engineer and City agents shall have no responsibility or liability by reason of either the nonexercise or the exercise of any such authority.

13. Special Assessments. The lots within the Replatted Area are subject to special assessments that have been levied. Prior to delivery of the plat to Developer, Developer shall have either (1) paid all installments and accrued interest on such special assessments in full, or (2) have paid the principal and all accrued interest to date on delinquent installments and shall have reappportioned the remaining principal and interest thereon to the lots as configured by the Replat. Such reappportionment shall be computed in a manner acceptable to the City Engineer. Such written reappportionment agreement and recording thereof with the County Treasurer's written acceptance thereof shall be provided to City by Subdivider at Subdivider's expense.

14. Ownership Representation. The undersigned signatory on the proposed Final Plat of Southport East Replat Four and on the Fourth Amendment to the Subdivision Agreement, to wit, <sup>David</sup> Daniel L. Underwood, Managing Member of Southport 10 LLC, does warrant and represent that he has executed the Final Plat for Southport East Replat Four and this Fourth Amendment to Subdivision Agreement on behalf of Southport 10 LLC and that said LLC is 100% owner of the Replatted Area.

Du

E

- 15. Covenants Running With the Land. The obligations and agreements of Developer herein are perpetual covenants running with the land and shall be binding on the Developer and all of Developer's successors and assigns in title. The covenants herein shall be cumulative to, and not in lieu of, prior covenants running with the land. City shall have the right, but not the obligation, to enforce any and all covenants.
- 16. Exhibit Summary. The Exhibits proposed by E & A Consulting Group, Inc. engineers for the Developer, attached hereto and made a part hereof, are as follows:
  - Exhibit "A": Composite Drawing of Replat Four.
  - Exhibit "B": Surveyor's Certificate.
  - Exhibit "C": Final Plat of Southport East Replat Four.
  - Exhibit "D": City Engineers requirements for approval of replatting.
- 17. Right to Enforce. Provisions of this Amendment may be enforced at law or in equity by the owners of land within the Replatted Area and may be enforced by the City at law, in equity or such other remedy as City determines appropriate.
- 18. Ratification. In all other respects, the Subdivision Agreement shall not be affected hereby, and is hereby ratified and confirmed.

IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents, hereto affix our signatures the day and year first above written.

ATTEST: SOUTHPORT 10 LLC, a Nebraska limited liability company

Glenn J. Andrew By David L. Underwood  
 David L. Underwood, Managing Member  
 Southport 10 LLC

ATTEST: CITY OF LA VISTA  
Rita M. Ramirez Rita M. Ramirez, City Clerk  
Douglas D. Kindig Douglas D. Kindig, Mayor



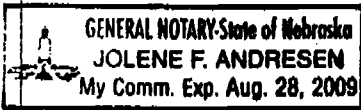
F

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

On this 30 day of May, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared and David L. Underwood, personally known by me to be the Managing Member of Southport 10 LLC and the identical person whose name is affixed to the foregoing Fourth Amendment to Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said corporation.

WITNESS my hand and Notarial Seal the day and year last above written.



Jolene F. Andreesen  
Notary Public

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DeWey )

