



CITY OF LA VISTA  
PLANNING COMMISSION

## **STAFF REPORT**

FINAL PLANNED UNIT DEVELOPMENT (PUD)  
FINAL PLAT HARRISON HEIGHTS SUBDIVISION  
CONDITIONAL USE PERMIT FOR LOT 4

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### **DATE OF HEARING:**

September 17, 2009

### **PROPOSAL:**

Subdivide Lots 13 & 14 in Crestview Heights into five (5) lots for the development of elderly / senior housing and three commercial uses as a Planned Unit Development (PUD)

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## **PROPERTY INFORMATION**

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### **APPLICANT:**

Empire Group, LLC  
1941 S. 42<sup>nd</sup> Street  
Omaha, NE 68105

### **PROPERTY OWNER:**

Empire Group, LLC  
1941 S. 42<sup>nd</sup> Street  
Omaha, NE 68105

### **LOCATION AND SIZE:**

Lots 13 & 14, Crestview Heights  
SE corner of Gertrude and Harrison Streets  
Lots = 12 Acres

### **CURRENT ZONING:**

R-3, High Density Residential and C-2, General Commercial  
PUD, Planned Unit Development District

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## **APPLICABLE DEFINITIONS**

(from Section 2 of Zoning Ordinance)

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**APARTMENT** shall mean a room or a suite of rooms within an apartment house or multiple family dwelling arranged, intended or designed for a place of residence of a single family or group of individuals living together.

**PLANNED UNIT DEVELOPMENT** shall mean a development designed to provide for an unusual or different arrangement of residential, business, or industrial uses in accordance with an approved development plan.

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## **BACKGROUND**

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### **History of Subject Properties:**

On September 4, 2008, these lots were sold by the Metropolitan Utilities District to the Empire Group. Prior to this sale the land had been undeveloped and used for farming. The Future Land Use Map in the Comprehensive Plan reflects this former land use as a Public/Civic use, and the Zoning Map supported the agricultural use.

On August 4, 2009 the subject properties were rezoned by City Council from TA, Transitional Agriculture to R-3, High Density Residential and C-2, General Commercial with an overlay of PUD, Planned Unit Development District.

### **Description of Proposed Development:**

On April 6, 2009, the City of La Vista received a new application for the development of apartments for senior living, an assisted living facility, and commercial flex buildings. The developer proposes to subdivide the two lots into five with each use to be built out in phases.

At the August City Council hearing, the preliminary PUD plan was approved for 112 elderly apartment units at market rate with 55 garages; and 48 affordable, senior apartments with no garages. These are age restricted for seniors 55 years old and up. Also, three commercial buildings were approved in the preliminary PUD that would total 20,500 square feet of flex commercial space.

### **Existing Conditions of Site:**

The site is currently being graded for building pads. Mature pine trees and deciduous trees exist on the perimeter of the properties. These trees have been preserved through the grading permit.

### **Surrounding Area and Adjacent Neighborhoods Land Uses and Zoning:**

North – City of Omaha, residential subdivision;  
East – Crestview Village, R-3 High Density Residential;  
South – Crestview Heights, R-1 Single Family; and

West – Crestview Heights, R-1 Single Family

**Applicable Regulations:**

Section 5.08 of the Zoning Ordinance, R-3 High Density Residential District

Section 5.11 of the Zoning Ordinance, C-2 General Commercial District

Section 5.15 of the Zoning Ordinance, PUD Planned Unit Development District

**Applicable Plans:**

The Comprehensive Plan and Future Land Use Map – The Comprehensive Plan supports the development of residential options for all income levels and actively access affordable housing programs available from local, state, and federal agencies/departments.

