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Lloyd J. Dowding
REGISTER OF DEEDS

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LLOYD J. DOWDING

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

A

SECOND AMENDMENT TO SUBDIVISION AGREEMENT
(Southport East Subdivision)

(Replat of Lot 2 together with Tax Lot 16 into Lots 1, 2 and 3, Southport East Replat Two)

THIS SECOND AMENDMENT, made this 16th day of March, 2006, to that certain Commercial Subdivision Agreement dated April 19, 2001 and original plat thereto, which among other lots, includes Lot 2 and Tax Lot 16, Southport East and which by this Second Amendment are to be replatted as Lots 1, 2 and 3, Southport East Replat Two of this Subdivision.

WITNESSETH:

WHEREAS, the City of La Vista ("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 dated April 19, 2001 (herein the "Subdivision Agreement" or the "Agreement"), setting forth certain agreements, Commercial Building Design and Criteria, and other terms, conditions and covenants running with the land in respect to the development of land within the Subdivision, all of which continue to apply to the area to be replatted; and

WHEREAS, Joe McDermott Associates, Inc. and John L. Hoich (herein collectively "Subdivider") is the owner of said original Lot 2 and Tax Lot 16, Southport East which are the subject of this Second Amendment, which lots are subject to the terms of the Subdivision Agreement; and

WHEREAS, Subdivider herein wishes to subdivide said Lot 2 and Tax Lot 16, Southport East into Lots 1, 2 and 3, Southport East Replat Two (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 25.888 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 9/28/05 (with revisions dated 10/04/05, 10/25/05 and 11/16/05) and attached hereto as Exhibit "C"; 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 2 and Tax Lot 16 of Southport East Subdivision shall be replatted as Lots 1, 2 and 3 of Southport East Replat Two, as more fully shown on Exhibit "C" (herein the "Replat" or "Replatted Area").
2. Drainage Calculations and Map. Subdivider has provided 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, all of which are in a form satisfactory to the City's Engineer.

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- 3. Perimeter Sidewalks. Subdivider, or its assigns, shall, at their cost, install and maintain perimeter sidewalks abutting the Replatted Area as the lots are built upon. Sidewalks are not required along 126th Street or Giles Road.
- 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, including the City's Gateway Corridor Design Guidelines, all of which are incorporated into this amendment by reference and shall be applicable to commercial development within the Replatted Area. Subdivider 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. 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 Second Amendment.
- 8. Staking Bond. Subdivider 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. Subdivider 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 Two	2.997 acres @ \$5,484/Ac. =	\$ 16,435
Lot 2, Southport East Replat Two	1.803 acres @ \$5,484/Ac. =	9,888
Lot 3, Southport East Replat Two	21.088 acres @ \$5,484/Ac. =	<u>115,647</u>
Total		<u>\$141,970</u>

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.

COMMERCIAL SUBDIVISION AGREEMENT
SOUTHPORT EAST LOTS 1-16, INCLUSIVE AND OUTLOT A
(Public Financing)

THIS AGREEMENT, made this 19th day of April, 2001, by and between R.S. LAND, INC., a Nebraska corporation and SOUTHPOINTE PARTNERS I, a Nebraska limited liability company (herein collectively referred to as "Developer" or "Subdivider"), SANITARY AND IMPROVEMENT DISTRICT NO. 218 OF SARPY COUNTY, NEBRASKA (hereinafter referred to as "District"), and the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska (hereinafter referred to as "City");

WITNESSETH:

WHEREAS, Developer is the legal owner of all lands within a proposed subdivision to be known as "Southport East" and to consist of 102.053 acres, more or less, being legally described on Exhibit "A" hereto (herein the "Subdivision"), which Subdivision is outside the corporate limits of the City and within the City's zoning and platting jurisdiction; and

WHEREAS, the Subdivision will consist of Lots 1 through 16, inclusive, and Outlot A, as more fully shown on the final plat for Southport East, a copy of which is attached hereto as Exhibit "B," said Southport East being hereinafter referred to as the "Subdivision"; and

WHEREAS, Developer has requested City to approve the platting of the Subdivision, as more fully shown on Exhibit "B" hereto, and to approve a connection of said Subdivision to sewer and drainage systems; and

WHEREAS, Developer has elected not to use the private financing option for the construction of streets, storm sewers, sanitary sewers, and water and underground electric distribution systems within the Subdivision, but instead wishes to finance same through District; and

WHEREAS, Developer, District and City have agreed that the infrastructure and utilities for the Subdivision are to be built out at one time rather than multiple phases; and

WHEREAS, the Developer and District propose that the District will build public improvements in or for the benefit of the Subdivision, the District being a Sanitary and Improvement District created at the request of and controlled by the Developer, which is the sole Owner(s) of all the lands within the boundaries thereof; and

WHEREAS, the parties wish to agree upon the manner and the extent to which public funds may be expended in connection with public improvements to be constructed within the Subdivision or serving the Subdivision and the extent to which the contemplated public improvements specially benefit property within the Subdivision and to what extent the cost of the same shall be specially assessed against the property of Developer, and other matters pertaining to the development of the Subdivision and health, safety and welfare of the City, the District, their inhabitants and the public.

NOW, THEREFORE, IT IS AGREED as follows:

1. Definitions

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

- A. "Improvement" shall include all paving, storm sewer, sanitary sewer, culverting or other item of infrastructure, all utilities and other facilities, interest in real estate, other capital assets, connection rights or other acquired rights which are acquired, in whole or in part, by use of District funds or credit, and shall include any of the foregoing that are placed within street right-of-way or public easement regardless of the source of funding.
- B. The "construction cost" of an improvement shall mean the amount paid to the contractor, contractors' utility or persons installing the improvement or performing the work, together with all other costs incurred in or related to the construction of the improvement.
- C. The "cost" or "entire cost" of a type of improvement shall be deemed to include all construction costs, engineering fees, attorneys' fees, testing expenses, publication costs, financing costs and miscellaneous costs. In this connection, financing costs shall include all fiscal agent's warrant fees and costs, interest on warrants to date of funding by issuance of bonds and all bond fees and costs. Miscellaneous costs of the improvement shall include the pro rata share of the general unallocated costs of the District, which unallocated costs shall be prorated to each improvement on the basis that the entire cost of each improvement bears to the entire cost of all improvements constructed by the District.
- D. "General Obligation" or "general obligation of the District" shall mean the amount by which the entire cost of a particular improvement or type of improvement exceeds the amount of special assessments levied by the District in respect to such improvement or type of improvement.
- E. "Maximum general obligation" of the District shall mean the amount by which the total indebtedness of the District incurred in respect to all improvements within or for the benefit of the Subdivision exceeds the total of special assessments levied in respect to all such improvements.
- F. "Property benefitted" shall mean property within the Subdivision (Exhibit "B-2") which constitutes buildable sites, as defined in Subsection 5-B, infra.
- G. "Southport East Declaration of Covenants, etc." shall mean the "Declaration of Covenants, Conditions, Restrictions and Easements for Southport East" to be approved by City and filed by R.S. Land, Inc., a Nebraska corporation and owner of all lands within the subdivision (Developer herein), said covenants being recorded in the office of the Register of Deeds of Sarpy County at Book ____ as Instrument No. ____.
- H. "Southport East Design Guidelines" shall mean the specific guidelines jointly developed and agreed to by Developer and City for the Development Tract for the purpose, among others, of creating cohesiveness and ensure quality of materials, aesthetics and maintenance upon which all tenants and owners can rely and to ensure view continuity and creation of a sense of place through the use of common elements of site and architecture, a copy of which is attached to this Agreement as Exhibit "H" hereto.
- I. "Southport East Property Owners Association" or "Property Owners Association" shall mean the Nebraska nonprofit corporation formed pursuant to, or in furtherance of, the Southport East Declaration of Covenants, etc. and consisting of all property owners of the subdivision in the manner and for such purpose as are provided in the "Southport East

Declaration of Covenants, etc." prepared by the Developer and approved by the City, for the development of the Subdivision.

2. Authorized Public Improvements

Developer, District and City agree that the District may construct or install, or cause to be constructed or installed, and the credit of District shall be used for the construction of, only the following types of public improvements upon the property located within or immediately adjacent to the boundaries of the District and necessary water, sewer, or drainage to existing or planned facilities as follows:

A. Paving:

1) Existing Paving. There currently exists on 126th Street two (2) thru lanes each direction and on 126th Street and Southport Parkway one (1) left turn bay onto Southport Parkway, and no paving within the Subdivision.

2) New Paving. District will cause the concrete paving of (a) Southport Parkway, Port Grace Boulevard and 120th Street; (b) the addition of one (1) right turn bay and one (1) left turn bay for traffic movement from 126th Street eastbound onto Southport Parkway; (c) necessary realignment of 126th Street thru lanes necessitated by such additional left turn lane; and (d) a right turn bay on 126th Street for northbound traffic onto 120th Street, all as illustrated on "Paving Plan" attached hereto as Exhibit "C-1." All new paving on 126th Street, Giles Road and 120th Street shall be ten inches (10") thick and paving within the Subdivision shall be not less than nine inches (9") thick at a width as shown on Exhibit "C-1." Exhibit "C-1" hereto also depicts that portion of said paving that is to be general obligation.

B. Storm Sewer. Public storm sewer system, including storm sewers, inlets, manholes, junction boxes, flared end sections and related appurtenances constructed in the dedicated street right-of-way or in dedicated easementways, as more fully illustrated on Exhibit "C-2" hereto.

C. Sanitary Sewer Collector System. All sanitary sewer mains, manholes and related appurtenances, including those situated in 120th Street, to be constructed as more fully illustrated on "Sanitary Sewer Plan" attached hereto as Exhibit "C-3."

D. Sanitary Outfall Sewer. Sanitary outfall sewer handling wastewater from the manhole at Harrison Street and 120th Street northeasterly through a siphon under the West Branch of the Papillion Creek to a point of connection with the City of Omaha's seventytwo inch (72") sewer, as shown on Exhibit "C-3."

E. Water (Internal). Water distribution mains located within dedicated street right-of-way per plat (Exhibit "B") to be installed by Metropolitan Utilities District.

F. Water (External Supply). For purposes of serving the Subdivision, twelve inch (12") and sixteen inch (16") water main extensions are to be constructed by Metropolitan Utilities District which will consist of approximately 5,700 feet of sixteen inch (16") water main in 120th Street from Harrison Street to Giles Road at an estimated cost of \$353,400, and

2,360 feet of twelve inch (12") water main in Giles Road from 120th Street to 126th Street at an estimated cost of \$99,120.

