

AGENDA ITEM 4 A

CIMARRON TERRACE PHASE II

CONDITIONAL USE PERMIT

**CITY OF LA VISTA
PLANNING DIVISION**

RECOMMENDATION REPORT

CASE NUMBER:

FOR HEARING OF: July 21, 2011

Report Prepared on: July 14, 2011

I. GENERAL INFORMATION

A. APPLICANT:

Pedcor Investments-2011-CXXX III, L.P
One Pedcor Square
770 3rd Avenue, S.W.
Carel, IN 46032

B. PROPERTY OWNER:

Pedcor Investments-2011-CXXX III, L.P
One Pedcor Square
770 3rd Avenue, S.W.
Carel, IN 46032

C. LOCATION: Generally located southwest of 96th and Harrison Streets

D. LEGAL DESCRIPTION: Lot 1, Cimarron Woods Replat Three

E. REQUESTED ACTION(S): Conditional Use Permit for Lot 1, Cimarron Woods Replat Three, for multi-family housing

F. EXISTING ZONING AND LAND USE: R-3 – High Density Residential

G. PURPOSE OF REQUEST: Development of Phase 2 of the Cimarron Terrace Apartment Complex. Phase 2 consists of the construction of 48 additional units in two buildings, 16 attached garages and 12 detached garages.

H. SIZE OF SITE: 4.0 acres

II. BACKGROUND INFORMATION

A. EXISTING CONDITION OF SITE: Phase 1 is under construction; the site for phase 2 has been preliminarily graded and moderately to steeply slopes towards an open drainage channel on the western end of the lot. This drainage area contains a mature grove of trees.

B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:

1. **North:** R-3 – High Density Residential, Under Construction
2. **East:** R-1 – Single-Family Residential
3. **South:** R-3 – High Density Residential, Undeveloped
4. **West:** R-3 – High Density Residential, Undeveloped

C. RELEVANT CASE HISTORY:

1. In October of 2002, an application was filed for approval of a Comprehensive Plan amendment, a rezoning from TA, Transitional Agriculture, to R-1 PUD
2. On March 20, 2003, after some revisions to the layout of the plat, the Planning Commission conducted a public hearing and recommended approval of the request. The staff report and meeting minutes identify the rezoning from TA to R-1 but state "A P.U.D. designation will also allow for some mixed residential development...which will be predominantly single-family housing." And "Through the use of a P.U.D. the higher density residential has relocated to the northeast corner of this site where commercial uses have been previously discouraged." Also identified are several comments from the staff and the Acting City Engineer, Terry Atkins, including:
 - (a) A traffic signal shall be provided at 99th Street when the apartments are constructed regardless of warrants.
 - (b) Language must be incorporated into the subdivision agreement requiring approval of the final apartment plan prior to site development. The final apartment plan must have adequate internal traffic flow for police and fire, which would include a wide divided entrance.
3. On May 6, 2003, the City Council conducted a public hearing and approved Ordinance No. 907. The staff report and meeting minutes include the same comments regarding multi-family development however the ordinance rezoned the entire area of the preliminary plat to R-1.
4. In August of 2003, an application was filed for approval of a revised preliminary plat, a final plat, a final PUD plan and a waiver to two sections of the Subdivision Regulations. The name of the subdivision was changed to "Cimarron Woods". The application identifies a proposed 418 units on Lot 380.
5. On August 21, 2003 the Planning Commission conducted a public hearing and recommended approval of the request. The staff report and meeting minutes include the same comments noted above regarding the multi-family development. In addition, the debt to value analysis for the S.I.D. identifies Lot 380 will contain +400 units.
6. On September 16, 2003 the City Council conducted a public hearing and approved Ordinance No. 916 which created the PUD-1 overlay designation to the R-1 zoning which had been approved in Ordinance

No. 907. The City Council also approved the revised preliminary plat, the final plat and the Subdivision Agreement. The staff report and meeting minutes include the same comments noted above regarding the multi-family development. Section 19 of the Subdivision Agreement also states "As regards Lot 380 (multi-family tract), site plan, building elevations and building design shall be subject to City approval, at which time it should become part of this Agreement and Exhibit "K"."

7. On February 19, 2008, the City Council approved Ordinance No. 1055 which rezoned Lot 380 of Cimarron Woods Subdivision from R-1 PUD-1, Single Family Residential to R-3 PUD-1, High Density Residential.
8. On April 17, 2008 the Planning Commission reviewed a new Preliminary Planned Unit Development Plan as it differed significantly from the original Preliminary PUD Plan that was approved in 2003. Garages are not being planned for all units; the internal roadways are different; the arrangement of the apartment complexes is different; and fewer apartment units are being planned.
9. On June 2, 2009, the City Council approved Resolution No. 09-052 which approved the preliminary Planned Unit Development (PUD-1) plan subject to: 1. The property being zoned to read R-3, PUD-1 zoning; 2. A traffic signal be installed at the intersection of 99th and Harrison Streets as part of Phase I; 3. A 10-foot wide trail be installed in Phase II; 4. Revisions requested by the City Engineer, be incorporated into the Final PUD Plan and Conditional Use Permit submittal; 5. Revisions and additional information requested by the City's Design Review Architect be incorporated into the Final PUD Plan and Conditional Use Permit submittal; 6. Other revisions stated in the staff report be addressed prior to Final PUD Plan and Conditional Use Permit submittal; and 7. A preliminary assessment of the potential waterway/wetland issues be performed and all applicable Army Corps of Engineers permits be acquired by the developer prior to approval of the Final PUD plan.
10. On November 19, 2009, the Planning Commission reviewed the Final PUD Plan, Final Plat and Conditional Use Permit and recommended approval subject to the resolution of items noted in the staff report.
11. On March 16, 2010 the City Council approved Resolution No. 10-026 which authorized the execution of a Conditional Use Permit for Pedcor Investments, LLC, to construct a multi-family residential development on Lot 380 Cimarron Woods (replatted as Lots 1 and 2, Cimarron Woods Replat Two).
12. On October 19, 2010, a resolution was approved for revisions to the Conditional Use Permit for Lot 380 Cimarron Woods (replatted as Lots 1 and 2, Cimarron Woods Replat Two) that included several changes, including the phasing of the development into two phases.

D. APPLICABLE REGULATIONS:

1. Section 5.08, Zoning Ordinance, regarding the R-3 High Density Residential District
2. Section 5.15, Zoning Ordinance, regarding the PUD Planned Unit Development Overlay District
3. Section 5.17.06, Gateway Corridor District, Sub-Area Secondary Overlay
4. Article 6, Zoning Ordinance, regarding Conditional Use Permits

III. ANALYSIS

A. COMPREHENSIVE PLAN: The Future Land Use Map of the Comprehensive Plan identifies this site for high density residential and commercial development. The Comprehensive Plan also identifies one of the General Community Goals as "Provide all residents with access to a variety of safe, decent, sanitary housing types, including elderly and persons with disabilities." The Housing Policies also state "Promote development of residential options for La Vista's residents of all income levels" and "Actively access affordable housing programs available from local, state and federal agencies/departments."

B. OTHER PLANS: Traffic Impact Analysis, Cimarron Terrace PUD.
Cimarron Woods Drainage Study

C. TRAFFIC AND ACCESS:

1. 96th Street abuts this lot on the east. Topography of the site limits the ability to gain access to 96th Street.
2. Access from 99th Street and throughout the site as shown on the site plan is consistent with the access shown on the final PUD.
3. The existing trail in Cimarron Woods is proposed to be extended into the Cimarron Terrace project and connect to 99th Street.

D. UTILITIES: All utilities are available to the site.

IV. REVIEW COMMENTS:

1. An amendment to the Cross Easement Agreement is needed to incorporate the ownership of Lot 1, Cimarron Woods Replat Three and an exhibit to identify the revised limits of Phase 2 and the future phase areas. The present Cross Easement Agreement includes a provision in Section 2.04 that the owners can relocate the easement areas. The amendment needs to include requiring consent of the City to any such changes in easement locations and conditions.
2. A Conditional Use Permit has been prepared and is attached to this report. It contains several conditions, including;
 - a. The Property shall be developed and maintained in accordance with the site plan (Exhibit "A") and all other Exhibits of this Agreement, as well as the Final Plat – Cimarron Woods Replat Two, as subsequently modified by the Administrative Plat -

Cimarron Woods Replat Three, ("Final Plat"), Cimarron Terrace Planned Unit Development, and Subdivision Agreement applicable to Lots 1 and 2, Cimarron Woods Replat Two Subdivision, which Lot 2 by Administrative Plat shall become Lots 1 and 2 Cimarron Woods Replat Three, as approved by the City and incorporated herein by this reference. Any modifications to the site plan must be submitted to the City's Chief Building Official for approval. Modification of any other document or Exhibit shall be subject to approval of the City, as directed by the City Administrator, unless otherwise expressly provided in the document or Exhibit to be modified.