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## REVIEW COMMENTS FROM CITY STAFF AND OUTSIDE AGENCIES

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**Black Hills Energy, Denise Montgomery**

No comments received

**City Engineer, John Kottmann:**

FINAL PLAT

1. The necessary mylar copies should be provided after City Council approval in order to include any revisions found necessary during the Planning Commission and City Council reviews.
2. A staking bond or letter certifying that lot corners have been pinned should be provided prior to the Mayor signing the final plat mylars. The staking bond should be \$150.00 per lot if a staking bond is provided.
3. An acceptable subdivision/development agreement will be needed prior to City Council consideration of the final plat. This agreement will need to address financing, installation, operation, and maintenance of proposed public and private improvements that are necessary to serve the property in this plat. The allocation of installation and maintenance costs needs to be addressed in this agreement, as well as the creation of a property owners' association for maintenance of private common area improvements.
4. A storm sewer easement needs to be added to the final plat across Lots 1 and 2 in favor of Lot
5. A cross easement over Lots 1, 2, and 3 is needed for sanitary sewer and other utility lines for these lots to reach adjacent public facilities.
6. In the Notary Block on the plat the County of "Douglas" needs to be changed to "Sarpy".

FINAL PUD

General

7. The Final PUD site plan with latest revision date of July 8, 2009 is generally consistent with the Preliminary PUD plan and incorporates changes requested by staff concerning sidewalks and reductions in impervious areas. Since the Final PUD plan is consistent with the

Preliminary PUD plan, I will not repeat my previous review comments. I will focus on items that were identified for additional review.

#### Parking

8. The proposed quantity of parking on Lots 1, 2 and 3 is 102 stalls which is right at the minimum requirement for general retail space. However, the proposed ADA stalls do not have the required access aisles shown. The plan needs to be revised to show the access aisles and how the stall count can be maintained. Further, if portions of the retail space are used for restaurant-type uses, then the required parking for those spaces will be at least twice the requirement for general retail space. A limitation on the portion of the facility than can be used for such uses or some other method proposed by the applicant is needed to ensure that an appropriate mix of uses occurs in order to avoid a situation with inadequate on-site parking.
9. The total parking count on Lot 4 needs to be checked. The plan data shows 55 garage stalls and 71 surface stalls for a total of 126, however, I count 51 garage stalls and 72 surface stalls for a total of 123 stalls. Due to the senior housing nature of the project, the PUD process is allowing 1 stall per unit. There needs to be enough parking on site for the residents and visitor parking. I recommend adding 10 parking spaces for a total of at least 133 spaces.
10. In regards to Lot 5, the plan data shows 55 proposed surface parking spaces. I agree with that quantity, however, 2 of the proposed ADA stalls do not have the required access aisles shown. The plan needs to be revised to show these aisles. Due to the senior housing nature of the project, the PUD process is allowing 1 stall per unit. There needs to be enough parking on site for the residents and visitor parking. I recommend adding 5 parking spaces for a total of at least 60.

#### Utilities

11. The final PUD plan needs to have information added to it showing proposed lighting locations and types of fixtures proposed (sharp cutoff style).
12. The locations of existing and proposed fire hydrants need to be added to the final PUD plan for review by the Fire Department and for conformance with the La Vista Municipal Code.

#### Grading & Drainage

13. The site drains to a storm sewer system in Harrison Street. A drainage study was prepared in September of 2008 as part of the grading permit application process. This study indicated that the runoff from the site will be reduced to below existing conditions for 2, 10, 50 and 100-year events. This study was based upon a different development configuration than is currently being proposed. The drainage study needs to be updated to be consistent with the current layout and grading to demonstrate that the required detention volumes are able to be provided to reduce storm water peak flows to existing conditions for 2, 10, 50 and 100-year events.
14. A grading and erosion control permit through the Papillion Creek Watershed Partnership website has been obtained for this site. It will need to be modified to match the revised configuration of site development prior to obtaining a building permit or revising the grading of the site.
15. The applicant needs to submit Post Construction Storm Water Management Plans containing the minimum information listed in the City's present guidance document dated March 3,

2009 which is posted on the City's web site. These plans need to be part of the final plat and/or PUD submittal reviewed by the Planning Commission and City Council. This plan needs to be separate from the PUD site plan. The applicant also needs to review the first flush volumes shown on the site plan since they seem to be less than 0.5 inches of runoff based on the lot areas. A signed Maintenance Agreement for the post construction storm water management plan following the sample form posted on the City's web site needs to be provided prior to granting building permits for this project.

