

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 16, 2018 AGENDA**

Subject:	Type:	Submitted By:
2ND AMENDMENT TO DECLARATIONS, EASEMENTS, COVENANTS, RESTRICTIONS SOUTHPORT EAST	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER

SYNOPSIS

A resolution has been prepared authorizing the approval of the Second Amendment to the Declaration of Easements, Covenants and Restrictions for Lots 1 and 2, Southport East Replat Two and Lots 1 through 10, Southport East Replat Six.

FISCAL IMPACT

None

RECOMMENDATION

Approval subject to City Attorney review and the Second Amendment to the Second Amended and Restated Conditions, Covenants and Restrictions for Southport East being ready to record simultaneously with this Amendment.

BACKGROUND

There are presently two property owners' associations for the lots in Southport East. In order to reduce operating costs and reduce confusion over what is to be maintained by each association, the property owners have agreed to dissolve the Southport Parkway SPE Owners Association, Inc and transfer those owners into the Southport East Landowners Association, Inc. This proposal makes sense and will simplify operations for all concerned.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, APPROVING THE SECOND AMENDMENT TO THE DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR LOTS 1 AND 2, SOUTHPORT EAST REPLAT TWO AND LOTS 1 THROUGH 10, SOUTHPORT EAST REPLAT SIX.

WHEREAS, the Declaration of Easements, Covenants and Restrictions for Lots 1 and 2, Southport East Replat Two, and Lots 1-10, Southport East Replat Six, requires any modifications to the terms be approved by the City; and

WHEREAS, the City has reviewed the proposed Second Amendment to the Declaration of Easements, Covenants and Restrictions and finds no legal impediment to the City's approval of the amendments as proposed;

NOW THEREFORE, BE IT RESOLVED that the Second Amendment to the Declaration of Easements, Covenants and Restrictions for Lots 1 and 2, Southport East Replat Two and Lots 1-10, Southport East Replat Six as presented at the October 16, 2018 City Council meeting be, and hereby is approved, and the Mayor and City Clerk be and hereby are, authorized to execute the approval of the Second Amendment of Declarations on behalf of the City with such revisions or amendments thereto that the City Administrator and City Attorney may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS 16TH DAY OF OCTOBER 2018.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

**SECOND AMENDMENT
TO
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR LOTS 1 AND 2,
SOUTHPORT EAST REPLAT TWO AND FOR LOT 3 SOUTHPORT EAST REPLAT TWO
REPLATED AS LOTS 1 THROUGH 10, SOUTHPORT EAST REPLAT SIX**

THIS SECOND AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR LOTS 1 AND 2, SOUTHPORT EAST REPLAT TWO AND FOR LOT 3 SOUTHPORT EAST REPLAT TWO REPLATTED AS LOTS 1 THROUGH 10, SOUTHPORT EAST REPLAT SIX (this "Amendment") is made this 13th day of March, 2018 (the "Effective Date"), by and between La Vista Lodging Investors, LLC, a Wisconsin limited liability company ("LLI"), Anthony Saldi, Debra Saldi, Thomas Peterson, Linda Peterson, Southport Center, L.L.C., a Nebraska limited liability company, as Tenants in Common (collectively, known as "Legends Bar"), Cutchall Property Management, L.L.C., a Nebraska limited liability company ("CPM"), The Eating Establishment-Giles, L.L.C., a Nebraska limited liability company ("EEG"), Galaxy Ventures III, LLC, a Nebraska limited liability company ("Galaxy"), 12040 McDermott Plaza, LLC, a Nebraska limited liability company ("12040"), GMC Properties Corporation, a Nebraska corporation ("GMC"), La Vista Investors, LLC, a California limited liability company ("LVI"), The Lund Company Partnership, a Nebraska general partnership ("LCP"), McDermott Gen3 Properties, L.P., a Kansas limited partnership, and Patrick McDermott, as Tenants in Common (collectively, known as "McDermott Properties"), Michael McDermott and John Hoich, as Tenants in Common (collectively, known as "McDermott/Hoich"), and Michael McDermott ("McDermott", together with LLI, Legends Bar, CPM, EEG, Galaxy, Southport, GMC, LVI, LCP, McDermott Properties and McDermott/Hoich, collectively the "Owners"), which all own the real property set forth in the recitals below (collectively, the "Property") and Southport East Landowners Association, Inc., a Nebraska nonprofit corporation (the "New Association").