- b. As-built topographic surveys of storm water detention areas shall be required before certificates of occupancy are issued for any building in Phase II, with a requirement that any discrepancies from the approved detention plans be corrected, or certified as inconsequential, to the satisfaction of the City Engineer prior to issuing such certificates.
- c. No vehicle repair, other than emergency maintenance such as changing a tire, or inoperable, abandoned or storage of vehicles shall be allowed in the parking areas on the Property shown on Exhibit "A". The Owner shall have seventy-two (72) hours after notice to correct any violation or cause the removal of any such vehicle that is in violation.
- d. Lots 1 and 2, Cimarron Woods Replat Three, and the owners thereof, shall be subject to the Cross-Easement Agreement between Pedcor Investments-2008 and Pedcor Investments dated October 21, 2011 attached hereto as Exhibit "B", by amendment thereto satisfactory to the City recorded with the Sarpy County Register of Deeds.
- e. Owner agrees to cooperate and coordinate with the owner of the Phase 1 Property and owner of Lot 2, Cimarron Woods Replat Three, to carry out Subdivider (as "Subdivider" is defined in the Subdivision Agreement) obligations under the Subdivision Agreement.

V. PLANNING DEPARTMENT RECOMMENDATION:

APPROVAL of a Conditional Use Permit for Lot 1, Cimarron Woods Replat Three, subject to satisfactory approval by the City's Design Review Architect and any final review comments by the City Attorney or City Engineer.

VI. PLANNING COMMISSION RECOMMENDATION:

VII. ATTACHMENTS TO REPORT:

- 1. Vicinity Map
- 2. Draft Conditional Use Permit
- 3. Draft Administrative Plat
- 4. Approved Drainage Easement Agreement
- 5. City Engineer's Report

VIII. COPIES OF REPORT SENT TO:

- 1. Mike Smith, Pedcor Investments, LLC
- 2. Larry Jobeun, Fullenkamp, Doyle & Jobeun
- 3. Public Upon Request


Prepared by: _____
 7-14-11
Community Development Director Date



Location Map

Cimarron Terrace Phase 2 CUP Application

July 14, 2011
CAS



City of La Vista
Conditional Use Permit

Conditional Use Permit for Cimarron Terrace Apartments

(Phase 2 – Lot 1, Cimarron Woods Replat Three)

This Conditional Use Permit issued this ____ day of _____, 2011, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Pedcor Investments-2011-CXXXIII, L.P., an Indiana limited partnership authorized to do business in Nebraska ("Pedcor Investments-2011" or "Owner"), pursuant to the La Vista Zoning Ordinance

WHEREAS, Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company authorized to do business in Nebraska ("Pedcor Investments") is an affiliated company and manager of the general partner of both Pedcor Investments-2008-CXVIII, L.P. ("Pedcor Investments-2008") and Pedcor Investments-2011. Pedcor Investments-2008 and Pedcor Investments together acquired for development Lot 380, Cimarron Woods Subdivision, consisting of 25.937 acres, more or less, ("Lot 380") which property is located outside of the corporate limits of the City but within the City's zoning and platting jurisdiction, in a unified, compatible manner as a multi-family housing development. In the process they subdivided Lot 380 into Lots 1 and 2, Cimarron Woods Replat Two, with Pedcor Investments-2008 acquiring Lot 1 for Phase 1 development and Pedcor Investments acquiring Lot 2 for Phase 2 development, as described in the Subdivision Agreement for the development dated October 19, 2010 ("Subdivision Agreement").

WHEREAS The City of La Vista issued a conditional use permit to Pedcor Investments-2008, dated October 19, 2010, (the "Phase 1 CUP"), with respect to the construction and operation of a multiple family dwelling complex known as Cimarron Terrace Apartments (Phase 1) consisting of 84 units and 64 attached garages (the "Phase 1 Property")

WHEREAS Pedcor Investments and Pedcor Investments-2011 desire that Pedcor Investments-2011 acquire, construct and operate an initial two buildings of Phase 2 of the multiple family dwelling complex to be known as Cimarron Terrace Apartments described in the Subdivision Agreement ("Phase II"). For purposes of development of the Phase II buildings, Lot 2, Cimarron Woods Replat Two, shall be administratively platted into Lots 1 and 2, Cimarron Woods Replat Three, and the Phase II buildings shall be constructed upon the following described tract of land within the City of La Vista's zoning jurisdiction to be acquired by Owner:

Lot 1, Cimarron Woods Replat Three, located in the N1/2 of Section 16, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska (the "Property"),

Specifically, Owner desires and intends to construct and operate the two buildings of Phase II containing 48 units and 16 attached garages and 12 detached garages within the Property.

WHEREAS, The construction and operation of Phase II shall be part of the integrated multiple family residential dwelling complex described in the Subdivision Agreement.

WHEREAS, Owner has applied for a conditional use permit for the purpose of constructing and operating Phase II as described above; 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 purpose, subject to certain conditions and agreements as hereinafter provided (the "Permit").

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this Permit is issued to the Owner to use the Property hereto for the purposes described above, said use hereinafter being referred to interchangeably as a "Permitted Use" or "Use".

Conditions of Permit

The conditions to which the granting of this Permit is subject are as follows:

1. Development and operation of Phase II on the Property is governed by this Permit. Pedcor Investments will apply for a conditional use permit for construction of any multiple family residential units on Lot 2, Cimarron Woods Replat Three, when it is ready to proceed, the approval of which will not be unreasonably denied. The rights granted by this Permit are transferable and any breach of any terms hereof shall cause Permit to expire and terminate subject to the rights of the Owner to cure such default or deficiency as set forth herein in this Agreement.
2. In respect to the proposed Use:
 - a. A site plan showing the Property boundaries, all existing and proposed easements, proposed structures, parking, access points, and drives is attached hereto and incorporated herein as Exhibit "A".
 - b. Architectural review of the building designs, landscaping, and lighting has been completed and the foregoing plans are approved as shown on Exhibits "C" through "K".
 - c. The Property shall be developed and maintained in accordance with the site plan (Exhibit "A") and all other Exhibits of this Agreement, as well as the Final Plat – Cimarron Woods Replat Two, as subsequently modified by the Administrative Plat - Cimarron Woods Replat Three, ("Final Plat"), Cimarron Terrace Planned Unit Development, and Subdivision Agreement applicable to Lots 1 and 2, Cimarron Woods Replat Two Subdivision, which Lot 2 by Administrative Plat shall become Lots 1 and 2 Cimarron Woods Replat Three, as approved by the City and incorporated herein by this reference. Any modifications to the site plan must be submitted to the City's Chief Building Official for approval. Modification of any other document or Exhibit shall be subject to approval of the City, as directed by the City Administrator, unless otherwise expressly provided in the document or Exhibit to be modified.
 - d. As-built topographic surveys of storm water detention areas shall be required before certificates of occupancy are issued for any building in Phase II, with a requirement that any discrepancies from the approved detention plans be corrected, or certified as inconsequential, to the satisfaction of the City Engineer prior to issuing such certificates.
 - e. No vehicle repair, other than emergency maintenance such as changing a tire, or inoperable, abandoned or storage of vehicles shall be allowed in the parking areas on the Property shown on Exhibit "A". The Owner shall have seventy-two (72) hours after notice to correct any violation or cause the removal of any such vehicle that is in violation.
 - f. Owner shall obtain all required permits for the Use 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 codes, fire codes and ADA requirements.
 - g. Owner shall comply (and shall ensure that all structures, appurtenances and improvements, and all activities occurring or conducted, on the Property at any time comply) with any applicable federal, state and/or local laws, rules or regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
 - h. 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 or its agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or

expense arising out of or resulting from any violations of any applicable environmental or safety law, rule or regulation relating to the Owner's Use of the Property.