- G. Underground Electrical. Underground electrical service to each of the lots in the Subdivision to be installed by Omaha Public Power District ("OPPD").
- H. Street Lighting. Street Lighting for public streets dedicated per plat (Exhibit "B") to be installed by Omaha Public Power District. Developer, with design approval of the City Administrator, may install decorative street lighting, consistent with the Southport East Design Criteria, to be installed by OPPD.
- I. Civil Defense Siren. The cost of civil defense sirens required by City or Sarpy County.
- J. Traffic Signals. The cost of traffic signals at the intersections of Giles Road and 120th Street and at Southport Parkway and 126th Street.
- K. Paving of 120th Street. The cost of paving 120th Street pursuant to the terms of an interlocal agreement between District, Sarpy County, Douglas County, in form and content approved by City.
- L. Enhanced Landscaping of 126th Street/Giles Road. The cost of enhancements to landscaping of 126th Street/Giles Road, 120th Street and Southport Parkway right-of-way as authorized by subsection 18-G, infra.

The exact design, location and dimensions of and detailed plans and specifications for each of the afore-described improvements, as well as any improvements in street right-of-way or public easement not funded by District, are subject to prior approval by the City in advance of award of contract for construction or acquisition. Except as herein expressly provided, the credit of the District shall not be used for the construction or payment of any improvement, unless first expressly approved in writing by City.

3. Unauthorized Expenditures of District Funds

Developer and District agree that, except to the extent specifically authorized by Section 2 hereof, *supra*, the credit or funds of the District shall not, without prior approval of City's City Council, be used for the planning, construction, acquisition or financing of any project, facility, utility installation or connection or connection fee, or other improvement. By way of specification and not by way of limitation, Developer and District agree that, except to the extent specifically authorized under Section 2 hereof, District shall not, without prior approval of City's City Council, incur any indebtedness or otherwise involve its credit or expend any of its funds in the planning, construction, acquisition, installation or financing of:

- A. Any swimming pool, golf course, park, playground, lineal trails or other recreational land or facility, except as specifically authorized herein. The pond and any related amenity to be built upon Outlot A will be constructed and maintained with private funds and no funds or credit of the district shall be obligated or used in respect thereto.
- B. The advancement or payment of any fee, connection fee, deposit, surcharge, demand charge or similar charge, whether or not refundable, imposed by any utility or other entity providing or contemplating providing utility-type service to the area to be developed.

- C. Any grading costs, except finish grading for street improvements within street rights-of-way dedicated per plat. The cost of any grading of right-of-way shall be one hundred percent (100%) specially assessed.
- D. Any sodding, seeding or other landscaping, including that contemplated on street right-of-way or other public property, except enhanced landscaping for 126th Street to the extent authorized by subsection 18-G.
- E. The payment of any sewer or water connection fee, sewer use or treatment fees, or water charge for lots or properties within or without the area to be developed.
- F. Any gas distribution system or any external gas supply line.
- G. The purchase or acquisition of real estate or interest therein, except as authorized by Section 10 hereof or as otherwise authorized by City.
- H. Costs of installation, maintenance and removal of silt ponds, silt fences and other erosion control measures, except for supplemental measures temporarily utilized for the sole purpose of protection of specific street improvements within in street rights-of-way dedicated per plat during the course of construction of such improvements.
- I. Costs of abandonment, relocation, or modification of existing utilities or transmission facilities or easements, including electrical, communication, gas or petroleum product transmission lines and facilities.
- J. Perimeter or other fencing for Subdivision or part thereof.
- K. Costs of improvement and maintaining private ingress and egress easements granted to the owners of Lots 4-9, inclusive.

4. Allocation of Cost of Improvements

Developer, District and City agree that the cost of all public improvements constructed by the District within or serving the Subdivision (Exhibit "B") as authorized by Section 2, supra, shall be defrayed as follows:

- A. Paving. One hundred percent (100%) of the cost of all paving of streets shown per plat (Exhibit "B") shall be paid by the special assessment against the buildable property benefited within the area to be developed, except for those portions of paving specifically identified on Exhibit "C-1" to be general obligation. 120th Street shall be paved pursuant to interlocal agreement with Sarpy County and the cost thereof shall be defrayed in the manner set forth in Subsection 18-B hereof, infra.
- B. Storm Sewer. One hundred percent (100%) of the cost of all storm sewers, including those in or along 120th Street and the connection to the West Papillion Creek, including manholes, inlets and other appurtenances, for storm sewers twenty-four (24") inches in size or less shall be specially assessed. Any public storm sewer located in a public street, or in a public easement on private property, the size of which is in excess of twenty-four (24") inches in size may be generally obligated for the difference in material and installation

cost between a twenty-four (24") inch pipe and the actual size required, which difference shall be general obligation. No portion of manholes, inlets or appurtenances may be general obligation. As regards only segments 1 and 3 of 120th Street, in respect to which segment Sarpy County will be contributing to the cost of storm sewer, the amount to be specially assessed for storm sewer may be reduced to reflect the County's contribution, provided however, the amount specially assessed shall in no event be less than fifty percent (50%) of the amount that would have been required to be specially assessed in the absence of Sarpy County's participation.

- C. Sanitary Sewer (Collector System). One hundred percent (100%) of the cost of all sanitary sewers constructed within or serving the area to be developed, including those in or along 120th Street, together with and including manholes and other appurtenances, shall be paid by special assessment against property benefited within the Subdivision. Except as provided in Subsection 4-D, infra, pertaining to outfall sewer, no portion of the cost of the sanitary sewer system shall be borne by general obligation of the District. Costs, if any, incurred or paid for connection to other sanitary and improvement districts for connection of the District shall be one hundred percent (100%) specially assessed.
- D. Sanitary Outfall Sewer. The sanitary sewer system serving the Subdivision will be connected to Omaha's existing seventy-two inch (72") interceptor sewer east of the West Branch of the Papillion Creek. The sanitary outfall sewer, as defined in Subsection 2-D, including the cost of the site, shall be general obligation. Such connection shall be made at the point shown on Exhibit "C-3." The Subdivision will not be connected, directly or indirectly, to the Sarpy Industrial Sewer.
- E. Water – Internal. One hundred percent (100%) of the cost of the water distribution system serving the area to be developed shall be specially assessed against property benefited within the area to be developed, including the cost of such contract charges as are authorized to be paid to Metropolitan Utilities District by the provision of Subsection 2-E, supra. No portion of the cost of the water distribution system shall be borne by general obligation of the District.
- F. Water – External Supply. Metropolitan Utilities District is to extend water from existing mains in Giles Road and 120th Street. All charges or fees and other costs of such extensions shall be specially assessed against buildable property in the Subdivision, except for a proportionate share thereof based upon amounts that are assessed against abutting property outside the Subdivision which is truly buildable property. The determination to which such abutting property is truly buildable property shall be made initially by the District's Engineer and reviewed by the City's Engineer.
- G. Underground Electrical. One hundred percent (100%) of all cost of the underground electrical service serving the area to be developed including contract charges authorized to be paid by District to OPPD by the provisions of Subsection 2-G, supra, together with such other charges as fall within the definition of "cost" as defined in Subsection 1-C, supra, shall be specially assessed against property within the area to be developed. Refunds from OPPD, if any, on account thereof, shall be credited in the manner provided in Subsection 8-F.

- H. Street Lighting. The cost of the monthly contract charges paid to Omaha Public Power District for furnishing lighting of public streets shall be paid from the general operating funds of the District.
- I. Civil Defense Siren. The cost of civil defense sirens required by City or Sarpy County may be general obligation.
- J. Traffic Signals. Traffic signals at the intersection of Giles Road and 120th Street shall be made a part of the interlocal agreement in respect to the paving of 120th Street. The traffic signal at Southport Parkway and 126th Street be constructed by District and the cost thereof shall be general obligation of the District.
- K. Sewer Connection Fee. The Sewer Connection Fee provided for in Subsection 16-A is to be paid at time of connection of properties to the sewer. The credit of the District shall not be used for purpose of payment of these fees, except as may otherwise be agreed by City.
- L. Landscaping, Etc. The cost of landscaping (including the pond on Outlot A and related facilities), sidewalks, medians and sign monuments, if any, and other improvements for which use of public money is not specifically authorized shall be paid by Developer and/or successor property owners without use of District's credit or funds.
- M. 126th Street Enhanced Landscaping. To the extent authorized by subsection 18-G, District's credit may be used for the enhancement of landscaping of 126th Street/Giles Road, 120th Street and Southport Parkway.
- N. Repair and Reconstruction. The cost of repair or reconstruction of improvements for which the original contractor and/or its bonding company has no further obligation may be borne by general obligation of the District. Repair or reconstruction exceeding \$10,000 shall be first reviewed and approved by City's Engineer. Maintenance of public improvements shall be paid from District's general fund.

EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT TO THE CONTRARY, ANY AND ALL COSTS OR OBLIGATIONS WHICH THE DISTRICT SHALL INCUR IN CONNECTION WITH ANY IMPROVEMENT, FACILITY, CONSTRUCTION, UTILITY INSTALLATION, CONNECTION FEE OR FINANCING SHALL BE ONE HUNDRED PERCENT (100%) SPECIALLY ASSESSED. THE MAXIMUM GENERAL OBLIGATION DEBT HEREIN PROVIDED FOR SHALL NOT BE EXCEEDED.

5. Special Assessments

Developer and District covenant and agree:

- A. General Requirements. District shall levy special assessments in the amount required by this Agreement and in the manner provided by law and in accordance with the provisions of this Agreement. Unless the City agrees otherwise, the Developer will levy all special assessments attributable to a particular type of improvement at one time and no buildable lot shall be exempted from such levy. Levy of special assessments shall be on a front foot basis unless City agrees otherwise. Levies attributable to particular improvements shall in no way preclude subsequent levies for enhancements or additional improvements of the

same kind. Unless otherwise directed by the City, the District shall cause all sums collected on special assessments to be immediately applied in payment of outstanding warrants of the District in the manner provided by law.

