

BOOK 863 PAGE 356

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR ST. ANDREW'S POINTE

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GEORGE J. BULLOCK
REGISTER OF DEEDS
DUBLIN, IOWA

THIS DECLARATION made on the date hereinafter set forth by St. Andrew's Pointe, Inc., a Nebraska corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant desires to encumber that certain property, which is more particularly described:

SEE ATTACHED EXHIBIT "A".

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to St. Andrew's Pointe Homeowners Association, Inc., a Nebraska non-profit corporation.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, or a fee simple title to any lot as defined herein which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of conveyance of the first Lot is described on the attached Exhibit "B".

Section 5. "Lot" shall mean and refer to any plot of land shown upon a recorded subdivision map of the Properties with the exception of the Common Area, and upon which a

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dwelling unit or units have been built, or which is buildable. If a Lot from the original platting is subdivided or split into additional Lots or parts of Lots capable of containing dwelling units they shall be considered separate Lots for the purpose of this Declaration.

Section 6. "Declarant" shall mean and refer to St. Andrew's Pointe, Inc., a Nebraska corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Architectural Control Committee" shall consist of five members appointed by the Association. Three votes are required for approval.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to establish rules and regulations and charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer and has been recorded, except as otherwise dedicated or reserved herein.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Restrictions. All Lots shall be used only for private dwelling purposes. Household pets within the Properties and Common Area will be subject to regulation, restriction, exclusion and special assessment as may be determined by the

Association from time to time. No dog runs or dog houses shall be constructed, erected or maintained upon any Lot. All garage doors must remain closed at all times except when cars are entering or exiting the garage space. No garbage cans or trash receptacles are to be permitted outside unless fully screened from view in a manner approved in writing by the Association. Construction of any outbuilding is prohibited. The rear lot line shall be that boundary of a Lot which abuts that property which is to be used either directly or indirectly as a golf course or Common Area. No patio fence which is larger than four (4) feet in height shall be erected without prior written approval of the Architectural Committee. Four (4) foot wrought iron fences can be built to the rear lot line (six (6) foot in the case of a fence surrounding a swimming pool), subject to Architectural Control Committee approval. No board on board fences shall be constructed on any Lot unless unanimously approved by the Architectural Committee. Sidewalks shall be constructed by the individual Lot Owners, at their sole expense, as soon after construction of a dwelling upon the Lot as weather shall permit. All Lot Owners shall plant, at their sole expense as soon after construction of a dwelling upon the Lot as weather permits, two 2-inch trees of any of the species approved of by the Architectural Committee. Automobile parking will be subject to regulation and restriction by the Association. Outdoor parking of boats, campers, or recreational vehicles and erection of outdoor radio or TV antennas are prohibited. Any Lot may be converted to Common Area purposes if and when the Association acquires title thereto.

Section 4. Easement and Licenses. The Association and its agents, contractors and designees shall have an easement and license to enter any dwelling or structure on any Lot at all times, but without any obligation, in order to accomplish changes, replacements, or repairs to plumbing, sewers, gas lines, water lines, telephone lines, electrical lines, meters, vents and other appliances or utilities in order to maintain service to or prevent injury or damage to any persons or dwellings or property located within the Properties or the Common Area above described. The Association and the Declarant reserve the right to grant such further easements and licenses under, upon or over said Lots as may be necessary or required by utilities furnishing gas, water, telephone, electrical and television or other utility services to said Properties or the Common Area above described. The Properties shall further be subject to existing easements for abutting roadways and right-of-ways.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot as defined herein which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from

ownership of any Lot which is subject to assessment. At least annually the Association membership shall elect a Board to govern the Association.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On December 31, 1997, or
- (c) the Declarant voluntarily waives its right to Class B voting privileges.

ARTICLE IV

COVENANT FOR MAINTENANCE AND INSURANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Lots dedicated as Common Areas shall not be subject to assessment and may not vote.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement, maintenance and general liability insurance for the Common Area. The amount of insurance, if any, shall be set by the Association Board.

