

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 7, 2007 AGENDA**

Subject:	Type:	Submitted By:
CONSENT AND ACKNOWLEDGEMENT — FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS & RESTRICTIONS (SOUTHPORT EAST)	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A resolution has been prepared to authorize the execution of the City's Consent and Acknowledgement in regard to the First Amendment to the Declaration of Easements, Covenants and Restrictions (ECR's) for Lots 1-10, Southport East Replat Six.

FISCAL IMPACT

None.

RECOMMENDATION

Approval.

BACKGROUND

A resolution has been prepared to authorize the execution of the City's Consent and Acknowledgement in regard to the First Amendment to the Declaration of Easements, Covenants and Restrictions (ECR's) for Lots 1-10, Southport East Replat Six. The City has been advised by Shaun James, attorney for the developer, that Security National Bank, as a condition of closing the purchase of a bank site, is requiring the existing Declaration of Easements, Covenants and Restrictions (ECR's) be amended. The requested changes are acceptable to all owners of land within Lots 1-10, Southport East Replat Six. The changes contained in the First Amendment to the ECR's affects only these lots.

Section 9.18 of the ECR's as approved requires that any modification to the terms of the ECR's "shall require the consent of the City." The First Amendment has been reviewed by the City Attorney and he has indicated there is no legal impediment to the City's approval of the amendments as proposed. A Consent and Acknowledgement to Amendment of Declarations has been prepared and is attached. This document will need to be executed by the Mayor and should be filed of record with the First Amendment.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE MAYOR TO EXECUTE THE CONSENT AND ACKNOWLEDGEMENT TO THE AMENDMENT OF DECLARATIONS FOR LOTS 1-10, SOUTHPORT EAST REPLAT SIX.

WHEREAS, Section 9.18 of the Declaration of Easements, Covenants and Restrictions for Lots 1-3, Southport East Replat Two, replatted as 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 First 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 First Amendment to the Declaration of Easements, Covenants and Restrictions for Lots 1-10, Southport East Replat Six as presented at the August 7, 2007 City Council meeting be, and hereby is approved, and the Mayor and City Clerk be and hereby are, authorized to execute the Consent and Acknowledgement to 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 7th DAY OF AUGUST, 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**CITY OF LA VISTA
CONSENT AND ACKNOWLEDGEMENT
to
AMENDMENT OF DECLARATIONS**

This Consent and Acknowledgement is given by the City of LaVista, Sarpy County, Nebraska in regard to the 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, recorded in the Register of Deeds Office of Sarpy County, Nebraska at Instrument No. 2007-21169 (the "Amendment").

WITNESSETH

WHEREAS, the Amendment has been approved and executed by all property owners affected by the Amendment; and

WHEREAS, the City has the right and power to approve all amendments to the 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 (the "Declaration"); and

WHEREAS, the Amendment has been reviewed and approval is recommended by the City Attorney and City of LaVista planning and administrative personnel; and

WHEREAS, the Amendment has now been brought before the City Council for the City of LaVista, and the Council agrees that approval of the Amendment is in the best interest of the City of LaVista and the Southport East development.

NOW THEREFORE, the City Council hereby consents and approves of the 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, and authorizes the recording of this Consent and

After recording, return to: Shaun James, Slusky Law, LLC, Suite 300, 17445 Arbor Street, Omaha, NE 68130

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

THIS 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 (herein "Amendment"), amends the above described Declaration of Easements, Covenants and Restrictions dated May 3, 2007 and recorded on May 4, 2007 in the office of the Register of Deeds, Sarpy County, Nebraska as Instrument Number 2007-13018 (the "Declaration") is made effective as of _____, 2007, by JOE MCDERMOTT ASSOCIATES, INC, a Nebraska corporation ("McDermott"), JOHN L. HOICH, an unmarried person ("Hoich"), SIMMONDS PROPERTIES, LTD., a Nebraska limited partnership ("Simmonds"), LAVISTA LODGING INVESTORS, LLC, a Wisconsin limited liability company ("Hotel Owner"), and DES MOINES LODGING INVESTORS III, LLC, a Wisconsin limited liability company ("Restaurant Owner"). Individually McDermott, Hoich, Simmonds, Hotel Owner and Restaurant Owner may be referred to as a Grantor or Declarant herein, and jointly or collectively as Grantors or Declarants.