B. Levy of Special Assessments. Except as may otherwise be agreed to by City, all said District's levy of special assessments shall be made in such a manner so as to assure that the entire burden of the levy is borne on an equitable basis by lots or parcels or portions of lots or parcels which are truly buildable sites. If any lots, parcel or part thereof, or other area within the area to be developed is not a buildable site by reason of insufficient size or dimensions or by reason of its having been acquired for any public purpose, or by reason of easement of similar burdens or by reason of floodway or flood plain restrictions, or for any other reason, then no portion of the total amount to be levied for special assessments shall be levied against said unbuildable lot, parcel, or other area, and the amount that otherwise would have been levied against same shall be spread and levied against the lots or parts thereof, within the area to be developed which are buildable sites. Attached hereto as Exhibit "F" is a depiction which the District and its Engineer represent to accurately show the portions of the Subdivision which are buildable property. Except as City may otherwise agree, costs shall be allocated and special assessments shall be levied on a front footage basis.

C. Notice to City. At least forty-five (45) days prior to the date of any hearing of the Board of Trustees of the District to be held for the purpose of determining apportionment of debt and/or equalizing or levying special assessments against property benefitted by any improvements constructed by District, submit to City in writing as regards each improvement or acquisition:

- 1) A detailed schedule of the proposed special assessments and the total amount of such specials;
- 2) A detailed breakdown of all costs that are proposed not to be specially assessed (general obligation) and the total of such unassessed costs;
- 3) A plat of the area to be assessed;
- 4) A full and detailed statement of the entire cost of each type of improvement, which statement or statements shall separately show:
 - (a) the amount paid to contractor;
 - (b) a special itemization of all other costs of the project, including, but not limited to, all engineering fees, attorneys' fees, testing expenses, publication costs, financing costs, including, but not limited to, interest on all warrants to date of levy or funding by issuance of bonds if later, estimated fiscal agent's warrant fees and bond fees and other fees incurred in connection with construction and/or financing of the improvements;
 - (c) a special itemization of all costs of the District not itemized in (a) or (b) above;

- 5) The type and estimated costs of any improvement of the District, if any, not included in (a), (b) or (c) above;
 - 6) Notice of the date, time and place of such proposed meeting of the District's Board of Trustees.
- D. Time of Levy. District will not unreasonably delay acceptance of an improvement and the District shall levy special assessments for all improvements within six (6) months after acceptance of the improvement.
- E. Interest Rate on Levy. In setting the rate of interest for special assessments levied by the District, the District shall set same at the maximum authorized by law for special assessments.
- F. City Predetermination of Compliance. District shall not proceed with any levy of special assessments except in accordance with the terms hereof and only after City has determined the proposed special assessments to be in accordance herewith.
- G. Lot Splits. Should any of the platted lots per Exhibit "B" be split or replatted, all special assessments levied on the lot will be paid at the time of such lot split or replat, unless the City otherwise agrees.
- H. Estimation of Bond Fees to be Specially Assessed. If special assessments are timely levied and unless circumstances at the time of levy shall make it apparent to the contrary, it shall be assumed in estimating the amount of specially assessed debt (non-general obligation debt) to be financed by bonds and resulting bond fees to be incurred in respect to issuance of bonds on account thereof, that by time of bond issuance, sixty percent (60%) of the total amount specially assessed shall have been collected and shall have been used to retire warrants and that the specially assessed portion (non-general obligation portion) of the debt of the District outstanding at date of bond issuance will have been reduced by a similar dollar amount.

6. Maximum General Obligation Debt

Developer and District warrant, covenant and agree that, notwithstanding any other provision of this Agreement to the contrary, the total amount of general obligation debt of the District arising from the District's activities and expenditures in connection with all phases of the construction of the improvements authorized herein shall not in the aggregate, in any event, exceed the total of the amount of general obligation authorized by Subsections 4-A, 4-B, 4-D, 4-F, 4-H, 4-I, 4-J, 4-L, 4-M and 4-N hereof. To the extent such general obligation of the District would have otherwise exceeded such total at date of levy of special assessments, the general obligation of the District shall be reduced and the amount specially assessed for paving, storm sewer and sanitary sewer improvements shall be increased.

7. Formula to be Applied by Both District and City

The method herein provided for computing special assessment and general obligation for the improvements herein authorized shall be binding on both the District and the City. City covenants and agrees that should City annex the area to be developed, or any part thereof, prior to District's levy of special assessments for the improvements authorized in Section 2 hereof, supra, and thereby succeed to said District's power to levy special assessments, that City will levy same in accordance with Sections 4 and 5 supra. All parties covenant and agree that nothing in this Agreement shall be construed so as to oblige the City to annex the Development Tract or any part thereof.

8. General Covenants of Developer and District

Developer and District covenant, warrant and agree that:

- A. Compliance with City Construction Requirements. District will abide by and incorporate into all contracts for improvements the provisions required by the regulations and standards of the City pertaining to construction of public improvements in Subdivisions and within street right-of-way and testing procedures therefor.
- B. Preconstruction Contracts. That prior to or contemporaneously with the filing of the final plat, the District will present to the City Administration for the benefit of the City binding contracts in full force and effect between the District and contractors requiring the timely and orderly installation of improvements authorized herein, and a binding agreement between the District and its fiscal agent providing for the placement of warrants and/or bonds of the District to finance the cost of the improvements authorized herein, and said fiscal agent's approval as to the terms of this Subdivision agreement.
- C. Easements. Prior to commencement of construction of improvements, District will obtain and file of record permanent easements for all sanitary and storm sewer lines, utilities and any other improvements authorized by Section 2 hereof, supra, which are not situated on dedicated street right-of-way. Said easements shall be granted to District and City by Developer at no cost to District or City and shall be in form satisfactory to City's Attorney and City's Engineer.
- D. Entrance Signage and Median Landscaping and Fencing. Installation and maintenance of entrance signs or related fixtures and any median landscaping and related fixtures and any Subdivision perimeter fencing shall be paid for by the Developer or the Subdivision's property owners' association. Plans for such proposed improvements that are to be located in public right-of-way on public property and a proposed maintenance agreement for the improvements with the Developer or property owners' association must be submitted to the City for review and approval prior to the installation of improvements.
- E. Utility Refunds/Rebates. That to the extent any costs of the external water supply main described in Section 2-F shall not have been specially assessed, all refunds, rebates and allowances of every kind and description received from Metropolitan Utilities District in respect to further water connections to such water main and all other refunds and rebates given in respect to any of the improvements financed by the District shall belong to the District and not the Developer, and Developer hereby assigns any right Developer may have thereto to District.

- F. Underground Electrical Refund/Rebate. All contract charges for underground power authorized to be paid by District to OPPD, including both the basic charges and refundable charges, together with all other charges and costs incident thereto, shall be specially assessed against property within the area to be developed. Any refund of the refundable portion of the underground electrical service charge for a particular lot which shall be made by OPPD to District or its successors shall be credited as follows:
- (1) If the refund is prior to the levy of special assessments for underground electrical service, said refund shall be credited as a reduction in the total cost of the underground electrical services to be levied against said lot.
 - (2) If the refund is after the date of the levy of special assessments for underground electrical service, said refund shall be credited as a payment on the balance owing on the special assessment levied against said lot in connection with underground electrical service for said lot.
 - (3) If the refund is after the date of levy and payment in full of special assessment, said refund shall be repaid to persons paying the special assessment or their assignees.
- G. District Funding re Annexation Issues. The District shall not sue nor fund any lawsuit to prevent any annexation of property within the District by the City, except in the event the City annexes only a part of the District, the District does not waive its right to contest a proper division of assets and liabilities.
- H. This section intentionally left blank.
- I. Administration. As regards this Agreement and its implementation:
- (1) No separate administrative entity nor joint venture, among the parties, is deemed created by virtue of this Subdivision Agreement.
 - (2) The administration of this Agreement shall be through the offices of the undersigned officers for their respective entities.
- J. Remedies. That in addition to whatever rights of enforcement of the terms hereof are herein granted to any party, each party may avail itself of all other remedies it may have to enforce the terms hereof at law or equity. By way of specification and not by way of limitation, each of the parties expressly reserve to and right to specifically enforce full compliance of the terms and conditions of this agreement by mandatory or prohibitory injunction.
- K. Covenants, Etc. The covenants and agreements of Developer and the District set forth in this Agreement are joint and several and shall constitute covenants running with the land.
- L. Non-Discrimination. In the performance of this contract, neither the District nor the Developer shall discriminate against any parties on account of race, national origin, sex,

age, disability, political or religious affiliations in violation of federal and state laws or local ordinances.

9. Partial Annexations

The parties mutually agree that in the event City shall annex a part of the area shown on Exhibit "B" hereto and said annexation shall not include the then entire territory of the District, then a division of assets and liabilities of the District in connection with such partial annexation of the District shall be made as may be agreed by City and District, and if they are unable to agree, then in the manner provided in Section 31-766 of the Nebraska Revised Statutes, as amended and in effect at the time. All parties agree that the City shall be under no obligation to annex the area to be developed of any part thereof.

10. Recreation/Open Space

The District shall not be purchasing or otherwise acquiring real estate or expending or using its funds or credit on any land or recreational facility. Developer is developing Outlot A for the purpose of a pond and related features as a privately owned aesthetic amenity of the Subdivision, and no funds or credit of the District shall be expended or used in respect thereto. Such pond and amenities shall be perpetually maintained by the Property Owners Association of the Subdivision, the conveyancing document for which and the articles of association of the Property Owners' Association to perpetually maintain it shall be in form satisfactory to the City. Outlot A is an unbuildable lot within the meaning of subsection 5-B supra.

11. Construction Standards and Procedures

District and Developer further agree that, as to all improvements constructed by or on behalf of the District or Developer or under their control or direction, that:

- A. All improvements will be constructed in strict accordance with plans and specifications and locations approved in writing by City's Engineer and in strict accordance with the City's policies and minimum standards and requirements of construction and testing procedures therefor, and directions of City Engineer, and that upon completion of construction thereof, District shall furnish to City a certificate from its consulting engineer so certifying.
- B. District shall cause appropriate testing of materials and work finished in respect to the construction of improvements and shall furnish City's engineers with copies of test results. City's engineers may order additional paving core tests, sewer televising or other tests, the cost of which shall be paid by District to the party performing the testing procedures, which additional testing costs shall also be a cost of the improvement. Neither the Developer nor the District nor any other party shall be entitled to rely upon any inspections made by the City for any purpose whatsoever. The sole responsibility for proper inspection and certification as to completion remains with the District and its engineers.
- C. District shall cause "Construction Record Drawings", in reproducible form, and specifications for all such improvements that District shall have heretofore or hereafter constructed within the area to be developed to be furnished to City, in triplicate, promptly and without cost to the City. All such plans shall be submitted on reproducible mylar, except where the City agrees otherwise. The engineering costs attributable to the production of said "Construction Record Drawings" shall be an engineering cost within the

meaning of Subsection 1-C, supra. District shall, prior to the District's advertising for bids for any improvement within the area to be developed, require District's Engineers to file with the City said Engineers' separate written assurance and agreement that said "Construction Record Drawings" will be prepared and filed with the City upon the completion of each improvement.