Miscellaneous

16. The applicant needs to identify how many feet will remain from back of curb of the proposed right-turn deceleration lane to the existing right of way line.
17. The text of the PUD plan needs to be updated and submitted.
18. The type of proposed screening of trash dumpsters needs to be shown on the final PUD plans.
19. Note No. 3 on the Final PUD Plan needs to be revised or deleted.
20. The PUD plan or the PUD text needs to have a statement as to the number of one-bedroom and two-bedroom units proposed on Lots 4 and 5.

CONDITIONAL USE PERMIT

21. I have considered the Standards for a conditional use permit set forth in Section 6.05 of the Zoning Regulations. If visitor parking is provided as recommended above and provisions are made to ensure a mix of retail uses not exceeding the available parking on the commercial lots and other revisions to the PUD plan are made as identified in this letter, then I do not object to the issuance of a Conditional Use Permit.

**Chief Building Official, Jeff Sinnett**

No comments received

**Fire Chief, Rich Uhl**

No comments received.

**Metropolitan Utility District, Jeff Loll**

No comments received.

**Omaha Public Power District, Connie Biddle**

No comments received.

**Police Chief, Bob Lausten**

The Police Department has reviewed the provided documents relating to the Harrison Heights project. An obvious concern would be how the development effects traffic at Gertrude/Harrison and the other intersections in the area.

**Public Works Director, Joe Soucie**

No comments received.

**Public School District**

No comments received.

**Qwest, Aaron Krebs**  
No comments received.

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## **PUBLIC COMMENTS**

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No comments have been received regarding the Final PUD Plan, Final Plat or Conditional Use Permit, as of the time this report was written.

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## **PLANNING STAFF ANALYSIS**

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### **Land Use:**

City Planning Staff supports the use of Lots 13 & 14 for senior apartments. Currently, La Vista only has one such facility at this time in Granville, which has just over 40 units. Elderly members of La Vista who are unable to get an available room at Granville are forced to leave La Vista to find accommodations. Therefore, Planning Staff has been targeting Lots 13 & 14 in Crestview Heights for more elderly living opportunities because it is a large enough acreage and compatible with surrounding land uses.

Revised, detailed color elevation drawings have been submitted with review of the Final PUD Plan. It is important that the multiple buildings within this development are compatible and coordinated in their architectural design. Building materials should be similar and coordinated so that all buildings in the PUD appear cohesive in their design. The City's design review architect has been working with the developers to achieve this.

The Final PUD shall limit Lots 1, 2 and 3 of Harrison Heights to no more than 25% of the combined gross floor area of the three commercial buildings for use as an A-2 occupancy (i.e. restaurant, nightclubs, bars.)

### **Transportation:**

Vehicles and pedestrians will be able to circulate internally through the proposed five lots. All five lots are proposed to be connected by ADA accessible sidewalks. Entrances to buildings connect with these internal sidewalks.

### **Landscaping:**

Many of the existing mature trees on the perimeter of the development will be preserved. The developer has graded the property to create level building pad sites at a significantly lower elevation as compared to Gertrude Street. Even though the developer proposes a three story apartment building, this grading should keep the rooflines about even with the single family residential homes to the south of Gertrude Street.

The PUD plan attempts to minimize the number of trees lost to preserve a buffer between the single family land uses and the proposed development. Also, these trees would provide a nice amenity to the proposed Planned Unit Development. Additional landscaping is required on the perimeter of the proposed lots by code, so new trees have been proposed to meet the minimum landscaping requirements.

**Stormwater Drainage:**

Stormwater detention ponds are proposed on each individual lot. The use of landscaped drainage swales, permeable pavement, rain gardens or other Low Impact Development Best Management Practices could reduce the size or the need for detention ponds. Stormwater runoff would infiltrate the ground sooner, thus the detention areas would not need to be as large.