Section 3. Exterior Maintenance. The Association shall provide maintenance of the Common Area, streets, sewers and walkways. Each Owner shall provide, at his own expense, exterior maintenance upon his respective Lot including mowing, fertilizing, watering, planting of trees, shrubs and grass and snow removal on walks and drives. Each Owner of Lots shall be responsible for all maintenance and repair of his dwelling units and he shall not permit waste but instead shall in a timely fashion maintain the exterior appearance of his unit in a clean, uniform, and orderly manner free of discolored or peeling paint or stain. Each Owner shall be responsible for prompt repair of broken glass.

Each Lot Owner shall install, maintain and repair at his or her own expense, lawn sprinkler systems on his or her Lot. The Declarant shall install, lawn sprinkler systems on the Common Area and street lights along the streets.

In the event any Owner fails in his maintenance obligations the Association Board, thirty (30) days after written demand, may at its election, perform the maintenance including but not limited to, painting, roofing, staining, repairing glass, maintaining or replacing trees, shrubs, bushes, rock walls, or otherwise, as may be necessary to cause the property to comply with this section. The cost of any Board ordered repair shall become a lien upon the Lot or Lots repaired without further Board action and the Owner(s) shall be personally obligated to reimburse the actual costs incurred. The Association may at its option elect to provide garbage and trash pick-up service, or any other exterior service, repair or maintenance, and may include the cost thereof in the assessments.

In the event that the need for maintenance or repair to Common Area, or Lots is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject, and such added assessment shall not be subject to the maximum assessment limitations herein contained.

Section 4. Payment of Assessments. The annual assessments shall be payable in 12 equal monthly installments one month in advance on or before the first day of each month; provided, however, the Directors of the Association may establish a different method of payment upon notice to the Owners. Special assessments shall be payable in the manner, amounts and times specified by the Directors.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments and the lien for exterior maintenance authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be delivered either personally or by mail to all members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Rate of Assessment. The total annual assessments shall be levied at an equal rate against each Lot; provided, however, that until January 1, 1990 the maximum annual amount that may be levied against any Lot upon which there is no completed dwelling as of January 1st of that year shall not exceed \$250.00 per year.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of sixteen percent (16%) per annum or the highest lawful rate, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or

foreclose the lien against the property in proceedings in the nature of a Mechanics Lien foreclosure. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior painting, resurfacing, addition to or change or alteration therein be made until the plans and specifications showing the size, nature, kind, shape, heights, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee appointed by the Board. In the event said Declarant or Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The finished above grade floor area of the main floor of each family dwelling unit shall contain a minimum living area of 1,800 square feet, except in the case of a 2-story there shall be a 1,600 square foot minimum on the first floor with a total minimum of 2,800 square feet above grade. There shall be a twenty-five foot (25) set-back requirement from all front Lot lines, and a twenty (20) foot set-back requirement from all rear Lot lines; except that a deck approved by the Architectural Committee, may extend to within ten (10) feet of the rear Lot line. All side yards shall be ten (10) feet, and there shall be twenty (20) feet between all buildings, unless otherwise approved by the Board, in advance. In the case of lots with rear lot lines of 80 feet or less there can be eight (8) foot side yards provided that there be ten (10) foot side yards at the front of the house and the average side yards shall be ten (10) feet. In the case of an existing home there can be eight (8) foot side yards provided that separation between houses is twenty (20) feet minimum, subject to approval by the Architectural Control Committee. Any and all exposed foundations and all fronts of dwelling units shall be brick; except for any unsupported dormers. All exteriors of dwelling units shall be

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earth tone colors. No curb cut shall extend beyond the two-foot concrete curb and gutter. All roofs shall be wood shingle unless approved by the Architectural Control Committee. Individual mail boxes shall be installed on one side of the street. The boxes shall be uniform in style and material. The Architectural Control Committee shall provide the design.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant, or any Owner, shall have the right to enforce, by any proceeding at Law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than seventy percent (70%) of the Lots and thereafter by an instrument signed by the owners of not less than sixty-six percent (66%) of the Lots.