- D. All such improvements shall comply with all applicable federal and state laws and regulations in general and with all applicable ordinances and regulations of the City in reference to construction use, operation and maintenance.
- E. In the event that City's Engineer determine that there is anything in the construction, maintenance or operation of any such improvements which will, in the opinion of City's Engineers, be detrimental to any other improvement or utility constructed or to be constructed in the same street right-of-way or easementway, District will, on notice thereof, promptly cause its engineers to jointly review and evaluate the problem with City's engineer and formulate a plan for corrective action which shall be implemented by District at District's cost.
- F. District shall require each contractor to furnish a performance and maintenance bond, with District and City as joint and several obligees thereon, which bond shall be satisfactory to the City as to surety, form and terms.

12. Administrative Fee

District agrees that it will pay to City an amount equal to two percent (2%) of the actual construction cost of all improvements constructed by or for the District, including electrical and water distribution systems constructed pursuant to contracts between the District and Omaha Public Power District or Metropolitan Utilities District, as well as all other improvements authorized under Section 2, supra, as reimbursement to City for engineering, legal and administrative expenses incurred by City in connection with administration of this Agreement. An estimated payment shall be made on the basis of two percent (2%) of the construction cost estimate for the various improvements computed by the Engineer and shall be paid to the City at the time the City approves the plans and specifications of the improvements. At time of District's acceptance of the work, the actual fee shall be determined on the basis of two percent (2%) of final construction cost and any variance between the estimated fee payment and the actual fee shall be adjusted and paid by District or refunded to District, whichever the case may be.

Said fees shall be a cost of the improvements within the meaning of Subsection 1-C, supra, and shall be prorated among improvements in the same ratio that the entire cost of each improvement bears to the entire cost of all improvements constructed by the District.

13. Sidewalks

Developer, at no cost to the District or City, shall install or cause to be installed sidewalks along both sides of Southport Parkway and Port Grace Street prior to opening of any commercial building thereon. Sidewalks along segments #1, #2 and #3 of 120th Street and along 126th Street and Giles Road may be deferred until the City determines that there is a need for same. All sidewalks along 120th Street shall be at Developer's expense and the credit of the District shall not be used for such construction. All

sidewalks, whenever installed, shall be constructed in accordance with the City sidewalk regulations and policies as they may from time to time exist, and shall be at property owners' expense.

14. Maintenance of Improvements

The District shall maintain and keep in good repair all improvements authorized to be constructed within the boundaries of the District pursuant to Section 2, supra. Prior to expending District credit or funds on any major repairs, District shall first make a determination that the project would not be covered by the performance bond and/or any separate maintenance bond executed by the contractor involved in the original construction of said improvement. Repairs in respect to which the District's share of the cost is reasonably estimated to be more than Ten Thousand Dollars (\$10,000) shall be subject to prior approval of City.

15. Sewer Connections

The parties mutually agree as follows:

- A. Term of Connection. Subject to the conditions and provisions hereinafter specified, the City hereby grants permission to the District to connect its sewer system to the sewer system of the City for a period not to exceed twenty (20) years, in such manner and at such place or places designated on plans submitted by the District and approved by the City.
- B. City Ownership of Outfalls. Upon the completion of any Sanitary Outfall Sewer built by the District, the City shall be granted and it shall accept control and operation of the facility. The District shall convey by proper legal instrument all its rights, easements, title, and interest in such Sanitary Outfall Sewer to the City. The form of acquisition shall be upon approved City forms.
- C. Connection Permit. The City shall have exclusive control over connections to the sewer system whether inside or outside the District's boundaries, and the District shall not, without the prior written approval of the City, permit any sewer lines or sewers outside the Subdivision to be connected to the sewer or sewer lines within or without the District. Any fee resulting from such a connection shall be paid to City, except as City shall otherwise agree.
- D. Sewage. At all times all sewage and discharge from and through said District shall be in conformity with the ordinances, regulations and conditions applicable to sewers and sewage within the City as now existing and as from time to time may be amended.
- E. Connection Permit and Fees. Before any connection from any premises to the sewer system of the District may be made, a permit shall be obtained for said premises and its connection from the proper department of the City, which permit shall be obtainable on the same terms, conditions, and requirements of the City applicable from time to time to permit property outside the City to connect to the sewer system of the City; it being expressly understood that the City reserves the right to collect all connection charges and fees as required by City ordinances or rules now or hereafter in force; all such connections shall comply with minimum standards prescribed by the City.

- F. City Right of Disconnection. Notwithstanding any other provisions of this Agreement, City retains the right to disconnect the sewer of any industry, or other sewer user within the area to be developed, which is discharging into the sewer system in violation of any applicable ordinances, statute, rule, or regulation.
- G. Compliance With City Regulations, Etc. The District and Developer expressly agree that they are and shall be:
- (1) Bound by and to any provisions of any ordinances, rules and regulations hereafter made and adopted by the City of La Vista applicable to sanitary and improvement districts whose sewers connect directly or indirectly with or into sewers or sewage systems of the City of La Vista; and
 - (2) Bound by any terms and provisions which by ordinance, resolution, or rule of the City of La Vista shall hereafter adopt or provide as being applicable to or required in contracts with sanitary and improvement districts or in order to permit or continue the discharge of any sewage from a sanitary and improvement district to flow into or through any part of the sewer or sewage system of the City of La Vista or sewer within its zoning or health jurisdiction.
- H. Easements to City. Developer and District shall, and by these presents do, grant unto City the following:
- (1) A perpetual easement and license to connect to and transmit sewage through the sewer system of District for transportation of sewage as City shall determine appropriate, for which connection or transportation City shall not be required to pay any connection fee or connection charge to District.
 - (2) A perpetual easement and license to City, its employees, representatives and agents, to enter upon and into the property, streets, roads and public ways and easements of District for the purpose of surveying, excavating, constructing, reconstructing, replacing, relocating, inspecting, maintaining, repairing, cleaning out, or otherwise improving the sewer system of the District.
- I. Separate Sewer Agreement. The use, operation and other matters pertaining to sanitary sewers and outfall sewer to be constructed pursuant to this Subdivision Agreement are governed by a separate "Sewer Agreement" entered into between the City and the District, and District, Developer and City agree to be bound by the terms of such Agreement. District and Developer do represent that the representations therein made are truthful and the agreements therein made will be faithfully performed by District and Developer.

16. Sewer Connection Fees

- A. La Vista Special Sewer/Drainage Fee ("La Vista Fee"). The City of La Vista imposes a special sewer/drainage fee ("La Vista Fee"), which is currently \$3,600 per acre for commercial tracts. The amount of fee at current rates (which is subject to change) is \$325,227.60 for the tract, computed as follows:

<u>Lot</u>	<u>Acres</u>	<u>Amount</u>
1	2.957	\$ 10,645.20
2	24.668	\$ 88,804.80
3	2.812	\$ 10,123.20
4	2.807	\$ 10,105.20
5	4.117	\$ 14,821.20
6	3.001	\$ 10,803.60
7	5.277	\$ 18,997.20
8	3.269	\$ 11,768.40
9	6.715	\$ 24,174.00
10	9.630	\$ 34,668.00
11	7.084	\$ 25,502.40
12	3.638	\$ 13,096.80
13	2.686	\$ 9,669.60
14	4.057	\$ 14,605.20
15	4.097	\$ 14,749.20
16	<u>3.526</u>	<u>\$ 12,693.60</u>
Total	90.341	

Total Tract Connection Fees
at current rates: \$325,227.60

The foregoing acreages and amounts do not include additional acreage to be acquired by Developer by purchase of surplus right-of-way, which additional acreages shall be subject to the City's sewer connection fee, and the foregoing acreages and amounts of sewer connection fee shall be increased accordingly to reflect increase in size of lots, where applicable. Outlot A is an unbuildable lot and will at no time be connected to the sanitary sewer.

- B. Time of Collection. The connection fees charged in respect to any lot at the time it becomes due shall be adjusted to reflect any and all increases in connection fee rates occurring subsequent to this Agreement and prior to the time of due date of the fee. If any lots within the Subdivision are subject to connection fees imposed by Sarpy County, the amount of the Sarpy Fee shall be collected by the City on behalf of Sarpy County and receipt for payment for each fee issued by City.
- C. When Due. Fees shall become due and owing and shall be paid in full in respect to each lot or parcel upon application for a building permit or sewer connection permit for the lot, unless sooner required by the provisions of subsection 5-G, supra. If a property is connected without benefit of the proper City permit, it shall be subject to disconnection at the cost of the owner and/or person causing such connection shall be subject to applicable penalties. In no event shall a property be served by the sewer system unless all fees and charges are paid in full.
- E. Additional Plats. In the event Developer shall plat or replat additional lots within the Development Tract, this Agreement shall be amended by the parties to provide payment of the then current fee for the additional lots, any additional fee to be paid at time of plat

approval(s) and prior to issuance of any building or sewer permits by City in such additional platted or replatted area.

- F. City Sewer Tap, Inspection and Use Fees to be Paid. The City may collect, within the Development Tract, the City's sewer tap and inspection and permit fees, and its sewer use fees as now or hereafter existing. Such fees shall be in addition to the payments provided for in this Section 16.
- G. Issue of Sewer Permit. No sewer permit will be issued by the City for any improvement or construction on any lot or parcel in the Subdivision until all sewer connection fees for such lot are paid to the City.