**Process:**

Motions are needed for recommendations on the Conditional Use Permit (multi-family development on Lot 4), Final Plat and Final PUD Plan need.

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## PLANNING STAFF RECOMMENDATION

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Continuance until the Final PUD plan and supporting documents have been revised and updated to reflect all City Staff's suggested revisions.

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Prepared by:

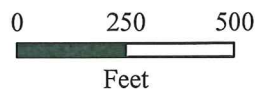
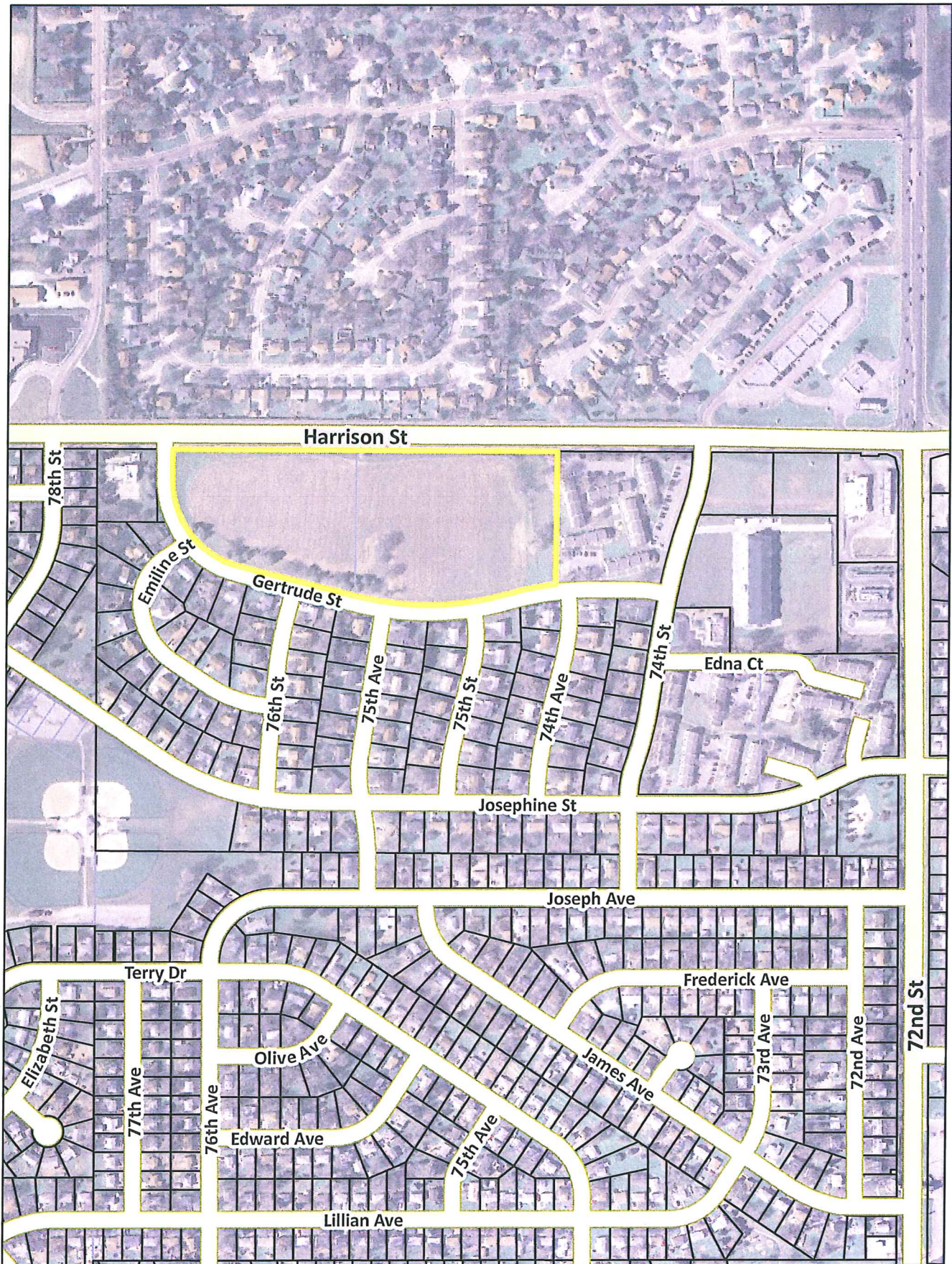
\_\_\_\_\_  
Community Development Director      Date

