

FILED SARY CO. NE.  
INSTRUMENT NUMBER  
**2007-05481**

2007 FEB 26 A 8:02

*Glenn J. Lawling*

REGISTER OF DEEDS

COUNTER *ab* S.F. *ab*  
VERIFY *ab* D.E. *ab*  
PROOF *P*  
FEES \$ *30.50*  
CHECK # \_\_\_\_\_  
CHG *FNT* CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

AGREEMENT

Return to:  
Coldwell Banker Commercial  
World Group  
Attn: Trenton  
780 N 114th Street  
Omaha, NE 68154

**05481**

*FNT*

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**AGREEMENT**

THIS AGREEMENT ("**Agreement**") is made and entered into as of the 19<sup>th</sup> day of February 2007 by and among Port Starboard, LLC, and its successors and assigns (collectively "**Port Starboard**"), and Fantasy's Inc. d/b/a Fantasy's Food & Fuel, and its successors and assigns (collectively "**Fantasy's**");

WITNESSETH:

WHEREAS, Fantasy's has entered into a certain Master ATM Placement Agreement with First National Bank dated February 1, 2004 ("**ATM Agreement**") respecting the placement of an Automated Teller Machine ("**ATM**") on its real estate known as Lot 2, Southport East Replat Three, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska ("**Fantasy's Property**"); and

WHEREAS, Port Starboard owns Lot 3, Southport East Replat Three, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska ("**Port Starboard's Property**"); and

WHEREAS, Fantasy's desires to have the certain private road (the "**Road**") which is to be constructed between the Fantasy's Property and Port Starboard's Property wider than originally contemplated, thereby being built further onto Port Starboard's Property than contemplated and at a greater cost than contemplated; and

WHEREAS, Port Starboard will agree to construction of a wider and adjusted Road as generally requested by Fantasy's (the "**Adjusted Road**") pursuant to the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, as well as the foregoing recitals which are a material part of this Agreement and incorporated herein, the parties hereto agree as follows:

1. **ATM AGREEMENT.** Fantasy's acknowledges that it has entered into the ATM Agreement, a true and accurate copy of which Fantasy's warrants it has provided to Port Starboard. In the event of the execution of any amendments, addendums or replacements to the ATM Agreement, or upon the execution of any agreement which, in whole or in part, addresses the placement or operation of an ATM or similar or replacement equipment with respect to Fantasy's Property (collectively a "**Substitute ATM Agreement**"), Fantasy's shall immediately provide a true and accurate copy of the executed Substitute ATM Agreement to Port Starboard.

2. **ATM AGREEMENT FEES.** Fantasy's, on behalf of itself and any future owners of the Fantasy's Property, hereby irrevocably warrants and agrees to deliver to Port Starboard one-half of all consideration, of any and every kind, paid to the owner of the Fantasy's Property pursuant to the ATM Agreement or any Substitute ATM Agreement ("**Compensation**"). The Compensation shall be delivered to Port Starboard within five (5) days of receipt by Fantasy's.

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3. **ADJUSTED ROAD CONSTRUCTION.** Port Starboard agrees and consents to construction of the Adjusted Road as designed by E & A Consulting Group, Inc. (the "**Project Engineer**"), pursuant to the terms and conditions hereof, and upon the satisfaction of the terms contained in Paragraph 4 hereof. The Adjusted Road shall be constructed in material compliance with **Exhibit A** attached hereto and incorporated herein.

4. **INCREASED COSTS AND EXPENSES OF ADJUSTED ROAD.** The parties acknowledge that the costs and expenses relating to the design and construction of the Adjusted Road will be greater than the costs and expenses would have been for construction of the unadjusted Road. Fantasy's hereby agrees to pay to Port Starboard, prior to commencement of construction of the Adjusted Road, the amount of the increase in costs and expenses relating in any way to the design and construction of the Adjusted Road as reasonably determined by the Project Engineer.