RECITALS

WHEREAS, LLI is the owner of Lot 1, Legends Bar is the owner of Lot 2, all located in Southport East Replat Two, City of La Vista, Sarpy County, Nebraska;

WHEREAS, McDermott/Hoich is the owner of Lot 3, 12040 is the owner of Lot 4, McDermott is the owner of Lot 5, GMC is the owner of Lot 6, LVI is the owner of Lot 7, EEG is the owner of Lot 8, Galaxy is the owner of Lot 9, CMP is the owner of Lot 10, all located in Southport East Replat Six, City of La Vista, Sarpy County, Nebraska;

RETURN TO:
Dvorak Law Group, LLC
13625 California Street, Suite 110
Omaha, NE 68154

WHEREAS, McDermott Properties is the owner of Lot 1, McDermott/Hoich are the owners of Lots 2 and 4, LCP is the owner of Lot 3, all located in Southport East Replat Nine, City of La Vista, Sarpy County, Nebraska;

WHEREAS, the Property is affected by that certain Declaration and Grant of Easements, Covenants and Restrictions for Lots 1 and 2 Southport East Replat Two and for Lot 3 Southport East Replat Two Replatted as Lots 1 through 10, Southport East Replat Six dated May 3, 2007, recorded on May 4, 2007, as Instrument No. 2007-13018, and amended by that certain First Amendment to Declaration of Easements, Covenants and Restrictions for Lots 1 and 2 Southport East Replat Two and for Lot 3 Southport East Replat Two Replatted as Lots 1 through 10, Southport East Replat Six dated July 12, 2007, recorded on July 16, 2007, as Instrument No. 2007-21169, all with the Register of Deeds in Sarpy County, Nebraska (collectively, the "Declaration");

WHEREAS, the Property is also affected by that certain Second Amended and Restated Declaration of Covenants, Conditions and Easements for Southport East dated September 24, 2002, recorded on November 27, 2002 as Instrument No. 2002-49202 and that certain First Amendment to the Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Southport East dated July 21, 2011, recorded on August 5, 2011 as Instrument No. 2011-19133, all with the Register of Deeds in Sarpy County, Nebraska (collectively, the "SELA Declaration"); and

WHEREAS, the Owners desire to (i) dissolve the Southport Parkway SPE Owners Association, Inc., a Nebraska non-profit corporation (the "Current Association"), (ii) replace the Current Association with the New Association, and (iii) otherwise amend the Declaration as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the undersigned hereby amend the Declaration as of the Effective Date as follows:

1. Definitions. Terms used in this Amendment shall have the meanings set forth in the Declaration except as otherwise defined herein.

2. Dissolution and Replacement of Association. The Owners have hereby agreed to dissolve the Current Association and upon the Effective Date of this Amendment, all references to Association in the Declaration shall mean the New Association. The New Association shall be responsible for all duties and obligations of the Association as set forth in the Declaration. As of the Effective Date, the SELA Declaration shall have been amended to include an assessment referred to as the "Parkway Assessment", which shall be for the payment of the Common Facilities Charge as set forth in the Declaration.

3. Approval and Consent of City of La Vista. The City of La Vista, Sarpy County, Nebraska has reviewed and approved this Amendment pursuant to the provisions of the Subdivision Agreement, as amended.

4. No Other Amendment. Except as specifically set forth herein, the Declaration shall remain in full force and effect.

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IN WITNESS WHEREOF, the undersigned has reviewed and approved this Amendment as of the Effective Date.