- i. A drainage study for Lots 1 and 2, Cimarron Woods Replat Two, which Lot 2, as subdivided, shall be Lots 1 and 2, Cimarron Woods Replat Three, has been completed, as referenced in the Subdivision Agreement. Owner agrees to comply with requirements related to drainage that are specified in said Subdivision Agreement.
 - j. No clubhouse shall be maintained on the Property.
 - k. Lots 1 and 2, Cimarron Woods Replat Three, and the owners thereof, shall be subject to the Cross-Easement Agreement between Pedcor Investments-2008 and Pedcor Investments attached hereto as Exhibit "B", by amendment thereto satisfactory to the City recorded with the Sarpy County Register of Deeds.
 - l. Owner agrees to cooperate and coordinate with the owner of the Phase 1 Property and owner of Lot 2, Cimarron Woods Replat Three, to carry out Subdivider (as "Subdivider" is defined in the Subdivision Agreement) obligations under the Subdivision Agreement.
3. In respect to the Gateway Corridor Overlay District, building design has been approved per letter from the City's design review architect, Kevin Schluckebier, dated _____.
4. The Owner's right to maintain the Use of the Property, as contemplated by this Permit, shall be based on the following conditions:
- a. An annual inspection to determine compliance with the conditions of this Permit. The Permit may be revoked upon a finding by the City that there is a material violation of the terms of this Permit if the violation continues after written notice from the City to Owner and opportunity to cure in the time and manner described below.
 - b. The Use authorized by this Permit must be initiated within 12 months after the date of the approval of this Permit otherwise such Permit shall become void. Construction of Phase II, having the design, dimensions, construction and amenities set forth in the application(s) for Cimarron Woods Replat Two, as modified by Cimarron Woods Replat Three, this Permit and/or PUD-1 Planned Unit Development, as approved, ("Application") shall be commenced within 12 months after the date of the approval of this Permit and completed with certificate of occupancy within 24 months after commencement of construction, subject to such extension of time as granted by the Chief Building Official in the event Owner commences construction within the time specified in this Section 4(b) and diligently continues with construction thereafter, and completion within the time required in this Section 4(b) is delayed for causes beyond the reasonable control of Owner; otherwise such Permit shall become void. Construction on Lot 2, Cimarron Woods Replat Three, shall be governed by the conditional use permit issued for said Lot.
 - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed from the Property at Owner's expense within twelve (12) months of cessation of the Use of the Property.
5. 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. There shall be a presumption that the project on the Property has been abandoned if the Owner fails to commence construction of Phase II within the time provided by Section 4(b) above.
 - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use, and such cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the use is not cured in the time and manner described below, so long as curative rights are provided under laws, rules and regulations governing said permit.
 - c. Owner's construction or placement of a storage tank, structure or other improvement on the Property (except during construction of any phase of the project) not specified in this Permit and Owners failure to cure such breach in the time and manner described below after City's giving notice thereof.
 - d. Owner's breach of any other term hereof and its failure to cure such breach in the time and manner

described below after City's giving notice thereof.

6. If construction of Phase II has not been commenced within twelve (12) months from the date of this Permit, this Permit shall be null and void and all rights hereunder shall lapse; provided, however, Owner shall have the right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
7. In the event the Owner fails to promptly remove any safety, environmental or other hazard or nuisance from the Property, or upon the expiration or termination of this Permit the Owner fails to promptly remove any remaining safety, environmental or other hazard or nuisance, 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 in connection with the removal thereof) 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, provided notice is furnished to the Owner along with a reasonable time to remove or cure such hazard, to enter the Property and to take whatever action as is necessary or appropriate to remove any such hazards or nuisances in accordance with the terms of this Permit, and the right of the City to enter the Property as may be necessary or appropriate to carry out any other provision of this Permit.
8. If any provision, or any portion thereof, contained in this Permit 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.
9. Issuance of this Permit shall be conditioned on Owner's acquiring fee simple title to the Property.

Miscellaneous

The conditions and terms of this Permit shall be binding upon owner, its 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 this Permit, unless the City has expressly waived said breach. 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. Cure Rights. Notwithstanding any other provision of this Permit to the contrary, Owner shall be entitled to notice and opportunity to cure a breach of this Permit as follows. City will notify the Owner of any breach of this Permit. Owner, which for purposes of taking action to cure a breach shall also include a limited partner of Pedcor Investments-2011-CXXXIII, L.P. shall be permitted to cure any breach. Cure shall be commenced and completed as soon as possible and in all cases within thirty (30) days after City provides notice of breach; provided, however, in any case that cure cannot be completed within 30 days, additional time will be allowed, so long as cure is commenced within the time required in this Section 2 and diligently pursued and completed as soon as possible, and allowing additional times does not present or increase risk of harm to persons or property. City shall have the right to terminate this Permit if a breach is not timely cured.
3. 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.
4. 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 as follows:

Contact Name and Address:

To Owner:

Pedcor Investments-2011-CXXXIII, L.P.
& Pedcor Investments, A Limited Liability Company
770 3rd Avenue, S.W.
Carmel, IN 46032
Attn: Thomas G. Crowe

Wachovia Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street
Charlotte, NC 28288
Attention: Michael Loose: Asset Management

5 All documents referenced in this Permit shall be incorporated herein by said reference.

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:

Pamela A. Buethe, CMC

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:

Pedcor Investments-2011-CXXXIII, L.P., an
Indiana limited partnership

By: La Vista Housing Company, LLC, its general
Partner

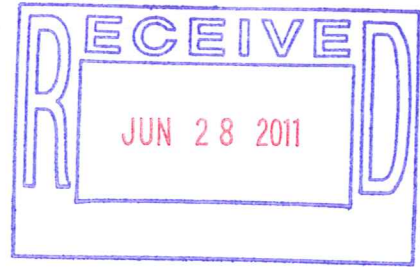
By: Pedcor Investments, A Limited Liability
Company, its manager

By:

Thomas G. Crowe,
Executive Vice President

Date:_____

309507



FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2010-29458

10/22/2010 3:50:40 PM

Wayne J. Dowling

REGISTER OF DEEDS



COUNTER ah ah C.E. ah
VERIFY ah D.V. p
PROOF ah
FEES \$ 91.50
CHECK# 180015
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

CROSS EASEMENT AGREEMENT

Return to:

First Nebraska Title and Escrow
2425 S. 120th St.
Omaha, NE. 68147

File: 10-111859

CROSS EASEMENT AGREEMENT

THIS CROSS EASEMENT AGREEMENT (this "Agreement") is made and entered into this 21st day of October, 2010 by and between PEDCOR INVESTMENTS-2008-CXVIII, L.P., an Indiana limited partnership (the "Phase I Owner"), and PEDCOR INVESTMENTS, A LIMITED LIABILITY COMPANY, a Wyoming limited liability company (the "Phase II Owner"). The Phase I Owner and the Phase II Owner are sometimes hereinafter together referred to as the "Owners").

RECITALS:

A. The Phase I Owner is the fee simple owner of certain real estate located in the City of LaVista, Sarpy County, Nebraska, pursuant to a Warranty Deed recorded Oct. 22, 2010 as Instrument Number 2010-29455 [or Book ____, Page ____] in the Office of the Sarpy County Recorder, Nebraska, the legal description of which is attached hereto as Exhibit A and incorporated herein by reference ("Phase I").

B. The Phase I Owner intends to develop Phase I as a multifamily residential project consisting of 84 units.

C. The Phase II Owner is the fee simple owner of certain real estate located in the City of LaVista, Sarpy County, Nebraska, situated adjacent to Phase I, pursuant to a Warranty Deed recorded Oct. 22, 2010 as Instrument Number 2010-29456 [or Book ____, Page ____] in the Office of the Sarpy County Recorder, Nebraska, the legal description of which is attached hereto as Exhibit B, and incorporated herein by reference ("Phase II") (Phase I and Phase II are sometimes hereinafter together referred to as "Phases").

D. Phase II is contiguous to Phase I, and the Phase II Owner intends to develop Phase II as a multifamily residential development.

E. The Phase I Owner is the fee simple owner of certain real estate located in the City of LaVista, Sarpy County, Nebraska, pursuant to a Warranty Deed recorded Oct. 22, 2010 as Instrument Number 2010-29456 [or Book ____, Page ____] in the Office of the Sarpy County Recorder, Nebraska, the legal description of which is attached hereto as Exhibit C and incorporated herein by reference ("Outlot E"). In order to mitigate existing wetland areas on Phase I and Phase II, the Phase I Owner intends to develop Outlot E as a wetland area. The creation of the wetland area is required in connection with the Phase I Owner's development of Phase I.

F. The Phases are intended for use as a fully integrated multi-family housing complex (the "Project"), each with separate ownership as described above and with the joint use of common facilities as hereinafter described.

G. The parties hereto have agreed upon the terms and conditions hereinafter provided for the provision of easements for the effective operation of Phase I and II, all upon the terms and conditions hereinafter set forth.

