

2014-25283

11/12/2014 2 31 10 PM

Lloyd J. Dowding

REGISTER OF DEEDS

COUNTER 13 C.E. 13
VERIFY LM D.E. LM
PROOF _____
FEES \$ 130.00
CHECK# 033682
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____



**THIS PAGE ADDED
FOR RECORDING
INFORMATION.**

**DOCUMENT STARTS ON
NEXT PAGE.**

LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS

Steven J. Stastny, Deputy

1210 GOLDEN GATE DRIVE, # 1230

PAPILLION, NE 68046-2842

402-593-5773

RJR

*FATCO-AC 5
Debbie Sexton
13924 Gold/G
Omaha, NE 68144*

**DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SHOPPES AT SOUTHPORT WEST**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration"), is made and entered into as of the Effective Date by Southport West Partners LLC, a Nebraska limited liability company ("Declarant")

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located in Sarpy County, Nebraska, which is legally described on Exhibit A and generally depicted on Exhibit B (the "Site Plan") (the "Property"); and

WHEREAS, Declarant intends that the Property be developed as a unified multi-use development to be known as the Shoppes at Southport West as depicted on Exhibit B (the "Development").

NOW, THEREFORE, Declarant hereby declares that the Property shall be and restrictions held, sold, leased and conveyed subject to the following easements, covenants, conditions, and restrictions 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 such Property or any, part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner or occupant thereof, and further declares that the Property shall be subject to the easement and related rights of the City of La Vista, Nebraska ("City") set forth below which shall be binding on all parties having any right, title or interest in such Property, or any part thereof, their heirs, successors and assigns.

**ARTICLE I
DEFINITION
S**

Section 1.1 "Building" or "Buildings" shall mean the building or buildings which have been; will be or may be constructed on the Lots.

Section 1.2 "Common Area" shall mean the portions of the Development and Improvements thereon or therein benefiting, or intended for the nonexclusive use by, one or more Lots, Owners, Permittees or users, in common with one or more other Lots, Owners, Permittees or users as permitted by this Declaration. Common Area shall include, but not be limited to, areas and Improvements depicted in Exhibit D, public utility lines and systems, infrastructure and equipment, all parking areas, and access roads, driveways, lanes, entrances, walkways, sidewalks, signage, landscaping, storm drainage, any detention or retention ponds, areas and drainage facilities; sanitary sewers, plaza areas, public lighting, directional signage, security lighting and facilities, if any; provided, however, Common Areas shall not include any facilities in the interior of any building or other Improvement used exclusively by the Owner or tenants of that building.

Section 1.3 "Declarant" shall mean Southport West Partners, LLC, a Nebraska limited liability company

Section 1.4 "Development" shall mean the Shoppes at Southport West development as described in the recitals hereof.

Section 1.5 "Improvements" shall mean all work, materials and labor, including without limitation, design, engineering, preparation, excavation, buildings, outbuildings, structures, underground installations, slope and grade alterations, lighting, roads, walkways, curbs, gutters, storm drains, drainage ways, utilities, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, patio areas, windbreaks, plantings, planted trees and shrubs, sidewalks, bicycle racks, planters, poles, flags, signs, storage or display areas, loading areas, docks, water retention areas, facilities, plantings, structures, maintenance or other requirements of the Post Construction Storm Water Management Plan or Post-Construction Storm Water Management Plan Maintenance Agreement with the City as applicable to the Property, fountains, water features, ponds, recreational facilities, and all other structures, infrastructure, land development or landscaping improvements of every type and kind, and all related operations, maintenance (including clean up and clean out), modifications, reconstruction, replacements and repairs

Section 1.6 "Lots" shall mean and refer to the Property and any lot(s) into which the Property may be subdivided. The current Lots are reflected on the Site Plan attached hereto as Exhibit B

Section 1.7 "Master CCR" shall mean that certain Declaration of Covenants, Conditions, Restrictions and Easements for Southport West Subdivision, dated June 7, 2005, filed July 5, 2005 as Instrument Number 2005-22478 in the Office of the Register of Deeds of Sarpy County, Nebraska, as amended by that certain First Amended dated May 17, 2006, filed May 24, 2006 as Instrument Number 2006-17152 in the Office of the Register of Deeds of Sarpy County, Nebraska.

Section 1.8 "Owner" shall mean and refer to the record owner of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.9 "Permittee" shall mean all Owners, their Tenants or licensees of the Lots, and each of their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees.

Section 1.10 "Period of Declarant Control" shall commence with the recording of this Declaration and shall continue for as long as Declarant owns at least one (1) Lot, unless and until the Declarant elects, in its discretion, to transfer, relinquish and/or surrender all of its rights and obligations in this Declaration in the manner set forth in Section 7.11 below.

Section 1.11 "Tenant" shall mean and refer to the designated Tenant or lessee under a lease agreement for all or part of a Lot or Improvement constructed thereon, and including any sublessees or subtenants of a Tenant.

Section 1.12 In addition to the definitions set forth above, there are other defined terms set forth elsewhere in this Declaration. All of the exhibits and preamble clauses to this Declaration are incorporated into this Declaration as though fully rewritten here at length.

ARTICLE II MASTER CCR

C

Section 2.1 Master CCR. The Property is subject to the Master CCR and each Member (as defined in the Master CCR) shall comply with the provisions thereof. Failure to so comply shall be grounds for (a) action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of said Master CCR, this Declaration or by law or equity, each of which remedies shall be cumulative and in addition to any other available remedy. If the Declaration is in any way inconsistent with the Master CCR, then the Master CCR shall prevail and control.

