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FILED SARPY CO. NE. INSTRUMENT NUMBER 2016-20468 2016 Aug 17 09:03:34 AM <i>Sheryl J. Dowling</i> REGISTER OF DEEDS



CROSS EASEMENT AND USE RESTRICTION AGREEMENT

THIS CROSS EASEMENT AND USE RESTRICTION AGREEMENT (the "Agreement") dated as of August 16, 2016 is between LAVISTA LODGING INVESTORS, LLC, a Wisconsin limited liability company (the "Hotel Property Owner"), ANTHONY SALDI AND DEBRA G. SALDI (the "Saldis"), THOMAS M. PETERSEN AND LINDA A. PETERSEN (the "Petersens"), and SOUTHPORT CENTER L.L.C., a Nebraska limited liability company ("Southport Center") (the Saldis, the Petersens and Southport Center are collectively referred to as the "Restaurant Property Owner").

RECITALS

A. The Hotel Property Owner is the owner of the real property legally described on Exhibit A (the "Hotel Property"). The Restaurant Property Owner is the owner of the real property legally described on Exhibit B (the "Restaurant Property"). As used in this Agreement: (1) the term "Owners" means the Hotel Property Owner and the Restaurant Property Owner; and (2) the term "Properties" means the Hotel Property and the Restaurant Property.

B. On the date hereof, an affiliate of the Hotel Property Owner is conveying the Restaurant Property to the Restaurant Property Owner. The Restaurant Property Owner will be developing the Restaurant Property in a manner generally consistent with the site plan attached as Exhibit C (the "Site Plan") or modified as required by the City of La Vista's City Council and approved by the Hotel Property Owner.

C. The Properties and certain other properties are subject to a Declaration and Grant of Easements, Covenants and Restrictions dated May 3, 2007 and recorded May 4, 2007 as Instrument No. 2007-13018 in the Records of Sarpy County, Nebraska, as amended (the "Declaration").

D. The Owners desire to set forth their Agreement regarding the matters set forth below. This Agreement is intended to satisfy the requirement for a separate written agreement regarding the performance and payment of the maintenance duties of the Owners with respect to the Properties as contemplated in Section 5.10 of the Declaration.

149506-16

AGREEMENT

1. Easements for Shared Drive Aisles.

1.1 Definitions. The "Shared Drive Aisles" means the areas designated as Shared Drive Aisles on the Site Plan. The "Shared Drive Permitted Use" means: (a) vehicular and pedestrian access to and from public rights of way and the joint drive aisles and access points described in Sections 5.2 and 5.4 of the Declaration; and (b) the performance of Shared OMRR.

1.2 Grant by the Hotel Property Owner. The Hotel Property Owner hereby grants the Restaurant Property Owner a non-exclusive easement over the portions of the Shared Drive Aisles owned by the Hotel Property Owner for the Shared Drive Permitted Use.

1.3 Grant by the Restaurant Property Owner. The Restaurant Property Owner hereby grants the Hotel Property Owner a non-exclusive easement over the portions of the Shared Drive Aisles owned by the Restaurant Property Owner for the Shared Drive Permitted Use.

1.4 Restriction on Other Uses of the Shared Drive Aisles. The Owners agree that the Shared Drive Aisles shall not be used for any purpose that would interfere with the Shared Drive Permitted Use and that the Shared Drive Aisles shall be kept open at all times for the Shared Drive Permitted Use. Neither Owner shall permit obstructions within the Shared Drive Aisles except as reasonably necessary for Shared OMRR. The Owners agree that the Shared Drive Aisles shall not be used as loading/unloading areas or otherwise obstructed by delivery vehicles at any time for a period longer than thirty (30) minutes. Notwithstanding the foregoing, in connection with refuse pick-ups from the dumpsters at the south end of the building on the Hotel Property, the Hotel Property Owner shall have the right to allow refuse trucks to temporarily partially block the Shared Drive Aisle near the south end of the building on the Hotel Property.

2. Easements for Shared Parking Areas.

2.1 Definitions. The "Shared Parking Areas" means the areas designated as the Shared Parking Areas on the Site Plan. The "Shared Parking Permitted Use" means: (a) the ordinary and customary parking of vehicles; and (b) the performance of Shared OMRR.