Attest:

City of La Vista

Pamela Buethe, City Clerk

By: _____
Douglas Kindig, Mayor

STATE OF NEBRASKA)
)
COUNTY OF SARPY) ss.

On this ____ day of _____, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Douglas Kindig, personally known by me to be the Mayor of the City of La Vista, and Pamela Buethe, personally known by me to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing instrument, and acknowledged the 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.

Notary Public

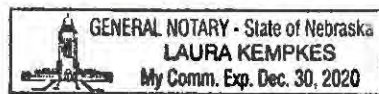
IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

Southport East Landowners Association,
Inc., a Nebraska nonprofit corporation

By: John L. Horch
Its: president

STATE OF NE)
COUNTY OF Douglas)

ss.



On this 26 day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared John L. Horch, personally known by me to be the President of Southport East Landowners Association, Inc., a Nebraska nonprofit corporation, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said corporation.

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

Laura Kempkes
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

La Vista Lodging Investors, LLC,
a Wisconsin limited liability company
Omaha SW Lodging Investors, LLC, Sole

By: JSL Investments, LLC, Managing Member
Its: [Signature] member

Jeffrey S. Lenz, Sole member

STATE OF WI)
COUNTY OF Dane) ss.

On this 30 day of March, 2018, before me Christine E. Hoebel, Notary Public, personally appeared Jeffrey S. Lenz, as the Sole Member of JSL Investments, LLC, Managing Member of La Vista Lodging Investors, LLC, a Wisconsin limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

Anthony Saldi
Anthony Saldi

Debra Saldi
Debra Saldi

Thomas Peterson
Thomas Peterson

Linda Peterson
Linda Peterson

Southport Center, L.L.C.,
a Nebraska limited liability company

By: Anthony Saldi

Its: member

STATE OF Nebraska)

COUNTY OF Douglas)

ss.

On this 2nd day of April, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Anthony Saldi and Debra Saldi, personally known by me, and the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed.

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

Rhonda R Matney
Notary Public

STATE OF Nebraska)

COUNTY OF Douglas)

ss.

On this 2nd day of April, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Thomas Peterson and Linda Peterson, personally known by me, and the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed.

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

Catherine Maellaro
Notary Public



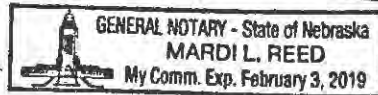
STATE OF Nebraska
COUNTY OF Douglas

ss.

On this 29th day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared James D. Sald personally known by me to be the Member of Southport Center, L.L.C., a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said company.

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

Mardi L. Reed
Notary Public



IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

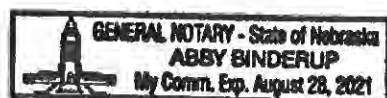
Cutchall Property Management, L.L.C.,
a Nebraska limited liability company

By: [Signature]
Its: Manager

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

On this 27 day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Greg Cutchall, personally known by me to be the Manager of Cutchall Property Management, L.L.C., a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said company.

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



[Signature]
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

The Eating Establishment-Giles, L.L.C.,
a Nebraska limited liability company

By: Lori Plauk
Its: Managing Partner

STATE OF Nebraska)
COUNTY OF Sarpy) ss.

On this 4th day of April, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Lori J Plauk, personally known by me to be the Managing Partner of The Eating Establishment-Giles, L.L.C., a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said company.

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



Victoria Sorrentino
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

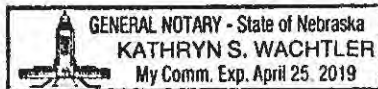
Galaxy Ventures III, LLC,
a Nebraska limited liability company

By: [Signature]
Its: Managing Member

STATE OF Nebraska)
COUNTY OF Sarpy) ss.

On this 9 day of April, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Bryce Bares, personally known by me to be the Managing Member of Galaxy Ventures III, LLC, a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said company.

