

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2006-04150  
2006 FEB -8 P 12:01 8

*Lloyd J. Dowding*  
REGISTER OF DEEDS

COUNTER A C.E. AK  
VERIFY LMH D.E. AK  
PROOF \_\_\_\_\_  
FEES \$ 112.50  
CHECK# 3098  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NFR \_\_\_\_\_  
*stamped copy*



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FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

**LLOYD J. DOWDING**

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

A

**THIRD AMENDMENT TO SUBDIVISION AGREEMENT**  
**(Southport East Subdivision)**  
**(Replat of Lots 3 and 4 into Lots 1 through 3, inclusive,**  
**Southport East Replat Three)**  
**Replat Developer: Port Starboard, LLC**

THIS THIRD AMENDMENT, made this 6th day of February, 2006, to that certain Commercial Subdivision Agreement dated April 19, 2001 and original plat thereto which, among other lots, includes Lots 3 and 4 which are to be replatted as Lots 1 through 3, Southport East Replat Three of Southport East Subdivision.

**WITNESSETH:**

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

WHEREAS, Port Starboard, LLC (herein "Developer") is now the owner of originally platted Lots 3 and 4 that are the subject of this Third Amendment, and which lots are subject to the terms of the Subdivision Agreement; and

WHEREAS, Developer had earlier submitted an application for replat that would have included Tax Lot 18 of the original plat of Southport East Subdivision in addition to said Lots 3 and 4 of said Subdivision (totaling 6.404 acres). However, the Developer was unable to acquire title to Tax Lot 18. The Developer has withdrawn said earlier application and has resubmitted an application to replat Lots 3 and 4 only (totaling 5.621 acres) and references herein to the "Replat" or "Replatted Area" include only Lots 3 and 4, Southport East Subdivision.

WHEREAS, Developer wishes to subdivide said Lots 3 and 4 into Lots 1 through 3, Southport East Replat Three (herein the "Replat" or the "Replatted Area"), same being a part of the Southport East Subdivision as shown on replat drawing attached as Exhibit "A" hereto and consisting of approximately 5.621 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 7/28/04 as Exhibit "C" hereto; and

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

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

1. **Replattings.** Subject to the terms of this Amendment, Lots 3 and 4 of Southport East Subdivision shall be replatted as Lots 1 through 3 of Southport East Replat Three, as more fully shown on Exhibit "C" (herein the "Replat" or "Replatted Area").
2. **Drainage Calculations and Map.** Developer shall provide drainage calculations and a drainage map for the Replatted Area for review and approval by the City's Engineer prior to execution of the final Replat demonstrating what easements may be needed to

B

convey major storm sewer events (hundred year flood) over the surface of the property, in a form satisfactory to the City's Engineer.

3. Perimeter Sidewalks. Perimeter sidewalks are required to be constructed by each lot owner at such lot owner's expense as the lots are built upon. Sidewalks will not be required along 126<sup>th</sup> Street.
4. Commercial Building Design Guide and Criteria. City's Commercial Building Design Guide and Criteria ("Commercial Criteria") dated September 15, 1999, and the Southport East Design Guidelines, the specific design criteria to be utilized within the Southport East Subdivision, all of which are incorporated into this amendment by reference and shall be applicable to commercial development within the Replatted Area. Developer agrees to abide by the provisions thereof as they have been amended 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 Third Amendment.
8. Staking Bond. Developer shall provide the City a staking bond satisfactory to City Engineer prior to City's release of the final plat of the Replatted Area or a letter from a registered surveyor certifying that pins have been set.
9. Tract Sewer Connection Fees. Developer agrees that the terms and conditions for the benefit of the City that are contained in the Subdivision Agreement and the separate Sewer Connection Agreement pertaining to the sanitary sewer system shall be equally applicable to the private sanitary sewer provided for herein and enforceable by City in respect thereto to the same extent as though the private sewer had originally been incorporated and made a part of said agreements. Tract sanitary sewer connection fees shall be due and payable to the City in the following amounts prior to the issuance of a building permit for a particular lot:

Lot 1, Southport East Replat 3	1.044 acres @ \$5,484/Ac. =	\$ 5,725
Lot 2, Southport East Replat 3	1.881 acres @ \$5,484/Ac. =	10,316
Lot 3, Southport East Replat 3	2.696 acres @ \$5,484/Ac. =	<u>14,785</u>
<b>Total</b>	<b>5.621</b>	<b><u>\$30,826</u></b>

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

- 10. Requirements of City Engineer for Replat Approval. Attached hereto and incorporated herein as Exhibit "D" is a copy of the City Engineer's comments concerning Developer's Application for Replat. Developer, its successors and assigns in title, agree to fully and timely comply with all such requirements in conjunction with the construction/installation of common area improvements or within such different time or times as designated in Exhibit "D" hereto.
- 11. Infrastructure to be at Private Expense. The cost of all infrastructure, improvements and easements within and serving the Replatted Area, including but not limited to parking improvements, ingress and egress, sanitary sewer, storm sewer, power, CATV, gas, water and cost of connection to external infrastructure shall be constructed and maintained at private expense and no part thereof shall be the responsibility of or at the expense of the Sanitary and Improvement District No. 218 of Sarpy County or of the City.
- 12. Common Area Improvements/Maintenance. For purposes hereof, the following provisions shall be applicable:
  - a. Common Area Improvement Defined. The term "Common Area Improvement" shall mean all infrastructure and improvements constructed on, or to be constructed within or benefiting any two or more lots, or combination of lots, within the Replatted Area. Said Common Area Improvements shall include, but not be limited to, ingress and egress, storm drainage, sanitary sewer, public utility infrastructure facility and services and other infrastructure needs for or serving more than a single lot.
  - b. Common Area Expense Defined. Common Area Expense shall include all costs of site acquisition, engineering, construction, reconstruction, modification, replacement, repair, maintenance (including clean up and clean out) of any such items and all services in respect thereto, together with the City Engineer's cost of inspection, review and design.
  - c. Sharing of Common Area Expense. Common Area Expense shall be shared as follows:
    - c-1. Initial Cost Sharing Ratio. The owners, their successors and assigns, of the replatted lots shall be responsible for and defray the Common Area Expense in the same ratio that each of their replatted lots bears to the total land area of lots served by the improvement, to wit:

Replat Lot No.	Acres	Percent of Common Area Expense
1	1.044	18.57%
2	1.881	33.47%
3	2.696	47.96%
<b>TOTAL</b>	<b>5.621</b>	<b>100.00%</b>

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

c-2. Adjustment of Common Area Cost Sharing Ratios. The method of sharing Common Area Expense as set forth in subparagraph 12.c-1 above may be modified by the owners of all replatted lots agreeing to a different cost sharing as among themselves and filing with the City an application executed by all property owners within the Replatted Area to allow sharing in the designated different ratio. If the City Administrator, in consultation with the City Engineer, determines the original cost allocation is to be unfair and such requested change, if approved, will not be adverse to the City's or to the public interest, then the City Administrator may approve such application. Approval shall be discretionary. If approved, the property owners, at their expense, shall file the modification with the appropriate written approval of the City Administrator and City Engineer endorsed thereon and shall file it of record as provided in subparagraph 12.d. hereof.

d. Filing of Record. The Developer, at its expense, shall record this Third Amendment in the land records of the Office of the Register of Deeds of Sarpy County and shall cause a recorded and certified copy thereof to be transmitted to the City Administrator. Any adjustment under subparagraph 12.c-2 above shall be prepared in form satisfactory to the City. All recordings shall be indexed by specific lot and recorded at Developer's expense.

e. City Engineer to be Determiner. The City Engineer shall be the determiner of which improvements are required and which are Common Area Expense and which are not Common Area Expense, and which, if any, are not being properly constructed, repaired or maintained or in are in need of replacement.

f. City Access/Repair, Etc. The City, its employees and agents, shall have right of entry and full access to any and all areas and improvements within the Replatted Area for purposes of inspection. In the event City determines construction, repair or maintenance is not progressing or not being performed satisfactorily or in a timely manner, City may, at its sole option and without obligation to do so, decide to undertake construction, repair and/or maintenance of any such Common Area Improvements and to assess the cost, including engineering costs and legal costs, together with interest at the rate of twelve percent (12%) per annum until paid, and City shall have a lien for the cost therefor, which lien City may file of record against the lots it determines to be benefited. If said lien amount is not timely paid in full, the City may foreclose the lien for said amount with interest thereon and reasonable attorneys fees incurred by City in such foreclosure.

g. City's Exercise of Rights Discretionary. City's and/or City Engineer's exercise of any or all of the authority herein given shall be at City's sole and absolute discretion, and City, City Engineer and City's officers and agents shall have no responsibility or liability by reason of either the nonexercise or the exercise of any such authority.

13. Special Assessments. The lots within the Replatted Area are subject to special assessments that have been levied. Prior to delivery of the plat to Developer, Developer shall have either (1) paid all installments and accrued interest on such special

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assessments in full, or (2) have paid the principal and all accrued interest to date on delinquent installments and shall have reapportioned the remaining principal and interest thereon to the lots as configured by the Replat. Such reapportionment shall be computed in a manner acceptable to the City Engineer. Such written reapportionment agreement and recording thereof with the County Treasurer's certified written acceptance thereof shall be provided to City by Developer at Developer's expense. There shall be no reapportionment of special assessments beyond such initial reapportionment.

- 14. Ownership Representation. The undersigned signatories on the proposed Final Plat of Southport East Replat Three and on this Third Amendment to the Subdivision Agreement, to wit, Trenton B. Magid and Tucker B. Magid, do warrant and represent that the ownership of Developer, Port Starboard, LLC is as follows:

50% by Starboard South, LLC of which Trenton B. Magid is a Managing Member, 50% by Tucker B. Magid, an individual and Managing Member;

and that they have the authority to execute this Amendment on behalf of said Port Starboard, LLC and that at time of recordation of this Third Amendment and the Final Plat of Southport East Replat Three, said Port Starboard, LLC will be the sole owner of the Replatted Area.

- 15. Covenants Running With the Land. The obligations and agreements of Developer herein are perpetual covenants running with the land and shall be binding on the Developer and all of Developer's successors and assigns in title. The covenants herein shall be cumulative to, and not in lieu of, prior covenants running with the land in favor of the City. City shall have the right, but not the obligation, to enforce any and all covenants.

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

- Exhibit "A": Composite Drawing of Replat Three.
- Exhibit "B": Surveyor's Certificate.
- Exhibit "C": Final Plat of Southport East Replat Three.
- Exhibit "D": City Engineers requirements for approval of replatting.
- Exhibit "E": Declaration of Permanent Cross-Access Easements, Restrictions and Maintenance Obligations.

- 17. Right to Enforce. Provisions of this Amendment may be enforced at law or in equity by the owners of land within the Replatted Area and may be enforced by the City at law, in equity or such other remedy as City determines appropriate.

- 18. Ratification. The terms of the Southport East Subdivision Agreement and amendments thereto shall continue in full force and effect as to the Replatted Area, except to the extent modified by the express terms of this Third Amendment. In all other respects, the Subdivision Agreement shall not be affected hereby, and is hereby ratified and confirmed.