RECITALS:

WHEREAS, Declarants Hoich and McDermott desire to convey title to Lot 9, Southport East Replat Six ("Lot 9") to Security National Bank; and

WHEREAS, Security National Bank has requested certain revisions to the Declaration be made as a condition of closing on the purchase of Lot 9; and

WHEREAS, Declarants are each willing to grant the revisions requested.

NOW, THEREFORE, in exchange for the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the Declarants hereby amend the Declaration as follows:

1. Section 1.3 is hereby deleted in its entirety, and the following inserted in its place: ""Common Areas" means those portions of the Lots, and any improvements thereon, designated from time to time by a Declarant, its successors or assigns, to be used for the common benefit of all or certain Owners and/or Occupants of the Lots, *provided, however*, that any Owner that may be adversely affected by such designation shall have consented in writing prior to such designation becoming effective."
2. Section 2.7 is hereby deleted in its entirety.
3. In Section 5.5(b), the sentence "The policies of insurance must each name the other Owners as additional insureds," is hereby deleted in its entirety.

4. The following sentence shall be added to end of Section 6.1(c), "Each Owner shall provide adequate employee parking on such Owner's Lot, and shall make reasonable efforts to ensure that employees of Owner or Owner's tenants do not park on other Lots."

5. In Section 9.3(d), the phrase "promotional and advertising activities," is hereby deleted.

6. In Section 9.7, the phrase "service charge of no more than 10%" is deleted, and is replaced with "service charge of no more than 5%."

7. In Section 9.7, the last sentence in the first paragraph is deleted in its entirety, and the following inserted in its place: " The proportionate share of the total Common Facilities' expenses to be borne by each Owner for any year shall be that percentage equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, as adjusted from time to time "

8. The second paragraph in Section 9.7 is hereby deleted in its entirety.

9. To the extent that this Amendment is inconsistent with a provision in the Declaration, the terms of this Amendment shall control. Except as amended herein, all other provisions of the Declaration are hereby ratified and confirmed and shall remain in full force and effect against all Lots and be and shall remain enforceable in accordance with its terms.

10. If any term, provision or covenant of this Amendment shall to any extent be deemed invalid and unenforceable by judgment or court order, the remainder of this Amendment shall not be affected thereby and such other terms, provisions and covenants of this Amendment shall be valid and shall be enforced to the extent permitted by law.

IN WITNESS WHEREOF, the undersigned has caused these presents to be effective on the day and year set forth above.

(Signatures and Acknowledges on following 3 pages)

DECLARANTS:

JOHN L. HOICH

JOE MCDERMOTT ASSOCIATES, INC.

By _____
Joseph McDermott, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____ 2007, by JOHN L. HOICH, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing this instrument above.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____ 2007, by JOE MCDERMOTT, the President of JOE MCDERMOTT ASSOCIATES, INC., who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing this instrument above, and upon oath states that his execution hereof is his authorized act on behalf of said corporation.

Notary Public

LAVISTA LODGING INVESTORS, LLC

By: Omaha SW Lodging Investors, LLC, sole member

By: David A. Lenz Investments, LLC, managing member

By _____
David A. Lenz, sole member

DES MOINES LODGING INVESTORS III, LLC

By _____
David A. Lenz, Managing Member

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 2007, before me a Notary Public, duly commissioned and qualified in and for said County, appeared David A. Lenz, the sole member of David A. Lenz Investments, LLC, a managing member of Omaha SW Lodging Investors, LLC, the sole member of Lavista Lodging Investors, LLC, personally known by me to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed, and the voluntary act and deed of said partnership.

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

Notary Public

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 2007, before me a Notary Public, duly commissioned and qualified in and for said County, appeared David A. Lenz, the managing member of Des Moines Lodging Investors III, LLC, personally known by me to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed, and the voluntary act and deed of said partnership.

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

Notary Public