ARTICLE III GRANT OF EASEMENTS

Section 3.1 Easements Subject to, and in addition to any other easements or rights provided under, the terms of this Declaration; Declarant hereby grants and conveys the following non-exclusive easements appurtenant, in, to, on, over, through, upon, across and under (hereinafter, the word "in" with respect to an easement granted "in" a particular Lot means, as the context may require, "in," "to," "on," "over," "through," "upon," "across," and "under," or any one or more of the foregoing), the Common Areas for the benefit and use of the Owners and their Permittees, or as otherwise specified:

(a) Cross Parking Easement. A nonexclusive easement for parking in the portions of the Common Areas developed as parking areas for the vehicles of Permittees thereon. There shall be cross parking rights on all designated parking areas within the Common Areas of all Lots

(b) Access Easement. A nonexclusive easement in the Common Areas, for vehicular and pedestrian use, ingress and egress, including without limitation, driveways, perimeter roads and access ways, and access and the right of access over established circulation elements between the public streets and perimeter roads and access ways and any portion of the Development.

(c) Utility Easement A nonexclusive easement in the Common Areas for the installation, use, inspection, testing, connection to, operation, maintenance, repair, replacement and removal of all or any part of: water lines and systems, telephone, telecommunications or cable television lines and systems, gas lines and systems, sanitary sewer lines and systems, storm sewers, drainage lines and systems, electrical lines and systems, and other utility lines or systems developed to serve one or more of the Lots; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment will be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of any other Lot or Improvements. The location of any such utility facilities shall be subject to the reasonable approval of the Owner of the burdened Lot, shall be located within or immediately adjacent to public utility easements or Lot lines, and when approved by such Owner, shall be evidenced by a recorded instrument legally describing and depicting the location of such easements. The Owner of each Lot shall cooperate in the granting of additional or appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Development. If an Owner, in the course of installing, using, testing, connecting to, operating, maintaining, repairing, replacing, or removing utility facilities on a Lot other than the Lot owned by the Owner, damages pavement, landscaping, or other Improvements on that Lot, such Owner shall promptly repair, at its sole cost and expense, all such damage and restore such Lot substantially to its prior condition and shall defend, indemnify and hold harmless and all other Owners or Tenants against all loss, liability, and costs (including reasonable attorneys' fees) which may result from the negligent act or omission of such Owner, its agents, employees or contractors. No Owner shall have the right to tie into utility facilities installed specifically to serve another Lot without the prior written consent of the Owner of the other Lot.

(d) Surface Water Drainage Easement. A non exclusive easement in the Common Areas for the flow of a reasonable volume of surface water, to include without limitation surface water resulting from major storm events such as 100 year storms, as determined from time to time, to the nearest storm sewer or surface water inlet, drainage catch basin, or waterway, provided all surface water drainage from any Lot shall be consistent with any approved drainage plan for the Development and shall be in accordance with all applicable laws, codes, and regulations of governmental authorities. The parties anticipate the establishment of detention facilities, as depicted on Exhibit B attached hereto and more particularly addressed below

(e) City Easement. To the City a permanent, non-exclusive easement in, to, on, over, through, upon, across or under the Property for the following purposes. The City or its designees shall have the right (but not the obligation) to enter upon and inspect Common Areas and related Improvements for compliance with requirements of this Declaration. In the event of any failure to care for or maintain or otherwise satisfy applicable requirements regarding said Common Areas or Improvements, the City or its designees, in addition to having the rights and remedies for breach described in Section 7.3 or otherwise under this Declaration, applicable law or equity, shall have the option (but shall not be obligated) to enter upon and take all actions with respect to the Property as the City Engineer determines necessary or appropriate to maintain, replace or repair said Common Areas or Improvements in accordance with requirements of this Declaration or applicable laws, rules or regulations.

Section 3.2 Nature of Easements and Rights Granted.

(a) Easements Appurtenant. The easement granted the City and each and all of the easements and rights otherwise granted or created herein are appurtenances to the Lots and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such Lots

(b) Nature and Effect. Easements and related rights granted the City are made for the sole benefit of the City and shall be binding on the Property, Declarant and all successors and assigns of the Declarant or Property or any interest therein. Each and all of the other easements, covenants, conditions, restrictions and provisions contained in this Declaration:

- (i) Are made for the direct, mutual and reciprocal benefit of the Owners, Tenants and Permittees of the Lots,
- (ii) Create mutual equitable servitudes upon each Lot in favor of the other Lots, except as otherwise specifically set forth herein;
- (iii) Constitute covenants running with the land; and
- (iv) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Development at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, condition, restriction or provision in question, or to the extent that such easement, covenant, condition, restriction or provision is to be performed on such portion

(c) Transfer of Title The acceptance of any transfer or conveyance of title from any Owner or Tenant or their respective heirs, representatives, successors or assigns of all or any

part of its interest in its Lot, or lease, or any portion thereof, shall be deemed to

- (i) Constitute the agreement of the grantee not to use or occupy, or permit any other party to use or occupy, its Lot, Improvements or Common Areas in any manner which would constitute a violation or breach of any of the easements, covenants, conditions, or restrictions contained herein; and
- (ii) Require any lessee or other assignee to assume and agree to perform each and all of the obligations of the conveying party under this Declaration with respect to the Lot, or interest to be conveyed, Improvements or Common Areas; provided, however, lessors and other assignors shall continue to be jointly and severally liable with their respective lessees and assignees for said performance

