

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2006-11172

2006 APR 24 A 10:08 AM

*Lloyd J. Dowding*  
REGISTER OF DEEDS

COUNTY an  
VERIFY JAMES D.E. K  
PROOF \_\_\_\_\_  
FEES \$ 201.50  
CHECK# \_\_\_\_\_  
CHG SEC CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

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**THIS PAGE ADDED  
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

**SECOND AMENDMENT TO SUBDIVISION AGREEMENT**

**(Southport East Subdivision)**

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

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

**WITNESSETH:**

WHEREAS, the City of La Vista ("City") and R.S. Land, Inc., a Nebraska corporation, and Southpointe Partners I, LLC (herein collectively referred to as the "Initial Developer") entered into a Commercial Subdivision Agreement with the City dated April 19, 2001 (herein the "Subdivision Agreement" or the "Agreement"), setting forth certain agreements, Commercial Building Design and Criteria, and other terms, conditions and covenants running with the land in respect to the development of land within the Subdivision, all of which continue to apply to the area to be replatted; and

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

WHEREAS, Subdivider herein wishes to subdivide said Lot 2 and Tax Lot 16, Southport East into Lots 1, 2 and 3, Southport East Replat Two (herein the "Replat" or the "Replatted Area"), same being a part of the Subdivision as shown on replat drawing attached as Exhibit "A" hereto and consisting of approximately 25.888 acres, more or less, per Surveyor's Certificate attached as Exhibit "B" hereto and being more specifically shown on the "Final Plat" of the Replatted Area dated 9/28/05 (with revisions dated 10/04/05, 10/25/05 and 11/16/05) and attached hereto as Exhibit "C"; and

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

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

1. Replattings. Subject to the terms of this Amendment, Lot 2 and Tax Lot 16 of Southport East Subdivision shall be replatted as Lots 1, 2 and 3 of Southport East Replat Two, as more fully shown on Exhibit "C" (herein the "Replat" or "Replatted Area").
2. Drainage Calculations and Map. Subdivider has provided drainage calculations and a drainage map for the Replatted Area for review and approval by the City's Engineer prior to execution of the final Replat demonstrating what easements may be needed to convey major storm sewer events (hundred year flood) over the surface of the property, all of which are in a form satisfactory to the City's Engineer.

B

- 3. Perimeter Sidewalks. Subdivider, or its assigns, shall, at their cost, install and maintain perimeter sidewalks abutting the Replatted Area as the lots are built upon. Sidewalks are not required along 126<sup>th</sup> Street or Giles Road.
- 4. Commercial Building Design Guide and Criteria. City's Commercial Building Design Guide and Criteria ("Commercial Criteria") dated September 15, 1999, and the Southport East Design Guidelines, the specific design criteria to be utilized within the Southport East Subdivision, including the City's Gateway Corridor Design Guidelines, all of which are incorporated into this amendment by reference and shall be applicable to commercial development within the Replatted Area. Subdivider agrees to abide by the provisions thereof as they may have or shall be from time to time amended or modified by the City.
- 5. Grading Plan. The Grading Plan for each individual lot of the Replat is to be submitted with the development plan of each individual lot.
- 6. Site Approval Precondition to Building Permit. Nothing herein shall be deemed a waiver or lessening of any of City's requirements for City approved site plan for any building prior to the issuance of a building permit therefor.
- 7. Public Access Roads or Driveways. Direct vehicular access to abutting streets shall be limited as indicated on the Replat. Any publicly used roads and driveways within the Replat shall be constructed to City approved specifications and shall not be less than seven inches (7") P.C. concrete paving. The City shall have access to and over such roadways and driveways for any purpose it deems appropriate in the exercise of its general governmental powers, including but not limited to, inspection, police, fire and rescue and other public safety purposes, and the exercise of all rights granted to City by the terms of the Subdivision Agreement as amended by this Second Amendment.
- 8. Staking Bond. Subdivider shall provide the City a staking bond satisfactory to City Engineer prior to City's release of the final plat of the Replatted Area.
- 9. Tract Sewer Connection Fees. Subdivider agrees that the terms and conditions for the benefit of the City that are contained in the Subdivision Agreement and the separate Sewer Connection Agreement pertaining to the sanitary sewer system shall be equally applicable to the private sanitary sewer provided for herein and enforceable by City in respect thereto to the same extent as though the private sewer had originally been incorporated and made a part of said agreements. Tract sanitary sewer connection fees shall be due and payable to the City in the following amounts prior to the issuance of a building permit for a particular lot:

Lot 1, Southport East Replat Two	2.997 acres @ \$5,484/Ac. =	\$ 16,435
Lot 2, Southport East Replat Two	1.803 acres @ \$5,484/Ac. =	9,888
Lot 3, Southport East Replat Two	21.088 acres @ \$5,484/Ac. =	<u>115,647</u>
Total		<u>\$141,970</u>

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

C

- 10. 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 and internal street 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 City.
- 11. Specific Requirements of City Engineer for Replat Approval. Attached hereto as Exhibit "D" is a copy of the City Engineer's comments concerning Subdivider's Application for Replat. Subdivider, its successors and assigns in title, agree to fully comply with all such requirements within the applicable time or times therein designated.
- 12. Common 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, roads, parking, storm drainage, sanitary sewer, public utility infrastructure or services and other infrastructure needs for or benefiting more than a single lot.
  - b. Common Area Expense Defined. Common Area Expense shall include all engineering expense, including engineering costs, the costs of construction, reconstruction, modification, repair, maintenance (including clean up and clean out) and replacement of any such items or services, together with the City's costs, if any, of engineering, 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	2.997	11.59%
2	1.803	6.97%
3	21.088	81.44%
TOTAL	25.888	100.00%

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

D

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.

- d. Filing of Record. The Subdivider, at its expense, shall record this Second Amendment in the land records of the Office of the Register of Deeds of Sarpy and shall cause a recorded copy thereof to be transmitted to the City Administrator. Any adjustment under subparagraph 12.c-2 above shall be similarly recorded and transmitted at Subdivider's expense. Such recordings shall include lot specific recorded notice.
  - 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 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 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 Subdivider, Subdivider shall have either (1) paid all installments and accrued interest on such special 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 written acceptance thereof shall be provided to City by Subdivider at Subdivider's expense.
14. Ownership Representation. The undersigned signatory on the proposed Final Plat of Southport East Replat Two and to the Second Amendment to the Subdivision Agreement, to wit, Joseph McDermott, President of Joe McDermott Associates, Inc. and

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John L. Hoich, an individual, do warrant and represent that they have executed the Final Plat for Southport East Replat Two and this Second Amendment to Subdivision Agreement on behalf of Joe McDermott Associates, Inc. and John Hoich, respectively, and that as between them they are the sole owners of 100% of the Replatted Area at date of execution of this Second Amendment and at date of recording the Replat.