B

NOW, THEREFORE, in consideration of the mutual covenants and undertakings hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereto hereby agree as follows:

Article I.

DECLARATIVE PURPOSES; GENERAL

Section 1.01 Recitals Incorporated. The foregoing Recitals are hereby incorporated into this Agreement as though fully set forth in this Article I.

Section 1.02 General. All easements granted herein shall be irrevocable and for the benefit of the other Owner and its respective successors and assigns. All rights, privileges and easements granted herein shall be appurtenant to the parcel of the Owner that is the recipient of such rights, privileges and/or easements. Except as provided herein, no easement may be modified, terminated or relocated except with the written consent of both Owners. All uses of easements shall comply with all applicable Requirements (as defined below).

Section 1.03 Confirmation; Non-Interference. All easements granted hereunder shall exist by virtue of this Agreement, without the necessity of confirmation by any other document. However, upon the request of any other Owner, each Owner will sign and acknowledge a document memorializing the existence (including the location and any conditions), the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is reasonably acceptable to each Owner. No Owner shall use any easement provided for in this Agreement in a manner that obstructs or unreasonably interferes with the use of such easement by the other Owner.

Section 1.04 Limited Function. The use of an easement granted hereunder shall be limited to use for the function for which the improvements subject to such easement in question were initially designed and constructed, unless another use is expressly set forth in this Agreement.

Section 1.05 Temporary Closure of Easements. Any Owner may (i) in connection with the maintenance, repair or restoration of its Phase, (ii) in an emergency situation, or (iii) to prevent a dedication of or accruing of rights, by the public in and to use of the Phase, temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use over, across and through any of the easements provided or reserved under this Agreement, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such easement.

Article II.

EASEMENTS

Section 2.01 Roadway Access Easements. The Phase I Owner and the Phase II Owner hereby grant, for the benefit of each other, and to be appurtenant to each Phase and for the use and benefit of their respective tenants, officers, employees, agents, lessees, guests and invitees, a

C

perpetual non-exclusive easement for vehicular and pedestrian use for ingress and egress to and from each Phase, to and from the public roadways contiguous to any Phase and to and from the Recreational Facilities (as hereinafter defined), on, over, across and upon that portion of each Phase from time to time on which are located paved roadways, driveways, and parking lots.

Section 2.02 Recreational Facilities Easement.

- (a) The Phase I Owner hereby grants, for the benefit of the Phase II Owner, to be appurtenant Phase II, for the use and benefit of the Phase II Owner's tenants, officers, employees, agents, lessees, guests and invitees, a perpetual non-exclusive easement to use and enjoy: the following Phase I improvements: (i) the swimming pool, (ii) the clubhouse (which clubhouse includes office, maintenance, business facility, and laundry facilities), (iii) the playground, and (iv) other recreational facilities, walkways, common open areas and the parking areas adjacent to such facilities and areas which presently exist or may hereafter exist on Phase I (all of such facilities and areas being collectively referred to as the "Phase I Recreational Facilities") on the same terms and conditions that the same are available for use by the tenants, officers, employees, agents and invitees of the owner of the Phase upon which such Phase I Recreational Facilities are located.
- (b) The Phase II Owner hereby grants, for the benefit of the Phase I Owner, to be appurtenant Phase I, for the use and benefit of the Phase I Owner's tenants, officers, employees, agents, lessees, guests and invitees, a perpetual non-exclusive easement to use and enjoy any recreational facilities, walkways, common open areas and the parking areas adjacent to such facilities and areas which presently exist or may hereafter exist on Phase II (all of such facilities and areas being collectively referred to as the "Phase II Recreational Facilities") on the same terms and conditions that the same are available for use by the tenants, officers, employees, agents and invitees of the owner of the Phase upon which such Phase II Recreational Facilities are located.
- (c) The Phase I Recreational Facilities and the Phase II Recreational Facilities are together referred to as the "Recreational Facilities."

Section 2.03 Utility Easements. Utility service line facilities now or may hereafter exist on either of the Phases that will provide utility service to the other Phase, including, without limitation, natural gas, electric, water, sanitary and storm sewer and telecommunications facilities. The Phase I Owner and the Phase II Owner hereby grant, for the benefit of each other, and to be appurtenant to each Phase, and for the benefit of their respective tenants, officers, employees, agents, lessees, guests and invitees, a perpetual non-exclusive easement to use, maintain and enjoy the utility service line facilities now or anytime hereafter situated on Phase I or Phase II (the "Utility Facilities") on the same terms and conditions that such Utility Facilities are available for use by the owner of the Phase upon which such Utility Facilities are located, and its tenants, officers, employees, agents and invitees.

Section 2.04. Temporary Construction Easement. For purposes of completing the construction or installation of any Utility Facilities, wetland mitigation activities, and paved roadways, the Phase I Owner shall have and retain a temporary construction easement on, over and across such

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portions of Phase II as may be reasonably necessary to construct or install the Utility Facilities, wetland mitigation, and paved roadways (sometimes referred to herein collectively, as the "Improvements"). The Phase I Owner shall coordinate its construction activity in a manner so as not to unreasonably interfere with or delay the development of improvements or other activities in and upon Phase II. Upon completion of the construction of the Improvements, the Phase I Owner shall restore Phase II to its original condition insofar as is appropriate. This temporary construction easement shall terminate upon completion of the construction of the Improvements without any additional action taken by the Phase I Owner or the Phase II Owner.

Section 2.04 Relocation of Easement Areas. So long as there is no material interference with then-existing easement use, each Owner shall have the right to relocate, at its sole cost and expense and not as a Shared Expense (as hereinafter defined), the easement areas on its respective Phase, provided that continued use of the service provided under the original easement shall not be interrupted.

Section 2.05 Covenants Run with the Land. All of the easements, restrictions and obligations herein shall create servitudes running with the title to the Phases herein described. The benefits and burdens under this Agreement are not personal but shall run with the title to their respective Phases, and extend to, and shall be binding upon and shall inure to the benefit of the Owners and their respective successors and assigns as owners of the Phases.

Section 2.06 Private Easements. The easements and rights hereby conveyed, although appurtenant to the respective Phases, are private easements and not for the use or benefit of the general public, and nothing herein contained shall be construed or deemed to be a dedication of any easement to or for the use of the general public, but to the contrary, they are expressly being granted and reserved as non-exclusive private easements.

Section 2.07 Unauthorized Use. Each Owner hereby reserves the right to eject or cause the ejection from its Phase of any person or persons not authorized, empowered or privileged to use the easements granted in this Agreement.

Section 2.08 General Standard of Use and Maintenance. The Owner of each Phase shall exercise its rights hereunder so as not to materially interfere with the normal use of the other Phase and the rights of the other Owner, shall not construct or place any obstacle or otherwise interfere in any way with the use of the easements herein granted by any other parties entitled to the use and enjoyment of them as described herein, and shall maintain the easement facilities located on its Phase in a condition and appearance consistent with the integrated operation and appearance of the Phases. Each of the Owners shall have the right in its sole discretion, to relocate, remove or alter the surface of or any structure or facility located on its Phase, provided that such relocation, removal or alteration does not materially interfere with the rights granted hereunder to any other Owner.

Each Owner hereby agrees to comply with the terms and conditions of that certain Subdivision Agreement, Lots 1 and 2, Cimarron Woods Replat Two Subdivision, dated OCTOBER 19, 2010, by and among the Phase I Owner, the Phase II Owner, Torco Development, Inc., Sanitary and Improvement District No. 237 of Sarpy County, Nebraska, and the City of La Vista (the "Subdivision Agreement") that are applicable to each Owner's respective parcel.

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Section 2.09 Maintenance and Repair Obligations.

- (a) Each Owner shall be responsible for operating, maintaining and repairing the Recreational Facilities and the Utility Facilities located on its respective Phase. Each Owner, however, shall each pay its proportionate share of the cost of operating, maintaining and restoring, and use charges of the Recreational Facilities and the Utility Facilities located on all Phases (collectively, the "Shared Facilities"), which include but are not limited to, capital repair and replacements, maintenance and restoration of the physical facilities and utility costs and other associated costs (the "Shared Expenses"). Such proportionate share shall be based on the number of residential rental units on each Phase for which certificates of occupancy have been obtained and which have been leased to an initial tenant compared to the total number of residential units on both Phases for which certificates of occupancy have been obtained and which have been leased to an initial tenant (the "Prorata Share").
- (b) Each Owner may send written notice to the other Owner from time to time requesting such Owner to pay its Prorata Share of the Shared Expenses, provided that statements therefor shall be sent no more frequently than once each month. Each Owner agrees to pay, within fifteen (15) days of receipt of any such written notice (the "Due Date"), its Prorata Share of such Shared Expenses. Such notice shall include an itemized statement, with supporting evidence (in the form of invoices, receipts, or other customary evidence of the nature of the expenses incurred), of all expenses incurred by the Owner seeking payment in operating, maintaining, repairing and/or replacing the Shared Facilities.