17. District Mill Levy.

The District and Developer agree:

- A. Annual Levy. District shall annually levy a minimum ad valorem property tax levy of no less than \$0.88 (88¢) per \$100.00 of taxable valuation for tax collection years through the year that District is capable of and pays all warrants on a cash basis or until they are funded by bonds. Unless otherwise agreed to by City, at least \$0.45 (45¢) per \$100.00 valuation of such levy shall be for debt retirement. Thereafter, District shall levy minimum debt retirement levies and general fund levies as hereinafter provided.
- B. After All Warrants are Paid. Commencing in the year following the year in which District pays its outstanding warrants through issuance of bonds, the District shall levy a mill levy determined as follows:
 - (1) Cash Flow Projection. On or about June 1 of each year following the issuance of District bonds, the District's fiscal agent will deliver to the City Treasurer, for review and approval by City, a cash flow projection by year for a fifteen (15) year period ("cash flow projection"). The cash flow projection shall include, but not be limited to, existing and projected taxable valuation, a projected annual debt service levy, existing and projected cash receipts, cash disbursements and available balances in the debt service fund. The projected annual debt service payments shall be based on a twenty (20) year or shorter bond principal payback, with not less than fifty percent (50%) of principal payback to occur within the first ten (10) years from date of issue, with payment of principal and interest to begin no later than one (1) year after actual bond issue date. District's fiscal agent shall, not less often than annually, cause such cash flow projection to be updated and filed with the City.
 - (2) Debt Retirement Levy. Commencing with District's levy made for the year following District's funding of all of its warrant indebtedness, the District's Board of Trustees agrees that, in addition to its general fund levy, it will levy for debt retirement purposes a levy sufficient to timely retire the existing and projected future debt obligations as revealed by the cash flow projection.
 - (3) General Fund Levy. District's Board of Trustees agrees that, commencing in the year 2001, in conjunction with and in addition to the levy for debt retirement, it shall annually levy a tax rate for its general fund purposes sufficient to pay all general

operating expenses of the District, including but not limited to, street lighting, water hydrant fees, maintenance, repair and reconstruction costs required under Section 14, supra, and general administrative expenses, and to fully comply with the Nebraska Budget Act, including an amount sufficient to timely retire general fund warrants and accruing interest thereon.

- (4) Minimum Levy. Notwithstanding any provision above to the contrary, the District's Board of Trustees agrees that until District's debt is paid in full, the District's levy shall in no event be less than \$0.88 (88¢) per \$100.00 valuation until all of such debt is converted to bonds, and thereafter the District's levy shall in no event be less than the total of the following:
- (a) A general fund levy in compliance with Subsection 17-B(3) above;
 - (b) A bond levy sufficient to timely raise sufficient funds for the District to make timely payments in full of all bond principal and interest payments as they become due.

18. Additional Special Covenants and Agreements

Developer and District further covenant and agree as follows:

- A. Outfall Sewer. The sanitary sewer commencing at the manhole in the vicinity of 120th Street and Harrison Street and extending easterly to its point of connection with the Omaha seventy-two inch (72") interceptor sewer, including the siphon under the West Papillion Creek, shall be outfall sewer and shall be owned by and the property of the City upon its completion and acceptance by the District. The point of connection with the Omaha seventy-two inch (72") interceptor shall be as shown on Exhibit "C-2."
- B. Improvement of 120th Street. Paving of 120th Street involves four (4) jurisdictional segments with paving, storm sewer and related improvements to be constructed through an interlocal agreement between District and Sarpy County, and approved by the City. The cost of the improvements of the individual segments will be defrayed as follows:
- 1) Segment 1. That segment commencing at Giles Road and proceeding diagonally to the actual section line in 120th Street in the vicinity of the north point of Lot 1. This segment is not on the section line, does not border on City's corporate limits, and will be paid by District. Both lots bordering this segment (Lot 1 and 2) have been provided unrestricted access points and property along each side of this segment shall be assessed for fifty percent (50%) of the cost of the street improvement to a combined width of thirty feet (30'). The balance of width above thirty feet (30') shall be general obligation.
 - 2) Segment 2. From the north point of Lot 1 north to the east one-quarter corner of Section 18-14-12 (approximately 46 feet north of the common lot line of Lots 15 and 12 of the Subdivision) shall be deemed to abut the corporate limits of City. As to this segment Developer shall be assessed fifty percent (50%) of the cost of the first thirty feet (30') of paving width and any balance above thirty feet (30') shall be general obligation. Access points shall be as shown per Exhibit "B".

- 3) Segment 3. 120th Street from the aforementioned east one-quarter corner of Section 18-14-12 northerly to the north edge of Lot 16. As to this segment Developer shall be assessed fifty percent (50%) of the cost of the first thirty feet (30') of paving width and any balance above thirty feet (30') shall be general obligation. Access points shall be as shown per Exhibit "B".
- 4) Segment 4. From the north edge of Lot 16 in a northerly and westerly direction under I-80 to its connection with Harrison Street in the vicinity of 123rd Street. It is contemplated that the County will pay for this segment and no contribution of District or City shall be made to the cost thereof.

the location of which segments are referred to herein as segments "1," "2," "3," and "4," respectively.

- C. Ingress/Egress Easements Lots 4-9, Inclusive. The entire cost of improving, reconstruction, maintaining or repairing improvements on or in the permanent ingress and egress easements for infrastructure and utilities therein on Lots 4-9, inclusive, shall be at property owner expense and no funds or credit of the District shall be expended or pledged in respect thereto. Construction, reconstruction, maintenance and repair of such facilities shall be entirely at owner expense or that of the Property Owners Association, and shall be covered by the Southport East Declarations and Covenants etc. In the event that Developer shall request and the City shall approve substitution of dedicated public standard width streets in lieu of the permanent ingress and egress easements, the credit of the District may be used for such purpose and the entire cost thereof shall be specially assessed.
- D. City may employ its regular engineers or independent engineers, as it may choose for different matters or issues pertaining to the Subdivision, and as used herein "City Engineer" shall mean the engineer or engineering firm so employed by City in respect to the particular review, matter or issue.
- E. Developer shall submit to City restrictive covenants for commercial use within the Subdivision for City's review and approval. City site plan approval shall be required for development of all lots within the Subdivision.
- F. Traffic Study. City and Developer have cooperated in having a traffic study done for the Subdivision for the purpose of projecting future traffic volume and eventual street capacity requirements. Developer and City shall share the cost of the study on the basis of two-thirds (2/3) for the City and one-third (1/3) for the Developer. The estimated cost of the study is \$30,000.
- G. Enhanced Landscaping of 126th Street and Other Right-of-Way. As part of the Giles Road corridor tract and a commercial development in excess of 100 acres, inclusive of street right-of-way, the general obligation of the District may be used to fund specific landscaping enhancements to the extent provided for herein.
 - (1) Right-of-Ways. As a part of the Southport East Design Guidelines, the areas between lot lines and actual paving of Interstate I-80, 126th Street and Giles Road and portions of 120th Street are to be landscaped by the Developer in accordance

with the applicable landscaping provisions of such Guidelines and are to be maintained in perpetuity by the Property Owners Association. The areas to be landscaped are shown on Exhibit "G" attached hereto. The District may generally obligate the cost of sod, together with all irrigation for public right-of-way located in Sections 1, 2 and 4, in the summer/fall of 2001 in an amount not to exceed \$0.65 per square foot for the total general obligation costs thereof. In regard to Sections 3 and 5, the District may generally obligate the cost of sod, together with all irrigation for public right-of-way for that distance which is parallel to the median located in 120th Street as shown on Exhibit "G" In regards to Sections 6 and 7, and those portions of Sections 3 and 5 which lie north of the median, the lot owner adjacent to the right-of-way shall be responsible for the cost of sod, together with all irrigation in the public right-of-way at the time of development of the lot, or portion thereof owned by said owner, which obligation shall be assumed by Developer's grantees. The Developer and/or the Property Owners Association shall pay the cost of any sod, together with all irrigation, in excess of \$0.65 per square foot for Sections 1, 2, 4 and those portions of Sections 3 and 5 which run parallel to the median located in 120th Street as shown on the exhibit.

(2) Landscaping of Medians.

- (a) Developer Paid Landscaping. In regard to the medians located in 126th Street, 120th Street and Southport Parkway, the Developer shall be responsible for any irrigation in the median, grading preparation, sod and planting of trees 3" to 3 ½" in diameter and maintenance. Such landscaping shall be installed within the summer/fall of 2001 in both 120th Street and Southport Parkway, such improvements to 126th Street, and the timing of installation, shall be at the option of the City.
- (b) City, at its option, may require enhanced landscaping consisting of large spade trees (5" plus in diameter), in which event District funds may be utilized to pay the cost differential between the larger trees and smaller trees of 3" to 3 ½" diameter, but such enhancement paid with District funds shall not exceed \$40,000 in cost.

(3) Permits and Easements. Developer and District shall obtain all necessary easements and consents from Sarpy County and the State of Nebraska before commencing landscaping, which obtaining of permits Developer and District agree that they will diligently pursue.

- H. Future Street Improvement. Notwithstanding the initial construction of extra lanes and width of paving and turning lanes to accommodate anticipated growing traffic volumes within and bordering the Subdivision, it is anticipated that, depending upon the character of buildout of the Subdivision and the Development Tract, that at some future time there may be a need for additional street improvement. Developer agrees that it will cooperate with City in the construction and financing of any such needed future improvements and acquisition of street right-of-way for same, including, to the extent appropriate under the circumstances, levy of special assessments against benefited property within the Subdivision to defray the cost of such improvements.

- I. Park and Recreation Impact Fee. Land within the Development Tract shall be subject to City park and recreation impact fees that it may from time to time generally impose.
- J. Excess Right-of-Way. City agrees that in respect to a piece of right-of-way that will be situated between Lot 2 and the finalized right-of-way of 120th Street that in the event that City determines that it is excess property, that City will sell said parcel to Developer at the same average per acre price that Developer paid for the acquisition of the Southport East tract, i.e. \$75,000 per acre.

19. Commercial Building Design Guide and Criteria

City's Commercial Building Design Guide and Criteria ("Commercial Criteria") dated September 15, 1999, a copy of which is attached as Exhibit "D" hereto and made a part hereof, shall be applicable to commercial development within the Development Tract, and Developer agrees to abide by the provisions thereof as they may from time to time be amended or modified by City. The parties agree that prior to issuance of a building permit, the City and the Developer shall have mutually agreed upon a specific design plan that complies with such criteria. Developer has presented specific design criteria in the form of the "Southport East Design Guidelines" as the design criteria to be utilized in the Development Tract, and City has approved and agreed to such Guidelines as satisfying the design requirements of the Commercial Criteria. A copy of the Southport East Design Guidelines are attached to this agreement as Exhibit "D". Generally, the Southport East Design Guidelines take the place of Appendix A, B, and C of the City's Commercial Building Design Guide and Criteria dated September 15, 1999. It shall be the City Administrator who shall determine which design criteria is applicable in the event of a conflict between the two documents referenced herein.

