

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
FEBRUARY 1, 2011 AGENDA**

Subject:	Type:	Submitted By:
SOUTHPORT WEST REPLAT 5 MEMORANDUM OF TERMS SHEET	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared authorizing the Mayor to execute Southport West Replat 5 Memorandum of Terms Sheet establishing in a preliminary statement, specific key aspects of the proposed development, including proposed developer improvements and public improvements.

FISCAL IMPACT

The resolution being presented to the City does not establish a commitment by the City at this time, but it does commit staff resources to bring the proposed project forward for further required consideration, including negotiation of definitive documents for later presentation and consideration of the City Council.

RECOMMENDATION

Approval.

BACKGROUND

The Cordish Companies, Inc. recently announced plans to develop a high quality tourism destination project in the Southport West area of La Vista. From its inception, the Mayor and City Council have envisioned Southport West as a significant upscale regional tourism destination development. As evidenced by the success of the recently opened Cabela's and JQH Embassy Suites/Marriott Courtyard and La Vista Conference Center, the area is uniquely positioned for retail and other commercial development because of its proximity immediately adjacent to Interstate 80.

The Cordish Companies, one of the largest and most respected developers in the world with extensive expertise in almost every discipline of real estate is proposing to build a significant retail and entertainment destination development in the Southport West area of the City. Specifically the company will design, develop, construct, equip, acquire and own the following:

- **The Outlets at Southport** — 300,000 square foot upscale outlet retail center with plans for 2nd phase
- **Southport Live!** — 60,000 square foot entertainment district

With a first phase projected cost of approximately \$104 million, the project is envisioned as a one of a kind regional tourist destination that will create significant commercial synergies with the existing La Vista Conference Center, the John Q. Hammons hotels and Cabela's already operating in Southport West.

There are substantial public benefits to be realized by the City and its residents from the proposed development of the project, including new construction, retail, dining, entertainment options and permanent jobs, as well as tax revenues for the City. A second phase of approximately 100,000 square feet of additional high quality outlets, restaurants and/or entertainment venues is also envisioned.

The City understands that the adequacy of all public infrastructure is critical and as a result is considering the development and construction of public streets, additional public parking and other public improvements within the City's existing off-street parking district in Southport West.

The proposed resolution will authorize the Mayor to execute a non-binding Southport West Replat 5 Memorandum of Terms Sheet establishing a preliminary statement of intent for the development of an Upscale Outlet Retail Center and Entertainment District by the Cordish Companies in the Southport West subdivision. The resolution will also provide staff direction to commit the necessary time and resources to bring the project forward for further consideration in accordance with all applicable requirements, as well as continued review and analysis of the financial impact of the proposed project. *(A copy of the Terms Sheet will be made available).*

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF TERMS SHEET DECLARING IN A PRELIMINARY STATEMENT KEY ASPECTS OF A PROPOSED DEVELOPMENT IN SOUTHPORT WEST.

WHEREAS, The Cordish Companies, Inc., one of the largest developers in the world, recently announced plans to develop a high quality regional tourism destination project in the Southport West area of La Vista; and

WHEREAS, the proposed development would create a regional shopping center and entertainment destination and build on existing development in Southport West; and

WHEREAS, the Mayor and City Council have long envisioned Southport West as a significant upscale regional tourism destination development. The proposed project would be consistent with that vision; and

WHEREAS, the registered voters of the City of La Vista, Nebraska by a majority affirmative vote at the general election held on November 2, 2010 approved the Nebraska Advantage Transformational Tourism and Redevelopment Act also known as (NATTRA) or LB1018. which allows the direction of City sales taxes in an area designated for tourism development to encourage development of the area. NATTRA is proposed for this project; and

WHEREAS, there are substantial public benefits to be realized by the City of La Vista and its residents from the proposed development of the project, including new construction, retail, dining and entertainment options and permanent jobs, as well as tax revenues for the City; and

WHEREAS In the interests of maintaining public health, safety and welfare, additional public infrastructure would be required by the City, including, for example, additional public streets and public off-street parking within the City's existing public off-street parking district to ensure safe and uncongested traffic flows are maintained along City streets in the area and through the I-80 interchange; and

WHEREAS, A Southport West Replat 5 Memorandum of Terms Sheet containing a preliminary statement of key aspects of the proposed development and public improvements is presented at this meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the Mayor to execute Southport West Replat 5 Memorandum of Terms Sheet declaring in a preliminary statement key aspects of the proposed development as known at this time.