Section 3.3 Abandonment of Easements After the expiration of the term of this Declaration, the easements granted pursuant to Section 3.1 hereof, or all or any part or parts thereof, subject to prior written approval of the City, may be abandoned and terminated only if the benefits and use thereof shall have ceased and cessation thereof continues for a continuous period of five (5) years. Thereafter, the then record owner of the fee of the Lot burdened with such easement may give written notice by United States certified mail, return receipt requested, mailed to the then record owner of the fee of the Lot(s) benefited by such easement and the then record owner, if any, of any leasehold interest in such benefited Lot(s), stating that such easement has been abandoned, and to be effective shall place of record in the Real Property Records of Sarpy County, Nebraska, the City Administrator's written approval and an affidavit that such abandonment has taken place and that such notice has been properly given. If the then record owner of the fee of the benefited Lot fails to place of record in the Real Property Records of Sarpy County, Nebraska, within ninety (90) days after the giving of such notice, an affidavit that such easement has not ceased to benefit or be used during such continuous five (5) year period, such easement shall thereupon be conclusively deemed abandoned and any person having or thereafter acquiring an interest in the Lot previously burdened shall hold and take such interest free of and unencumbered by such easement.

Section 3.4 Restriction No Owner shall grant any easement for the benefit of any property not within the Development; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements herein or otherwise by an Owner on its Lot to the City or other governmental authorities or to public utility companies

Section 3.5 No Barrier Agreement No barriers, fences, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Lots located in the Common Area available for pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment of the rights and easements created by this Article III or by any other provision of this Declaration. The preceding sentence shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes, subject to approval of the City of La Vista Engineer. In addition, each Owner may temporarily close or block traffic on its Lot for the time necessary for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties that are additional to the easements set forth in this Declaration (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give fifteen (15) days written notice to each other Owner of its intention to do so and shall attempt to coordinate such closing with each other Owner, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Lot as reasonably required for the purpose of repair, construction and reconstruction

ARTICLE IV

F

SHARED EXPENSES

Section 4.1 Detention Facilities. The Owners hereby agree to the following terms in connection with the use and maintenance of the detention facilities located on the Property, as identified on the Site Plan attached hereto as Exhibit B ("Detention Facilities"):

(a) Ownership. Each detention facility shall be owned by the Owner of the Lot upon which it is located. Pursuant to the easement set forth in Section 3.1(d) above, the Detention Facilities shall be deemed Common Areas and each Lot shall have the right to have its surface water flow over Common Areas into the Detention Facilities and shall have the burden of surface water flow over the Common Areas located on its Lot.

(b) Construction and Maintenance. Declarant shall design, construct, install, operate, replace, maintain and repair the Detention Facilities in a good and workmanlike manner.

(c) Cost. The Owner of each Lot shall contribute its proportionate share of the costs of design, construction, installation, operation, maintenance, repair and replacement of the Detention Facilities, which proportionate share shall be a percentage determined by dividing the square feet of land within an Owner's Lot by the total square feet of land within the Development. The Owner of each Lot shall reimburse the Declarant within ten (10) days after receipt of an invoice for its proportionate share of all costs associated with the installation and maintenance of the Detention Facilities, including but not limited to, insurance deductibles and premiums for insurance carried on the Detention Facilities and all maintenance, replacement and repair costs.

Section 4.2 Parking Lot. The Owners hereby agree to following terms in connection with the ownership and maintenance of the parking lots located on the Property, as identified on the Site Plan attached hereto as Exhibit B, including without limitation driving lanes, parking spaces and landscaping, ("parking area"):

(a) Ownership. Each parking area shall be owned by the Owner of the Lot upon which it is located. Pursuant to the easement set forth in Section 3.1(a) above, all of the parking areas in the Development shall be deemed Common Areas and available to the Owners and Permittees within the Development on a first-come first served basis.

(b) Construction and Maintenance. The Owner of the Lot upon which the parking area is located shall, at the Owner's sole cost and expense (subject to subsection (c) below) design, construct, install, operate, replace, maintain and repair the parking area located on its Lot in a good and workmanlike manner.

(c) Lots 3 and 4. The Owner of Lot 3 shall design, construct and install the parking area on Lot 3. The Owners of Lots 3 and 4 shall each contribute their proportionate share of the costs of operation, maintenance, repair and replacement of that certain portion of the parking area and drives on Lot 3 identified on Exhibit C attached hereto (the "Shared Maintenance Area"). Each Owner's proportionate share shall be a percentage determined by dividing the square feet of all Buildings within an Owner's Lot by the total square feet of all Buildings located on Lots 3 and 4. The Owners of Lots 3 and 4 hereby acknowledge that for purposes of this Section, "Buildings" shall only mean buildings and not other improvements (such as parking areas or landscaping). Each Owner shall contribute its proportionate share within ten (10) days after receipt of an invoice for its proportionate share of all costs associated with the operation, maintenance, repair and replacement of the Shared Maintenance Area, including but not limited to, insurance deductibles and premiums for insurance carried on the Shared Maintenance Area, real estate taxes for the Shared Maintenance

Area (the Owners shall determine an equitable allocation of the real estate taxes levied on Lot 3 between the Shared Maintenance Area and the rest of the Lot) and all operating, maintenance, replacement and repair costs for the Shared Maintenance Area. Except for the Shared Maintenance Area, the Owners of Lots 3 and 4 shall be solely responsible for all costs associated with the parking areas, drives and other common areas located on the respective Lot.