F

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

PORT STARBOARD, LLC, a Nebraska limited liability company

By Tucker B. Magid  
Tucker B. Magid, Managing Member

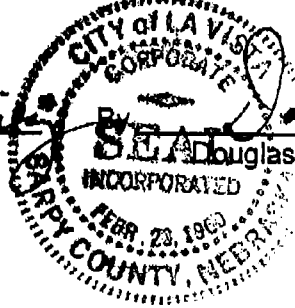
By: Starboard South, LLC, a Nebraska limited liability Company, Managing Member

By Trenton B. Magid  
Trenton B. Magid, Managing Member

ATTEST:

CITY OF LA VISTA

Rita M. Ramirez  
Rita M. Ramirez, City Clerk



Douglas D. Kindig  
Douglas D. Kindig, Mayor

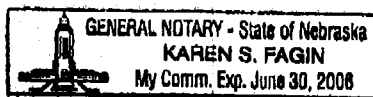
ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA

COUNTY OF Sage } ss.

On this 14th day of February, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Trenton B. Magid, personally known by me to be the Managing Member of Starboard South, LLC, a Nebraska limited liability company, managing member of Port Starboard, LLC, a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing Third Amendment to Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said limited liability companies. Trenton B. Magid is personally known or identified to me by satisfactory evidence to be the same person executing this Amendment.

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



Karen S. Fagin  
Notary Public

6

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF Lincoln ) ss.

On this 6th day of February, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Tucker B. Magid, an individual, Managing Member of Port Starboard, LLC, a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing Third Amendment to Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said limited liability company. Tucker B. Magid is personally known or identified to me by satisfactory evidence to be the same person executing this Amendment.

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



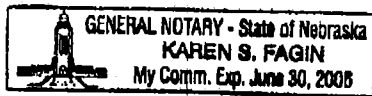
Karen S. Fagin  
Notary Public

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF Lincoln ) ss.

On this 6th day of February, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Douglas D. Kindig, personally known by me to be the Mayor of the City of La Vista and Rita M. Ramirez, to me personally known to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Third Amendment to Subdivision Agreement, and acknowledged the execution thereof to be their voluntary act and deed, and the voluntary act and deed of said City.

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



Karen S. Fagin  
Notary Public

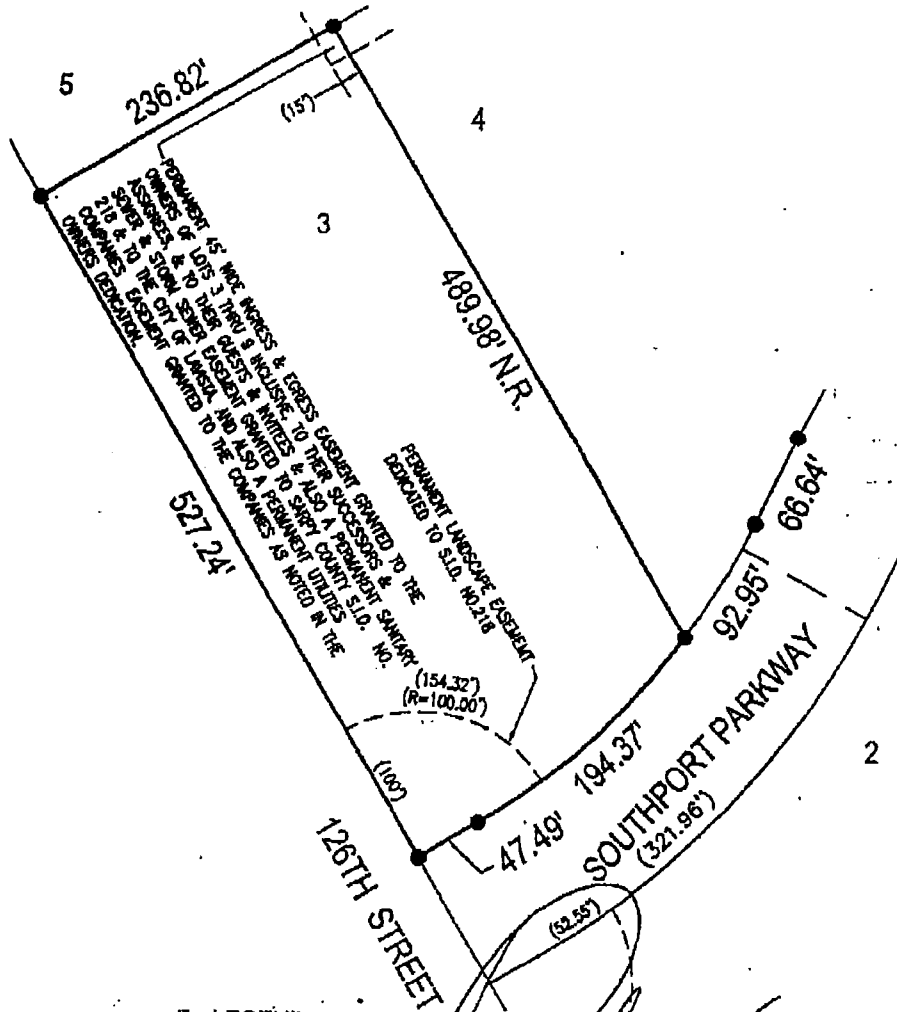




**LAND SURVEYOR'S CERTIFICATE**

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

LEGAL DESCRIPTION: LOT 3, SOUTHPORT EAST, A SUBDIVISION LOCATED IN 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.