2.2 Grant by the Hotel Property Owner. The Hotel Property Owner hereby grants the Restaurant Property Owner a non-exclusive easement over the portions of the Shared Parking Areas owned by the Hotel Property Owner for the Shared Parking Permitted Use.

2.3 Grant by the Restaurant Property Owner. The Restaurant Property Owner hereby grants the Hotel Property Owner a non-exclusive easement over the portions of the Shared Parking Areas on the Restaurant Property for the Shared Parking Permitted Use.

2.4 Restriction on Other Uses of the Shared Parking Areas. The Owners agree that the Shared Parking Areas shall not be used for any purpose that would interfere with the Shared Parking Permitted Use.

3. Shared Area Operation, Maintenance, Repair and Replacement.

3.1 Definition. The "Shared Areas" means the Shared Drive Aisles and the Shared Parking Areas.

3.2 Cooperation. The Owners shall cooperate in good faith regarding: (a) the operation, maintenance, repair and replacement of the Shared Areas; and (b) any obligations required pursuant to Section 5.10 of the Declaration as it relates to the Shared Areas (the foregoing (a) and (b) are collectively referred to as the "Shared OMRR"). The Shared OMRR includes, without limitation, snow and ice removal, debris and trash removal, sealing and striping, traffic calming devices (e.g., speed bumps), repair and replacement, landscaping, and other items necessary to maintain the Shared Areas in a first class manner similar to comparable buildings/developments in the area.

3.3 Sharing of Costs. The Restaurant Property Owner shall be solely responsible for all costs associated with completing the development of the Restaurant Property pursuant to the Site Plan. After the completion of the development of the Restaurant Property, all out-of-pocket costs incurred for Shared OMRR shall be paid 50% by the Hotel Property Owner and 50% by the Restaurant Property Owner. If either party (the "Paying Owner") pays for the entire costs of an item of Shared OMRR, the Paying Owner may submit to the other Owner (the "Invoiced Owner") invoices and receipts in reasonable detail evidencing such payment, together with a request for reimbursement for 50% of such payment (a "Request for Reimbursement"). The Invoiced Owner shall pay its 50% share to the Paying Owner within thirty (30) days of receiving a Request for Reimbursement.

4. Rights Reserved by Owners. Each Owner (the "Granting Owner") reserves the right to impose reasonable restrictions upon users of the easements granted by the Granting Owner herein, including, without limitation, restrictions intended to protect health and safety and that are intended to reasonably extend the useful life of improvements on the Granting Owner's Property.

5. Restaurant Property Plans and Designs. The parties acknowledge that the Hotel Property Owner has approved the initial plans and designs for the Restaurant Property. Any material change to the plans and designs shall require the approval of the Hotel Property Owner, which will not be unreasonably withheld.

6. Use Restrictions on the Restaurant Property.

6.1 Description of Use Restrictions. The Restaurant Property Owner agrees that the Restaurant Property will be subject to the following use restrictions, which are for the benefit of the Hotel Property (collectively, the "Use Restrictions"):

(a) The Restaurant Property Owner shall not construct the initial improvements on the Restaurant Property unless the final plans and designs (including, without limitation, building footprint, building height, exterior building materials, signage and lighting) have received the prior written approval of the Hotel Property Owner, not to be unreasonably withheld.

(b) The restaurant, or any other business operating with an approved liquor license on the Restaurant Property, shall not be open for business outside of Sarpy County's designated hours for the sale of on-premises alcoholic beverages.

(c) The Restaurant Property shall not be used as a nightclub, gentleman's club, adult bookstore, or any other similar uses which prohibit the entry of persons under the age of 18.

(d) Any change in the use of the Restaurant Property from restaurant/retail with a possibility of office mix or any material change to building footprint, building height, exterior building materials, signage or lighting will be subject to the prior written consent of the Hotel Property Owner, which consent will not be unreasonably withheld, but which consent may be premised on: (i) the use or change being compatible and consistent with the use of the Hotel Property as a hotel; and (ii) the use or change complying with clauses (b) and (c) above.

6.2 Independent Obligations. The Use Restrictions are separate and independent from the other obligations in this Agreement, meaning that any claims by the Restaurant Property Owner that the Hotel Property Owner is in breach of other obligations in this Agreement shall not affect the right of the Hotel Property Owner to enforce the Use Restrictions.