Section 4.3 Other Common Areas and related Improvements. [Left intentionally blank]

Section 4.4. City Costs. The City or its designees shall have the right (but not the obligation) to inspect Common Areas and related Improvements for compliance with this Declaration. In the event of any failure to care for or maintain or otherwise satisfy applicable requirements regarding said Common Areas or Improvements, the City or its designees, in addition to having the rights and remedies for breach described in Section 7.3 or otherwise under this Declaration, applicable law or equity, shall have the option (but shall not be obligated) to enter upon and take all actions with respect to the Property as the City Engineer determines necessary or appropriate to maintain, replace or repair said Common Areas or Improvements in accordance with requirements of this Declaration or applicable laws, rules or regulations. The Declarant and Owners shall reimburse the City for all costs and expenses incurred in taking any such actions, and the City shall be authorized to record and foreclose liens against the Property for any amount that is not paid within 30 days, plus attorneys fees and interest which shall accrue at the rate of 12% per year.

ARTICLE V RULES AND REGULATIONS

Section 5.1 Rules and Regulations. Declarant shall have the right to promulgate such rules and regulations as it deems necessary and each Owner shall be bound by such rules and regulations. The rules and regulations may govern and restrict the use of any area of the Development, provided, however, that the same must be reasonable and must not discriminate among Owners except to reflect their different rights as provided herein, and shall not be inconsistent with this Declaration. Upon adoption, the rules and regulations shall have the same force and effect as if set forth herein.

ARTICLE VI MAINTENANCE AND TAXES

Section 6.1 Maintenance by Owners. Each Owner and Tenant shall maintain or cause to be maintained, at its expense (subject to the partial reimbursement right set forth in Section 4.2 above), its Lot, including any adjacent Common Areas, public right-of-ways, and all Improvements completed thereon in a well-maintained, clean, neat, good, working and attractive condition and repair at all times and shall comply with all applicable laws, rules and regulations, including without limitation, all health, fire, building and safety ordinances, codes, regulations and requirements applicable thereto. Each Owner shall perform the following, at its sole cost and expense, for any portion of its Lot, including but not limited to Common Areas:

(a) Maintaining paved surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally approved by the Declarant, or such substitute as shall in all respects be equal in quality, use and durability to that originally approved and installed;

(b) Removing all paper, mud and sand, snow and ice, trash, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities (including lighted signs) as shall be required or permitted;

(e) Maintaining all signs and all perimeter walls and exterior building walls (including, but not limited to, all retaining walls) and other exterior surfaces in a good condition and state of repair;

(f) Maintaining, mowing, weeding, thinning, trimming, watering, fertilizing, cultivating and pruning all landscaped areas, including any adjacent public right-of-ways, to maintain the same in a neat, well-groomed condition, and replacing as necessary shrubs and other landscaping on a regular basis, dead or dying plants shall be removed within thirty (30) days; all plants and trees are to be irrigated as often as necessary to maintain healthy growing conditions; Owners shall also adjust tree guys, stakes, etc., on a regular basis to maintain a neat appearance and to prevent damage to trees;

(g) Promptly removing all graffiti or other similar markings from all perimeter walls, exterior building walls and other exterior surfaces, paved areas and other portions of any Improvements;

(h) Maintaining any pedestrian, vehicular or other easements granted or reserved pursuant to the terms and conditions of this Declaration, and

(i) In the event any act, omission or condition caused by any Owner or its Tenant or Permittees results in the destruction or removal of any landscaping or other Improvements within the Common Areas, such Owner shall repair and replace, in a good and workmanlike manner, free of liens and to as good a condition as the condition of such Improvements prior to such destruction or removal, all such Common Area Improvements. Any landscape Improvements shall be promptly replaced with landscaping and other materials of like size and kind as approved by the Declarant and the Association.

Section 6.2 Taxes and Assessments Except for the taxes levied on the Shared Maintenance Area which shall be shared in accordance with Section 4.2 above, each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Lot and any Improvements located thereon, and any personal property owned or leased by such Owner in the Development, provided that if such taxes or assessments or any part thereof may be paid in installments, each Owner may pay each such installment as and when the same becomes due and payable. Nothing contained herein shall prevent any Owner from contesting at its cost and expense any taxes and assessments with respect to its Lot in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded (allowing for appeal to the highest appellate court), the contesting Owner shall promptly pay all taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

Section 6.3 Maintenance Standard. Notwithstanding anything in this Declaration to the contrary, the Development and all parts and improvements therein or thereof shall be maintained in neat, clean, good and working order, condition and repair.

ARTICLE VII MISCELLANEOUS

Section 7.1 Rights and Obligations of Lenders. Except for any lien imposed by the City, if by virtue of, any right or obligation set forth herein a lien shall be placed upon the Lot of any Owner hereto, such lien shall expressly be subordinate and inferior to the lien of any first lien holder now or hereafter placed on such Lot. Any holder of a first or other lien on any Lot, and any assignee or successor in interest of such first or other lien holder, shall be subject to the terms and conditions of this Declaration.

Section 7.2 Release from Liability. Except as otherwise provided in this Declaration, any person acquiring fee or leasehold title to any Lot, shall be bound by this Declaration only as to the Lot or portion of the Lot acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Lot or portion of the Lot, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section 7.2, the easements, covenants and restrictions in this Declaration shall continue as easements on the Property or to be benefits to and servitudes upon said Lots running with the land.

Section 7.3 Breach.