Section 4. Special Rights of Mortgagees. Any notice required to be given to an Owner must be similarly given to all mortgagees of record covering said Lots to be binding upon them. In addition to the required consents by Owners, it is also required that all such mortgagees of record execute written consents to the dedication, the assessments, the amendments and annexations referred to respectively in Article II, Section 1(c); Article IV, Section 5; and Article VI, Sections 3 and 4 above.

EXECUTED this 29 day of August, 1988.

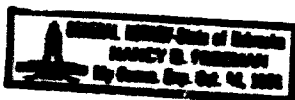
ST. ANDREW'S POINTE, INC., a
Nebraska corporation

By: [Signature]
Arnold E. Grove, President

By: [Signature]
Rowin K. Floth, Vice President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this
29 day of August, 1988 by Harold E. Grove, President
and Rowin K. Floth, Vice President, respectively of St. Andrew's
Pointe, Inc., a Nebraska corporation on behalf of such
corporation.



Nancy B. Freeman
Notary Public

My Commission Expires:

October 14, 1991

EXHIBIT "A"

Lots 1 through 63, inclusive, and Outlots 1 through 5, inclusive,
in St. Andrew's Pointe, an Addition to the City of Omaha, as surveyed,
platted and recorded, in Douglas County, Nebraska.

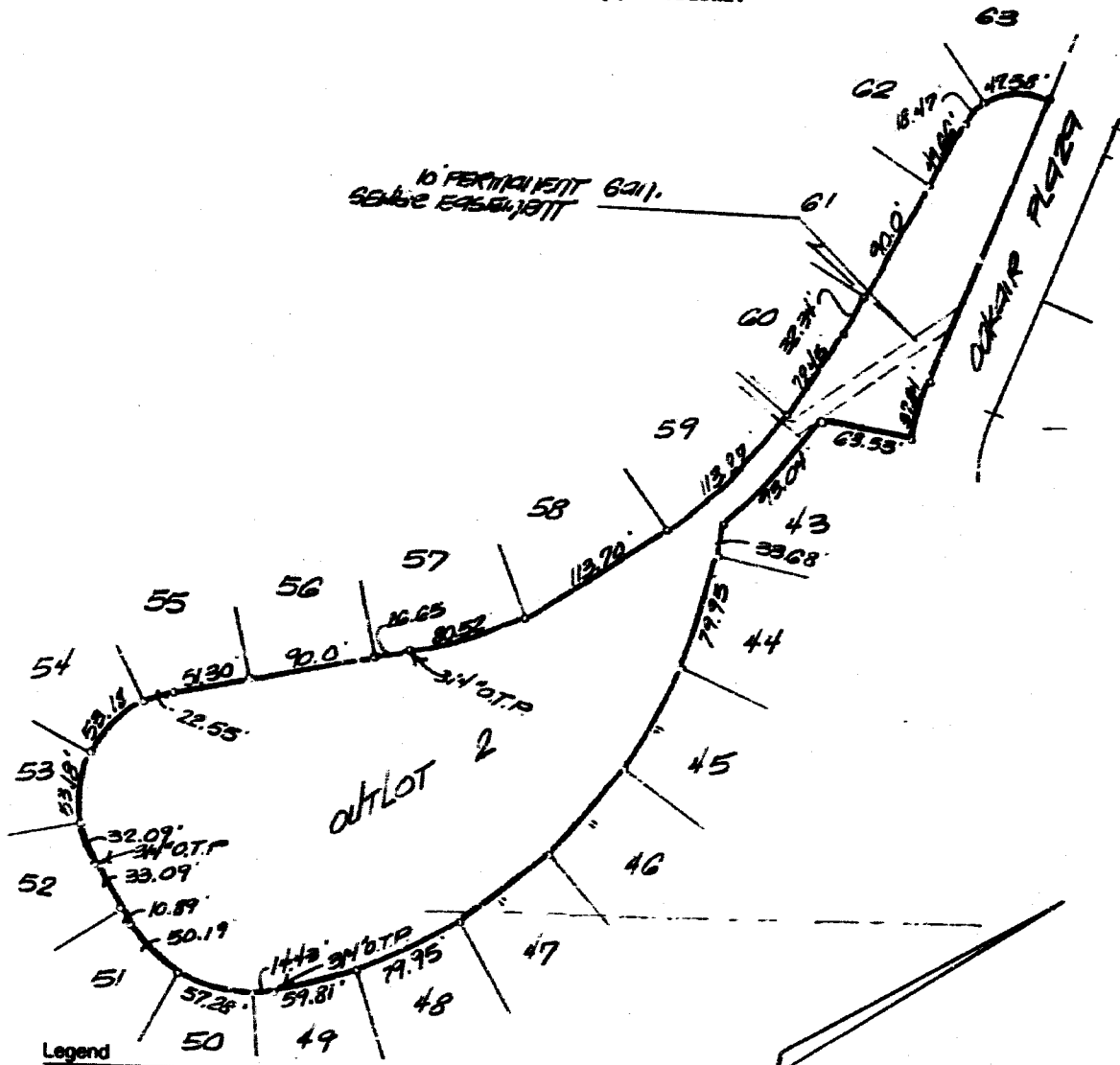
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LAND SURVEYOR'S CERTIFICATE