7. Relationship With Declaration. Nothing in this Agreement is intended to limit the rights that each Owner has under the Declaration. Each Owner shall be solely responsible for the obligations in Section 5.2 of the Declaration as they relate to areas within such Owner's Property other than the Shared Areas. The Owners shall be jointly responsible for the obligations in Section 5.2 of the Declaration as they relate to the Shared Areas. The provisions of this Section 8 are intended to constitute the agreement of the Owners regarding maintenance of the Properties pursuant to Section 5.10 of the Declaration.

8. Covenants Run with the Land. All of the easements, restrictions and other terms and conditions of this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the then-current fee simple owner of the Hotel Property and the then-current fee simple owner of the Restaurant Property. The parties named as the Hotel Property Owner and the Restaurant Property Owner shall cease to have any liability under this Agreement with respect to facts or circumstances arising after such party has transferred its fee simple interest in the Hotel Property or the Restaurant Property.

9. Non-Use. Non-use or limited use of the rights granted in this Agreement shall not prevent the benefitting party from later use of such rights to the fullest extent set forth in this Agreement.

10. No Public Dedication. Nothing contained in this Agreement shall constitute or be deemed to constitute a gift or dedication of any portion of the Properties to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the Owners that this Agreement constitutes private easements and other private rights for the benefit of the Owners.

11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

12. Entire Agreement. With respect to the subject matter of this Agreement, this Agreement and the Declaration sets forth the entire understanding of the Owners. This Agreement may not be amended or otherwise modified except by a written instrument executed and acknowledged by the Owners and recorded in the Records of Sarpy County, Nebraska.

13. Notices. All notices to either Owner (the "Receiving Owner"), with the exception of reimbursement requests pursuant to Section 3.3, shall be delivered in person or sent by certified mail to the Receiving Owner at its last known address. If the Receiving Owner's address is not known, the Owner sending the notice may use the address to which the Receiving Owner's property tax bills are sent. Requests for reimbursement pursuant to Section 3.3 may be delivered in any commercially reasonable manner for delivery of regular business communications, which may include facsimile or email to the Receiving Owner's last known address.

14. No Waiver. No delay or omission by an Owner in exercising any right under this Agreement shall be construed to be a waiver of the right.

15. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any provision of this Agreement, either to restrain or prevent the violation or obtain any other relief.

16. Attorney Fees. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs (including, without limitation, reasonable attorney fees) from the non-prevailing party.

17. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the Owners.

18. Headings. The section headings in this Agreement are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect the interpretation of the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

The Hotel Property Owner executes the foregoing Cross Easement and Use Restriction Agreement effective as of the date first written above.

LAVISTA LODGING INVESTORS, LLC

By: Omaha SW Lodging Investors, LLC, its sole Member

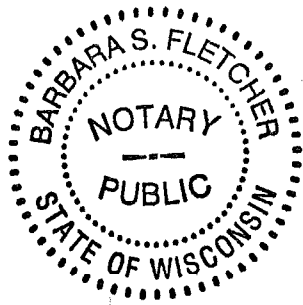
By: David A. Lenz Investments, LLC, a Managing Member

By: *David A. Lenz*
David A. Lenz, Member

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

The foregoing instrument was acknowledged before me this 15th day of August, 2016, by David A. Lenz, a Member of David A. Lenz Investments, LLC, a Managing Member of Omaha SW Lodging Investors, LLC, the sole Member of Lavista Lodging Investors, LLC, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing the foregoing instrument, and acknowledged that execution thereof to be his voluntary act and deed, and the voluntary act and deed of the company.

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



Barbara S. Fletcher
Notary Public
my commission exp. 2/26/2017

CONSENT OF HOTEL PROPERTY LENDER

The undersigned consents to the foregoing Cross Easement and Use Restriction Agreement.

FIRST NATIONAL BANK OF OMAHA, a national banking association

By: Keith Swanson

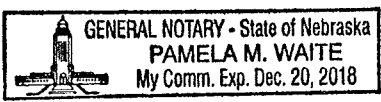
Name: Keith Swanson

Title: Vice President

STATE OF NEBRASKA)
) ss
COUNTY OF Douglas)


The foregoing instrument was acknowledged before me this 12th day of August, 2016, by Keith A. Swanson the Vice President of First National Bank of Omaha, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing the foregoing instrument, and acknowledged that execution thereof to be his voluntary act and deed, and the voluntary act and deed of the company.