Article III.

**INDEMNIFICATION; COMPLIANCE WITH REQUIREMENTS; DEVELOPMENT
RESTRICTIONS; LIENS; INSURANCE**

Section 3.01 Indemnification. Each Owner (hereinafter in this Section 3.01 only, the "Indemnifying Party") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner, its parents, subsidiaries, members, partners, trustees, shareholders, investors, representatives and agents, and their respective officers, directors and employees (each an "Indemnitee") from and against any and all claims and losses arising from the use, possession or management by the Indemnifying Party, its parents, subsidiaries, members, partners, trustees, shareholders, representatives and agents and the respective officers, directors and employees of any of them (each a "Responsible Party") of the Indemnifying Party's portion of the Project or activities therein or arising out of the use, exercise or enjoyment by a Responsible Party of an easement created under this Agreement. This indemnification shall not apply to any claims or losses brought or caused by the negligence or willful misconduct of an Indemnitee.

The Phase I Owner shall also defend, protect, indemnify and hold harmless the Phase II Owner from and against all claims or demands, including any actions or proceedings brought thereon, and all costs, expenses and liabilities of any kind relating thereto, including reasonable attorneys'

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fees and cost of suit, arising out of or resulting from the Phase I Owner's failure to comply with the terms and provisions of the Subdivision Agreement. The Phase II Owner shall also defend, protect, indemnify and hold harmless the Phase I Owner from and against all claims or demands, including any actions or proceedings brought thereon, and all costs, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the Phase II Owner's failure to comply with the terms and provisions of the Subdivision Agreement.

Section 3.02 Hazardous Materials. The Owners each hereby agree, for themselves and their employees, agents, lessees, guests invitees and tenants and other occupants of their respective Phases from time to time, not to bring upon the other Phases, and not to use the other Phases for the discharge or disposal of, any wastes, materials or substances which are controlled or regulated by any applicable federal, state or local environmental law, rule or regulation. Each Owner hereby agrees to indemnify and hold harmless the other Owner for and from any loss, liability, damage, cost or expense of any nature whatsoever, including without limitation, attorneys' fees on appeal or otherwise, and including all costs relating to environmental testing and/or remediation, incurred by the other Owner as a result of any breach of the preceding agreement on the part of the indemnifying Owner, its employees, agents, invitees, licensees, guests and tenants or any other occupants of the indemnifying Owner's Phase.

Section 3.03 Compliance With Requirements. Each Phase shall at all times be constructed, installed, used, operated, maintained and repaired in compliance with all applicable Requirements (as defined below). Without limiting the generality of the foregoing, each Phase shall at all times comply with all applicable zoning ordinances, setback restrictions, building size restrictions, height limitations, bulk restrictions, floor-area ratio requirements, landscaping requirements, parking requirements and environmental laws.

Section 3.04 No Prohibited Use. Neither Phase shall be used or operated for any purpose that constitutes a Prohibited Use. "Prohibited Use" shall mean any use or occupancy of the Project that: (a) violates the applicable Requirements, (b) causes damage to the building or other improvements of any other Party, or (c) materially and adversely affects the first-class image of the Project. Prohibited Use also includes the use of any part of the Project for: (i) any purpose that constitutes a public or private nuisance, (ii) any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising, (iii) any drilling for and/or removal of subsurface substances, or (iv) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose. "Requirements" shall mean collectively:

- (a) Applicable Laws, which shall mean all laws, statutes, acts, ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of any governmental authority, that now or hereafter during the term of this Agreement may be applicable to an Owner and/or the Project and the construction, maintenance, use and operation thereof, including those relating to zoning, building, health, safety, hazardous materials, and accessibility of public facilities; and
- (b) the requirements of any insurance providers with respect to the Project, and/or (c) any utility service providers with respect to the Project.

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To the extent that any Requirement affects or applies to only a portion of the Project, then such Requirement shall constitute a "Requirement" for purposes of this Agreement only to the extent of the portion of the Project affected thereby.

Section 3.05 Liens. Each Owner shall remove, within sixty (60) days after the filing thereof, any mechanics', materialmen's or any other like liens on the applicable Owner's Phase if the existence or foreclosure of such lien on such Phase would adversely affect any easement granted under this Agreement. An Owner shall not be required to remove such lien within said sixty (60) day period if within said sixty (60) day period (a) such lien cannot be foreclosed, and (b) such Owner (i) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the other Owner of its intention to contest the validity or amount of such lien, and (ii) shall deliver to the other Owner either (A) cash or a surety bond from a surety company reasonably acceptable to creditor party in an amount equal to one hundred twenty-five percent (125%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs that may thereafter accrue by reason of such lien claim, or (B) other security reasonably acceptable to the other Owner. Upon final determination thereof, the Owner contesting the lien shall promptly pay the amount of any such lien claim, together with all costs, interest and penalties that may be payable in connection therewith.

Section 3.06 Insurance. Each Owner shall keep its own Phase insured against loss or damage by fire and other risk casualties and hazards as may be insured from time to time by prudent owners of first class residential and commercial property in an amount at least equal to the full replacement value thereof. Each Owner shall each maintain comprehensive general liability insurance against claims for personal injury, death or property damage occurring in or upon their respective properties. Such insurance shall be in amounts as may be required by law and as may be carried from time to time by prudent owners of first class commercial and residential property and shall name the other Owner as an additional insured.

Article IV. DEFAULT: REMEDIES

Section 4.01 Late Payments. Any payment due under this Agreement which is not paid on or before the Due Date (as defined in Section 2.09) shall be deemed delinquent. Any payment which is delinquent for thirty (30) days or more shall bear interest at the highest contract rate of interest then permitted in Nebraska (or, if there is none, 18% per annum) from the Due Date to the date when paid and the Owner seeking payment may bring an action against the Owner which is obligated to pay the payment to recover the payment (together with interest, costs and reasonable attorneys' fees for such action, which shall be added to the amount of the payment and included in any judgment rendered in such action). The Owner to which any such delinquent payment is due may record and enforce a lien on the Phase of the defaulting Owner in the manner provided under the State of Nebraska mechanics' lien statute; provided, however, any such lien shall be subordinate to any mortgage lien on the Phase to which such lien attaches.

Section 4.02 Arbitration. In the event of a dispute between the Owners regarding the operation, maintenance, repair and replacement obligations for the Shared Facilities imposed

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herein, other than a dispute regarding a delinquent payment of an Owner's Prorata Share of the Shared Expenses, the Owners shall diligently endeavor to resolve the dispute between themselves in an expeditious manner. However, if such agreement is not possible, then claims, disputes or other matters in question arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof. Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law and in any court having jurisdiction. During all arbitration proceedings, all parties shall be entitled to all discovery which is available under the Federal Rules of Civil Procedure applicable in the federal district in which each Phase is located. The parties agree that all arbitration proceedings shall take place in Hamilton County, Indiana.

Section 4.03 Right to Cure or Abate. If any portion of the Shared Facilities is damaged or falls into disrepair, then such damage or the area which is in disrepair shall be repaired and restored by the Owner on which such portion of the Shared Facilities or area of disrepair are located. In the event that an Owner does not maintain, repair and/or replace the Shared Facilities located on its Phase as required under this Agreement after thirty (30) days' written notice from the other Owner specifying any deficiencies in maintaining, repairing and/or replacing such Shared Facilities as required under this Agreement, then the other Owner may, but shall not be obligated to, complete such maintenance, repairs and/or replacement and seek reimbursement from the nonperforming Owner for its Prorata Share of the maintenance, repair and/or replacement costs, or may seek specific performance of the obligation of the nonperforming Owner to perform such maintenance, repairs and/or replacement. Notwithstanding the foregoing, in the event such damage or disrepair of any Utility Facilities materially and substantially adversely affects the operation of any Phase on which such Utility Facilities are not located and the Owner of the Phase on which such Utility Facilities are located does not commence the needed repairs within 24 hours following written notice thereof from the affected Owner, the affected Owner may perform such repairs and seek reimbursement from the other Owner for its Pro Rata Share of such repair costs. In performing any such repair work, the affected Owner shall take all reasonable steps to minimize the impact of such repairs on the operations of the Phase on which such Utility Facilities are located and shall restore such Phase to as near its pre-repair condition as is practicable. Notwithstanding the foregoing, the owner of each Phase shall be responsible for costs of replacement and repair of the Shared Facilities located on the other Phase which are damaged by that party's exercise of its rights hereunder. The obligation imposed by this Section 4.03 shall be limited to costs not covered by insurance.