(a) Remedies. If any Owner shall fail to perform any material covenant or condition contained in this Declaration, the aggrieved Owner(s) shall give the defaulting Owner at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting Owner shall not have in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved Owner(s) may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

(b) Right of Entry. The defaulting Owner hereby grants to the aggrieved Owner(s) nonexclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting owners Lot (excluding the right to enter in or upon any Buildings on such Lot) for all purposes reasonably necessary to enable the aggrieved Owner(s) (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Declaration which the defaulting Owner shall have failed to perform, after notice and time to cure, as aforesaid, but only such notice and time to cure as shall be reasonable or practicable under the circumstances need be given in the event of any emergency. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting owner or collection may be sought otherwise and in any event the defaulting Owner shall pay such amount with interest at the rate of two percent (2%) per annum over the then existing prime rate of interest announced from time to time by Citibank, N A or its successors (but in no event exceeding the maximum rate per annum permitted by law).

Section 7.4 Non-Merger. This Declaration shall not be subject to the doctrine of merger.

Section 7.5 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

Section 7.6 Entire Agreement. This Declaration constitutes the entire declaration of the Declarant and agreement between the Owners hereto as to the matters set forth in this Declaration. This Declaration, once executed and delivered, shall not be modified or altered in any respect except upon the execution of a modification or alteration by Declarant and a majority of the Owners, which modification or

J

alteration shall be subject to written approval of the City Administrator and recorded in the official land records of Sarpy County, Nebraska.

Section 7.7 Estoppel Certificates. Each Owner shall upon not less than thirty (30) days from receipt of written notice from any other Owner execute and deliver to such other Owner a certificate stating that (a) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other Owner or Owners are in default in any respect under this Declaration and if in default, specifying such default.

Section 7.8 Notice. Any notice required or permitted to be given under this Declaration shall be in writing and shall be made by personal delivery or deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, or deposit with a recognized national overnight courier and addressed to the Owner being notified at the address given below (or such other address which any Owner may designate for itself from time to time hereafter by written notice to the other Owners):

If to Declarant: Southport West Partners, LLC
 c/o CB Richard Ellis/Mega
 11213 Davenport Street, Suite 300
 Omaha, Nebraska 68154
 Attn: Dean Hokanson

If to Owner/Tenant: To the party at the street address of the Lot owned or occupied.

Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or overnight courier delivery or upon deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication.

Section 7.9 Assignment. The rights and obligations of any Owner hereunder may be assigned in whole or in part to any person acquiring the entire interest of such Owner in its Lot or to one or more ground lessees or lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or lease between such Owner and such ground lessee or lessee.

Section 7.10 Exhibits. Each reference herein to an exhibit refers to the applicable exhibit that is attached to this Declaration. All such exhibits constitute a part of this Declaration and by this reference are expressly made a part hereof

Section 7.11 Assignment of Declarant Rights. Any and all of the rights, powers and reservations of Declarant herein contained, subject to prior written approval of City Engineer, may be assigned by Declarant from time to time, in its discretion, to any person or entity who will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignment, any such person or entity assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by Declarant in this Declaration. Any assignment made under this Section 7.11, and City Engineer approval thereof, shall be in recordable form and shall be recorded in the Office of the Register of Deeds of Sarpy County, Nebraska. Notwithstanding any provision of this Declaration to the contrary, Declarant, subject to prior written approval of the City Engineer, may, at any time and from time to time without the consent of the Owners, temporarily or permanently relieve itself of all or a portion of its rights and obligations under this Declaration by filing in the Register of Deeds of Sarpy County, Nebraska, a notice stating that Declarant has surrendered the rights and obligations specified therein, and upon the recording of such notice, said powers and

obligations so specified shall immediately vest in the Owner or Owners designated by the Declarant.

Section 7.12 Limitation of Liability. Except as otherwise provided in this Declaration, any person acquiring fee or leasehold title to any of the Lots or any portion thereof, shall be bound by this Declaration only as to the Lot or portion of the Lot acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Lot or portion of the Lot; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section, the easements, covenants and restrictions in this Declaration shall continue to be as easements on the Property or benefits to and servitudes upon said tracts running with the land.

Section 7.13 Term of this Declaration This Declaration shall be effective as of the date first above written and shall continue in full force and effect until December 31, 2064. At any time within one year prior to December 31, 2063, and each 20-year period thereafter (each such date being referred to as a "Termination Date"), by written declaration signed and acknowledged by a majority of the approving Owners and duly recorded with the Recorder of Deeds for Sarpy County, Nebraska, terminate this Declaration, effective as of the next Termination Date. Failing such termination, this Declaration shall automatically be renewed and extended for successive period of 20 additional years, subject to the right of the vote of the majority of the Owners to terminate this Declaration. Provided, however, termination of this Declaration, to be effective, shall require the prior written approval of the City and shall be recorded with the terminating declaration. Notwithstanding the foregoing, the easements referred to in Article III hereof shall continue in full force and effect as provided herein. Upon the termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

Section 7.14 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Declaration as of the day and year first written above.

SOUTHPORT WEST PARTNERS, LLC,
a Nebraska limited liability company,

By: 
Name: Dean Hokanson
Title: Managing Member

STATE OF Nebraska)
COUNTY OF Douglas) SS

On this 22nd day of October, 2014, before me, a Notary Public in and for said county

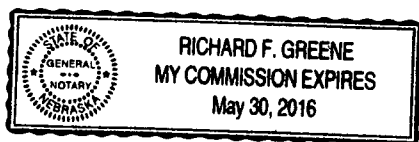
L

and state, personally appeared Dean Hokanson, who executed the foregoing Declaration, and acknowledged before me that he/she was duly authorized and did execute the same as Manager of Southport West Partners, LLC, a Nebraska limited liability company, on behalf of the company.

GIVEN under my hand and Notarial Seal, this 22nd day of October 2014.