- 15. Covenants Running With the Land. The obligations and agreements of Subdivider herein are perpetual covenants running with the land and shall be binding on the Subdivider and all of Subdivider's successors and assigns in title. The covenants herein shall be cumulative to, and not in lieu of, prior covenants running with the land. City shall have the right, but not the obligation, to enforce any and all covenants.
- 16. Planned Unit Development. Subdivider has made application to City for approval of a Planned Unit Development on Lots 1 and 2 of the Replat, which the City Council has approved as to location and concept, but the final language of which must be approved by the City Administrator in consultation with the City Engineer and the City Attorney. City will process Subdivider's or its successor's application for the Conditional Use Permit following City's approval of the Planned Unit Development.
- 17. Cross-Access Easement and Restrictions Agreement. Subdivider, Nanaimo Bay, LLC and Des Moines Lodging Investors III, LLC will be entering into a Cross-Access Easement and Restrictions Agreement pertaining to properties within the Replatted Area. In regard to said document:
  - a. Properties involved therein are:
    - Lot 1, Southport East Replat Two, Owner: Nanaimo Bay, LLC, a Nebraska limited liability company (Hotel site)
    - Lot 2, Southport East Replat Two: Des Moines Lodging Investors III, LLC, a Wisconsin limited liability company (Restaurant site)
    - Lot 3, Southport East Replat Two (remainder of Replatted Area): Future development (owners Joe McDermott Associates, Inc. and John L. Hoich)
  - b. No provision within the document shall be interpreted, construed or have the effect of abolishing, suspending, abating or diminishing City's ability to, at City's sole option, exercise its rights and authority to invoke and exercise its right of entry and full access to the Replatted Area and exercise the other rights herein reserved to the City under Section 12(f) hereof.
  - c. All legal descriptions and references to land within the document shall not be limited to "Southport East" but shall include the full name of the Replat, i.e. "Lot \_\_, Southport East Replat Two."
  - d. Any amendment or termination of the Agreement shall be approved by City before it becomes effective.
- 18. Exhibit Summary. The Exhibits proposed by E & A Consulting Group, Inc. engineers for the Subdivider, attached hereto and made a part hereof, are as follows:

Exhibit "A": Composite Drawing of Replat Two.

F

- Exhibit "B": Surveyor's Certificate.
- Exhibit "C": Final Plat of Southport East Replat Two.
- Exhibit "D": City Engineers requirements for approval of replatting.
- Exhibit "E": Application for Approval of Planned Unit Development.
- Exhibit "F": Cross-Access Easement and Restrictions Agreement.

19. 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.
20. Ratification. In all other respects, the Subdivision Agreement shall not be affected hereby, and is hereby ratified and confirmed.

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

ATTEST: JOE McDERMOTT ASSOCIATES, INC., a  
Nebraska corporation

Joseph McDermott  
Secretary

By Joseph McDermott  
Joseph McDermott, President



ATTEST:

John L. Hoich  
John L. Hoich, individually

CITY OF LA VISTA

Rita M. Ramirez  
Rita M. Ramirez, City Clerk

By Douglas D. Kindig  
Douglas D. Kindig, Mayor

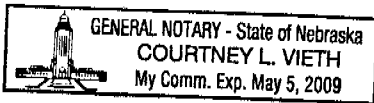
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ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

On this 23<sup>rd</sup> day of December, 2005, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Joseph McDermott, President, and Joseph McDermott, Secretary of Joe McDermott Associates, Inc., personally known by me to be the President and Secretary and the identical persons whose names are affixed to the foregoing Second Amendment to Subdivision Agreement, and acknowledged the execution thereof to be their voluntary acts and deeds, and the voluntary act and deed of said corporation.

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



Courtney L Vieth  
Notary Public

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

On this 23<sup>rd</sup> day of December, 2005, before me a Notary Public, duly commissioned and qualified in and for said County, appeared John L. Hoich, personally known by me to be the identical person whose name is affixed to the foregoing Second Amendment to Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed.

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



Courtney L Vieth  
Notary Public

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Sarpy )

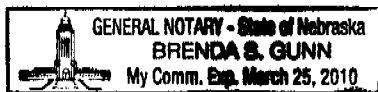
On this 16<sup>th</sup> day of March, 2005, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Douglas D. Kindig, personally known by me to be the Mayor of the City of La Vista and Rita M. Ramirez, to me personally known to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Second Amendment to Subdivision Agreement, and acknowledged the



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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.



Brenda Gunn  
Notary Public

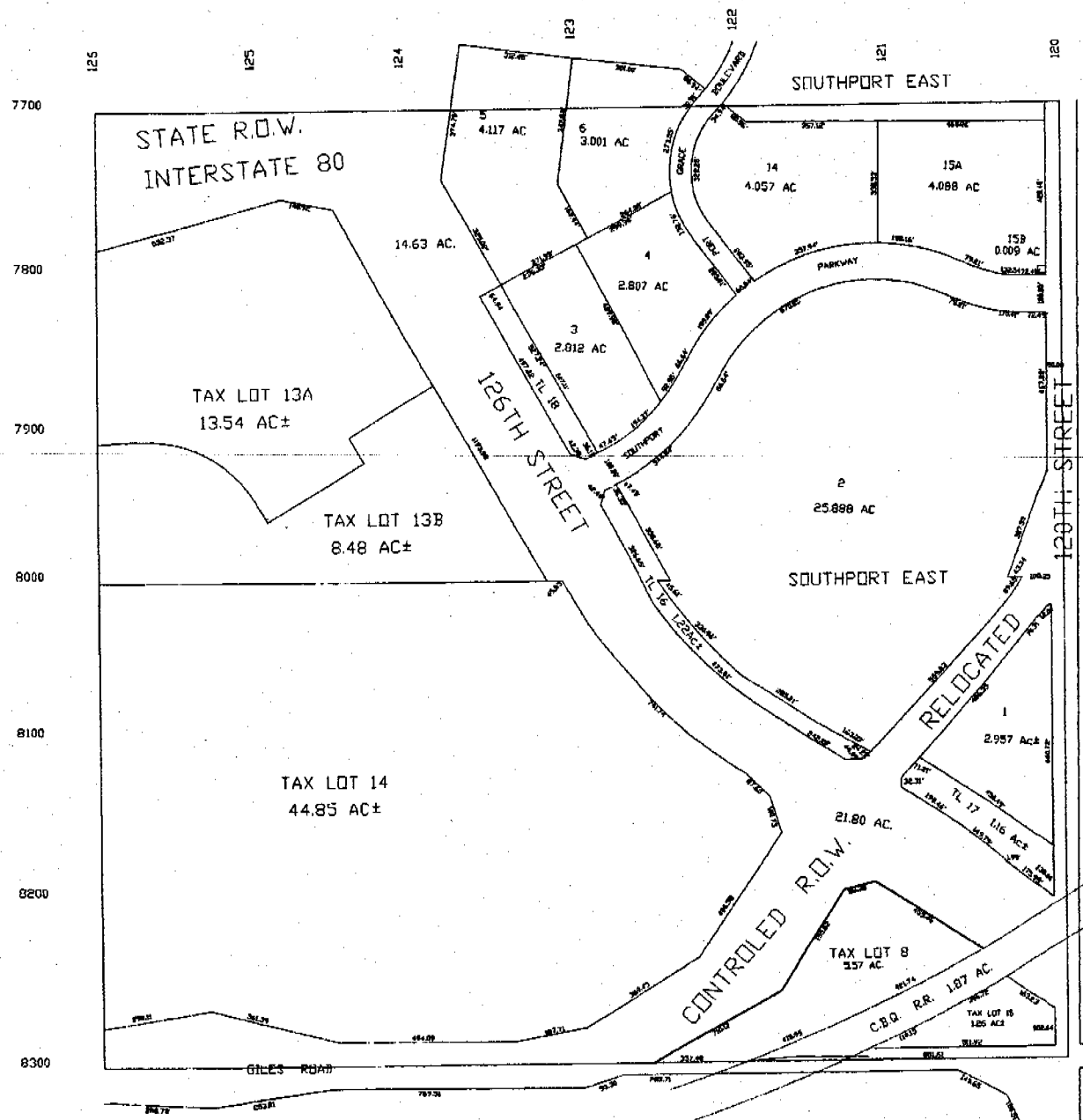
I

NOTICE

This map constitutes a representation based on information provided to the Sarpy County Surveyors Office by other individuals and organizations. Therefore no representations regarding the accuracy of the size, dimensions, measurements, condition, platting or location of the within described area are made. Should such information be required for construction, zoning or other purposes, the services of a private surveyor and/or title search should be secured.