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

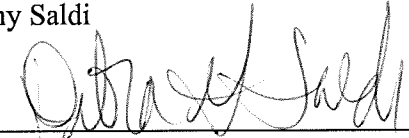


Pamela M. Waite

The Saldis, as part of the Restaurant Property Owner, execute the foregoing Cross Easement and Use Restriction Agreement effective as of the date first written above.



Anthony Saldi



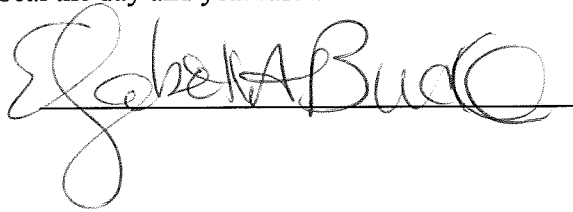
Debra G. Saldi

STATE OF Nebraska)
COUNTY OF Douglas) ss

The foregoing instrument was acknowledged before me this 16 day of August, 2016, by Anthony Saldi, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing the foregoing instrument, and acknowledged that execution thereof to be his voluntary act and deed.

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

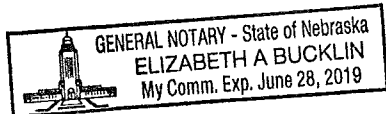


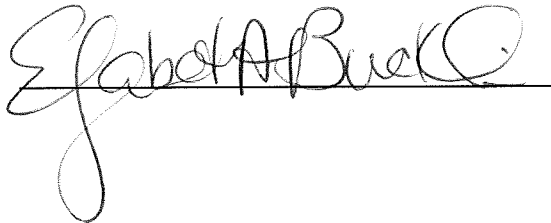


STATE OF Nebraska)
COUNTY OF Douglas) ss

The foregoing instrument was acknowledged before me this 16 day of August, 2016, by Debra G. Saldi, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing the foregoing instrument, and acknowledged that execution thereof to be her voluntary act and deed.

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





The Petersens, who are part of the Restaurant Property Owner, execute the foregoing Cross Easement and Use Restriction Agreement effective as of the date first written above.

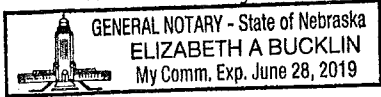
Thomas M. Petersen
Thomas M. Petersen

Linda A. Petersen
Linda A. Petersen

STATE OF Nebraska)
COUNTY OF Douglas) ss

The foregoing instrument was acknowledged before me this 16 day of August, 2016, by Thomas M. Petersen, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing the foregoing instrument, and acknowledged that execution thereof to be his voluntary act and deed.

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



Elizabeth A. Bucklin

STATE OF Nebraska)
COUNTY OF Douglas) ss

The foregoing instrument was acknowledged before me this 16 day of August, 2016, by Linda A. Petersen, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing the foregoing instrument, and acknowledged that execution thereof to be her voluntary act and deed.

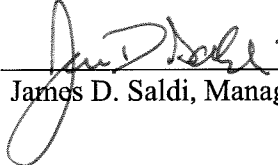
WITNESS my hand and Notarial Seal the day and year last above written.



Elizabeth A. Bucklin

Southport Center, as part of the Restaurant Property Owner, executes the foregoing Cross Easement and Use Restriction Agreement effective as of the date first written above.

SOUTHPORT CENTER L.L.C.

By:  _____
 James D. Saldi, Manager

Eab Nebraska
 STATE OF WISCONSIN)
) ss
 COUNTY OF DANE)
Eab Douglas

The foregoing instrument was acknowledged before me this 16 day of August, 2016, by James D. Saldi, as the Manager of Southport Center L.L.C., who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing the foregoing instrument, and acknowledged that execution thereof to be his voluntary act and deed, and the voluntary act and deed of the company.

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



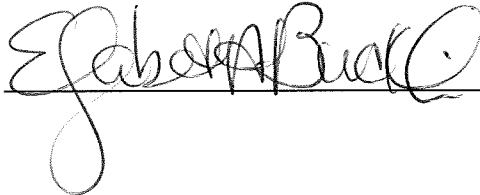
 _____

EXHIBIT A

LEGAL DESCRIPTION OF THE HOTEL PROPERTY

Lot 1, Southport East Replat Two, an addition to the city of La Vista, as surveyed, platted and recorded in Sarpy County, Nebraska.