Richard F. Greene
Notary Public

My Commission expires: May 30, 2016



M

EXHIBIT A


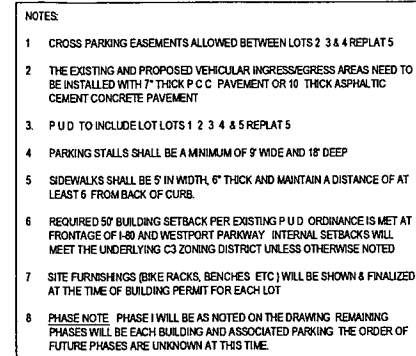
LEGAL DESCRIPTION OF PROPERTY

Lots 1 - 5 Southport West Replat 5, Sarpy County , Nebraska.

N

EXHIBIT B

SITE PLAN



Engineering Answers

SHOPPES AT SOUTHPORT WEST

EXHIBIT "C"
PLANNED UNIT DEVELOPMENT
SITE PLAN

OPEN SPACE CALCULATIONS					
LOT NO	SQ. FT.	ACRES	REQUIRED OPEN SPACE *	PROVIDED OPEN SPACE	DIFFERENCE
LOT 1 REPLAT 5	147,991	3.398	36,996 S.F.	68,633 S.F.	31,635 S.F.
LOT 2 REPLAT 5	30,943	1.169	12,736 S.F.	17,749 S.F.	7.9 S.F.
LOT 3 REPLAT 5	59,367	1.825	85,214 S.F.	120,503 S.F.	35,285 S.F.
LOT 4 REPLAT 5	29,919	0.911	22,637 S.F.	24,656 S.F.	1,018 S.F.
LOT 5 REPLAT 5	43,748	0.993	10,812 S.F.	18,553 S.F.	8,041 S.F.
TOTAL	673,549	15.463	160,387 S.F.	241,533 S.F.	73,146 S.F.

* 25% OF CURRENT LOT SQUARE FOOTAGE

SITE PARKING TABLE							
LOT AREA			BUILDING TYPE	BUILDING SIZE	REQUIRED PARKING	PROVIDED PARKING	PARKING RATIO
LOT NO	SQ. FT	ACRES					
LOT 1 REPLAT 5	147 991	3.338	OFFICE / SHOWROOM	15,500 S F	74 Stalls	75 Stalls	4.06 Stalls / 1,000 S F
LOT 2 REPLAT 5	50 943	1.169	RETAIL	10,800 S F	43 Stalls	57 Stalls	5.28 Stalls / 1,000 S F
LOT 3 REPLAT 5	340 857	7.825	RETAIL	34,900 S F	140 Stalls	501 Stalls	14.35 Stalls / 1,000 S F
LOT 4 REPLAT 5	90 508	2.078	ASSEMBLY	26,070 S F	75 Stalls	63 Stalls	2.25 Stalls / 1,000 S F
LOT 5 REPLAT 5	43,249	0.993	RETAIL	800 S F	3 Stalls	18 Stalls	22.50 Stalls / 1,000 S F
TOTAL				86,070 S F	335 Stalls	714 Stalls	★ 7.67 Stalls / 1,000 S F

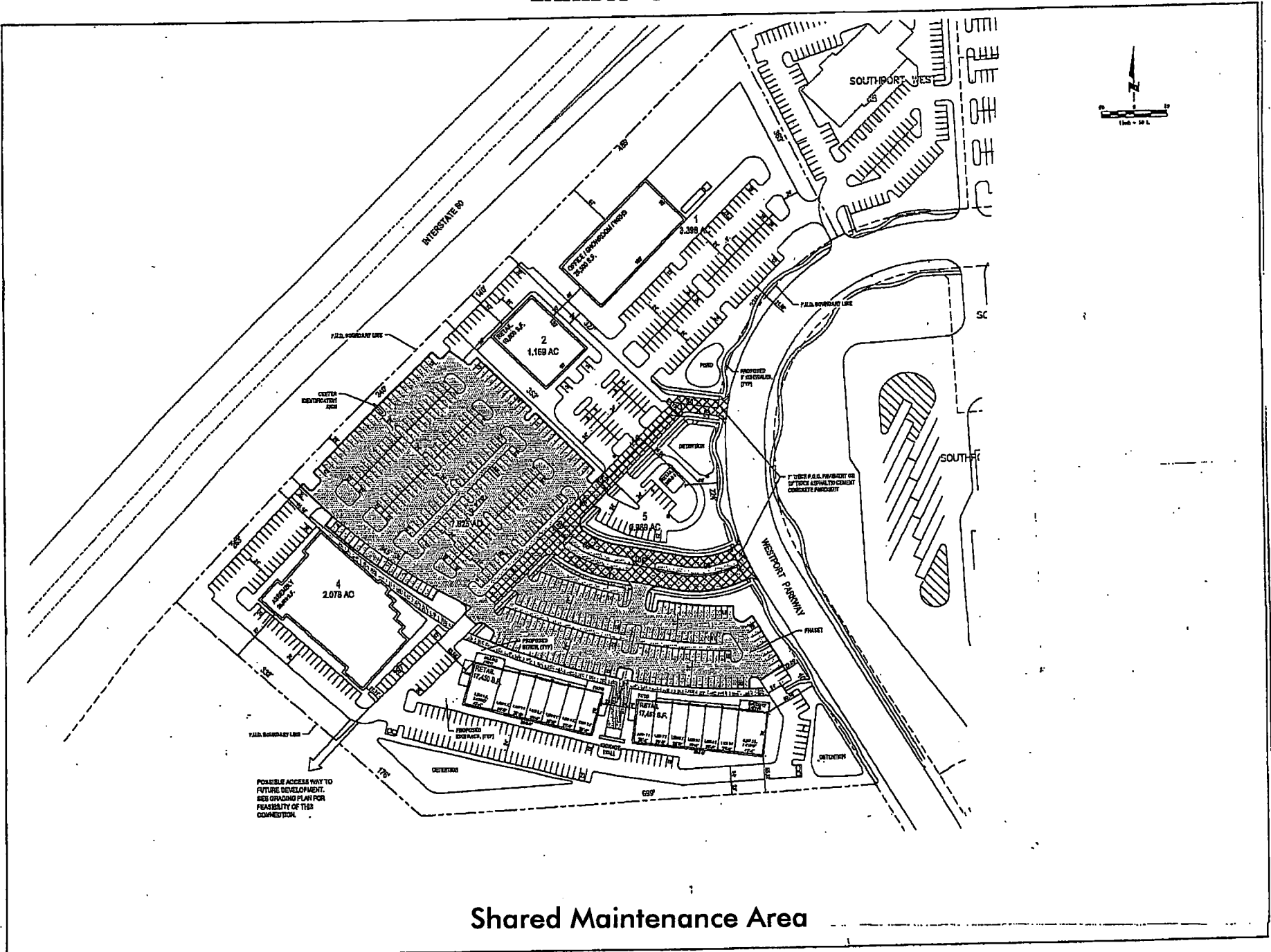
* NOTE, SHARED PARKING BETWEEN LOTS 2, 3, & 4 REPLAT 5.