Section 4.04 Lien. The party to whom payment of money or other duty or obligation is owed under this Agreement (the "Creditor Party") shall be entitled to a lien against the other party's Phase which party has failed to make such payment or to perform such duty or obligation as and when required hereunder (the "Defaulting Party"), which lien shall be created and foreclosed in accordance with this Section 4.06.

- (a) **Creation.** A lien authorized by this Section 4.06 shall be created by recording a written instrument (the "Claim of Lien") with the applicable recorder's office, that (i) references

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this Agreement, (ii) alleges a specific breach of this Agreement, (iii) states the amount owed by the Defaulting Party through the recording date of the Claim of Lien, (iv) contains a legal description of the Phase of the Defaulting Party, and (v) is executed and acknowledged by the Creditor Party or any of its authorized agents.

- (b) Amount. A lien created pursuant to this Section 4.06 shall include (i) the amount stated in the Claim of Lien, (ii) all costs and expenses incurred in creating and foreclosing such lien (including attorneys' fees or expenses), (iii) all amounts that become due from the Defaulting Party (or its successors or assigns) to the Creditor Party after the date the Claim of Lien is recorded, whether such amounts arise from a continuation of the default alleged in the Claim of Lien or from some other default under this Agreement, and (iv) interest on all of the foregoing at the interest rate set forth in Section 4.01 above.
- (c) Priority. The priority of a lien created pursuant to this Section 4.06 shall be established by reference to the date the amount referenced in the Claim of Lien became due and payable; provided, however, that any lien created pursuant to this Section 4.06 shall not defeat or render invalid the lien of any mortgage whether currently existing or hereinafter created.
- (d) Extinguishment. If the Defaulting Party cures its default, and pays all amounts secured by a lien created pursuant to this Section 4.06, the Creditor Party shall record an instrument sufficient in form and content to clear title to the Phase of the Defaulting Party from the Creditor Party's lien.
- (e) Foreclosure. A lien created pursuant to this Section 4.06 may, at the sole option of the Creditor Party, be foreclosed judicially, in the same manner as provided for foreclosure of a mortgage of real property in the State of Nebraska.

Section 4.05 Remedies Cumulative. The remedies provided in this Article IV are in addition to any remedies available elsewhere in this Agreement or under applicable law. Exercise of one remedy shall not be deemed to preclude exercise of other remedies for the same default, and all remedies available to a Party may be exercised cumulatively.

Article V.

ESTOPPEL CERTIFICATES

Section 5.01 Estoppel Certificates. Each Owner shall, from time to time, within thirty (30) days after written request from the other Owner or any lender of an Owner, execute, acknowledge and deliver to the requesting party a certificate ("Estoppel Certificate") stating (a) that the terms and provisions of this Agreement are unmodified and in full force and effect, or, if modified, identifying such modifications, (b) whether, to the knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Agreement by the requesting Owner and, if so, specifying the nature and extent thereof, and (c) the current address or addresses to which notices are to given to the Owner executing such Estoppel Certificate.

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Article VI.

NOTICES

Section 6.01 Notices. Every notice, demand, consent, approval or other document or instrument required or permitted to be served upon or given to any party hereto shall be in writing and shall be delivered in person or sent by nationally recognized overnight courier service or in registered or certified form, postage prepaid, return receipt requested, addressed to such party at the following address:

Phase I Owner: Pedcor Investments-2008-CXVIII, L.P.
One Pedcor Square
770 3rd Avenue S.W.
Carmel, Indiana 46032
Attn: General Partner

With copy to: Wachovia Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street
Charlotte, NC 28288
Attention: Michael Loose: Asset Management

Phase II Owner: Pedcor Investments, A Limited Liability Company
One Pedcor Square
770 3rd Avenue S.W.
Carmel, Indiana 46032
Attn: Thomas G. Crowe

Article VII.

MISCELLANEOUS

Section 7.01 Lender Consents. Any lender currently holding a deed of trust or mortgage interest on either or both Phases, has acknowledged and consented to the execution of this Agreement. The foreclosure of any deed of trust, mortgage or other security instrument now or hereafter covering any Phase or any portion thereof shall in no way affect or diminish any of the rights, duties or obligations created by this Agreement, all of which shall remain in full force and effect.

Section 7.02 Amendments. This Agreement may not be amended or modified orally but may be amended or modified only in writing, signed by all of the parties hereto (or their respective successors or assigns as Owners). No waiver of any term or provision of this Agreement shall be effective unless it is in writing, making specific reference to this Agreement and signed by the

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party against whom such waiver is sought to be enforced, and any such waiver shall not constitute a waiver of any other or subsequent rights under or violations of this Agreement.

Section 7.03 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of each of them.

Section 7.04 Governing Law. This Agreement has been executed and delivered in the State of Indiana but shall be governed by and construed in accordance with the laws of the State of Nebraska. This Agreement may be enforced in a Nebraska court of law or equity in any manner provided by law or in this Agreement, including, without limitation, any action for specific performance or damages, and any failure by any party to enforce any provision of this Agreement shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.05 Non-Recourse. Notwithstanding anything to the contrary herein, the parties hereto agree that they shall each look solely to the other party's interest in the Project, together with all income and proceeds derived therefrom (including sale, insurance and condemnation proceeds), for satisfaction of any liability of such party under or with respect to this Agreement. This Section 7.05 shall not, however, (i) constitute a waiver of or release or impair any obligation evidenced by any other agreement, (ii) limit the right to name any Owner as a party defendant in any action or suit for judicial foreclosure and sale under a lien imposed under and pursuant to this Agreement, and (iii) relieve a Owner or any other person from any liability for any act of fraud.

Section 7.06 Severability. If any term or provision of this Agreement shall be held invalid, illegal or unenforceable, in whole or in part, the validity of any and all other terms and provisions of this Agreement shall not in any way be affected thereby.

Section 7.07 Captions. The headings contained in this Agreement are for convenience of reference only and are not part of this Agreement and shall not be used in construing it.

Section 7.08 Duration. This Agreement and each term, easement, covenant, restriction and undertaking of this Agreement will remain in effect in perpetuity unless terminated by written agreement of the Parties.

Section 7.09 Counterparts. This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute an original.

Section 7.10 Eminent Domain. Nothing herein shall be construed to give any Owner any interest in any award or payment made to the other Owner, as the owner of its Phase, in connection with any exercise of the power of eminent domain, or transfer in lieu thereof, affecting any portion of a Phase, even though the affected portion of such Phase is encumbered by the easement rights herein granted; however, each Owner shall have the right to make a separate claim against any condemning authority for any diminution in value of its Phase on account of the loss of use of the easement rights herein granted and for the value of any

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improvements installed by such Owner pursuant to said license rights which are damaged or destroyed in connection with any exercise of the power of eminent domain or any transfer in lieu thereof. The Owner of a Phase that is subject to a taking or condemnation shall, to the extent reasonably practicable, promptly repair, restore, and relocate, if necessary, any easements affected by such taking or condemnation.

Section 7.11 Attorneys' Fees. In the event any Owner shall be in default under this Agreement, or if any dispute shall arise between any of the Owners concerning the interpretation of this Agreement, and if an action shall be brought in connection therewith in which it shall be finally (with no further appeal being available due to the expiration of appeal periods or otherwise) determined that any Owner was in default, or that the court agrees with one Owner's interpretation of the disputed provision of this Agreement, the Owner determined by the court to be in default, or with whose interpretation of this Agreement the court does not agree, shall pay to the other Owner all attorneys' fees and litigation expenses incurred or paid by the other Owner in connection therewith.

Section 7.12 Abandonment of Easements. Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Project subject to an easement unless the Owner benefited by such easement states such Owner's intention to abandon the easement.

Section 7.13 Non-Exclusive. The easements and other rights herein created are not exclusive, and the right is hereby reserved to grant such other easements, rights and privileges to such persons and for such purposes as the Owners in their discretion may elect, so long as such purposes do not reasonably interfere with the easements and other rights granted herein, and are otherwise not inconsistent herewith.