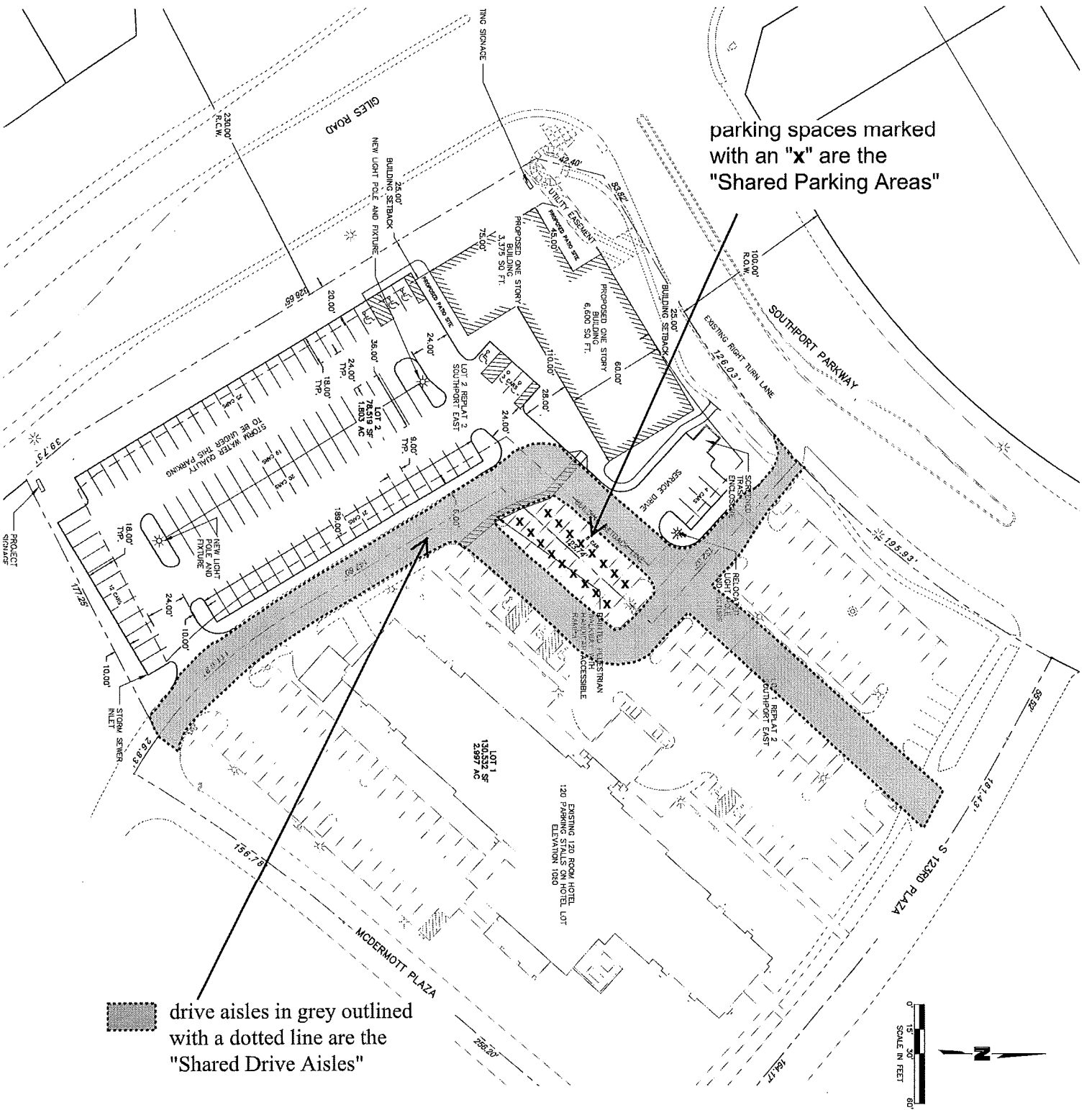
EXHIBIT B

LEGAL DESCRIPTION OF THE RESTAURANT PROPERTY

Lot 2, Southport East Replat Two, an addition to the city of La Vista, as surveyed, platted and recorded in Sarpy County, Nebraska.

EXHIBIT C

SITE PLAN



parking spaces marked with an "x" are the "Shared Parking Areas"

drive aisles in grey outlined with a dotted line are the "Shared Drive Aisles"