SE 1/4 SEC. 18-T14N-R12E  
SCALE 1" = 200'

945



SARPY COUNTY  
SURVEYOR'S OFFICE

- REVISIONS
- 01-12-00-T.L.
  - 02-06-01-T.L.
  - 02-23-01-T.L.
  - 08-09-01-T.L.
  - 10-26-01-PLAT
  - 06-20-02-19709
  - 07-31-02-24018
  - 01-06-03-TL
  - 08-13-04-10432
  - 09-22-04-VL

EXHIBIT A



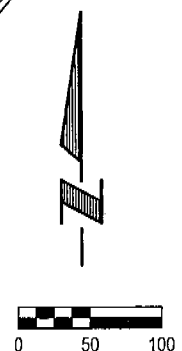
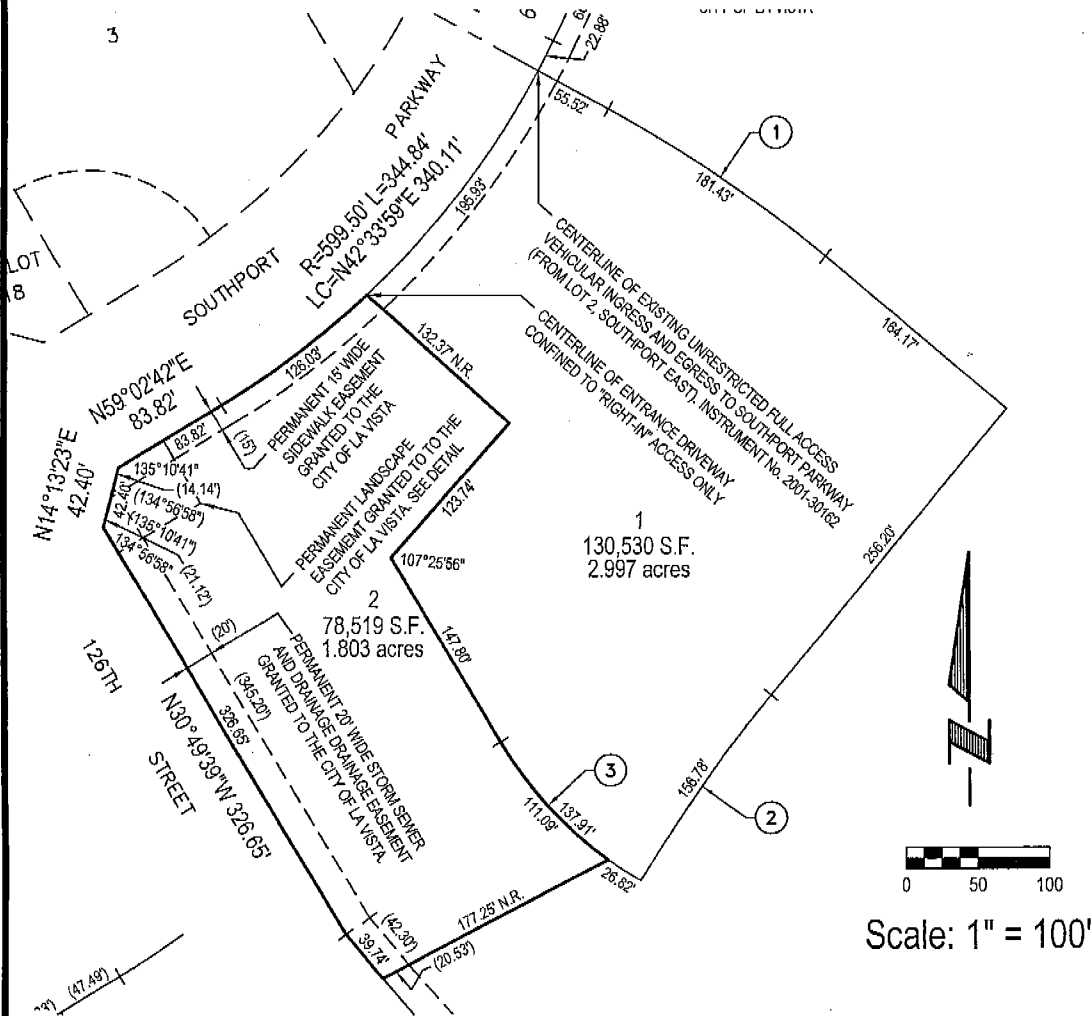
K

Filed in the office of  
 SАРY COUNTY SURVEYOR  
 Papillion, Nebraska

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 2, SOUTHPORT EAST REPLAT TWO, A SUBDIVISION LOCATED THE SE 1/4 OF SECTION 18, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SАРY COUNTY, NEBRASKA.



LOT LINE CURVE TABLE				
CURVE	RADIUS	LENGTH	TANGENT	DELTA
1	900.00'	181.43'	91.03'	11°33'02"
2	1001.72'	156.78'	78.55'	8°58'02"
3	268.56'	137.91'	70.51'	29°25'18"

ROBERT CLARK L.S. 419  
 3-17-2006  
 DATE

**e+a** E&A CONSULTING GROUP, INC.  
 ENGINEERING • PLANNING • FIELD SERVICES  
 330 NORTH 117TH STREET OMAHA, NE 68154 PHONE (402) 485-4700

OFFICIAL ADDRESS: \_\_\_\_\_  
 DATE RECEIVED: \_\_\_\_\_ BUILDING PERMIT No.: \_\_\_\_\_  
 Drawn by: MH Chkd by: \_\_\_\_\_ Chkd by: \_\_\_\_\_  
 Job No.: 2000030.17 Date: 3-17-2006 Book No.: XXXXX

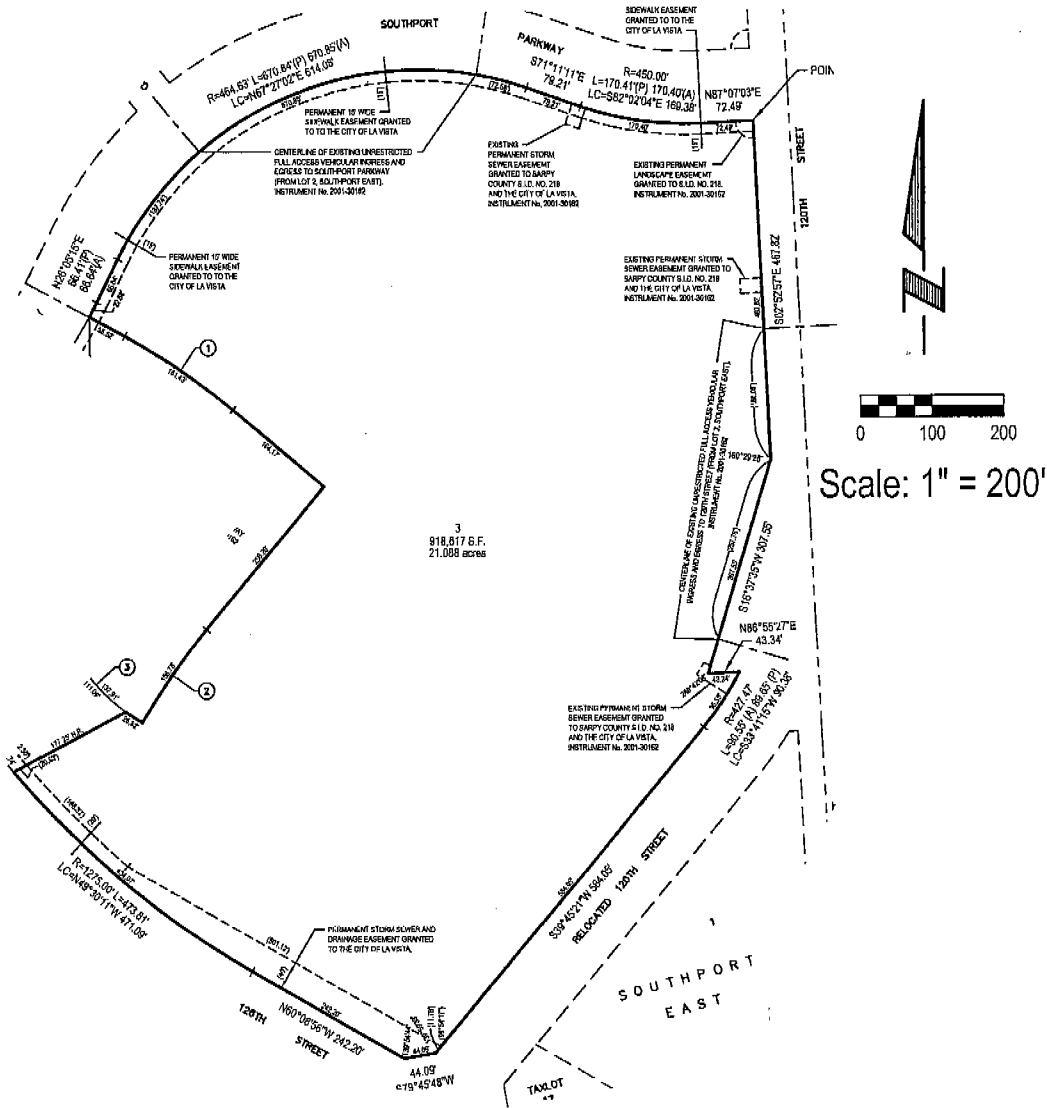
**LOT CERTIFICATE**  
**SOUTHPORT EAST**  
**REPLAT TWO**  
 SАРY COUNTY, NEBRASKA