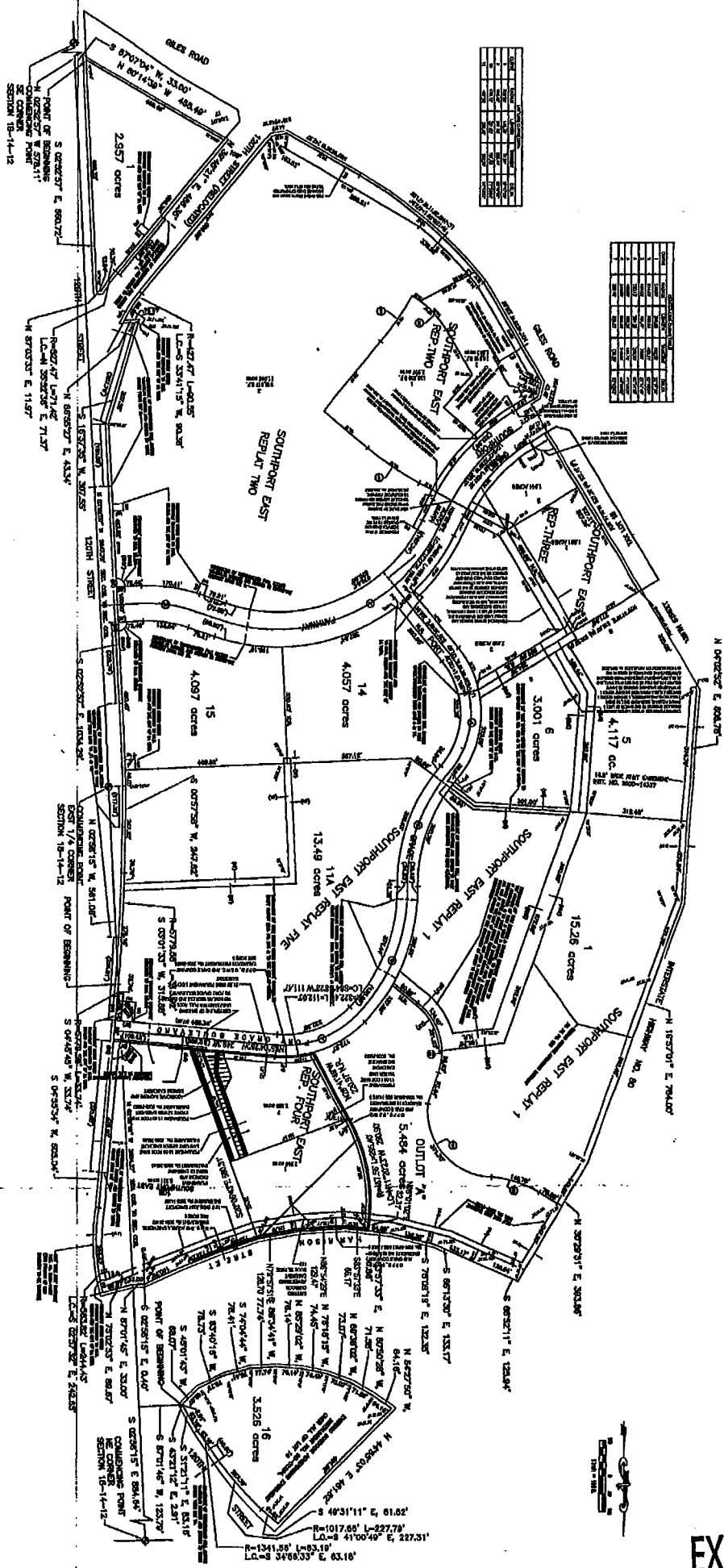
On this 30 day of May, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Douglas D. Kindig, personally known by me to be the Mayor of the City of La Vista and Rita M. Ramirez, to me personally known to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Fourth Amendment to Subdivision Agreement, and acknowledged the execution thereof to be their voluntary act and deed, and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal the day and year last above written.



Karen S. Fagin  
Notary Public

G.



NO.	DESCRIPTION	ACRES
1	...	...
2	...	...
3	...	...
4	...	...
5	...	...
6	...	...
7	...	...
8	...	...
9	...	...
10	...	...
11	...	...
12	...	...
13	...	...
14	...	...
15	...	...
16	...	...
17	...	...
18	...	...
19	...	...
20	...	...
21	...	...
22	...	...
23	...	...
24	...	...
25	...	...
26	...	...
27	...	...
28	...	...
29	...	...
30	...	...
31	...	...
32	...	...
33	...	...
34	...	...
35	...	...
36	...	...
37	...	...
38	...	...
39	...	...
40	...	...
41	...	...
42	...	...
43	...	...
44	...	...
45	...	...
46	...	...
47	...	...
48	...	...
49	...	...
50	...	...

NO.	DESCRIPTION	ACRES
1	...	...
2	...	...
3	...	...
4	...	...
5	...	...
6	...	...
7	...	...
8	...	...
9	...	...
10	...	...
11	...	...
12	...	...
13	...	...
14	...	...
15	...	...
16	...	...
17	...	...
18	...	...
19	...	...
20	...	...
21	...	...
22	...	...
23	...	...
24	...	...
25	...	...
26	...	...
27	...	...
28	...	...
29	...	...
30	...	...
31	...	...
32	...	...
33	...	...
34	...	...
35	...	...
36	...	...
37	...	...
38	...	...
39	...	...
40	...	...
41	...	...
42	...	...
43	...	...
44	...	...
45	...	...
46	...	...
47	...	...
48	...	...
49	...	...
50	...	...