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



[Signature]
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

GMC Properties Corporation,
a Nebraska corporation

By: _____
Its: _____

STATE OF Nebraska)
COUNTY OF Lancaster)

ss.

On this 21st day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Roger D Moore, personally known by me to be the President of GMC Properties Corporation, a Nebraska corporation, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said corporation.

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



Steve A. Talbot
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.



La Vista Investors, LLC,
a California limited liability company

By: [Signature]
Its: Warren Berzuck, Managing Member

STATE OF California)
COUNTY OF Los Angeles) ss.

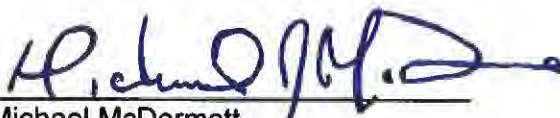
On this 16th day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Warren Berzuck, personally known by me to be the Managing Member of La Vista Investors, LLC, a California limited liability company, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said company.

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



[Signature]
Notary Public

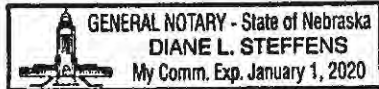
IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.


Michael McDermott

STATE OF Nebraska)
)
COUNTY OF Douglas) ss.

On this 15th day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Michael McDermott, personally known by me and the identical person whose name is affixed to the foregoing instrument, 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.




Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

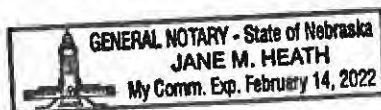
The Lund Company Partnership,
a Nebraska general partnership

By: [Signature]
Its: Managing Partner

STATE OF Nebraska)
COUNTY OF Douglas) ss.

On this 19th day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared John Lund, personally known by me to be the Managing Partner of The Lund Company Partnership, a Nebraska general partnership, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said partnership.

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



[Signature]
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

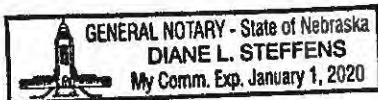
Patrick McDermott
Patrick McDermott

McDermott Gen3 Properties, L.P.
a Kansas limited partnership
By: McDermott Property Management LLC
Its: General Partner
By: Michael M. [Signature]
Its: Managing Member

STATE OF Nebraska)
COUNTY OF Douglas) ss.

On this 15th day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Michael McDermott as the Managing Member of McDermott Gen3 Properties, L.P., a Kansas limited partnership, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed, and the voluntary act and deed on behalf of said partnership.

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



[Signature]
Notary Public

STATE OF Nebraska)
COUNTY OF Douglas) ss.


On this 15th day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Patrick McDermott, personally known by me, and the identical person whose name is affixed to the foregoing instrument, 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.



[Signature]
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.


Michael McDermott

John Hoich

STATE OF _____)
COUNTY OF _____) ss.

On this ____ day of _____, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared John Hoich, personally known by me and the identical person whose name is affixed to the foregoing instrument, 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.

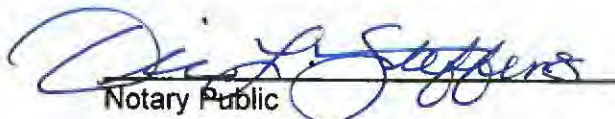
Notary Public

STATE OF Nebraska)
COUNTY OF Douglas) ss.

On this 15th day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Michael McDermott, personally known by me and the identical person whose name is affixed to the foregoing instrument, 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.




Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the Effective Date.

Michael McDermott

John R. Hoich
John Hoich

STATE OF NE)
COUNTY OF Douglas)

ss.



On this 26 day of March, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared John Hoich, personally known by me and the identical person whose name is affixed to the foregoing instrument, 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.

Laura Kempkes
Notary Public

STATE OF _____)
COUNTY OF _____)

ss.