Filed in the office of  
**SARPY COUNTY SURVEYOR**  
 Papillion, Nebraska

**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 REPLAT TWO, A SUBDIVISION LOCATED THE SE 1/4 OF SECTION 18, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA.



CURVE	RADIUS	LENGTH	TANGENT	DELTA
1	900.00'	181.43'	91.03'	11°33'02"
2	1001.72'	156.78'	78.55'	8°58'02"
3	268.56'	137.91'	70.51'	29°25'18"

ROBERT CLARK L.S. 419  
 3-17-2006  
 DATE



**E&A CONSULTING GROUP, INC.**  
 ENGINEERING • PLANNING • FIELD SERVICES  
 330 NORTH 117TH STREET OMAHA, NE 68154 PHONE: (402) 895-0700

OFFICIAL ADDRESS: \_\_\_\_\_  
 DATE RECEIVED: \_\_\_\_\_ BUILDING PERMIT No.: \_\_\_\_\_  
 Drawn by: MH Chkd by: \_\_\_\_\_ Chkd by: \_\_\_\_\_  
 Job No.: 2000030.17 Date: 3-17-2006 Book No.: XXXXXX

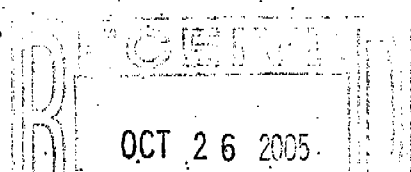
**LOT CERTIFICATE**  
**SOUTHPORT EAST**  
**REPLAT TWO**  
 SARPY COUNTY, NEBRASKA



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**EXHIBIT "D"****City Engineer's Requirements for Approval of Southport East Replat Two**

1. The proposed uses are consistent with the original traffic considerations. A proposed right-in access is proposed to Southport Parkway, however, the length of the taper is difficult to determine from the drawings provided. The applicant should provide a 20-scale drawing of the proposed right-in only access geometry which would include showing the location of the nearest edge of the thru-lane on 126<sup>th</sup> Street. This should be provided prior to City Council approval of the plat.
2. Perimeter sidewalks will be required as the lots are built upon. Sidewalks are not required along 126<sup>th</sup> Street or Giles Road.
3. A proposed private roadway is shown along the northeastern edge of proposed Lot 1. This roadway is likely to serve significant traffic volumes in the future development of Lot 3. This roadway should be constructed to no less than a three-lane section to provide for left-turning movements. Presently, it is shown to transition from a three-lane section near Southport Parkway to a two-lane section as it extends into the site along the northeastern side of Lot 1.
4. The final plat illustrates a permanent ingress and egress easement to provide for shared access through the property. A cross-easement and restrictions agreement has been submitted that provides for common area maintenance. This agreement should be reviewed by the city attorney prior to approval of the final plat by the City Council. This agreement should be recorded against the properties. The shared access road should be paved with not less than 7-inch thick Portland cement concrete pavement and to a width not less than 25 feet.
5. Consideration of any development or construction needs to include any written guidance and approval from the FAA concerning height limitations due to the Millard Airport.
6. The property is subject to the Gateway Corridor Design Guidelines and Southport East Design Guidelines. City staff will need to review for compliance with those regulations when building plans are submitted.



CITY OF LA VISTA  
PLANNING & ZONING  
APPLICATION FORM

EXHIBIT E

CHECK APPLICATION(S) SUBMITTED:

- Comprehensive Plan Amendment
- Rezoning
- Zoning/Subdivision Amendment
- Conditional Use Permit
- Condition Use Permit Amendment
- Tower Development Permit
- Administrative Plat
- Preliminary Plat \*
- Revised Preliminary Plat
- Final Plat
- Replat or Small Tract Sub.
- Vacation of Plat
- Preliminary P.U.D.
- Final P.U.D.
- Building Design Review
- Site Plan Review
- Other: \_\_\_\_\_

\* A pre-application meeting is required prior to submittal.

A. GENERAL INFORMATION

1. Applicant:

Name: John L. Hoich Contact: John Hoich  
 Address: 4428 South 180th Street  
 City/State/Zip: Omaha, NE 68135  
 Phone/Fax: (402) 333-1919 / (402) 896-0554

2. Property Owner: (if not applicant)

Name: Joe McDermott Associates, Inc Contact: Joe McDermott  
 Address: 9816 F Street  
 City/State/Zip: Omaha, NE 68127  
 Phone/Fax: (402) 331- 5262 / None

3. Engineer/Surveyor or Architect

Name: E & A Consulting Contact: Jeff Elliott  
 Address: 12100 O Street  
 City/State/Zip: Omaha, NE 68137  
 Phone/Fax: (402) 895-4700 / (402) 895-3599  
 Email: jelliott@eacg.com

4. Primary Project Contact: (Applicant, Representative, or Other)

Name: Slusky Law, LLC Contact: Jerry Slusky or Shaun James  
 Address: 17445 Arbor Street, Suite 300  
 City/State/Zip: Omaha, NE 68130  
 Phone/Fax: (402) 991-5777 / (402) 991-5117  
 Email: jslusky@sluskylaw.com or sjames@sluskylaw.com



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- If more than one property owner or developer is involved, please attach additional names and addresses to this application.
- The contact person will receive all staff correspondence.

Please note that your application will not be accepted or there may be a delay in processing by the Community Development Department if any of the required information or materials are missing or improperly presented. In order to ensure that a complete application is provided and to avoid unnecessary delays in processing, please remember to submit the appropriate submittal requirements i.e., signed application, fees, exhibits and/or site plans, special studies if applicable and signed checklist. If you have any questions regarding this application or required materials, please contact the Community Development Department at (402) 331-4343 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

**5. Certification:**

An application may be filed only by the owner(s) of the property or by a person with the power of attorney from the owner authorizing the application, or by the attorney-at-law representing the owner. Indicate your authority.

- I (We) (am) (are) the sole owner(s) of the property.
- I have the power of attorney from the property owner(s) authorizing the application and a copy of the authorization is attached.
- I am the attorney at law representing the owner(s) and a copy of the authorization is attached.