Section 7.14. Wetland Mitigation. The Phase I Owner and the Phase II Owner acknowledge and agree that each party's respective parcel contains wetland areas that are required to be mitigated in order to develop each respective parcel. The parties further acknowledge that the Phase I Owner is required to mitigate the wetland areas on Phase I and Phase II in order to develop its project on Phase I. The Phase I Owner agrees to mitigate the wetland area on Phase II at the same time it mitigates the wetland area on Phase I. As a means of mitigating the wetland areas on Phase I and Phase II, the Phase I Owner has or will purchase Outlot E and create and maintain a wetland area thereon. The Phase I Owner intends for the Phase II Owner to benefit from the creation of the wetland area on Outlot E. The Phase II Owner agrees to share in the cost of the ongoing maintenance of the wetland area by the Phase I Owner; provided, however, the Phase II Owner shall have no obligation to reimburse the Phase I Owner for any cost incurred by the Phase I Owner for wetland monitoring required of the Phase I Owner under Permit No. 2009-01538-WEH, for which the Phase I Owner has contracted with Geotechnical Services, Inc. The Phase II Owner shall pay its Prorata Share in the same manner and at the same times as the Phase II Owner pays its Prorata Share of Shared Expenses set forth in Section 2.09.

[SIGNATURE PAGES FOLLOW]



By: La Vista Housing Company, LLC
its general partner

By: Pedcor Investments, A Limited
Liability Company
its manager

By: Thomas G. Crowe
Executive Vice President

[illegible]

Witness my hand and Notarial Seal this 21st day of October, 2010.



Kendrick Wilburn
Notary Public – Signature

Kendra D. Wilburn
Notary Public – Printed

My County of Residence Is:

March 20, 2011

Maunon

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PEDCOR INVESTMENTS, A LIMITED
LIABILITY COMPANY



Thomas G. Crowe
Executive Vice President

STATE OF INDIANA)
) SS.
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Thomas G. Crowe, an Executive Vice President of Pedcor Investments, A Limited Liability Company and acknowledged execution of the foregoing Cross Easement Agreement, for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this 21st day of October, 2010.



Kendra D. Wilburn
Notary Public – Signature

Kendra D. Wilburn
Notary Public – Printed

My Commission Expires:

March 20, 2011

My County of Residence Is:

Marion

This Instrument prepared by and the original recorded instrument should be returned to:
Susan L. Bond, Attorney-at-Law, One Pedcor Square, 770 3rd Avenue SW, Carmel, Indiana
46032, (317) 218-2667.

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EXHIBIT A
PHASE I LEGAL DESCRIPTION

Lot 1, Cimarron Woods Replat Two, A Subdivision in Sarpy County, Nebraska.

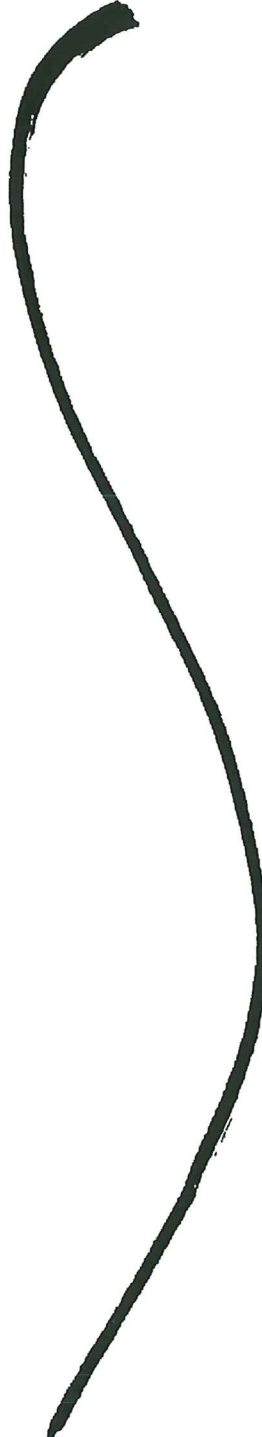


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EXHIBIT B

PHASE II LEGAL DESCRIPTION

Lot 2, Cimarron Woods Replat Two, A Subdivision in Sarpy County, Nebraska.

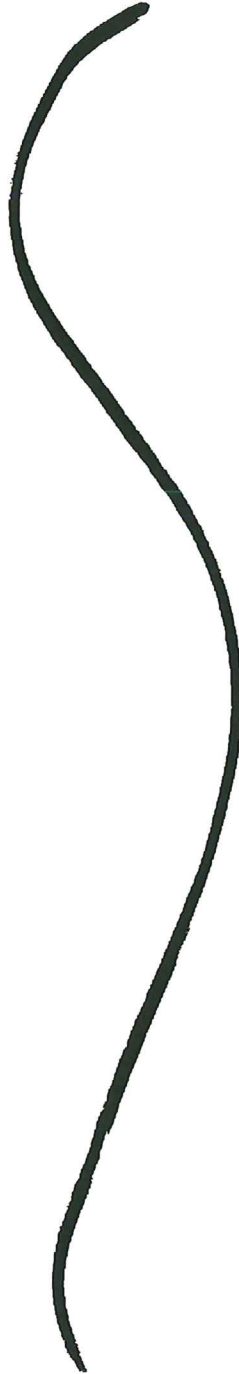


2010-29458Q

EXHIBIT C

OUTLOT E LEGAL DESCRIPTION

Outlot E, Val Vista, An Addition to the City of La Vista, Sarpy County, Nebraska



FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2010-29461

10/22/2010 3:51:08 PM

Clay J. Rouding

REGISTER OF DEEDS



COUNTER *ah* C.E. *W*
VERIFY *ah* D.E. *P*
PROOF *W*
FEES \$ *21.50*
CHECK# *180103*
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

When recorded return to:
City of La Vista
8116 Park View Blvd.
La Vista, NE 68128

(Space above line for recording data)

DRAINAGE EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

That Sanitary and Improvement District No. 237 of Sarpy County, Nebraska (hereinafter referred to as "GRANTOR"), for and in consideration of the sum of One and No/100ths Dollars (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey to the City of La Vista, a municipal corporation in the State of Nebraska (hereinafter referred to as "GRANTEE"), and to its successors and assigns, a permanent non-exclusive easement to, over, across and through the area depicted and legally described on Exhibit "A" attached hereto (the "Easement Area"), for the purpose of providing for the discharge of storm waters from Lot 380, Cimarron Woods, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, into Outlot "E", Cimarron Woods, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska. GRANTOR also grants to GRANTEE and to GRANTEE'S agents, employees, contractors and representatives a non-exclusive permanent easement to construct, install, access, inspect, repair, replace and maintain any storm water facility within the Easement Area.

TO HAVE AND TO HOLD unto GRANTEE, its successors and assigns.

The GRANTOR may continue to use the surface of the Easement Area, including all other purposes subject only to the right of GRANTEE to use the same for the purpose herein expressed and provided any such use by GRANTOR shall not unreasonably interfere with the use and purpose of this Easement.

It is further agreed as follows:

1. That no building, improvements, or other structures shall be placed in, on, over or across the Easement Area by GRANTOR, or its successors and assigns without the expressed approval of GRANTEE, except, however, that landscaping, lawn irrigation systems, underground detention piping and related appurtenances, may be installed within the Easement Area if there is no potential storm water displacement and does not otherwise unreasonably interfere with the use and purpose of this Easement. Such permitted improvements shall be maintained by the GRANTOR and its successors and assigns.

-FNT- 10-111859

* NOW KNOWN AS LOT 51 & 2, CIMARRON
WOODS REPLAT 2,

A

2. That GRANTEE shall cause the Easement Area to be left in a neat and orderly condition if it enters the same. This Easement is also for the benefit of any contractor, agent, employee, or representative of GRANTEE.
3. That said GRANTOR for itself and its successors and assigns does confirm with GRANTEE and its successors and assigns, that the GRANTOR is seized in fee of the Easement Area, and that GRANTOR has the right to grant and convey this Easement in the manner and form aforesaid, and that GRANTOR will warrant and defend this Easement and the GRANTEE and its successors and assigns from the lawful claims and demands of all persons. This permanent easement shall run with the land.
4. That this DRAINAGE EASEMENT is granted upon the condition that the GRANTEE may remove or cause to be removed all presently existing improvements thereon, including but not limited to crops, vines, and trees within the Easement Area as necessary for GRANTEE'S use of the Easement Area.
5. That the GRANTOR, and its successors and assigns does hereby agree to maintain and inspect the storm water drainage as needed. In the event the GRANTOR, or its successors and assigns fail to maintain such storm water drainage after receipt of ten (10) days written notice thereof from GRANTEE, weather permitting, then GRANTEE shall have the right to perform such maintenance, in which event GRANTOR or its successors and assigns, as the case may be, shall compensate GRANTEE for the reasonable cost of maintenance of the storm water detention facility by the GRANTEE. Such reimbursement shall be paid to GRANTEE within thirty (30) days of GRANTOR'S receipt of a paid invoice from GRANTEE for such costs.
6. That this drainage easement contains the entire agreement of the parties with respect to the subject matter hereof; that there are no other different agreements or understandings between the GRANTOR and the GRANTEE with respect to the subject matter hereof; and that the GRANTOR, in executing and delivering this drainage easement, has not relied upon any promises, inducements or representations of the GRANTEE or its agents or employees, except as set forth herein:

IN WITNESS WHEREOF said GRANTOR has hereunto set his or her hand this 10 day of September, 2010.