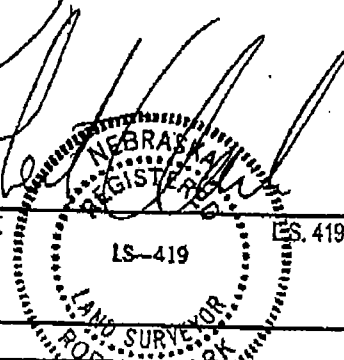


**LEGEND**

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

ROBERT CLARK

5-20-02  
 DATE



**E&A CONSULTING GROUP, INC.**  
 ENGINEERS • PLANNERS • SURVEYORS  
12801 S. 130TH AVENUE, SUITE 200, PAPER LAKE, NEBRASKA 68044-1000

OFFICIAL ADDRESS: \_\_\_\_\_  
 DATE RECEIVED: \_\_\_\_\_ BUILDING PERMIT No.: \_\_\_\_\_  
 Drawn by: BAS Chkd by: Bas 1-5-06 Chkd by: \_\_\_\_\_  
 Job No.: 2000030.18 Date: 01/06/06 Book No.: 2305

**LOT SURVEY**

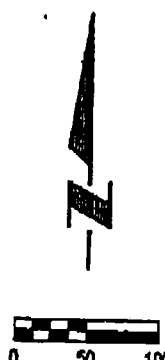
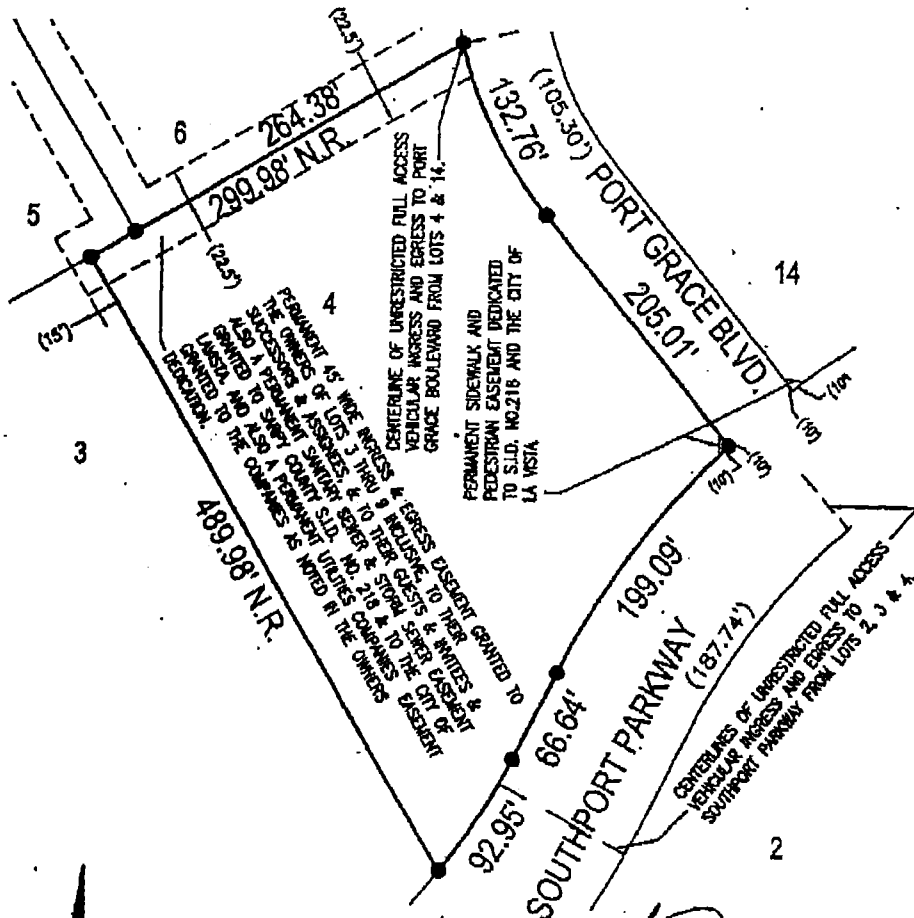
**LOT 3  
 SOUTHPORT EAST  
 SARPY COUNTY, NEBRASKA**

**EXHIBIT "B" (1)**

LAND SURVEYOR'S CERTIFICATE

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

LEGAL DESCRIPTION: LOT 4, SOUTHPORT EAST, A SUBDIVISION LOCATED IN 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.



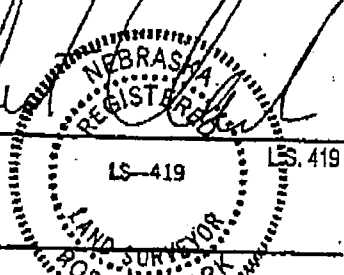
Scale: 1" = 100'

LEGEND

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

ROBERT CLARK

5-20-02  
DATE



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

OFFICIAL ADDRESS: \_\_\_\_\_  
DATE RECEIVED: \_\_\_\_\_ BUILDING PERMIT No.: \_\_\_\_\_

Drawn by: BAS Chkd by: *bas 1-5-02* Chkd by: \_\_\_\_\_

Job No.: 2000030,18 Date: 01/05/08 Book No.: 2305

LOT SURVEY

LOT 4  
SOUTHPORT EAST  
SARPY COUNTY, NEBRASKA

EXHIBIT "B" (2)

K

SOUTHPORT EAST REPLAT THREE LOTS 1 thru 3 INCLUSIVE

MADE A PART HEREOF OF THE SOUTHPORT EAST REPLAT THREE, A SUBDIVISION OF LAND OWNED BY THE SOUTHPORT EAST REPLAT THREE TRUST, INC., A CORPORATION INCORPORATED UNDER THE LAWS OF THE STATE OF MICHIGAN, AS THE SAME APPEARS ON THE SOUTHPORT EAST REPLAT THREE MAP, AS FILED WITH THE CLERK OF COUNCIL BLAIR COUNTY, MICHIGAN, ON THIS 14TH DAY OF MARCH, 1980.