**Attachments:**

- Vicinity Map
- Final PUD Plan / Final Plat
- Draft PUD
- Draft CUP
- Colored elevation views
- Letters from the public, if received



# Vicinity Map



## Legend

- Parcels
- Harrison Heights



## PUD PLAN

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA:

Section 1. In accordance with Section 5.15 of the La Vista Zoning Ordinance No. 848, the final PUD-1 (Planned Unit Development) plan for Harrison Heights is developed for the following described real estate, to wit:

### LEGAL DESCRIPTION

See exhibit "A" attached hereto and made a part hereof.

Section 2. This document provides for a PUD plan for development of a planned residential area for senior living that will service not only the city, but also the surrounding market area. In addition the PUD includes a small community commercial center. The residential area is characterized by senior apartments served by separate parking and garage facilities uniquely located on two tracts of land with a combined area of approximately 9.39 acres. The commercial center is characterized by multiple-tenant or free-standing retail, office and general services served by communal parking areas and uniquely located on two tracts of land with a combined area of approximately 2.66 acres. The regulations contained in this Ordinance will facilitate development in a planned, orderly fashion so as to protect the public health, safety, and general welfare. All grading, installation of infrastructure, construction of site improvements and build out shall be in strict accordance with the provisions of this Ordinance, except as shall be amended by the City Council in the required manner. The underlying residential and commercial zoning district regulations shall continue to be applicable, except as provided for in this Ordinance and the attached exhibits.

### Section 3. Definitions

Unless a contrary intent is clearly indicated herein, the following words and phrases shall have the following meanings, regardless of whether or not capitalized:

- A. "Developer" shall mean Empire Group L.L.C. its successors and assigns.
- B. "Free Standing Building" shall refer to any building or similar structure, each of which conducts a separate business.
- C. "Multiple-attached Building" shall refer to any building or similar structure that houses more than a single tenant or owner, in which numerous, discrete business activities are conducted.
- D. "Open Space" shall mean anything on the site except buildings, parking lots or drives for vehicular circulation, that is generally pervious, but may include well landscaped pedestrian places, pools, pool decks and roof gardens.
- E. "Planned Unit Development Plan" shall mean a plan developed and approved that outlines certain provisions for the property and its uses. Such plan shall consist of the final plat, design guidelines, landscaping, etc.
- F. "Plat" or "the Plat," shall mean the final plat approved by the City Council.
- G. "Subdivision" shall mean the 12.052 acres of land described in Exhibit "A" hereto, to be known as "Harrison Heights".

### Section 4. Parcel Identification Map

Attached hereto and made a part of this PUD plan for parcel delineation is the Parcel Identification Map for the Harrison Heights PUD (Planned Unit Development), marked Exhibit "B".

### Section 5. Conceptual Site Plan

A conceptual site plan for each parcel shall be submitted to the City for approval prior to any lot development within said parcel.