SANITARY AND IMPROVEMENT
DISTRICT NO. 237 OF SARPY COUNTY,
NEBRASKA

ATTEST:


Clerk of said District

By:


Chair of the Board of Trustees

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
)ss.
COUNTY OF Sarpy)

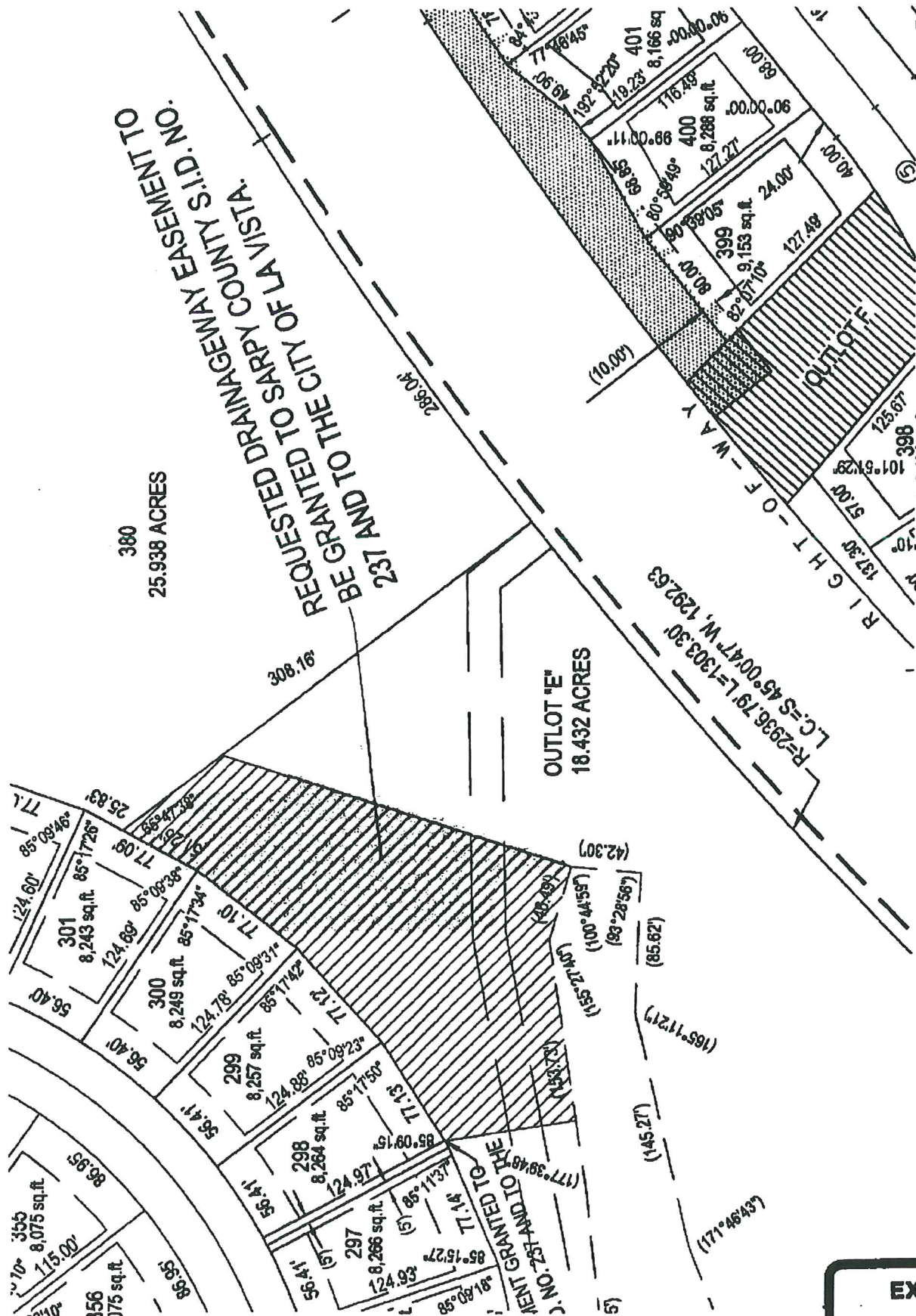
On this 10 day of September, 2010, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Gerald L. Torczon, personally known by me to be the Chair of the Board of Trustees of Sanitary and Improvement District No. 237 of Sarpy County, Nebraska, and Doris J. Nicholson, to me personally known to be the Clerk of the Board of Trustees of Sanitary and Improvement District No. 237 of Sarpy County, Nebraska, the identical persons whose names are affixed to the foregoing Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said Sanitary and Improvement District No. 237.

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

Karen K. Kusa



EXHIBIT
"A"





April 26, 2011

Mr. Christopher Solberg
City Planner
City of La Vista
8116 Park View Blvd.
La Vista, NE 68128

RE: Conditional Use Permit Application-Initial Review
Lot 1, Cimarron Woods Replat Three
Cimarron Terrace Apartments-Phase 2

Chris:

I have reviewed the site plan and documents accompanying the application that I received from you for a proposed conditional use permit for the second phase of Cimarron Terrace Apartments. I note that the request is for a separate Conditional Use Permit, not an amendment to the existing use permit. Based on the elements for consideration set forth in Article 6.05 of the Zoning Regulations, I have the following comments:

1. The various standards for consideration set forth in Section 6.05 were thoroughly reviewed during the prior reviews on this project. The development plan currently proposed for Phase 2 remains consistent with Exhibit "J", the Planned Unit Development Plan in the Subdivision Agreement with the following exceptions:
 - a. The total number of parking spaces in this area has increased by 13 spaces.
 - b. The proposed detached garage south of proposed Building 7 has been shifted to the east about 27 feet.
 - c. A storm shelter has been added to the northeast of Building 7.
 - d. A playground area has been shown east of Building 7.

These exceptions are minor in my opinion and the addition of the storm shelter is a beneficial change. The deletion of the sidewalk east of Building 5 has largely compensated for the addition of sidewalk east of Building 7 to reach the storm shelter.

2. The applicant needs to prepare a conceptual Post Construction Storm Water Management Plan for the Phase 2 area that provides for water quality treatment of the first-half inch of storm water runoff and provides for maintaining no increase in 2-year storm peak runoff flows above existing

City Hall
8116 Park View Blvd.
La Vista, NE 68128-2198
p: 402-331-4343
f: 402-331-4375

Community Development
8116 Park View Blvd.
p: 402-331-4343
f: 402-331-4375

Fire
8110 Park View Blvd.
p: 402-331-4748
f: 402-331-0410

Golf Course
8305 Park View Blvd.
p: 402-339-9147

Library
9110 Giles Rd.
p: 402-537-3900
f: 402-537-3902

Police
7701 South 96th St.
p: 402-331-1582
f: 402-331-7210

Public Works
9900 Portal Rd.
p: 402-331-8927
f: 402-331-1051

Recreation
8116 Park View Blvd.
p: 402-331-3455
f: 402-331-0299

conditions. This is needed for compliance with the Papillion Creek Watershed Partnership policies. This should be submitted with the application for a building permit.

3. The Exhibit "A" drawing needs to have the existing and proposed sanitary sewer and water mains added to it for the Phase 1 and Phase 2 areas.
4. The legal description on Exhibit "A" needs to be revised to pertain to the Phase 2 area.
5. The application form for the Conditional use permit has data pertaining to 9 buildings on all of Lots 1 and 2 of Cimarron Woods Replat Three. This should be revised to pertain to the 2 buildings proposed as part of this Conditional Use Permit.
6. The Conditional Use Permit will need to go through Design Review for Gateway Corridor Overlay compliance.
7. The Exhibit "A" site plan should be reviewed by the Fire Department for access and fire hydrant placement and other aspects they may be concerned about.

Please feel free to contact me if you have questions about my recommendations.



John M. Kottmann

City Engineer

Cc file