<i>John L. Hoich</i>	John L. Hoich	4428 South 180th Street
Signature	Name (Print)	Address
<i>Joe McDermott</i>	Joe McDermott	Joe McDermott Associates, Inc. 9816 F Street
Signature	Name (Print)	Address

**NOTE: ALL APPLICATIONS MUST HAVE THE CURRENT PROPERTY OWNER'S SIGNATURE(S), OR THE PERSON WITH THE PROPER POWER OF ATTORNEY SIGNATURE, NOTARIZED BY A CERTIFIED NOTARY PUBLIC (ATTACH IF NECESSARY)**

**6. Affiliated Application:**

An applicant may wish to increase the property considered under this application to include surrounding owners. By signing below, an adjoining property owner can state their intent to be party to this application (attach additional sheet if necessary. A legal description must also be attached for each property owner.

None

Signature	Name (Print)	Address
Signature	Name (Print)	Address

PROJECT INFORMATION:

Q

- 1. Subdivision Name: Southport East Replat Two
- 2. Project Location: 1/4 & SE 1/4 Section 18, T. 14, R. 12, Sarpy County, Nebraska.  
General Location: 126th & Southport Parkway
- 3. Project/Property Address (if known): Unknown
- 4. Area: 4.80 (acres)
- 5. Future Land Use Designation (Comprehensive Plan): Commercial
- 6. Proposed Land Use Designation (if applicable): Commerical
- 7. Existing Zoning Designation: *(attach additional sheet if necessary)*

Zoning	Acres	Lots	Units	Density
<u>C-3</u>	<u>4.80</u>	<u>2</u>		
Total	<u>4.80</u>	<u>2</u>		

- 8. Proposed Zoning Designation *(attach additional sheet if necessary)*

Zoning	Acres	Lots	Units	Density
<u>C-3 PUD-1</u>	<u>4.80</u>	<u>2</u>		
Total	<u>4.80</u>	<u>2</u>		

- 9. Present Use of the Land: Agricultural

10. Proposed Request: Planned Unit Development Plan and Zoning for Lots 1 & 2 Southport East Replat Two.

- 11. If commercial\industrial\office or multi-family residential: In lots 1 & 2 (4.80 acres)

- a. Number & type of units\buildings: 2
- b. Total building coverage (footprint): 27,000 square feet.
- c. Total open space: 63,000 square feet.
- d. Total paved impervious area: 120,000 square feet.
- e. Total building floor area: 27,000 gross square feet.
- f. Total number of parking spaces: Provided 229 Covered      Uncovered X
- g. Total number of persons employed or intended to be regularly employed on the site during the maximum working shift 35.

13. If single family residential;

- a. Number of units/lots: \_\_\_\_\_
- b. Minimum lot frontage as measured at building setback line: \_\_\_\_\_
- c. Minimum lot size: \_\_\_\_\_ square feet
- d. Average lot size: \_\_\_\_\_ square feet

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14. Attach Legal Description of Property and Surveyor's Certificate.

15. Attach list of Property Owners located within 300 feet of proposed project. (Must be prepared by a title company and in label-ready format).

16. Attach site plan and/or other documents that illustrate this request.

17. Include appropriate application fee.

18. For public hearing presentation, overhead transparencies or other approved form of projected illustrations identical to any display boards being used are required.

**FOR OFFICE USE ONLY**

Project Case Number \_\_\_\_\_

Planning Commission 11/17/05  
 Published: "Popillion Times" 11/3/05  
 Action: Recommended Approval

Complete Application Received 10/26/05

City Council 12/20/05  
 Published: Popillion Times 12/8/05  
 Action: Approved on 12/20/05

Check Number/Amount \_\_\_\_\_

Posted on Property: yes  
 Notice to School District: yes

Other Comment (s):

Ordinance No. 976

5

## UTILITIES & IMPROVEMENTS

(Must be Submitted when Public Improvements are Proposed and/or Required)

	Proposed		Private	FINANCING %		
	Existing	Quantity		Cost	S.I.D.	
				Special	G.O.	Reimbursables
<b>Sanitary Sewer</b>		450 LF		100%		
<b>Storm Sewer</b>		1120 LF		100%		
<b>Paving</b>						
<b>Major</b>						
<b>Collector</b>						
<b>Minor</b>		21,000 SF		100%		
<b>Sidewalks</b>		1,460 LF		100%		
<b>Parks &amp; Open Space</b>						
<b>Recreation Facilities</b>						
<b>Water</b>		400 LF		100%		
<b>Gas</b>		400 LF		100%		
<b>Electricity</b>		2000 LF		100%		
<b>Other</b>						
<b>TOTALS</b>						

Electricity:                      Above Ground \_\_\_\_\_      Below Ground \_\_\_\_\_

Anticipated Total Taxable Valuation:      Land \_\_\_\_\_      Improvements \_\_\_\_\_

Covenants: \_\_\_\_\_      Filed: \_\_\_\_\_      Debt Ratio \_\_\_\_\_

\*\*Attach Itemized Estimate



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## Application for Planned Unit Development Southport East Replat Two – Lot 1 and Lot 2

Applicants: John L. Hoich and Joe McDermott Associates, Inc., property owners  
Property: Lot 1 and Lot 2, Southport East Replat Two (4.800 acres)

The Applicants request approval for a Planned Unit Development (PUD-1 District) for the Property. The Property is currently zoned C-3, and the La Vista future land use plan maintains a commercial use for the Property and the surrounding area. As a result the addition of a PUD overlay is in conformity with the La Vista Comprehensive Plan as required by 5.12.02.01 of the La Vista zoning code (the "Code").

In addition, the lands immediately to the north, west and south are also designated to remain commercial. To the east, a small section of the Property is across the street is planned as recreational/park land. The development of the Property under the proposed PUD would not have a substantially adverse effect on the development of the surrounding area as the surrounding uses are entirely compatible with those of the PUD proposal. The proposal therefore meets the requirements of 5.12.02.02 of the Code, and since the Property contains 4.800 acres, it also meets 5.12.02.03 (2) of the Code which requires that a commercial PUD contain three (3) or more acres.

**Height Variance Requested:** The Applicants are requesting certain variances as part of their PUD. The Property is under contract to the North Central Group ("NCG") a hotel developer, owner and operator. NCG has developed over 30+ limited and full service franchised hotel facilities that meet specific design criteria, including signage, exterior finishes and architectural detail. Attached to this application as Exhibit 5.15.05.07 is an elevation of the proposed hotel facility to be constructed by NCG. The main roof line is 45' in height, but the architectural parapets required for signage and aesthetics add 8 to 10 feet in height. The Applicants are therefore requesting a variance in the height requirements, as permitted by 5.15.02.03 (4) of the Code to permit architectural details, such as parapets, to exceed the 45' maximum height requirement by no more than 10'.

**Use Regulations:** The Property is currently zoned C-3 which permits a wide variety of retail and office uses and accommodates the majority of uses intended for the Property. However, hotel and meeting facilities is one of the uses included in C-3 as a Conditional Use, in 5.12.03.10. ~~The Applicants are requesting that as part of the PUD approval for a conditional use permit be granted for the facility to be constructed by NCG.~~ A separate CUP Application will be submitted on behalf of NCG. The hotel will include approximately 116 rooms and will employ 30 to 40 people on a full or part-time basis (an equivalent

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of 20 – 25 full-time). The estimated investment for the hotel facility is \$10,000,000 with projected stabilized gross room revenues of \$3,000,000 annually. NCG's hotel facilities are high quality properties designed to provide outstanding lodging accommodations for both commercial and leisure travelers. The inclusion of the hotel facilities in Southport East will enhance the neighboring area and provide additional services to the increasing customer base for many of the retail facilities and restaurants located and planned in the vicinity. NCG has also planned a restaurant adjacent to the hotel facilities. The anticipated investment for the restaurant is \$1,500,000, with \$1,500,000 to \$2,000,000 projected gross revenues annually. The restaurant will employ an additional 30 – 40 people on a full or part-time basis, again the equivalent of 20 – 25 full-time positions.