P

EXHIBIT "C"

**SHARED MAINTENANCE AREA
(LOTS 3 AND 4)**

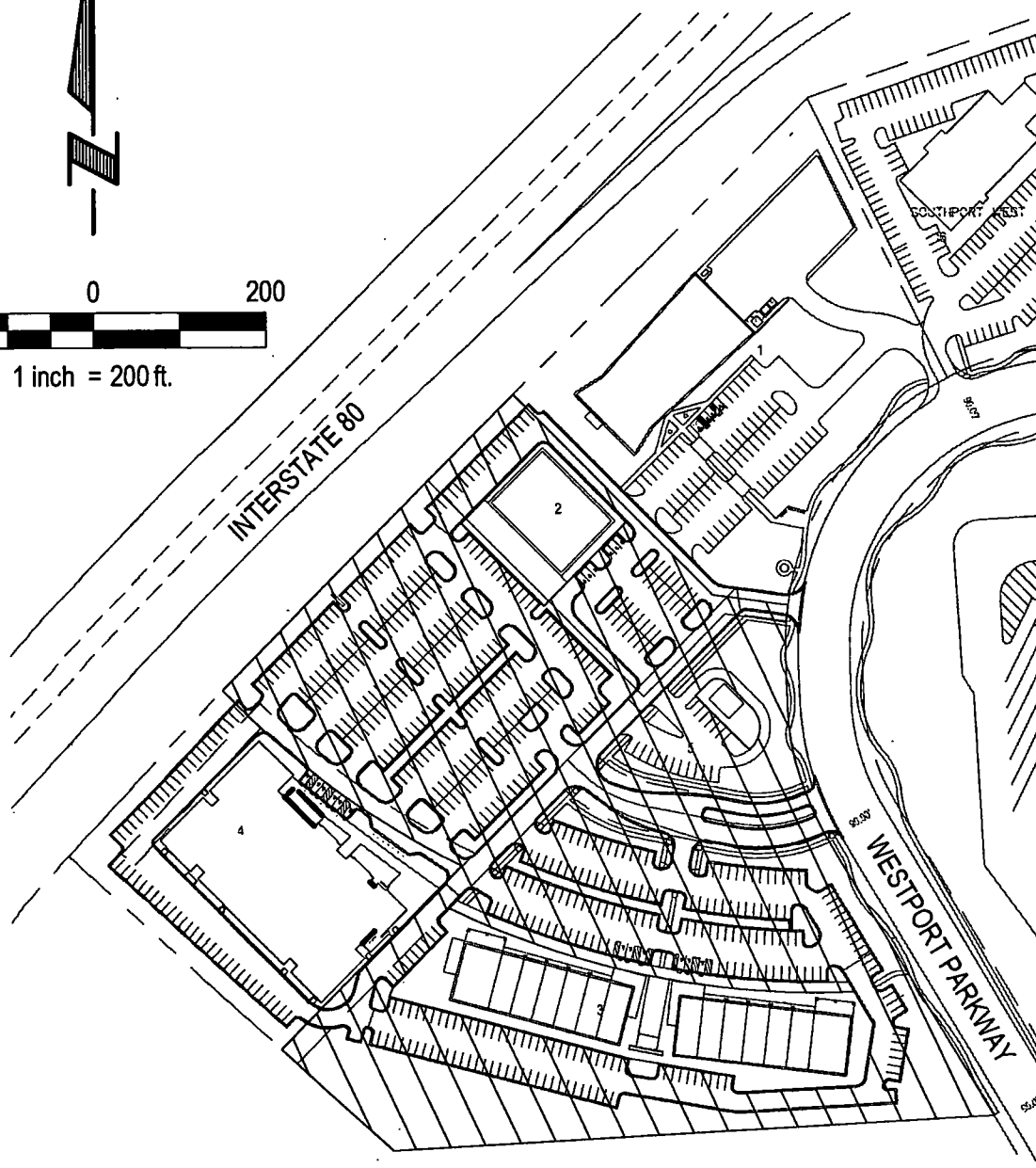
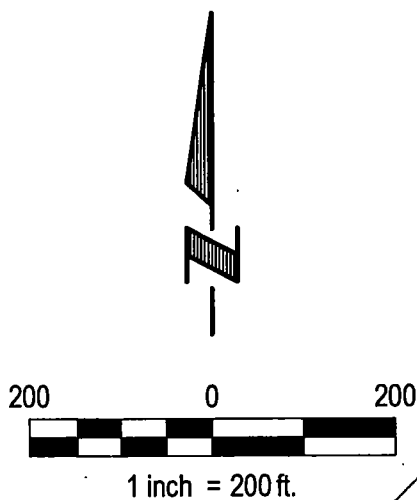
EXHIBIT "C"