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I hereby certify that this survey 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: Outlot 2, St. Andrew's Pointe, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.



Legend

- corners found ●
- corners set 24\"/>
- recorded distance C
- measured distance R
- computed distance or angle M
- crimped top pipe COMP.
- open top pipe C.T.P.
- chord O.T.P.
- bearing C.H.
- set temporary point BRG.
- ▲

SCALE: 1" = 100'

James Wannell

Signature of Land Surveyor

DATE RECEIVED _____

Date: June 24, 1988

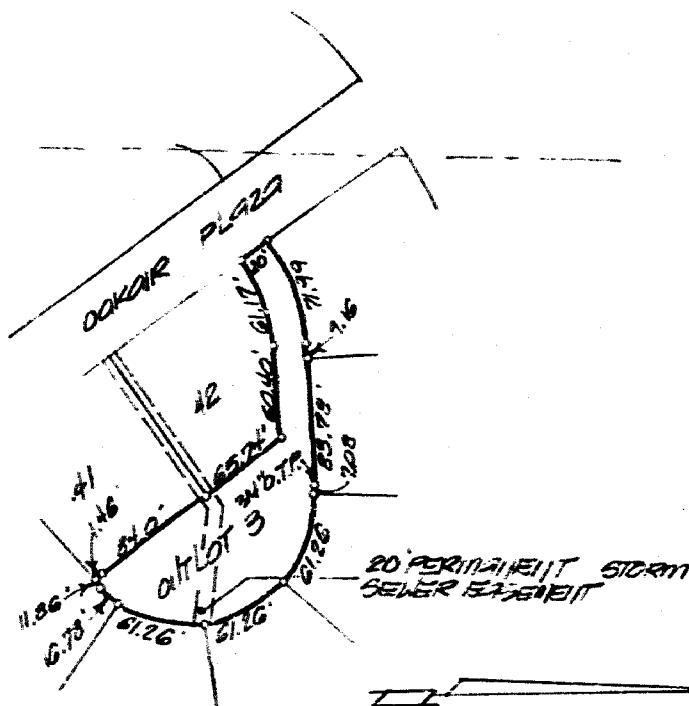
Reg. No. 308

LAND SURVEYOR'S CERTIFICATE

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I hereby certify that this survey 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: Outlot 3, St. Andrew's Pointe, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.



SCALE: 1" = 100'

Legend:

- | | |
|----------------------------|--------|
| corners found | • |
| corners set | ○ |
| recorded distance | R |
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| computed distance or angle | COMP. |
| crimped top pipe | C.T.P. |
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| chord | C.H. |
| bearing | BRG. |
| set temporary point | Δ |