**Standards and Conditions for Development; Preliminary and Final PUD**

**Requirements:** The PUD requested meets all of the criteria established by the Code as required by 5.15.04; 5.15.05.02 through 5.15.05.09; and 5.15.06.01 of the Code. More specifically, the Applicants respond to these requirements as follows:

**5.15.04.01:** Contingent upon approval of this PUD, NCG will close on the purchase of the Property in December 2005. The Applicants, in cooperation with NCG will construct the private roads and drives on the property, and install the infrastructure necessary for the complete development of the Property. NCG intends to start construction in 2006.

**5.15.04.02:** Attached as Exhibit 5.15.04.02 is a draft of the preliminary Cross-Access Easement and Restrictions Agreement that will be recorded on the Property and on Lot 3, Southport East Replat Two. (Lot 3 is adjacent to the Property, but is not part of this PUD Application.) The purpose of this preliminary easement is to provide for immediate access and parking between the Property and Lot 3 that will be developed over the next three to five years. As additional end-use retail and office users are identified for Lot 3, the Applicants and NCG will prepare and record the final Declaration of Easements, Covenants and Restrictions ("ECRs"). The preliminary easement agreement to be recorded at the time of closing with NCG includes a requirement that NCG and the Applicants will prepare and record the ECRs.

**5.15.04.03:** The Property is bounded by 126<sup>th</sup> Street to the east, and by Southport Parkway to the north. Access is provided off of Southport Parkway. There will be a right-in only access point from Southport Parkway to the Property. Additional access to private drives connecting to Southport Parkway, and located adjacent to the Property, is provided at three more locations: two on East side of the Property and one on the North side of the Property. Each of these points will provide for full access movements as will the intersection of Southport Parkway and the private drive. The right-in only access to the hotel/restaurant portion of the Property requires approval under this PUD application. The Applicants have

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provided a traffic report to the City of La Vista Engineer, who has reviewed the proposal, obtained an additional recommendation, and has agreed that the restricted right-in access as shown on the plat will not compromise safety and maintains traffic flow at the highest level projected under the 2025 traffic study.

5.15.04.04: The primary reason for this requested PUD is to accommodate the need for a variance in the height requirements. The projected uses are within those contemplated by the City of La Vista for development of this area, and will not increase the need for, or otherwise impose any additional burden on, public services and facilities already in place or planned by the City of La Vista.

5.15.04.05: This application has been filed by all of the owners, and a letter of cooperation from NCG is attached as Exhibit 5.15.04.05, as further support that this application is on behalf of all interested parties of the Property and that NCG will comply with the PUD and subdivision agreement.

5.15.04.06: As noted in the introductory paragraphs above, the Property is zoned C-3 and the planned development is compatible with the La Vista Comprehensive Plan and current development in the surrounding vicinity. Attached as Exhibit 5.15.04.06 is the current plan for improvements on the Property.

5.15.04.07: All parking and loading areas will be in compliance with the Code. The attached Exhibit 5.15.04.06 (noted above) identifies these areas.

5.15.04.08: No residential uses abut the Property, so this Code requirement is not applicable.

5.15.04.09: The PUD complies with all set back requirements as shown on the attached Exhibit 5.15.04.06. Set-backs are no less than 25' from the right-of-way of any street, and no less than 10' from any district boundary line not abutting a street right-of-way.

5.15.04.10: The PUD complies with maximum commercial building coverage of no more than 60% as shown on Exhibit 5.15.04.06.

5.15.04.11: The Property will not be used for a residential purpose, therefore this Code section is not applicable.

5.15.04.12: Attached as Exhibit 5.15.04.12 is a draft of the Tenants and Owners Association Bylaws providing for the formation of an association of the Property tenants and owners which will collect dues and maintenance fees, and will be responsible for the maintenance of the landscaping, parking areas, drive areas, sidewalks and common areas.



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5.15.04.13: The PUD does not include any residential use, so this Code section does not apply.

5.15.04.14: Access to the Property is provided on Southport Parkway, a collector street, as shown on Exhibit 5.15.04.06. There will not be any direct access to 126<sup>th</sup> Street, which is the main arterial street.

5.15.04.15: Sidewalks, where required, will conform to City of La Vista specifications. Sidewalk locations are shown on Exhibit 5.15.04.06.

5.15.05.02 (1 through 10) and 5.15.05.03 (1 through 8): The development site plan is attached as Exhibit 5.15.04.06, and includes all of the required elements set forth in these Code sections.

5.15.05.04: This information will be provided by E & A Consulting.

5.15.05.05: The full legal description of the Property contained within the PUD is shown on Exhibit 5.15.04.06.

5.15.05.06: The vicinity map, including the general arrangement of streets within an area of 1,000' from the boundaries of the Property, is provided on Exhibit 5.15.04.06.

5.15.05.07: Attached as Exhibit 5.15.05.07 is an elevation of the proposed Hampton Inn & Suites to be constructed by NCG. Other buildings to be located on the Property will conform to Code and Gateway Corridor requirements regarding materials, colors, and screening.

5.15.05.08: Common areas, including parking, landscaping, drives and sidewalks, will be maintained by the Tenants and Owners Association

5.15.05.09: Attached as Exhibit 5.15.04.02 is the Cross-Access Easement and Restrictions Agreement that will be recorded upon closing of the sale of the Property to NCG. As additional end-use retail and office users are identified for Lot 3 (not part of this PUD Application), the Applicants and NCG will prepare and record the final ECRs so that specific restrictions and covenants can be tailored for the Property.

5.15.06.01: The final PUD plan requirements are included on Exhibit 5.15.04.06.

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**WHEN RECORDED, RETURN TO:**

Harvey L. Temkin, Esq.  
Reinhart Boerner Van Deuren s.c.  
22 East Mifflin Street, Suite 600  
P. O. Box 2018  
Madison, WI 53701-2018

**CROSS-ACCESS EASEMENT AND RESTRICTIONS AGREEMENT**

This Cross-Access Easement and Restrictions Agreement ("Agreement") is executed as of March 27, 2006 (the "Effective Date"), by and between JOE MCDERMOTT ASSOCIATES, INC., a Nebraska corporation, and JOHN L. HOICH, an adult resident of the State of Nebraska (collectively, "McDermott and Hoich"), and DES MOINES LODGING INVESTORS III, LLC, a Wisconsin limited liability company ("Lot 2 Owner"), and NANAIMO BAY, LLC, a Nebraska limited liability company ("Lot 1 Owner," and together with the Lot 2 Owner, the "Lot Owners").

**RECITALS**

A. As of the Effective Date, McDermott and Hoich are the owners of the real property (the "McDermott and Hoich Property") located in Sarpy County, Nebraska that is more particularly described on the attached Exhibit A.

B. As of the Effective Date, Lot Owners are the owners of the real property (the "Lot Owners Property") located in Sarpy County, Nebraska, that is more particularly described on the attached Exhibit B and which is adjacent to the McDermott and Hoich Property. The McDermott and Hoich Property and the Lot Owners Property are each an integral part of the real estate development herein defined as "Southport East Replat Two".

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C. McDermott and Hoich and Lot Owners (collectively, the "Parties" or individually, a "Party") desire to establish the easements and restrictions provided for in this Agreement to facilitate the integrated operation of their respective properties until such time as more comprehensive easements, covenants and restrictions can be established for the complete development of the surrounding properties including the McDermott and Hoich Property and Southport East Replat Two.

AGREEMENT

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Construction and Purposes.