GENERAL PROVISIONS

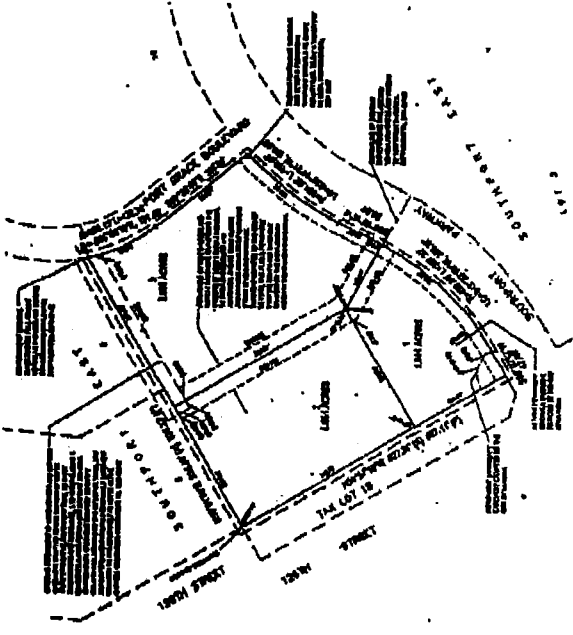
THESE LOTS ARE TO BE CONVEYED TO THE BUYER AS SHOWN ON THE ATTACHED MAP AND SUBJECT TO THE RESTRICTIONS, COVENANTS, CONDITIONS AND EASEMENTS THEREON SET FORTH IN THE SOUTHPORT EAST REPLAT THREE MAP, AS FILED WITH THE CLERK OF COUNCIL BLAIR COUNTY, MICHIGAN, ON THIS 14TH DAY OF MARCH, 1980.

DEED

THE PART OF SAID SOUTHPORT EAST REPLAT THREE WHICH IS BEING REPLATED BY THIS DEED IS SHOWN ON THE ATTACHED MAP AND SUBJECT TO THE RESTRICTIONS, COVENANTS, CONDITIONS AND EASEMENTS THEREON SET FORTH IN THE SOUTHPORT EAST REPLAT THREE MAP, AS FILED WITH THE CLERK OF COUNCIL BLAIR COUNTY, MICHIGAN, ON THIS 14TH DAY OF MARCH, 1980.

ACCEPTANCE OF DEED

I, THE BUYER, HEREBY ACCEPT THE DEED AS SHOWN ON THE ATTACHED MAP AND SUBJECT TO THE RESTRICTIONS, COVENANTS, CONDITIONS AND EASEMENTS THEREON SET FORTH IN THE SOUTHPORT EAST REPLAT THREE MAP, AS FILED WITH THE CLERK OF COUNCIL BLAIR COUNTY, MICHIGAN, ON THIS 14TH DAY OF MARCH, 1980.



COUNTY RECORDS SECTION

This is to certify that the above described land is not subject to any lien or claim of any kind, and that the same is not subject to any other lien or claim of any kind, and that the same is not subject to any other lien or claim of any kind.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

NOTARY PUBLIC IN AND FOR THE STATE OF MICHIGAN

My Commission Expires on \_\_\_\_\_

My Office is located at \_\_\_\_\_

My Term of Office is \_\_\_\_\_

My Commission No. is \_\_\_\_\_

My Office is located at \_\_\_\_\_

My Term of Office is \_\_\_\_\_

My Commission No. is \_\_\_\_\_

ACCEPTANCE OF DEED

I, THE BUYER, HEREBY ACCEPT THE DEED AS SHOWN ON THE ATTACHED MAP AND SUBJECT TO THE RESTRICTIONS, COVENANTS, CONDITIONS AND EASEMENTS THEREON SET FORTH IN THE SOUTHPORT EAST REPLAT THREE MAP, AS FILED WITH THE CLERK OF COUNCIL BLAIR COUNTY, MICHIGAN, ON THIS 14TH DAY OF MARCH, 1980.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

NOTARY PUBLIC IN AND FOR THE STATE OF MICHIGAN

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My Term of Office is \_\_\_\_\_

My Commission No. is \_\_\_\_\_

My Office is located at \_\_\_\_\_

My Term of Office is \_\_\_\_\_

My Commission No. is \_\_\_\_\_

ACCEPTANCE OF DEED

I, THE BUYER, HEREBY ACCEPT THE DEED AS SHOWN ON THE ATTACHED MAP AND SUBJECT TO THE RESTRICTIONS, COVENANTS, CONDITIONS AND EASEMENTS THEREON SET FORTH IN THE SOUTHPORT EAST REPLAT THREE MAP, AS FILED WITH THE CLERK OF COUNCIL BLAIR COUNTY, MICHIGAN, ON THIS 14TH DAY OF MARCH, 1980.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

NOTARY PUBLIC IN AND FOR THE STATE OF MICHIGAN

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My Office is located at \_\_\_\_\_

My Term of Office is \_\_\_\_\_

My Commission No. is \_\_\_\_\_

My Office is located at \_\_\_\_\_

My Term of Office is \_\_\_\_\_

My Commission No. is \_\_\_\_\_



EXHIBIT 'C'

L

EXHIBIT "D"

**City Engineer's Requirements for Approval of Southport East Replat Three**

1. **Correct Note 5 on the final plat to include Lot 3 in the last full line of this note.**
2. **The applicant shall provide a drainage plan showing the drainage areas and proposed private storm sewer system that will be needed to serve Lots 1, 2, and 3. An acceptable plan shall be provided prior to City Council approval and shall be used to evaluate future building permit submittals on Lots 1, 2 and 3.**
3. **The applicant shall provide a plan showing the proposed private sanitary sewer system that will be needed to serve Lots 1, 2, and 3. An acceptable plan shall be provided prior to City Council approval and shall be used to evaluate future building permit submittals on Lots 1, 2 and 3.**

**DECLARATION OF PERMANENT CROSS-ACCESS  
EASEMENTS, RESTRICTIONS AND MAINTENANCE OBLIGATIONS**

THIS DECLARATION OF PERMANENT CROSS-ACCESS EASEMENTS, RESTRICTIONS AND MAINTENANCE OBLIGATIONS (the "Declaration") is made and entered into this 6<sup>th</sup> day of February, 2006, by Port Starboard, LLC ("Declarant").