EXHIBIT A



PROJECT NO. \_\_\_\_\_

County Surveyor and Engineer  
Douglas County

LOCATION \_\_\_\_\_

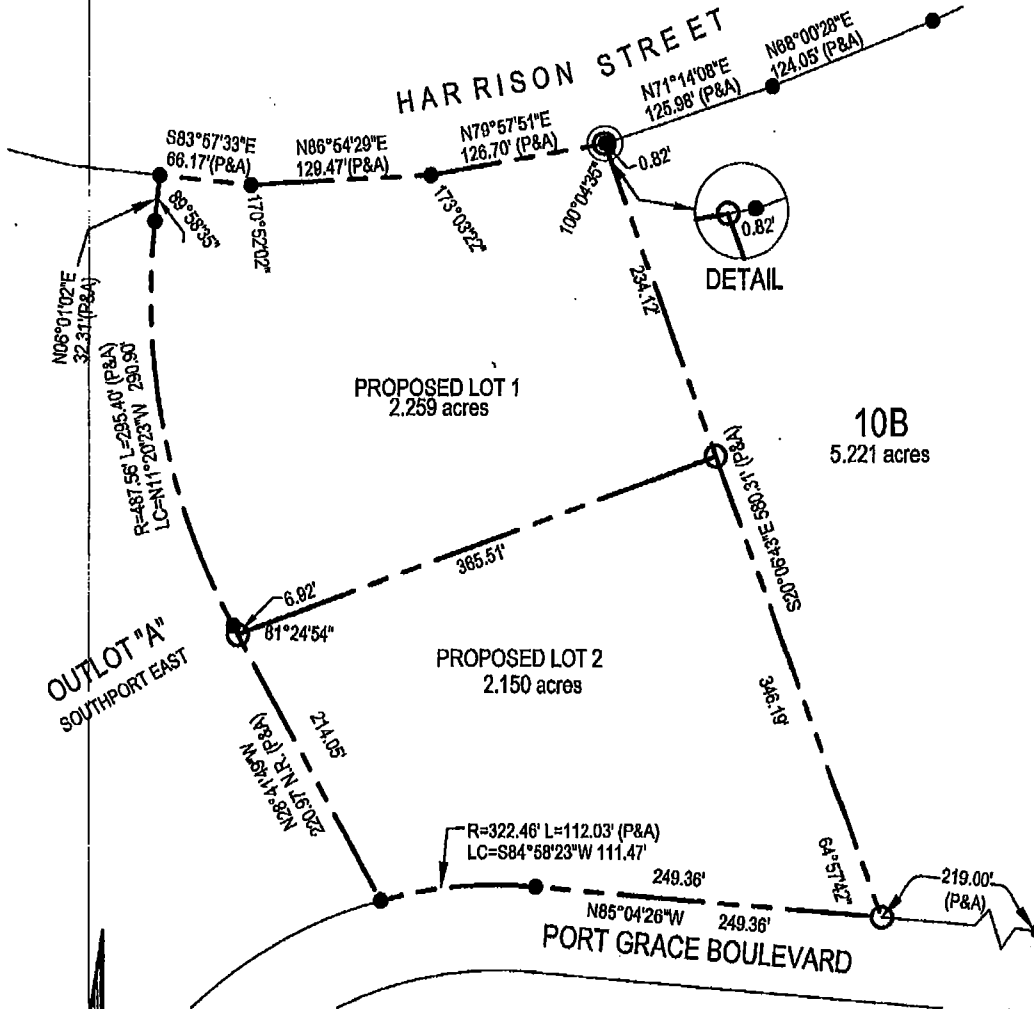
EXHIBIT B

LAND SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT, MAP, SURVEY OR REPORT WAS MADE BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA

LEGAL DESCRIPTION:

ALL OF LOT 10A, SOUTHPORT EAST, A SUBDIVISION LOCATED IN THE EAST 1/2 OF SECTION 18, AND ALSO IN PART OF THE NW 1/4 OF SECTION 17, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA.



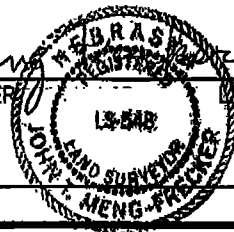
LEGEND

- P PLAT DISTANCE
- A ACTUAL DISTANCE
- PINS FOUND  
5/8" REBAR  
UNLESS NOTED
- PINS SET  
5/8" REBAR  
UNLESS NOTED



Scale: 1" = 100'

*John Meng-Frecker*  
 JOHN MENG-FRECKER LS 548  
 05/12/2006  
 DATE



**E&A CONSULTING GROUP, INC.**  
 ENGINEERS • PLANNERS • SURVEYORS  
 12001 Q STREET, OMAHA, NE 68137 PHONE: (402) 895-0700

OFFICIAL ADDRESS: \_\_\_\_\_  
 DATE RECEIVED: \_\_\_\_\_ BUILDING PERMIT No.: \_\_\_\_\_  
 Drawn by: BJW Chkd by: \_\_\_\_\_ Chkd by: \_\_\_\_\_  
 Job No.: 2000030.15 Date: 12/02/05 Book No.: 2920

**LOT SURVEY**  
**LOT 10A**  
**SOUTHPORT EAST**  
 SARPY COUNTY, NEBRASKA



2006-18124 J

EXHIBIT D

SOUTHPORT EAST REPLAT FOUR  
EXHIBIT "D"

City Engineer's Requirements for Approval of Southport East Replat Four

1. Submit an acceptable exhibit identifying the Common Area Improvements
2. The applicant shall provide a drainage plan showing the drainage areas and proposed private storm sewer system that will be needed to serve Lots 1 and 2.