James Warner

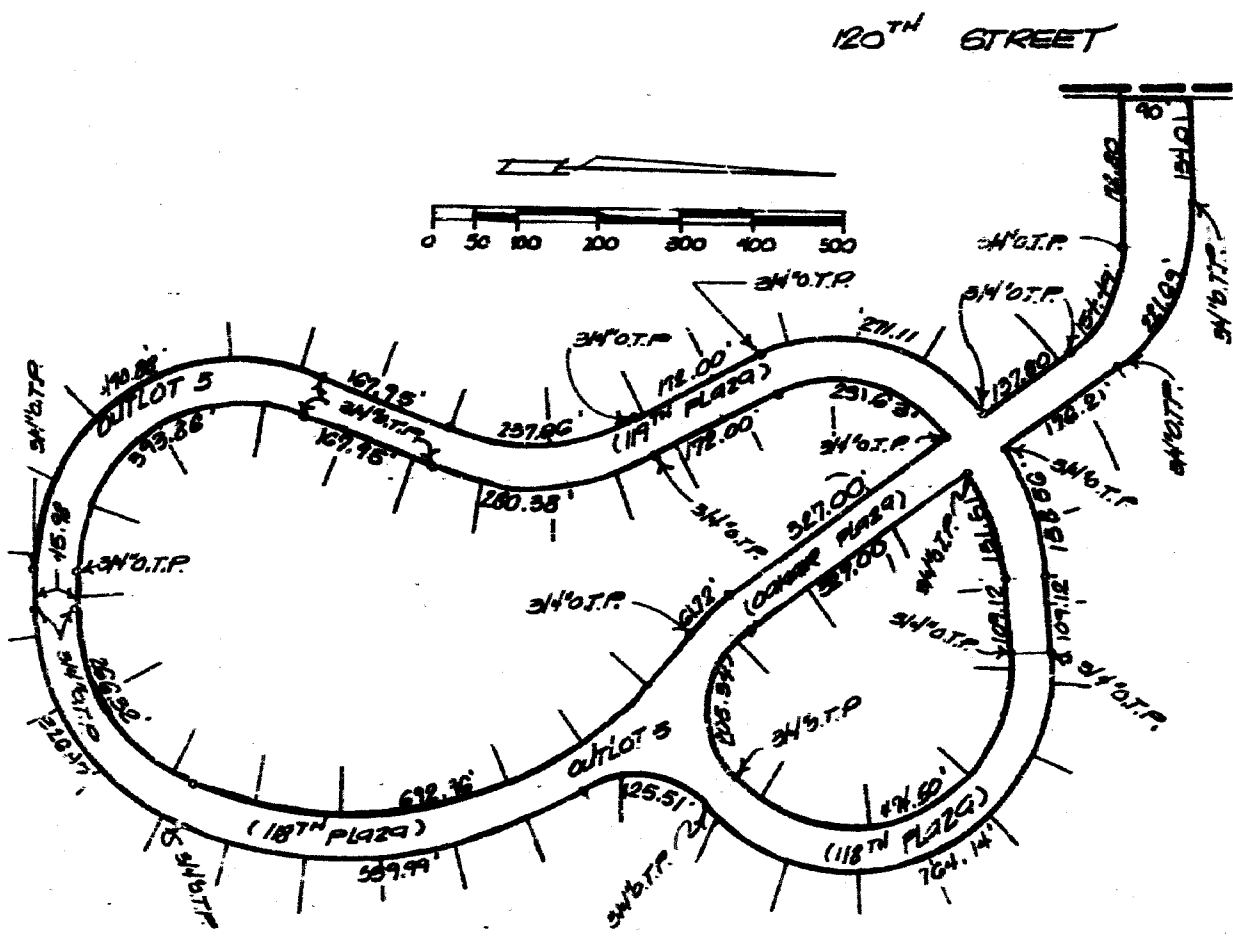
Signature of Land Surveyor

LAND SURVEYOR'S CERTIFICATE

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I hereby certify that this survey 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: Outlot 5, St. Andrew's Pointe, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.



Legend

- corners found ●
- corners set 3/4" O.T.P. UNLESS NOTED ○
- recorded distance R
- measured distance M
- computed distance or angle COMP.
- clamped top pipe C.T.P.
- open top pipe O.T.P.
- chord C.H.
- bearing BRG.
- set temporary point Δ

[Handwritten Signature]
 Signature of Land Surveyor