1.1 Accuracy of Recitals. The Parties acknowledge and confirm the accuracy of the Recitals, which are incorporated into and made a part of this Agreement.

1.2 Temporary Pending Final ECRs. The Parties acknowledge that the provisions of this Agreement are meant to be temporary, pending sufficient development planning for the adjoining properties in Southport East Replat Two providing for integrated and equitable easements, covenants and restrictions ("ECRs") granting easements and cross easements for parking, ingress and egress, providing for maintenance of easements and common areas, and similar benefits, rights and burdens on all of the properties in Southport East Replat Two. The Parties acknowledge that the ECRs shall also include provisions for a Southport East Replat Two property owner's association vested with authority for the collection of dues and assessments for maintenance of common areas, architectural and design control and review rights, and similar governance matters. The ECRs will, among other matters, provide restrictions or covenants regarding the drainage of storm water; signage rules and allotments; exterior lighting requirements; landscaping controls; and similar restrictions, rights, obligations, and duties necessary for an integrated high quality commercial development; and may include use restrictions for one or more lots within Southport East Replat Two, including the Lot Owners Property.

1.3 Covenant to Execute. The Parties, each on behalf of itself and its successors, heirs and assigns, covenant and warrant to one another that each shall work cooperatively and in good faith to establish the terms of the ECRs and each shall duly execute and record the ECRs on each Party's respective property within Southport East Replat Two.

2. Grant of Easements.

2.1 For the Benefit of the Lot Owners Property. McDermott and Hoich grant to Lot Owners and Lot Owners' tenants, guests, agents, contractors, employees and invitees a perpetual, nonexclusive easement over and across the joint drive aisles and street access points of the McDermott and Hoich Property, as may from time to time be constructed and maintained for such use, for the purpose of vehicular and pedestrian ingress and

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egress from the Lot Owners Property, such joint drive aisles and street access points being depicted on the attached Exhibit C. Subject to the limitations of Section 3 below, McDermott and Hoich shall not obstruct or impair Lot Owners' use of the nonexclusive easements granted hereunder.

2.2 For the Benefit of the McDermott and Hoich Property. Lot Owners grant to McDermott and Hoich and McDermott and Hoich's tenants, guests, agents, contractors, employees and invitees a perpetual, nonexclusive easement over and across the joint drive aisles and street access points of the Lot Owners Property, as may from time to time be constructed and maintained for such use, for the purpose of vehicular and pedestrian ingress and egress from the McDermott and Hoich Property, such joint drive aisles and street access points being depicted on the attached Exhibit C. Subject to the limitations of Section 3 below, Lot Owners shall not obstruct or impair McDermott and Hoich's use of the nonexclusive easements granted hereunder.

3. Limitations. The easement rights described in Sections 2.1 and 2.2 comprise all of the easements created hereunder (collectively, the "Easements"). The portions of the McDermott and Hoich Property and the Lot Owners Property that are or may become subject to the Easements (collectively, the "Easement Parcels" or individually, the "Easement Parcel") are subject to the rights of any Party to close off its portion of the Easement Parcels for a reasonable period of time as may be necessary to prevent the acquisition of prescriptive rights; provided, however, that no Party shall close off such portions of the Easement Parcels to the extent that either vehicular ingress and egress access and access to or the availability of any utilities to the benefited parcel would be cut off.

4. Improvement of Easement Parcels.

4.1 Improvement. Lot Owners shall be responsible for construction of the joint drive aisles and access points located within the Easement Parcels described in paragraphs 2.1 and 2.2 with Lot Owners and McDermott and Hoich sharing in the costs of constructing such joint drive aisles and access points, with Lot Owners being responsible for payment of a percentage of such costs based on the percentage of the square footage of the Lot Owners Property as it relates to the total square footage of Southport East Replat Two (the "Lot Owners Percentage") and McDermott and Hoich being responsible for payment of the remainder of all such costs. Such amounts shall include all costs of construction, including, without limitation, all engineering costs, costs of all permits and approvals and any attorneys' fees incurred in connection therewith.

4.2 Reimbursement. Periodically, but no more frequently than monthly, Lot Owners shall provide McDermott and Hoich with invoices covering work performed by Lot Owners in accordance with this Section 4 for which McDermott and Hoich are responsible for sharing costs, including with such invoice a calculation of the total expenditures and a calculation of the proportionate shares of McDermott and Hoich and Lot Owners of such expenditures. Within thirty (30) days after receipt of such invoice, McDermott and Hoich shall pay their proportionate share to Lot Owners. Any amounts

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not paid by McDermott and Hoich by such due date shall bear interest as set forth in Section 5.3.

5. Operation, Maintenance and Repair.

5.1 Operation, Maintenance and Repair of Easement Parcels. Lot Owners shall be solely responsible for the operation, maintenance and repair of the Easement Parcels; however, Lot Owners and McDermott and Hoich shall share in the costs to operate, maintain and repair the Easement Parcels, with Lot Owners being responsible for payment of the Lot Owners Percentage and McDermott and Hoich being responsible for payment of the remainder of such costs. The provisions of Section 4.1 shall apply with respect to the manner of billing and reimbursing for such expenses. The Easement Parcels shall be kept in good condition and repair at all times.

5.2 Damage to Easement Parcels. To the extent that any of the Easement Parcels are damaged as the result of the negligent or willful and wrongful actions or omissions of a Party ("Damaging Party") or the Damaging Party's agents, contractors or employees, the Damaging Party shall promptly repair such damage at its sole cost and expense. To the extent that the Easement Parcels are damaged in any other manner (including, without limitation, the failure to keep the Easement Parcels in good repair as provided herein), the Party or Parties responsible for maintaining the damaged Easement Parcels in good condition and repair, as provided in this Agreement, shall promptly repair such damage with the costs to be paid as provided in Sections 5.1 or 5.2, as the case may be.

5.3 Remedies. If Lot Owners shall fail to fulfill their obligations with respect to maintenance and repair as set forth in this Section 5, McDermott and Hoich shall have the right, but not the obligation, to provide notice of such failure and, in the event that the failure is not cured within thirty (30) days following the receipt of such notice (in accordance with Section 14 below), enter onto the Lot Owners Property for the purpose of completing the necessary maintenance or repairs. All reasonable amounts expended by McDermott and Hoich pursuant to the preceding sentence shall be reimbursed by Lot Owners within ten (10) days of receipt of a valid invoice for such amounts. If either Party fails to pay amounts owing by it pursuant to this Agreement, such amounts shall accrue interest at the rate of twelve percent (12%) per annum from the date originally due until paid, but in no event at a rate greater than that permitted by law. If either party is required to commence an action to enforce this Agreement or collect any amounts owing hereunder, the prevailing party shall be entitled to collect from the nonprevailing party all costs, expenses and disbursements, including attorneys' fees, it incurs in connection with collecting amounts owing hereunder and pursuing the enforcement action.

6. Mutual Indemnities. The Parties covenant and agree with each other, on behalf of each of their successors and assigns, as the case may be, to indemnify, hold harmless and defend (with legal counsel reasonably acceptable to each Party) the respective owner of an Easement Parcel for, from and against any and all claims, liabilities, expenses and reasonable attorneys' fees and court costs which may be claimed or asserted against an owner of an Easement Parcel, its successors and assigns, arising out of the use of an

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Easement Parcel, as provided in this Agreement, by any Party to this Agreement, or its tenants, guests, agents, contractors, employees and invitees, including, but without limitation, claims for property damage and bodily injury and any mechanics' or materialmen's liens or claims of lien which may be asserted against any of them, their successors or assigns. Such indemnification shall only apply, however, to the extent the Easement Parcel owner does not recover its loss through the proceeds of any insurance it may have in force (or may be required to have in force as provided in Section 7 below).