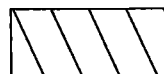
Shared Maintenance Area

R

EXHIBIT D
COMMON AREA



LEGEND



COMMON AREA



Engineering Answers

E & A CONSULTING GROUP, INC.

Engineering • Planning • Environmental & Field Services

330 North 117th Street Omaha, NE 68154 Phone: 402.895.4700 Fax: 402.895.3599

Job No.: P2000.030.104

Date: 10/02/2014

Drawn by: ASK

Scale: 1"=200"

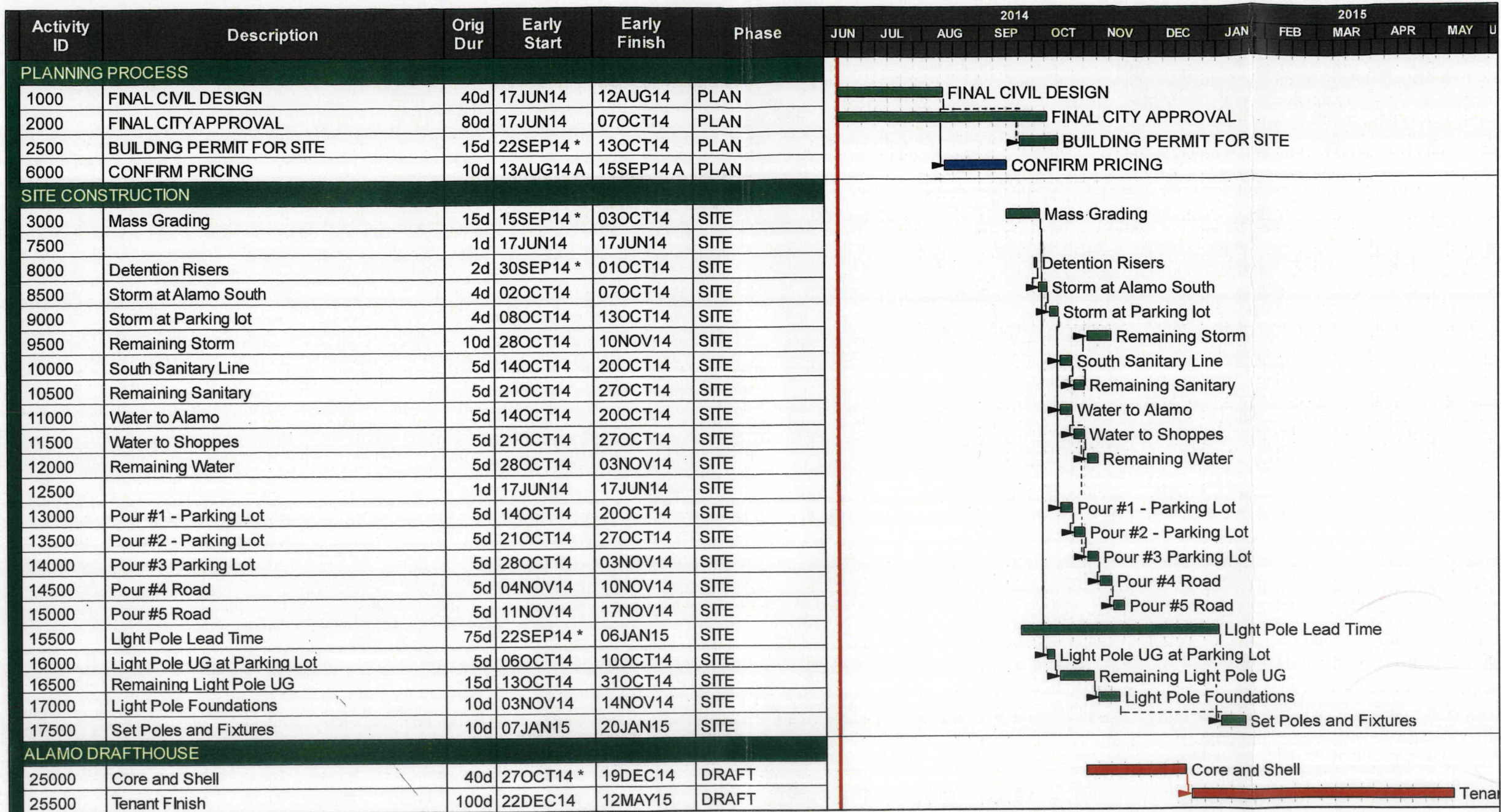
Sht: 1 of 1

SHOPPES AT SOUTHPORT WEST

COMMON AREA PLAN

EXHIBIT "D"

La Vista, NEBRASKA



Start date 17JUN14
 Finish date 12MAY15
 Data date 17JUN14
 Run date 07OCT14
 Page number 1A
 © Primavera Systems, Inc.

The Weitz Company
Southport West Replat - Exhibit I