### Section 6. Allowed Uses

Unless otherwise provided in this Ordinance, Permitted and Permitted Conditional Uses allowed within the R-3 High Density Residential District shall be allowed on Lots 4 and 5, Harrison Heights except as modified below:

- A. The following uses shall be prohibited:
  - i. Non-age restricted apartments

Unless otherwise provided in this Ordinance, all Permitted and Permitted Conditional Uses allowed within the C-2 General Commercial District shall be allowed on Lots 1,2 and 3, Harrison Heights except as modified below:

- B. The following uses shall be prohibited:
  - i. None

#### Section 7. Building Design Guidelines and Criteria

Building design shall be performed in accordance with the City of La Vista's Commercial Building Design Guide and Criteria dated September 15, 1999. Buildings within this development will be compatible and coordinated in their architectural design. Materials shall be similar and coordinated so all buildings in the PUD appear cohesive in their design.

#### Section 8. Conditions

Section 5.15 of the La Vista Zoning Ordinance No. 848 includes the Planned Unit Development Overlay District (PUD) and establishes certain regulations and guidelines pertaining to accompanying information required on a Plat, Site Plan and/or conditional use permits. All uses shall adhere to the underlying zoning district except as herein provided.

##### A. General Conditions

The Parcel Identification Map and Conceptual Site Plan incorporate commercial uses as allowed by C-2 General Commercial Zoning on Lots 1,2 and 3.

In addition, the following general site plan criteria shall be integrated into and made part of the Harrison Heights PUD.

- i. All subdivisions, public streets, public street rights-of-way and general development shall adhere to the standards and design criteria set forth in the La Vista Subdivision Regulations and the most current design standards adopted by the City of La Vista pertaining thereto unless otherwise stated within this PUD Plan and Harrison Heights Design Guidelines.
- ii. Unless otherwise specified herein, the development of the Harrison Heights PUD shall comply with the applicable La Vista Zoning District Regulations or any other applicable City Codes.

##### B. Land Use Design Criteria

Unless provided otherwise in this PUD Plan, all general use regulations, performance standards and provisions set forth in the La Vista Zoning Ordinance for the appropriate commercial and residential zoning districts shall apply to any development within the identified area. The negative elements of such uses as loading docks, heating, ventilation, or air conditioning (HVAC) units, or similar electrical or mechanical appurtenances shall be designed to be screened and buffered from view by the general public through the use of architectural features or earth berming and landscaping.

- i. The intent of the design and layout of Lots 1,2 and 3 is to develop retail, office center(s) and/or individual businesses. The intent of the design and layout for Lots 4 and 5 is to develop senior apartments.

##### C. Access and Off-Street Parking

- i. Access. Driveways shall be located so that no undue interference with the free movement of road traffic will result, to provide the required sight distance, and to provide the most-favorable driveway grade. Access points within the development shall be limited to what is shown on the

final plat and subdivision agreement. Any deviation from this shall require the approval of the City.

- ii. Off-Street Parking. Parking on lots in the identified commercial areas shall be provided based on the aggregate ratio of five (5) off-street parking spaces per one thousand (1,000) square feet of gross leasable floor area of improvements constructed on each lot, unless off-site/public parking is utilized with approval of the city. Parking on lots in the identified residential areas shall be provided based on the aggregate ratio of one (1) space per unit plus one (1) space per employee on the largest shift.

a. Landscaping.

- (1) Off-street parking areas containing twenty-five (25) or more parking spaces shall provide internal landscaping, other than that required in a buffer zone or along street frontages, and shall be protected by a concrete curb.
- (2) Landscape islands a minimum of seven (7) feet in width shall be provided at the end of all parking rows. In addition, landscape islands a minimum of seven (7) feet in width shall be provided throughout the parking lots such that no parking space is farther than one hundred twenty (120) feet away from any landscaped space.
- (3) Required trees shall be located to minimize potential damage to vehicles, to insure adequate sight distance, and the maneuvering of emergency vehicles within the development and each lot.
- (4) The internal landscaped areas shall be located to direct traffic, dispersed throughout the lot to improve site aesthetics, and installed so that, when mature, it does not obscure traffic signs, fire hydrants, lighting, drainage patterns on site or adjacent properties, or obstruct vision for safety of ingress or egress.
- (5) Parking areas shall be screened, recessed, or otherwise constructed and located so as to prevent the glare from automobile headlights illuminating adjacent properties and to minimize negative views from public streets.
- (6) Parking area lighting shall be shielded so as to prevent illumination of adjacent properties. A lighting plan shall be submitted from review in conjunction with any site plan.
- (7) Off-street loading areas shall not interfere with or impede the circulation or flow of traffic.

