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INSTRUMENT NUMBER

2010-31215

11/05/2010 08:57:41 AM

Lloyd J. Dowding

REGISTER OF DEEDS

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LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS

Steven J. Stastny, Deputy

1210 GOLDEN GATE DRIVE, STE 1109

PAPILLION, NE 68046-2895

402-593-5773

RVR

City of Papillion
 122 East 3rd Street
 Papillion, NE 68046

**SECOND AMENDMENT TO MIXED USE
DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO MIXED USE DEVELOPMENT AGREEMENT is made pursuant to Article XXII of the Zoning Ordinance of the City of Papillion, and entered into by and between the CITY OF PAPIILLION, NEBRASKA, a municipal corporation (hereinafter referred to as "City"), and The Venteicher Limited Liability Company, a Nebraska limited liability company (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, the City and Developer have entered into a certain Mixed Use Development Agreement that was approved by the City Council of the City of Papillion on November 8, 2006, by Resolution No. R06-0171, as amended by that certain First Amendment to Mixed Use Development Agreement, approved by the City Council of the City of Papillion on October 7, 2008, by Resolution No. R08-0161 (collectively the "Development Agreement"), setting forth certain conditions with respect to the development of property owned by the Developer known as Portal Plaza South; and

WHEREAS, the Developer desires to amend the Agreement to add certain civic uses as permitted uses and modify the existing permitted uses within Portal Plaza South.

NOW, THEREFORE, the following is agreed between the parties hereto:

1. Capitalized Terms. All capitalized terms used in this Second Amendment shall have the meanings set forth in the Agreement except as otherwise defined herein.

2. Amendment: Exhibit G-1 to the Development Agreement is hereby repealed and replaced with Exhibit G-2 which is amended, in part, to:

A. Include the following uses as permitted uses within Portal Plaza South:

Civic Uses:

- Administration
- Clubs (except that outdoor athletic facilities shall not be permitted.)
- College and university facilities
- Cultural Services
- Adult Day Care Services
- Child Care Center and Preschool
- Postal Facilities

Commercial Uses:

- Commercial Recreation (Controlled Impact – Indoor Only)

B. Modify the existing permitted uses to indicate that Cocktail Lounges and Liquor Sales shall not be permitted to operate within 150 feet nor within an adjacent bay of

any of the Civic Uses identified on the permitted uses list (except Postal Services). The 150 foot buffer shall be measured from the closest building line or interior wall of the civic use to the closest parallel building line or interior wall of the commercial or industrial use. The enclosed outdoor play area for Child Care Centers and Preschools shall be used as the measuring point should it extend further than the wall.

- C. Modify the existing permitted uses to indicate that Light Industry and Warehousing shall not be permitted to within an adjacent bay of any of the Civic Uses identified on the permitted uses list (except Postal Services). Adjacent bays shall also include bays in separate adjacent but non-adjoining buildings.
- D. Modify the existing permitted uses to indicate that Kennels (with an outdoor component) shall not be permitted to within an adjacent bay of a Child Care Center or Preschool. Adjacent bays shall also include bays in separate adjacent but non-adjoining buildings.
- E. The property owner shall be responsible for filing a restrictive covenant with the Sarpy County Register of Deeds against all properties within Portal Plaza South and Portal Plaza South Replat 1 specifying that Light Industry and Warehousing uses located within 150 feet of a Civic Use (except Postal Services) shall not use or store any substance or material that, by reason of its toxic, caustic, corrosive, flammable, explosive or otherwise injurious property, is reasonably determined to be detrimental to the health and safety of the occupants of any Civic Use. The City shall not be a party to that covenant. Enforcement of the covenant shall be the duty of the property owner.

At the time of building permit application, any such permitted use shall be required to meet the minimum parking requirements for such use and otherwise comply with the requirements set forth and established in the Development Agreement.

3. No Other Amendments. Except as specifically set forth herein, the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the executing parties, by their respective duly authorized agents, have entered into this Second Amendment to the Mixed Use Development Agreement effective on the date of City Council approval.


DEVELOPER:

THE VENTEICHER LIMITED LIABILITY COMPANY,
a Nebraska limited liability company,

By: *George W. Venteicher*
George W. Venteicher, Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 28th day of October, 2010, by George W. Venteicher, Managing Member of The Venteicher Limited Liability Company, a Nebraska limited liability company, on behalf of said limited liability company.

[Seal] 

Frank H. Kulig
Notary Public

D

This AMENDMENT approved and accepted by the CITY OF PAPILLION, NEBRASKA, this 19th day of October, 2010.