**RECITALS**

WHEREAS, Declarant is the owner of that certain real property situated in the County of Sarpy, State of Nebraska, legally described as Lots 1, 2 and 3, Southport East Replat Three, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska (the "Property"); and

WHEREAS, Declarant desires to impose certain easements, restrictions and maintenance obligations for the mutual and reciprocal benefit and complement of the Property and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth, which easements shall be placed upon the Property as more specifically shown on the attached Exhibit "1" (the "Easement Area").

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Declarant does hereby declare and grant for the benefit of itself, its mortgagees, successors, assigns that the Property and all present and future owners and occupants of the Property shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration.

1. Definitions. For purposes hereof:

- (a) The term "Owner" or "Owners" shall mean Declarant and any and all successors or assigns of Declarant as the owner or owners of fee simple title to all or any portion of the Property, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on the Property.
- (b) The term "Permittees" shall mean the tenant(s) or occupant(s) of any portion of the property (a "Lot"), and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Lot, and/or (ii) such tenant(s) or occupant(s).

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2. Easement.

- 2.1. Reservation of Easement. Declarant hereby reserves unto itself, its successors and assigns of Lots 1, 2, and 3, Southport East Replat Three, the right to construct, operate, maintain, repair and replace as provided in this declaration, streets, sidewalks, storm sewers, sanitary sewers, utility services, landscaping, and other similar improvements ("Improvements") serving the Property
- 2.2. Grant of Easement: Declarant hereby grants and conveys unto itself, its successors and assigns, a permanent non-exclusive easement over, under, across, upon and through the Easement Area for the purpose of inspecting, monitoring, maintaining, repairing and replacing, the Improvements.
- 2.3. Indemnification. Each Owner benefiting from the use of, or having rights with respect to, the Improvements (a "Benefiting Owner") shall indemnify and hold the Declarant, and its successors and assigns harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising out of such Benefiting Owner and its Permittees' use of any Improvement.
- 2.4. Reasonable Use. The Improvements shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time.

3. Construction and Maintenance.

- 3.1. General. Each Owner shall participate on a proportionate basis in the maintenance of all Improvements located within the Easement Area. Each Owner's proportionate share shall be determined by dividing the square footage of the Owner's Lot by the total square footage of the Property. If Declarant retains title to any Lot and commences construction on such Lot, then Declarant shall be considered an Owner for purposes of maintenance of the Improvements and Declarant shall pay its proportionate share of the maintenance of Improvements.
- 3.2. Damage by an Owner. If any Owner or its Permittees shall cause damage to any Improvement through misuse or inappropriate use, such Owner shall repair all such damage and restore the Improvement to a safe and fully operational condition and repair. All costs for such repair shall be the sole responsibility of the Owner responsible for causing the damage.
- 3.3. Determination of Maintenance Need. During such time as the Declarant owns any portion of the Property, and Declarant reasonably believes that repairs or maintenance are required to any Improvement, such maintenance shall be

performed and the costs paid by each Owner in accordance with its proportionate share. In the event Declarant no longer owns any portion of the Property, then the determination of whether maintenance is required shall be determined by a majority vote of the Lot Owners based upon each Owner's proportionate share. Declarant may delegate the duty of maintenance, including but not limited to repairs and snow removal, to a management company. Each Owner shall participate on a proportionate basis in the management cost, as well as all other repair, snow removal, and maintenance costs.

- 3.4. Collection of Maintenance Costs. If any Owner fails or refuses to contribute its proportionate share to the payment of maintenance costs within fifteen (15) days after demand is made by any contractor or other Owner, the remaining Owner or Owners may pay the defaulting Owner's proportionate share of the costs, and such amount together with interest thereon at the rate of 10% per annum, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Owner's Lot. The imposition of a lien on the defaulting Owner's Lot shall not reduce or otherwise limit or eliminate the contributing Owner or Owners rights to the remedies set forth in Section 5 below.
4. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public, including Permittees, or as dedicating for public use any portion of the Property. No easements, except those expressly set forth in paragraph 2 shall be implied by this Declaration; in that regard, and without limiting the foregoing, no easements for signage, or drainage are granted or implied.
5. Remedies and Enforcement.
  - 5.1. All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.
  - 5.2. Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following receipt of written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the rate of ten percent (10%) per annum.



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- 5.3. Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.
- 5.4. No Termination For Breach. Notwithstanding any part of the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Lot made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.
6. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Sarpy County Register of Deeds and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of one hundred percent (100%) of the then record Owners of the Property, in accordance with paragraph 7.1 hereof.
7. Miscellaneous.
- 7.1. Amendment. This Declaration may be modified or amended, in whole or in part, or terminated, by the written consent of one hundred percent (100%) of the then record Owners of the Property, evidenced by a document that has been fully executed and acknowledged by such record Owners, and recorded in the official records of the office of the Register of Deeds of Sarpy County, Nebraska.
- 7.2. No Waiver. No waiver of any default of any obligation by any Owner shall be implied from any omission by another Owner to take any action with respect to such default.
- 7.3. No Agency. Nothing in this Declaration shall be deemed or construed by any Owner or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the Owners.
- 7.4. Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the Owners and their successors, assigns, heirs, and personal representatives.