20. Agreements Herein Constitute Covenants Running with Land

This Subdivision Agreement and the agreements and understandings herein constitute covenants running with the land and shall be binding upon the Developer, its successors, assigns, heirs, lenders, mortgagees and others gaining or claiming an interest or lien within the Subdivision tract.

21. Exhibit Summary

The Exhibits proposed by E & A Consulting Group, Inc., engineers for District and Developer, are attached hereto and made a part hereof are as follows:

- Exhibit "A": Metes and bounds legal description for Southport East Subdivision.
- Exhibit "B": Final plat of Southport East, being Lots 1 through 16, inclusive, and Outlot A dated November 20, 2000, with first revision dated December 5, 2000 and second revision dated January 5, 2001.
- Exhibit "C-1": Pavement drawing showing paving, storm sewer sizing inlets and related appurtenances, together with delineation of that portion of paving that may be general obligation, dated April 17, 2001.
- Exhibit "C-2": Storm sewer drawing dated March 6, 2001, without revision.
- Exhibit "C-3": Sanitary sewers dated March 6, 2001, without revision.

- Exhibit "D": La Vista Commercial Building Design and Criteria.
- Exhibit "E": Illustration of internal street intersections, showing portions thereof to be general obligation and portions to be assessed.
- Exhibit "F": Developer's determination as to buildable lots within the area to be developed.
- Exhibit "G": Right-of-way to be landscaped.
- Exhibit "H": Southport East Design Criteria.*

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

*Document not in suitable form for recording purposes. Copy on file in the office of the City Clerk.

ATTEST:

Kelly Smith
Secretary

R. S. LAND, INC., a Nebraska corporation

By *Ronald E. Smith*
Ronald S. Smith, President

SOUTHPOINTE PARTNERS I, a Nebraska limited liability Company

By *[Signature]*
Managing Member

ATTEST:

Kelly Smith
Clerk of Said District

SANITARY AND IMPROVEMENT DISTRICT NO. 218 OF SARPY COUNTY, NEBRASKA

By *Ronald E. Smith*
Chair of the Board of Trustees

ATTEST:

[Signature]
City Clerk
SEAL
INCORPORATED
FEBR. 23, 1969
SARPY COUNTY, NEBRASKA

CITY OF LA VISTA.

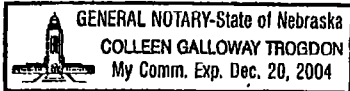
By *[Signature]*
Harold Anderson, Mayor

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF Douglas)

On this 17th day of April, 2001, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Ronald S. Smith, personally known by me to be the President of R. S. LAND, INC. and the identical person whose name is affixed to the foregoing Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed.

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



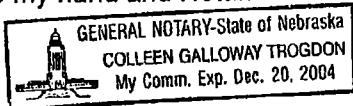
Colleen Galloway Trogdon
Notary Public

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF Douglas)

On this 17th day of April, 2001, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Roger Langpan, personally known by me to be the Managing Member of SOUTHPOINTE PARTNERS I, and the identical person whose name is affixed to the foregoing Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed.

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



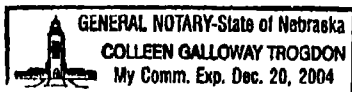
Colleen Galloway Trogdon
Notary Public

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF Douglas)

On this 17th day of April, 2001, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Ronald E. Smith, personally known by me to be the Chair of the Board of Trustees of Sanitary and Improvement District No. 218 of Sarpy County, Nebraska, and Kelly G. Smith, to me personally known to be the Clerk of the Board of Trustees of Sanitary and Improvement District No. 218 of Sarpy County, Nebraska, the identical persons whose names are affixed to the foregoing Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed.

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



Colleen Galloway Trogdon
Notary Public

ACKNOWLEDGMENT OF NOTARY

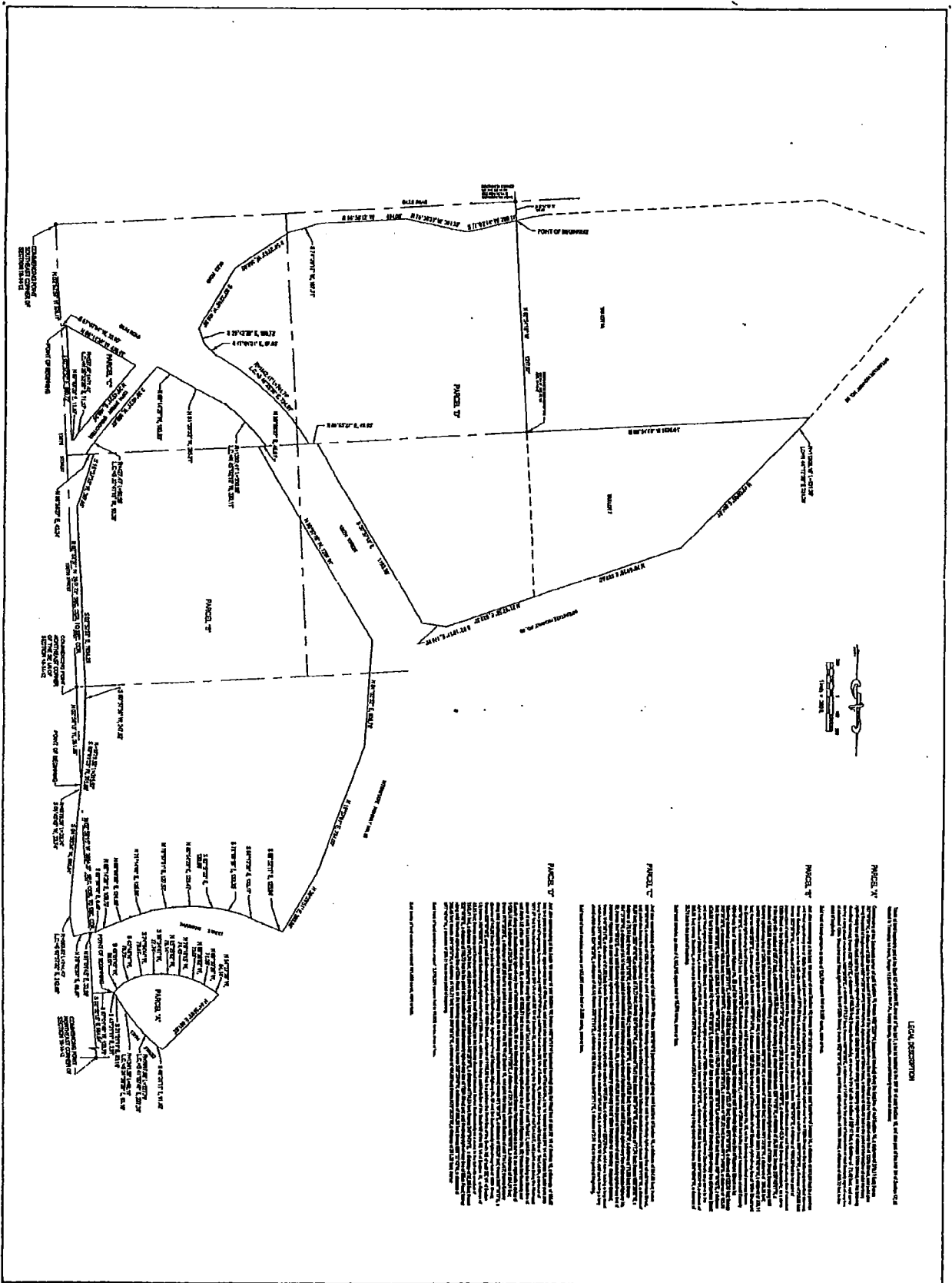
STATE OF NEBRASKA)
COUNTY OF Sarpy)

On this 19th day of April, 2001, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Harold Anderson, personally known by me to be the Mayor of the City of La Vista and Rita Ramirez, to me personally known to be the City Clerk of the City of La Vista, the identical persons whose names are affixed to the foregoing Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed.

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



Brenda Sedlacek
Notary Public



NO.	DATE	REVISION
1	11/17/00	ISSUED
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EXHIBIT "A-1"
 COMPOSITE PLAT

SOUTHPORT
 LA VISTA, NEBRASKA

E&A CONSULTING GROUP, INC.
 ENGINEERS • PLANNERS • SURVEYORS

ONE E COMET
 SUITE 101
 P.O. BOX 1010
 LA VISTA, NE 68028

PHONE 402-833-1111
 FAX 402-833-1112

EXHIBIT " A2 "

SURVEYOR'S CERTIFICATE

I hereby certify that I have made a ground survey of the subdivision described herein and that temporary monuments have been placed on the boundary of the within plat, and that a bond has been furnished to the City of La Vista to ensure placing of permanent monuments and stakes at all corners of all lots, streets, angle points and ends of all curves in SOUTHPORT EAST (the lots numbered as shown), being a platting of part of the East 1/2 of Section 18; and also part of the NW 1/4 of Section 17; all located in Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of said Section 18; thence $N02^{\circ}52'57''W$, (assumed bearing) along the East line of said Section 18, a distance of 578.11 feet; thence $S87^{\circ}07'04''W$, a distance of 33.00 feet to the point of intersection of the Northerly right-of-way line of Giles Road and the West right-of-way line of 120th Street, said point also being the point of beginning; thence $N60^{\circ}14'39''W$ along said Northerly right-of-way line of Giles Road, a distance of 458.49 feet to the point of intersection of said Northerly right-of-way line of Giles Road and the Easterly right-of-way line of relocated 120th Street; thence along said Easterly right-of-way line of relocated 120th Street, on the following described courses; thence $N39^{\circ}45'21''E$, a distance of 486.35 feet; thence Northeasterly, on a curve to the left with a radius of 527.47 feet, a distance of 71.42 feet, said curve having a long chord which bears $N35^{\circ}52'36''E$, a distance of 71.37 feet; thence $N87^{\circ}03'33''E$, a distance of 11.97 feet to the point of intersection of said Easterly right-of-way line of relocated 120th Street and said West right-of-way line of 120th Street; thence $S02^{\circ}52'57''E$ along said West right-of-way line of 120th Street, a distance of 660.72 feet to the point of beginning.

Said tract of land contains an area of 128,790 square feet or 2.957 acres, more or less.