CITY OF PAPILLION, NEBRASKA, a Municipal corporation,

By: [Signature]
David Black, Mayor

ATTEST:

[Signature]
City Clerk



Exhibit G-2

Permitted Uses¹

I. Office Use Types

- A. General Office
- B. Financial Services
- C. Medical Offices

II. Civic Use Types²

- A. Administration
- B. Child Care Center
- C. Clubs (except that outdoor athletic fields are not permitted)
- D. College and University Facilities
- E. Cultural Services
- F. Day-Care Services (Adult)
- G. Postal Services
- H. Preschool

III. Commercial Use Types

- A. Automotive rental and sales³
- B. Auto Services (including car washes)
- C. Business Support Services
- D. Cocktail Lounge⁴
- E. Commercial Recreation (Controlled Impact – Indoor Only)
- F. Construction Sales and Services
- G. Consumer Services
- H. Food Sales
 - i. Convenient Food Sales
 - ii. Limited Food Sales
 - iii. General Food Sales
- I. General Retail Services
- J. Kennels⁵
- K. Liquor Sales⁶
- L. Personal Improvement Services
- M. Personal Services
- N. Pet Services
- O. Restaurants
 - i. Restaurant (drive-in or fast food)⁷
 - ii. Restaurant (general)
- P. Veterinary Services

IV. Industrial use Types⁸

- A. Custom Manufacturing
- B. Light Industry
- C. Warehousing
- D. Mini Storage with Outdoor Storage

¹ Any required 150 foot buffer will be measured from the closest building line or interior wall of the civic use to the closest parallel building line or interior wall of the commercial or industrial use. The enclosed outdoor play area for Child Care Centers and Preschools shall be used as the measuring point should it extend further than the wall. Any requirement related to adjacent bays shall also include bays in separate adjacent but non-adjoining buildings

² Civic Uses (except Postal Services) shall not be located within 150 feet of Cocktail Lounges or Liquor Sales and shall not be located in bays adjacent to Light Industry or Warehousing Uses.

³ Automotive rental and sales are restricted to not more than four lots within Portal Plaza South. Not more than four vehicles for sale or rent may be displayed/stored outside the building or rear yard; and may not be displayed/stored in a required parking area or bufferyard.

⁴ Cocktail Lounge is not permitted within 150 feet of any Civic Use (other than Postal Service).

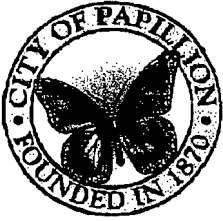
⁵ Kennels are limited to indoor boarding, except that outdoor play/exercise areas may be located in a rear yard if properly screened in accordance with the Site Requirements for Outdoor Storage set forth in the Agreement (Exhibit D, Section K). Outdoor play/exercise areas may only be used on a temporary basis throughout the day. Kennels that have an outdoor play/exercise area shall not be located an adjacent bay of a Child Care Center or Preschool.

⁶ Liquor Sales is not permitted within 150 feet of any Civic Use (except Postal Services).

⁷ A maximum of fifty (50%) percent of the overall mixed use area may be used for any of the above-referenced uses; provided, however, that there shall be a twelve percent (12%) maximum on the overall mixed use area that may be used for free-standing fast food restaurants.

⁸ Light Industry and Warehousing are not permitted within any bay that is adjacent to any Civic Use (except Postal Services).

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CITY OF PAPIILLION

David P. Black, Mayor

Mark A. Stursma, Planning Director

122 East Third Street

Papillion, Nebraska 68046

Phone 402-597-2060

Fax 402-592-2074

November 4, 2010

Lloyd J. Dowding

Sarpy County Register of Deeds

1210 Golden Gate Drive Suite 1109

Papillion, NE 68046-2897

Re: 2nd Amendment to Portal Plaza South Mixed Use Agreement

Dear Mr. Dowding;

On 10/19/10, The Papillion City Council approved RES. R10-0148 to adopt the 2nd Amendment to the Portal Plaza South Mixed Use Agreement. The Portal Plaza South Mixed Use Agreement regulates Lots 1, 2, 3, 6, 7, 8, 9 and 10 Portal Plaza South, Outlot A, Portal Plaza South, and Lots 1 and 2, Portal Plaza South Replat 1. Please file the 2nd Amendment to the Portal Plaza South Mixed Use Agreement accordingly.

If I can be of further assistance in this matter, please contact me at (402) 597-2060.

Sincerely,

CITY OF PAPIILLION

Mark Stursma, AICP

Planning Director