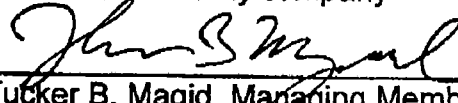
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- 7.5. Grantee's Acceptance. The grantee of any Lot in Southport East Replat Three, or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall, for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to that part of the Property so acquired by such grantee.
- 7.6. Severability. Each provision of this Declaration and the application thereof to the Property are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the Owners agree to promptly cause such legal description to be prepared. Ownership of one or more Lots by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.
- 7.7. Entire Declaration. This Declaration contains the complete understanding and agreement with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.
- 7.8. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery, to the address of the applicable Owner. Notice shall be deemed given upon receipt or refusal to accept delivery.
- 7.9. Estoppel Certificate. Each Owner agrees that, upon the written request of any other Owner, it will, within twenty (20) days after receipt of such request, issue to such Owner, or such Owner's mortgagee or successor, an estoppel certificate stating, to the best of the issuer's knowledge as of such date, whether it knows of any default under this Declaration by the requesting Owner, and if there are known defaults, specifying the nature thereof in reasonable detail.
- 7.10. Governing Law. The laws of the State of Nebraska shall govern the interpretation, validity, performance, and enforcement of this Declaration.

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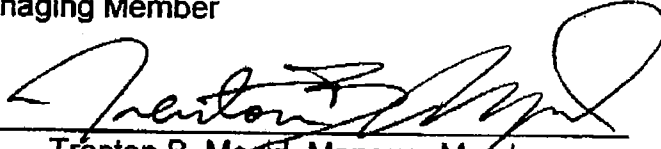
7.11. City of La Vista Rights re Common Area Maintenance, Etc. As regards construction, maintenance, repairs and replacement of common area improvements, there is reserved to the City of La Vista ("City") the discretionary and non-obligatory right to cure deficiencies and to assess the cost thereof within the "Property" as set forth and defined in the Third Amendment to the Southport East Subdivision Agreement ("Third Amendment"). Such right of the City is not altered, negated or diminished by the terms of this Declaration and shall continue to be enforceable by the City, at its option, under the circumstances described in said Third Amendment.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the date first written above.

Port Starboard, L.L.C.  
 a Nebraska limited liability company

By:   
 Tucker B. Magid, Managing Member

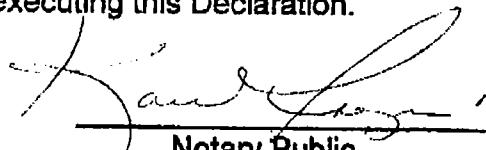
By: Starboard South, L.L.C., a Nebraska limited liability company  
 Managing Member

By:   
 Trenton B. Magid, Manager Member

STATE OF NEBRASKA   )  
   )SS  
 COUNTY OF DOUGLAS   )

The foregoing instrument was acknowledged before me this 6th day of July, 2006 by Trenton B. Magid, Manager Member of Starboard South, L.L.C., a Nebraska limited liability company, managing member of Port Starboard, L.L.C., a Nebraska limited liability company. Trenton B. Magid is personally known or identified to me by satisfactory evidence to be same person executing this Declaration.



  
 Notary Public

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STATE OF NEBRASKA )  
                                  )SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 6th day of Feb 2006 by Tucker B. Magid, an individual, managing member of Port Starboard, L.L.C., a Nebraska limited liability company. Tucker B. Magid is personally known or identified to me by satisfactory evidence to be same person executing this Declaration.



*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public

WHEN RECORDED RETURN TO:

9130-1/ #1916.4

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# EXHIBIT "1"

## LEGAL DESCRIPTION

DECLARATION AND AGREEMENT OF PERMANENT CROSS-ACCESS EASEMENTS, RESTRICTIONS AND MAINTENANCE OBLIGATIONS LOCATED IN PART OF LOTS 5 AND 6, SOUTHPORT EAST, A SUBDIVISION LOCATED IN THE SE1/4 OF SECTION 18; AND ALSO TOGETHER WITH PART OF LOTS 1 THRU 3, INCLUSIVE, SOUTHPORT EAST REPLAT THREE, A SUBDIVISION LOCATED IN SAID SE1/4 OF SECTION 18; 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 NORTHWEST CORNER OF SAID LOT 2, SOUTHPORT EAST REPLAT THREE, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 5, SOUTHPORT EAST; THENCE N59°01'30"E (ASSUMED BEARING) ALONG THE NORTHERLY LINE OF SAID LOT 2, SOUTHPORT EAST REPLAT THREE, SAID LINE ALSO BEING THE SOUTHERLY LINE OF SAID LOT 5, SOUTHPORT EAST, A DISTANCE OF 211.82 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING N59°01'30"E ALONG SAID NORTHERLY LINE OF LOT 2, SOUTHPORT EAST REPLAT THREE, SAID LINE ALSO BEING SAID SOUTHERLY LINE OF LOT 5, SOUTHPORT EAST, A DISTANCE OF 10.00 FEET; THENCE N30°58'30"W, A DISTANCE OF 22.50 FEET; THENCE N59°01'30"E, A DISTANCE OF 323.13 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF PORT GRACE BOULEVARD, SAID POINT ALSO BEING ON THE EASTERLY LINE OF SAID LOT 6, SOUTHPORT EAST; THENCE SOUTHEASTERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF PORT GRACE BOULEVARD, SAID LINE ALSO BEING SAID EASTERLY LINE OF LOT 6 SOUTHPORT EAST, AND ALSO THE EASTERLY LINE OF SAID LOT 3, SOUTHPORT EAST REPLAT THREE ON A CURVE TO THE LEFT WITH A RADIUS OF 290.09 FEET, A DISTANCE OF 47.26 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S13°22'12"E, A DISTANCE OF 47.21 FEET; THENCE S59°01'30"W, A DISTANCE OF 268.85 FEET; THENCE S30°58'30"E, A DISTANCE OF 316.63 FEET; THENCE S61°43'32"E, A DISTANCE OF 121.72 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SOUTHPORT PARKWAY, SAID LINE ALSO BEING THE SOUTHERLY LINE OF SAID LOT 3, SOUTHPORT EAST REPLAT THREE; THENCE S26°05'15"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF SOUTHPORT PARKWAY, SAID LINE ALSO BEING SAID SOUTHERLY LINE OF LOT 3, SOUTHPORT EAST REPLAT THREE, A DISTANCE OF 5.94 FEET; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF SOUTHPORT PARKWAY, SAID LINE ALSO BEING SAID SOUTHERLY LINE OF LOT 3, SOUTHPORT EAST REPLAT THREE, AND ALSO THE SOUTHERLY LINE OF SAID LOT 1, SOUTHPORT EAST REPLAT THREE ON A CURVE TO THE RIGHT WITH A RADIUS OF 499.50 FEET, A DISTANCE OF 44.07 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S28°38'56"W, A DISTANCE OF 44.06 FEET; THENCE N81°43'32"W, A DISTANCE OF 135.43 FEET; THENCE N30°58'30"W, A DISTANCE OF 352.88 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 37,038. SQUARE FEET OR 0.850 ACRES, MORE OR LESS.