On this ____ day of _____, 2018, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Michael McDermott, personally known by me and the identical person whose name is affixed to the foregoing instrument, 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.

Notary Public

EXHIBIT "A"

**PLAN OF DISSOLUTION
OF
SOUTHPORT PARKWAY SPE OWNERS ASSOCIATION, INC.**

This Plan of Dissolution (the "Plan") is designed to be and shall constitute a plan of dissolution of Southport Parkway SPE Owners Association, Inc., a Nebraska nonprofit corporation (the "Corporation"), in accordance with the Corporation's Articles of Incorporation ("Articles") and the Nebraska Nonprofit Corporation Act (the "Act").

WHEREAS, the directors and members have determined that it would be appropriate and in the Corporation's best interest to adopt a Plan of Dissolution at this time to facilitate the timely dissolution of the Corporation.

NOW, THEREFORE, in consideration of the provisions of the Plan contained herein, the Corporation agrees as follows:

1. Approval of Plan and Effective Date. The Plan shall be approved by the directors and the members as provided by the Act and shall become effective upon the date of the members' approval of the same.

2. Plan of Liquidation. In furtherance of this Plan, the directors and officers of the Corporation are hereby authorized to sell or distribute any and all of the assets of the Corporation, and to wind up, settle, and close the affairs of the Corporation and to pay all of Corporation's debts, if any.

3. Cessation of Business. The Corporation shall cease doing active business and shall commence the winding up of its affairs. As a part of such winding up, the Corporation shall liquidate and distribute its assets as follows:

a. The Corporation's remaining tangible personal property, including furniture, equipment and supplies, if any, shall be sold pursuant to arms-length transactions and the proceeds from the sales shall be added to the remaining assets of the Corporation and used to pay any outstanding debts as hereafter provided. Any such items of tangible personal property which remain unsold following reasonable efforts by the directors, shall be distributed as provided in Section 3(d) below, or otherwise shall be discarded, as determined by the directors.

b. The Corporation shall first use its monies to pay any outstanding amounts due and owing to the Internal Revenue Service or the State of Nebraska.

c. To the extent there are any monies remaining after the foregoing payment(s), the Corporation shall utilize the same to pay all known or ascertainable liabilities of Corporation for which a legitimate claim has been made in whole, or, if there are insufficient funds, in part. To the extent there are insufficient funds to satisfy all such liabilities, they shall be satisfied in order of legal priority, with claims of the same priority being satisfied on a pro-rata basis.

d. The Articles require that its remaining assets, if any, after the foregoing payments be distributed to a mutual benefit nonprofit owners association serving the lots located in Southport East Replat Two, Southport East Replat Six and Southport East Replat Nine subdivisions as surveyed, platted and recorded in Sarpy County, Nebraska (the "Southport Parkway Development Area."). The directors acknowledge that Southport East Landowners

EXHIBIT "A"

Association, Inc., a Nebraska nonprofit corporation ("SELA") is a Nebraska mutual benefit owners association serving the Southport Parkway Development Area and have selected the SELA to receive any remaining assets of the Corporation.

4. Authorization. The directors and officers of the Corporation are authorized, empowered and directed to perform all such other acts and things, and execute and file all documents which may be required by law or which the directors and officers deem necessary or advisable to fully carry out the intent and purposes of the Plan, and the dissolution of the Corporation and the termination of its corporate existence. Without limiting the generality of the foregoing authorization, the directors and officers are authorized to execute and file all tax returns, informational returns, forms and other documents or information required by the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder and to publish such notice(s) and to execute and file articles of dissolution and other appropriate documents relating to dissolution as required by the Nebraska Nonprofit Corporation Act.

[The Remainder of This Page Intentionally Left Blank. Signature Page Follows.]

EXHIBIT "A"

IN WITNESS WHEREOF, the President of the Corporation hereby certifies that the directors and members of the Corporation have approved the Plan of Dissolution as of this _____ day of _____, 2018.

John Hoich, President