5. **OBLIGATIONS.** Fantasy's shall be solely and exclusively obligated to perform any and all obligations pursuant to the ATM Agreement, and any Substitute ATM Agreement, without contribution from Port Starboard. Port Starboard's execution of this Agreement shall not obligate it to do anything or impose any liability on it except as expressly stated herein. Port Starboard shall not be liable to Fantasy's or any other party for any loss, damage, liability or expense suffered by Fantasy's or any other party on account of any action taken or omitted to be taken by Fantasy's pursuant to the ATM Agreement or any Substitute ATM Agreement.

6. **REPRESENTATIONS.** Fantasy's and Port Starboard hereby warrant and represent to each other that the execution and delivery of this Agreement and the performance of the provisions hereof have been duly authorized by all necessary action of such of their parts, and that this Agreement has been duly and validly executed and delivered to the other party and constitutes a valid and legally binding agreement enforceable in accordance with its terms.

7. **EXPENSES.** In the event of a breach of any agreement or obligation contained in this Agreement, and a breach shall be established, the prevailing party shall be entitled to recover all costs and expenses incurred therefor, including but not limited to reasonable attorneys' fees.

8. **MEMORANDUM OR NOTICE.** The parties agree to permit, and cooperate in, the filing with the Register of Deeds of Sarpy County, Nebraska, of a memorandum or other notice memorializing the material terms of this Agreement.

9. **SURVIVAL.** All rights and obligations of the parties contained in this Agreement shall survive and remain in full force and effect notwithstanding any termination of this Agreement.

10. **WAIVER OF DEFAULT.** Failure of a party to complain of any act or failure to act of another party or to declare such other party in default shall not be deemed or constitute a waiver by such party of any rights hereunder.

11. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties relative to the subject matter herein and except as otherwise expressly

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provided herein it shall not be altered, modified or changed except by a written document duly executed by all parties hereto at the time of such alteration, modification or change.

12. **SEVERABILITY.** In the event any provision of this Agreement is held to be illegal, invalid or unenforceable to any extent, the legality, validity and enforceability of the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect and shall be enforced to the greatest extent permitted by law.

13. **BINDING AGREEMENT.** The provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

14. **HEADINGS.** The headings contained in this Agreement are for convenience only and shall not be considered in construing or interpreting any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**Port Starboard, LLC**

**Fantasy's Inc.**

By: Starboard South, LLC, Manager

By: Trenton B. Magid  
Trenton B. Magid, Member Manager

By: John Spaustat  
John Spaustat, President

and

Tucker B. Magid  
Tucker B. Magid, Manager

**Exhibits**

A – Adjusted Road Plan



2007-05481 E

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )

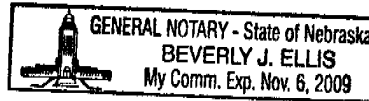
On this 19th day of February 2007 before me a Notary Public, qualified for said county, personally came, Tucker B. Magid, known to the identical person who signed the foregoing instrument as Seller, and acknowledged the execution thereof to be his voluntary act and deed for the purposes therein expressed, on behalf of said organization.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal at Omaha, Nebraska, on the last day above written.

*Beverly J. Ellis*  
Notary Public

Dated: February 19, 2007

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )



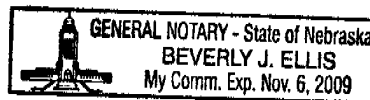
On this 19th day of February 2007 before me a Notary Public, qualified for said county, personally came, Trenton B. Magid, known to the identical person who signed the foregoing instrument as Seller, and acknowledged the execution thereof to be his voluntary act and deed for the purposes therein expressed, on behalf of said organization.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal at Omaha, Nebraska, on the last day above written.

*B. J. Ellis*  
Notary Public

Dated: February 19, 2007

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )



On this 19th day of February 2007 before me a Notary Public, qualified for said county, personally came, John Spaustat, president of Fantasy's Inc., known to the identical person who signed the foregoing instrument as Seller, and acknowledged the execution thereof to be his voluntary act and deed for the purposes therein expressed, on behalf of said organization.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal at Omaha, Nebraska, on the last day above written.

*Edward R. Krause*  
Notary Public

Dated: February 19, 2007