D. Signage

All signs may be permitted with approval of a sign permit based upon the adopted sign regulations, except as modified herein. To the extent that the provisions of this PUD Plan conflict with or are more restrictive than similar provisions provided in the La Vista Zoning Ordinance, the provisions of this PUD Plan shall control.

This Ordinance recognizes that because of the size and scope of the project, and because access will be obtained to the development via large public arterial streets, the project has an extraordinary need for flexibility in the signage regulations applicable thereto.

- i. Project Directory Signs. Project Directory Signs shall be allowed on the internal roadways of the subdivision to help facilitate movement through and around the development. The sign area, setback, and number of project directional signs located within the development shall be determined in conjunction with the issuance of the sign permit for the development. The Project Directory Signs may contain directional information about the location of individual businesses within the development, and such information may be set forth the name of the business and use logos, service marks, or stylized letters that are

identified with that business. Any Project Directory Sign may contain the Developer's logo for the development.

- ii. Center Identification Signs. Multi-tenant buildings, multi-attached buildings and free standing buildings as part of a mall in the identified area may be allowed to advertise on center Identification signs. Such signs shall be a maximum of twenty-four (24) feet in height and contain a maximum of one hundred fifty (150) square feet of signage. Center identification signs may be allowed for individual users to identify their location off of internal streets or driveways with the approval of a sign permit. Such signs may include logos; located at least twenty (20) feet from the street right-of-way and ten (10) feet from the property line; and at not more than one per entrance.
- iii. Monument Signs. Monument signs for free standing buildings in the identified area shall not exceed fifteen (15) feet in height. Such signs may include logos; located at least ten (10) feet from the street right-of-way and ten (10) feet from the property line; and at not more than one per street frontage.

Section 9. Amendment to this PUD Plan Application for amendments to this PUD plan may be made only by the Developer as long as it holds ownership of any portion of Harrison Heights Subdivision. This shall overwrite Section 5.15.09 of the 2001 LaVista Nebraska zoning ordinance.

Section 10. That this Ordinance shall be in full force and effect after its passage approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

## City of La Vista Conditional Use Permit

### Conditional Use Permit for Multi-family Housing, Lot 4 Harrison Heights

This Conditional Use Permit issued this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to \_\_\_\_\_. ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate senior apartments upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 4 of Harrison Heights Subdivision, within the NE ¼ of Section 14, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of constructing an apartment complex for seniors over 55 years of age meant for independent living,; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area designated on Exhibit "A" hereto for multi-family residential, specifically senior apartments for independent living, said use hereinafter being referred to as "Permitted Use or Use".

#### **Conditions of Permit**

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the Permitted Use:
  - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives shall be provided to the City and attached to the permit as "Exhibit A".
  - b. These apartments are intended for senior independent living - only residents 55 years and older are allowed to rent apartments at this Permitted Use.
  - c. All parking for residents and visitors is to remain on-site; no on-street parking is allowed on Gertrude Street.
  - d. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the indoor rec. facility, except trash receptacles and those approved in writing by the City.
  - e. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete. Trash dumpsters shall be placed with a trash enclosure of six feet in height and screened accordingly.
  - f. Landscaping requirements from Section 7.17 of the City of La Vista Zoning Ordinance shall be



satisfied and maintained by the property owner.

- g. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, and ADA.
  - h. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
  - i. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
  - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
  - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
  - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
  - a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
  - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
  - c. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
5. If the permitted use is not commenced within one (1) year from \_\_\_\_\_, 2009, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
6. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
7. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional,

invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

### **Miscellaneous**

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

### **Contact Name and Address:**

### **Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pam Buethe  
City Clerk

## CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_