And also commencing at the East 1/4 corner of said Section 18; thence $N02^{\circ}58'15''W$ (assumed bearing) along said East line of Section 18, a distance of 561.08 feet to a point on said West right-of-way line of 120th Street, said point also being the point of beginning; thence along said West right-of-way line of 120th Street on the following described courses; thence Southerly, on a curve to the left with a radius of 5779.58 feet, a distance of 315.92 feet, said curve having a long chord which bears $S03^{\circ}01'33''W$, a distance of 315.88 feet; thence $S00^{\circ}57'58''W$, a distance of 247.62 feet to a point on the South line of the NE 1/4 of said Section 18; thence $S02^{\circ}52'57''E$, a distance of 1034.29 feet to the point of intersection of said West right-of-way line of 120th Street and the Westerly right-of-way line of said relocated 120th Street; thence along said Westerly right-of-way line of relocated 120th Street on the following described courses; thence $S16^{\circ}37'35''W$, a distance of 307.55 feet; thence $N86^{\circ}55'27''E$, a distance of 43.34 feet; thence Southwesterly, on a curve to the right with a radius of 427.47 feet, a distance of 90.55 feet, said curve having a long chord which bears $S33^{\circ}41'15''W$,

a distance of 90.38 feet; thence S39°45'21"W, a distance of 559.83 feet to the point of intersection of said Westerly right-of-way line of relocated 120th Street and the Easterly right-of-way line of 126th Street; thence along said Easterly right-of-way line of 126th Street on the following described courses; thence N60°14'39"W, a distance of 163.03 feet; thence N61°33'32"W, a distance of 285.21 feet; thence Northwesterly on a curve to the right with a radius of 1332.41 feet, a distance of 330.96 feet, said curve having a long chord which bears N45°02'10"W, a distance of 330.11 feet; thence N86°55'27"E, a distance of 45.61 feet; thence N30°57'18"W, a distance of 1287.91 feet to the point of intersection of said Easterly right-of-way line of 126th Street and the Easterly right-of-way line of Interstate Highway No. 80; thence along said Easterly right-of-way line of Interstate Highway No. 80, on the following described courses; thence N04°02'52"E, a distance of 606.78 feet; thence N19°57'01"E, a distance of 784.00 feet; thence N30°29'51"E, a distance of 393.86 feet to the point of intersection of said Interstate Highway No. 80 and the Southerly right-of-way line of Harrison Street; thence along said Southerly right-of-way line of Harrison Street on the following described courses; thence S66°52'11"E, a distance of 125.94 feet; thence S66°13'30"E, a distance of 133.17 feet; thence S76°09'19"E, a distance of 132.35 feet; thence S83°57'33"E, a distance of 130.86 feet; thence N86°54'29"E, a distance of 129.47 feet; thence N79°07'51"E, a distance of 127.52 feet; thence N71°14'08"E, a distance of 125.98 feet; thence N68°00'28"E, a distance of 124.05 feet; thence N65°14'28"E, a distance of 100.70 feet; thence S02°58'15"E, a distance of 0.40 feet; thence N87°01'45"E, a distance of 33.00 feet to a point on said East line of Section 18; thence N75°02'53"E, a distance of 89.67 feet to the point of intersection of said Southerly right-of-way line of Harrison Street and said West right-of-way line of 120th Street; thence along said West right-of-way line of 120th Street on the following described courses; thence Southerly on a curve to the right with a radius of 583.82 feet, a distance of 244.43 feet, said curve having a long chord which bears S02°57'32"E, a distance of 242.65 feet; thence S04°55'34"W, a distance of 605.04 feet; thence Southerly, on a curve to the left with a radius of 5779.58 feet, a distance of 33.74 feet, said curve having a long chord which bears S04°45'45"W, a distance of 33.74 feet to the point of beginning.

Said tract contains an area of 4,163,016 square feet or 95.570 acres, more or less.

And also commencing at the Northeast corner of said Section 18; thence S02°58'15"E (assumed bearing) along said East line of Section 18, a distance of 884.64 feet; thence S87°01'46"W, a distance of 123.79 feet to the point of intersection of the Westerly right-of-way line of said 120th Street and the Northerly right-of-way line of said Harrison Street, said point also being the point of beginning; thence along said Northerly right-of-way line of Harrison Street on the following described courses; thence S45°01'43"W, a distance of 67.07 feet; thence S63°40'16"W, a distance of 78.73 feet; thence S74°04'44"W, a distance of 78.41 feet; thence S86°34'41"W, a distance of 77.74 feet; thence

N85°29'02"W, a distance of 76.14 feet; thence N78°18'15"W, a distance of 74.45 feet ; thence N69°36'02"W, a distance of 73.07 feet; thence N60°50'28"W, a distance of 71.58 feet; thence N54°27'50"W, a distance of 64.16 feet to the point of intersection of said Northerly right-of-way line of Harrison Street and said Easterly right-of-way line of Interstate Highway No. 80; thence N44°55'03"E along said Easterly right-of-way line of Interstate Highway No. 80, a distance of 461.82 feet to the point of intersection of said Easterly right-of-way line of Interstate Highway No. 80 and said Westerly right-of-way line of 120th Street; thence along said Westerly right-of-way line of 120th Street on the following described courses; thence S49°31'11"E, a distance of 61.82 feet; thence Southeasterly, on a curve to the right with a radius of 1017.66 feet, a distance of 227.79 feet, said curve having a long chord which bears S41°00'49"E, a distance of 227.31 feet; thence Southeasterly on a curve to the right with a radius of 1341.56 feet, a distance of 63.19 feet, said curve having a long chord which bears S34°56'33"E, a distance of 63.18; thence S31°21'11"E, a distance of 83.16 feet; thence S43°21'11.5"E, a distance of 2.91 feet to the point of beginning.

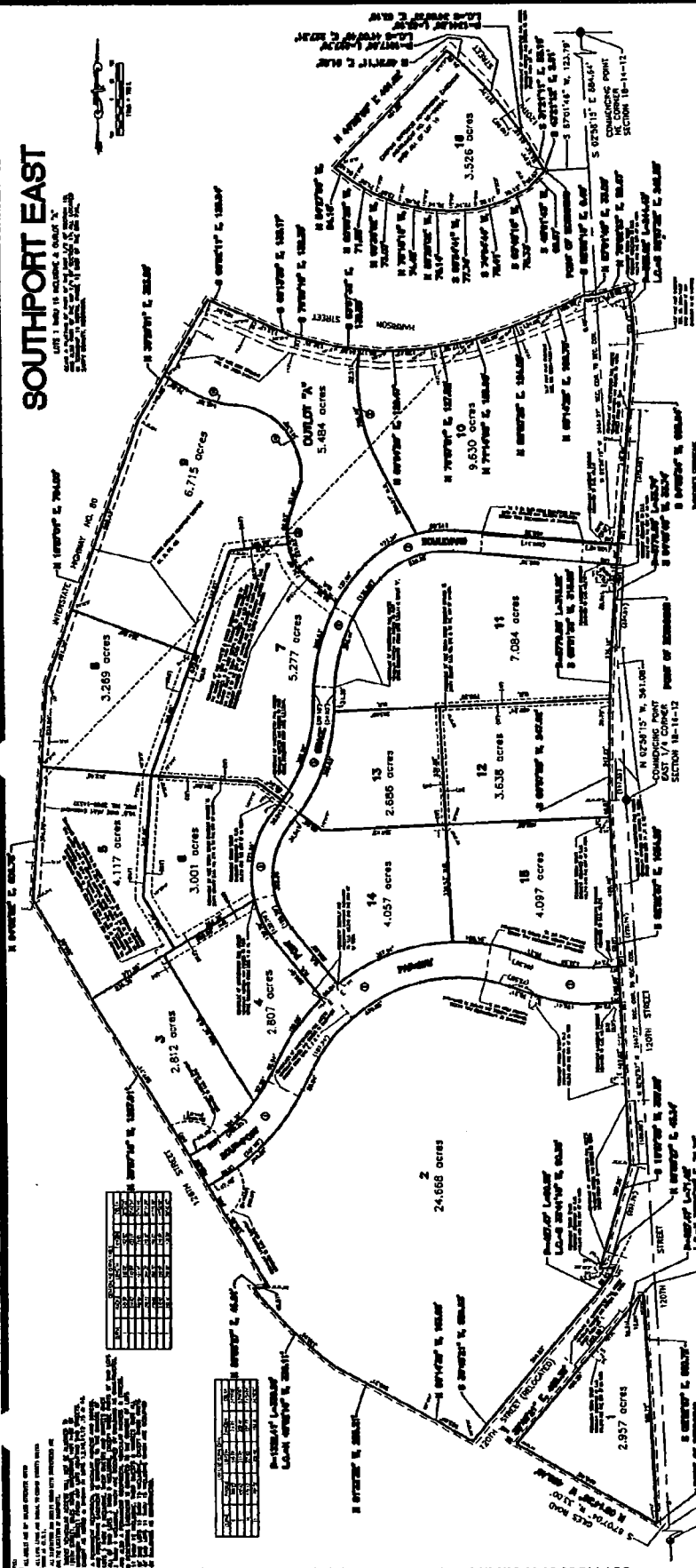
Said tract of land contains an area of 153,581 square feet or 3.526 acres, more or less.

Said tracts of land contain an area of 102.053 acres, more or less.