7. Insurance. Upon the last to occur of (i) commencement of use of the initial improvements to the Easement Parcels, or (ii) the Effective Date, the Party owning such Easement Parcel shall deliver to the other Party benefiting from such Easement Parcel a currently effective certificate of commercial general liability insurance written on an "occurrences" basis with a minimum combined single limit of One Million Dollars (\$1,000,000) with coverage for owned and non-owned motor vehicles and contractual liability coverage and with a reasonable deductible amount as determined by the applicable owner of such Easement Parcel. All policies of insurance required by the terms of this Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the insured which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of subrogation, setoff, counterclaim or deductions against the insured. The policies of insurance must each name the other Party benefiting from such Easement Parcel as an additional insured. Such insurance coverage may be included in blanket insurance policies. The issuer of such certificates shall commit to give all insured Parties thirty (30) days' prior notice before cancellation of the policies or reduction in coverage, except in case of nonpayment of premiums, in which case the insurer(s) shall commit to give the insured Parties ten (10) days' prior notice before cancellation or reduction in coverage. Each Party may request from time to time that the insurance amounts be mutually increased to reflect commercially reasonable amounts in Sarpy County, Nebraska, and each Party shall promptly secure such increased coverage and provide the other Party benefiting from such Easement Parcel with a certificate of insurance evidencing such coverage.

8. Liens. Each Party shall retain the right to encumber their respective property, but any such encumbrance shall be subject to this Agreement. No Party to this Agreement shall permit any claim, lien or other encumbrance arising from any Party's use of the Easement Parcels to accrue against or attach to the property of the other Party to this Agreement except that such Party may include in any such encumbrance such Party's rights to the Easements created herein.

9. Use Restrictions. No hotel, motel or other transient lodging facility of any type providing for lodging of guests for a period of less than thirty (30) days at a time (collectively, a "Lodging Facility") shall be constructed or operated on any portion of the McDermott and Hoich Property, unless prior written consent is obtained from Lot Owners, or its successors in title to the real estate described on the attached Exhibit B. The provisions contained in this Paragraph 9 shall survive and be deemed part of the ECRs regardless of whether expressly stated therein.



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If to McDermott and  
Hoich:

John L. Hoich  
4428 South 180<sup>th</sup>  
Omaha, NE 68135

With a copy to:

Attorney Jerry Slusky  
Slusky Law, LLC  
Suite 300  
17445 Arbor Street  
Omaha, NE 68130

All notices shall be deemed to have been given when delivered if hand delivered, when received if sent by courier, or forty-eight (48) hours following deposit with the United States Postal Service.

15. Invalidity. Every provision of this Agreement shall be enforceable to the fullest extent permitted by law. If any provision of this Agreement is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this Agreement shall not be affected.

16. General. No waiver of any provision of this Agreement shall be deemed to be a continuing waiver of that provision or a waiver of any other provision of this Agreement. Time is of the essence in the performance of each and every provision of this Agreement. Each person executing this Agreement on behalf of a Party personally represents and warrants that he or she is duly authorized to execute this Agreement in the capacity shown. This Agreement may be executed in any number of counterparts, each of which taken together shall constitute one and the same original Agreement.

17. Authority of the City of La Vista. No provision within this document shall be interpreted, construed or have the effect of abolishing, suspending, abating or diminishing City of La Vista's ability to, at its sole option, exercise its rights and authority to invoke and exercise its right of entry and full access to the property within Southport East Replat Two and exercise the other rights herein reserved to the City under Section 12(f) of the Commercial Subdivision Agreement originally entered into by and between the City of La Vista, R.S. Land, Inc. and Southpointe Partners I, LLC, and as later amended by that Second Amendment to Subdivision Agreement executed by the City of La Vista, Joe McDermott Associates, Inc., and John L. Hoich.

18. City of La Vista Approval Required. This Agreement may not be modified, terminated, or amended in any manner without the prior approval of the City of La Vista so as to ensure the continued access to and maintenance of the improvements located on the property within Southport East Replat Two.

19. Entire Agreement. This Agreement sets forth the entire understanding of the Parties and may not be amended except by a written document executed and



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acknowledged by all Parties to this Agreement and duly recorded in the office of the Register of Deeds of Sarpy County, Nebraska.

Executed under seal as of the Effective Date.

DES MOINES LODGING INVESTORS III, JOE MCDERMOTT ASSOCIATES, INC. LLC

By: [Signature] (SEAL)  
David A. Lenz, Managing Member

By: \_\_\_\_\_ (SEAL)  
Its: \_\_\_\_\_

NANAIMO BAY, LLC

By: [Signature] (SEAL)  
Name: C. J. Raymond  
Title: Member of C.J. Raymond

\_\_\_\_\_ (SEAL)  
John L. Hoich

Investments, L.L.C., sole member of Nanaimo Bay, LLC

Ag

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

The foregoing instrument was acknowledged before me on March 16, 2006, by David A. Lenz, who acknowledged being the Managing Member of Des Moines Lodging Investors III, LLC, a Wisconsin limited liability company, and who acknowledged executing the foregoing instrument on behalf of the company, being authorized to do so for the purposes therein contained.

Barbara S. Fletcher  
Notary Public, Dane County, WI  
Name: Barbara S. Fletcher  
My Commission: Expires 3/1/09

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

The foregoing instrument was acknowledged before me on March 20<sup>th</sup>, 2006, by C.J. Raymond, who acknowledged being the member A.C.J. Raymond of Nanaimo Bay, LLC, a Nebraska limited liability company, and who acknowledged executing the foregoing instrument on behalf of the company, being authorized to do so for the purposes therein contained.

X Investments, L.L.C., Sole member

Diane Quinn  
Notary Public, Dane County, WI  
Name: DIANE QUINN  
My Commission: Expires 7/26/09

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acknowledged by all Parties to this Agreement and duly recorded in the office of the Register of Deeds of Sarpy County, Nebraska.

Executed under seal as of the Effective Date.

DES MOINES LODGING INVESTORS III, LLC      JOE MCDERMOTT ASSOCIATES, INC.

By: \_\_\_\_\_ (SEAL)  
David A. Lenz, Managing Member

By: Joe McDermott <sup>associate</sup> (SEAL)  
Its: President

NANAIMO BAY, LLC

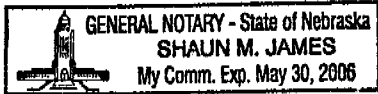
By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

John R. Hoich (SEAL)  
John L. Hoich

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

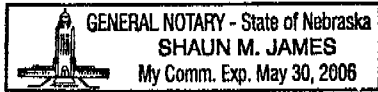
The foregoing instrument was acknowledged before me on MARCH 16, 2006, by Joe McDermott, who acknowledged being the President of Joe McDermott Associates, Inc., a Nebraska corporation, and who acknowledged executing the foregoing instrument on behalf of the corporation, being authorized to do so for the purposes therein contained.



Shaun James  
Notary Public, DOUGLAS County, NE  
Name: SHAUN JAMES  
My Commission: \_\_\_\_\_

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on MARCH 16, 2006, by John L. Hoich, who acknowledged executing the foregoing instrument.



Shaun James  
Notary Public, DOUGLAS County, NE  
Name: SHAUN JAMES  
My Commission: \_\_\_\_\_

AJ

**EXHIBIT A**

**LEGAL DESCRIPTION OF MCDERMOTT AND HOICH PROPERTY**

All of the property located within Lot 3, Southport East Replat Two, a subdivision in Sarpy County, Nebraska.

AK

**EXHIBIT B**

**LEGAL DESCRIPTION OF LOT OWNERS PROPERTY**

Lots 1 and 2, Southport East Replat Two, a subdivision in Sarpy County, Nebraska.

A1

**EXHIBIT C**

**DEPICTION OF EASEMENT PARCELS**