SEE SHEET 1 OF 2 FOR DRAWING

SHEET 2 OF 2



**E&A CONSULTING GROUP, INC.**  
ENGINEERS • PLANNERS • SURVEYORS  
3101 G STREET, OMAHA, NE 68102 PHONE: (402) 333-0700

### SOUTHPORT EAST REPLAT THREE

DECLARATION AND AGREEMENT OF PERMANENT CROSS-ACCESS  
EASEMENTS, RESTRICTIONS AND MAINTENANCE OBLIGATIONS  
SARPY COUNTY, NEBRASKA

Drawn by: BJW

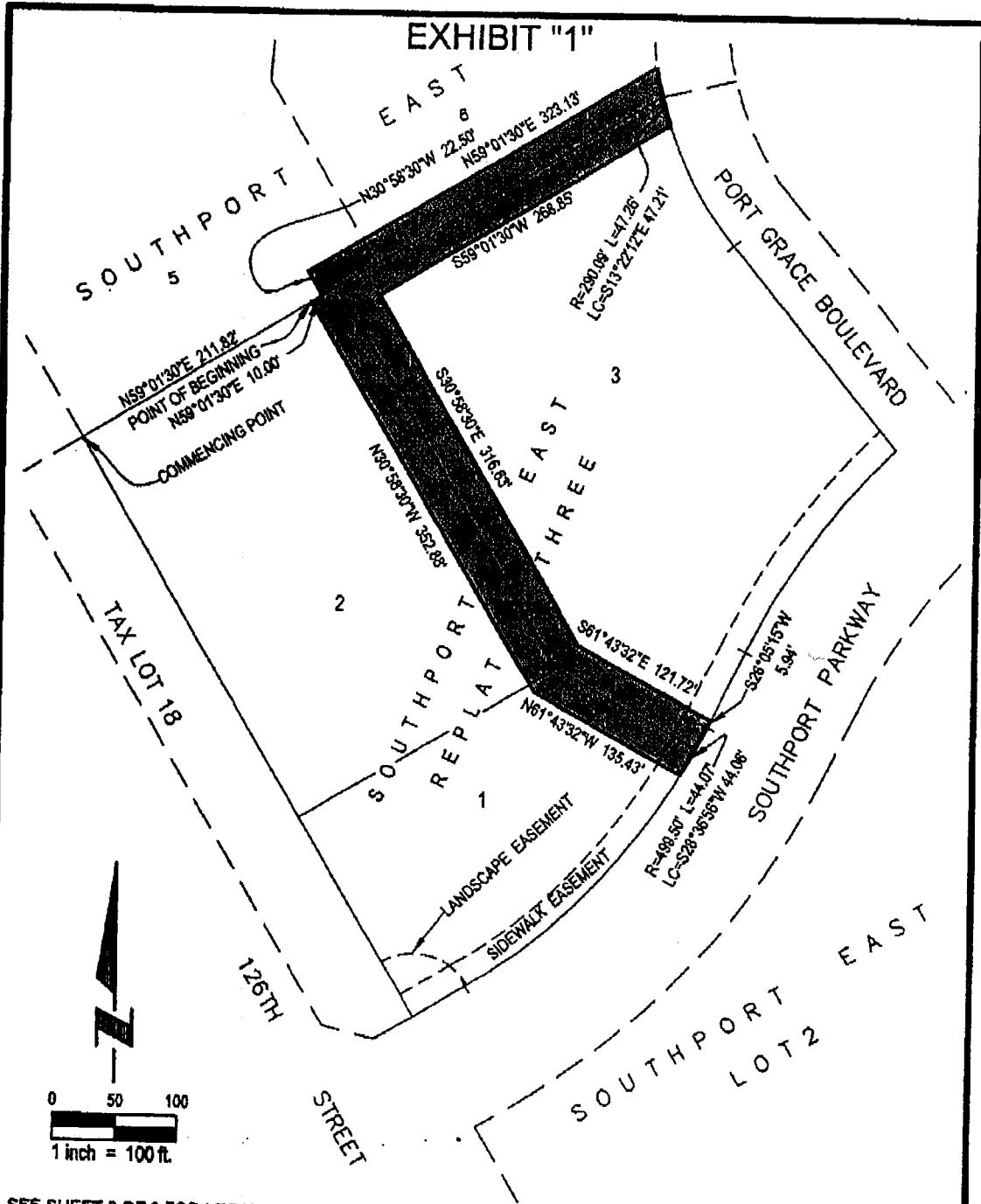
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SEE SHEET 2 OF 2 FOR LEGAL DESCRIPTION

SHEET 1 OF 2



**E&A CONSULTING GROUP, INC.**  
 ENGINEERS • PLANNERS • SURVEYORS  
1001 G STREET, SUITE 100, LINCOLN, NE 68502

**SOUTHPORT EAST REPLAT THREE**  
 DECLARATION AND AGREEMENT OF PERMANENT CROSS-ACCESS  
 EASEMENTS, RESTRICTIONS AND MAINTENANCE OBLIGATIONS  
 SARPY COUNTY, NEBRASKA

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