#2000030.01 ld/sw
01/05/01

DATE	NO.	DESCRIPTION

SOUTHPORT EAST
 1/2 SECTION 18, T41N, R12E, S11W
 COUNTY OF WISCONSIN, STATE OF WISCONSIN

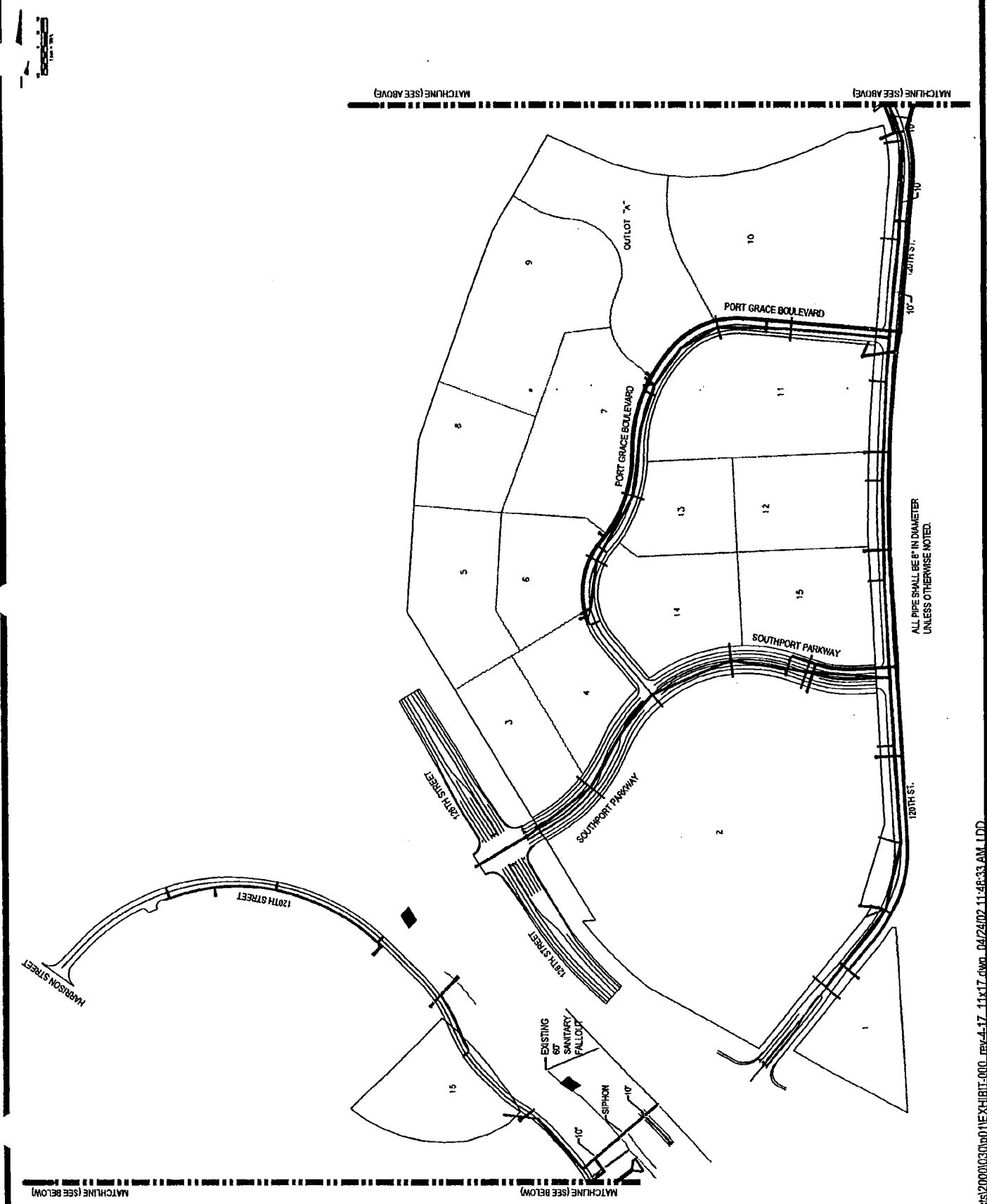


SECTION 18-11-12
 CONCRETE PAVEMENT
 ASPHALT PAVEMENT
 GRAVEL DRIVEWAYS
 LANDSCAPING
 LIGHTING
 SIGNAGE
 UTILITIES
 WATER MAINS
 SEWER MAINS
 STORM SEWERS
 RETAINING WALLS
 CURBS
 GUTTERS
 DRAINAGE
 PARKING
 LOADING DOCKS
 WAREHOUSES
 OFFICES
 RESIDENTIAL
 COMMERCIAL
 INDUSTRIAL
 AGRICULTURAL
 RECREATIONAL
 CULTURAL
 HISTORICAL
 ARCHAEOLOGICAL
 PALEONTOLOGICAL
 ANTHROPOLOGICAL
 ETHNOLOGICAL
 LINGUISTICAL
 LITERARY
 ARTS
 CRAFTS
 MUSIC
 THEATER
 DANCE
 CINEMA
 TELEVISION
 RADIO
 COMPUTER
 TELEPHONE
 INTERNET
 CABLE
 SATELLITE
 WIRELESS
 MOBILE
 SMART
 CLOUD
 BIG DATA
 ANALYTICS
 AI
 ML
 DL
 NLP
 CV
 IR
 AR
 VR
 MR
 XR
 Hologram
 Metaverse
 Blockchain
 Cryptocurrency
 NFT
 DAO
 DeFi
 Web3
 Metaverse
 Virtual Reality
 Augmented Reality
 Mixed Reality
 Extended Reality
 Immersive Reality
 Virtual World
 Virtual Space
 Virtual Environment
 Virtual Landscape
 Virtual Architecture
 Virtual Design
 Virtual Construction
 Virtual Manufacturing
 Virtual Agriculture
 Virtual Mining
 Virtual Energy
 Virtual Transportation
 Virtual Commerce
 Virtual Education
 Virtual Healthcare
 Virtual Government
 Virtual Law
 Virtual Finance
 Virtual Insurance
 Virtual Real Estate
 Virtual Travel
 Virtual Tourism
 Virtual Entertainment
 Virtual Sports
 Virtual Gaming
 Virtual Social Media
 Virtual News
 Virtual Journalism
 Virtual Academia
 Virtual Research
 Virtual Innovation
 Virtual Creativity
 Virtual Imagination
 Virtual Inspiration
 Virtual Motivation
 Virtual Empowerment
 Virtual Empathy
 Virtual Compassion
 Virtual Kindness
 Virtual Generosity
 Virtual Gratitude
 Virtual Humility
 Virtual Patience
 Virtual Persistence
 Virtual Resilience
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 Virtual Bravery
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 Virtual Accountability
 Virtual Responsibility
 Virtual Leadership
 Virtual Teamwork
 Virtual Collaboration
 Virtual Cooperation
 Virtual Synergy



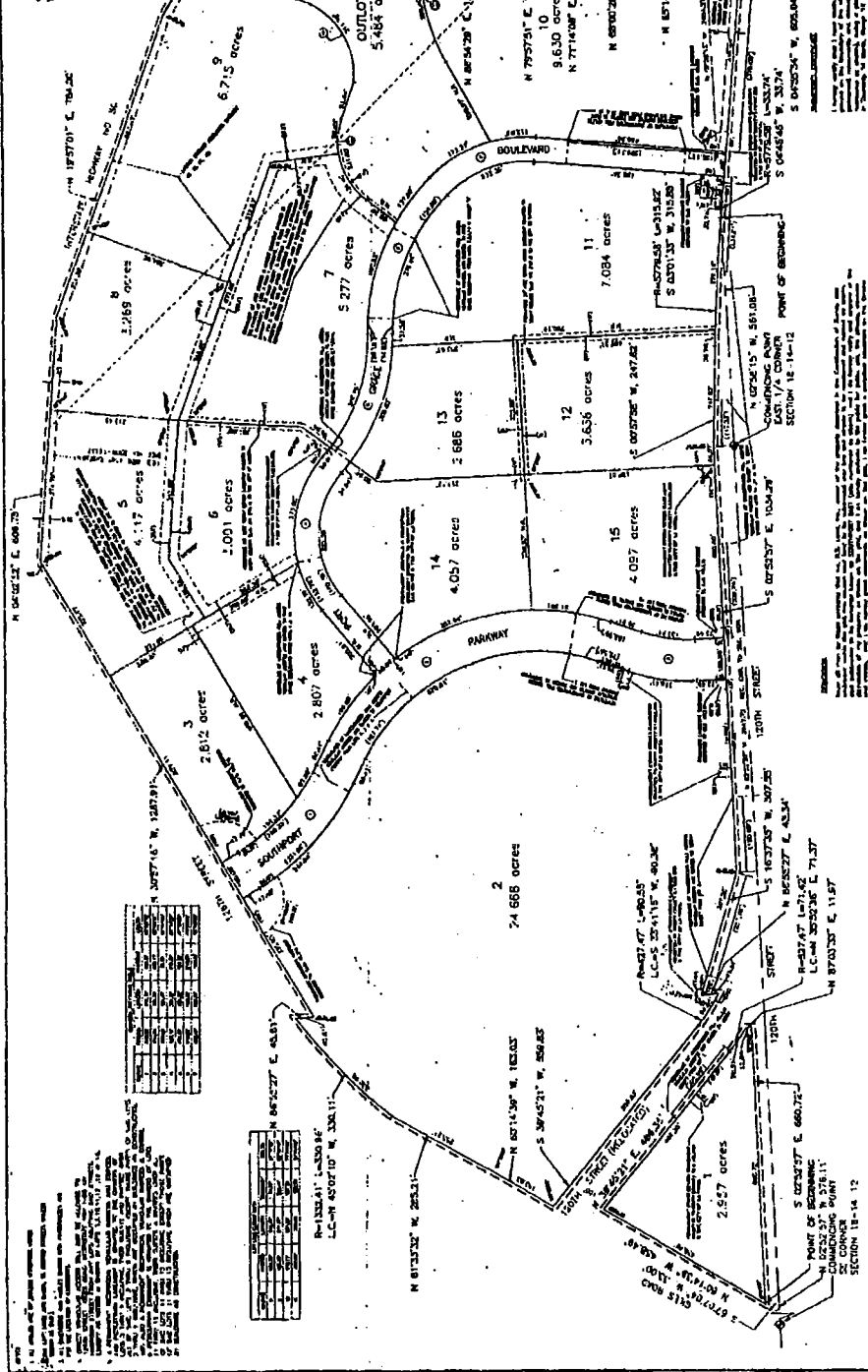
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NO.	DATE	DESCRIPTION
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ALL PIPE SHALL BE 18" DIAMETER
 UNLESS OTHERWISE NOTED.

SOUTHPORT EAST
 2410E-1007

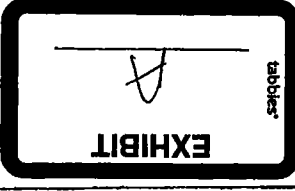


SOUTHPORT EAST

... (Detailed text block, likely a survey description or legal description of the property boundaries and easements.)

... (Detailed text block, likely a survey description or legal description of the property boundaries and easements.)

... (Detailed text block, likely a survey description or legal description of the property boundaries and easements.)



... (Text block associated with the seal, likely a signature or title.)

... (Text block associated with the seal, likely a signature or title.)

Robert Clark 4.10.02