BE IT FUTHER RESOLVED, that the Mayor and City Council direct the City Administrator, in consultation with the City Attorney and other advisors and staff, to work with The Cordish Companies and other necessary parties to bring the proposed development forward for further considerations and approvals as required by applicable laws and other requirements, which authorization includes the negotiation and development of proposed definitive agreements and instruments.

PASSED AND APPROVED THIS ____ DAY OF _____, 2011.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

Southport West Replat 5 Memorandum of Terms Sheet

Introduction: The Cordish Companies, Inc. is a Maryland corporation, with its principal place of business located at 601 E. Pratt Street, 6th Floor, Baltimore MD 21202 ("The Company"). The Company or its closely held affiliates have been engaged in the development of world-class development projects, including The Walk, Atlantic City Outlets, Atlantic City, NJ; The Power Plant, Baltimore, MD; the Power and Light District, Kansas City, MO; and, Fourth Street Live!, Louisville, KY; Power Plant Live!, Baltimore, MD and, Charleston Place, Charleston, SC.

The Company's origins date back to 1910 and encompass four generations of privately-held, family ownership. During the past ten decades, The Company has grown into a global conglomerate of businesses defined by two major areas of expertise: one of the leading *real estate development companies* and most successful *operators of entertainment districts* in the world. Over the generations, The Company has remained true to the family's core values of quality, entrepreneurial spirit, long-term personal relationships and integrity. As a testimony to the long-term vision of its family leadership, The Company still owns and manages virtually every business it has created.

The Company is one of the largest and most respected developers in the world with extensive expertise in almost every discipline of real estate: entertainment & mixed-use, lodging, sports anchored developments, retail, office and residential. Widely recognized as the leading international developer of large-scale urban revitalization projects and entertainment districts, The Company has been awarded more Urban Land Institute Awards for Excellence than any other developer in the world.

The Company has decided to build a significant retail and entertainment destination development in the Southport West area of La Vista, Nebraska ("City"). Specifically, The Company, at its sole cost through a newly formed and wholly owned entity, will design, develop, construct, equip, acquire and own a high quality outlet mall and entertainment district (the "Project") in Southport West, as depicted on Exhibit A. The first phase of the Project is depicted on Exhibit A ("Phase I improvements"). With a first phase projected cost of approximately \$104 million, the Project is envisioned as a one of a kind regional visitor destination that will create significant commercial synergies with the existing La Vista Conference Center, the John Q. Hammons hotels and Cabela's already operating in Southport West, as well as a planned multiplex theater facility. There are substantial public benefits to be realized by the City of La Vista and its residents from the proposed development of the Project, including new construction jobs, retail, dining, entertainment options and permanent jobs, as well as

tax revenues for the City. The Developer and City envision that the Project will also include a substantial second phase of approximately 100,000 square feet of additional high quality outlets, restaurants and/or entertainment venues ("Phase II improvements"). The parties desire to specify key aspects of the proposed development, including developer improvements and public improvements, subject to all required processes and approvals.

Key Terms: In addition to the foregoing, below are key terms by and between the parties for the proposed Project:

1. The Developer agrees that Phase I improvements of the Project will include a high quality outlet center of at least 300,000 SF of retail outlet space, and related improvements such as pedestrian walkways and plazas, as depicted on Exhibit A, of equal or greater quality to other Cordish high quality outlet properties, such as The Walk: Atlantic City Premium Outlets ("Outlet Center"). At least 50,000 SF of the proposed Outlet Center will be leased and operated by at least four marquee tenants consistent in quality with the leading tenants in The Walk: Atlantic City Premium Outlets ("Marquee Tenants"), as agreed by the Developer and City.
2. The Developer agrees that Phase I improvements of the Project also will include an entertainment district of at least 60,000 SF and related improvements such as pedestrian walkways and plazas, as depicted on Exhibit A, of equal or greater quality to other Cordish award winning entertainment districts constructed in the United States within the last fifteen years, such as Kansas City Power and Light District, Kansas City (MO), Power Plant Live!, Baltimore (MD), Fourth Street Live!, Louisville (KY), and Bayou Place, Houston (TX) ("Entertainment District"). The parties also contemplate that a multiplex theater complex will be constructed and open in Southport West with Phase 1 improvements of such quality, size and scope as agreed by the Developer and City ("Theaters").
3. The Outlet Center and Entertainment District, and Phase II improvements, will be on approximately 20 acres of land, as depicted on Exhibit A, ("Developer Land") to be acquired by Developer at its sole cost pursuant to direct negotiations and contracts between the Developer and current landowners, Heritage-Westwood La Vista, LLC ("Heritage") - approximately 4.9 acres), Southport West Partners, LLC and SPW Partners, LLC (combined, Southport West Partners, LLC and SPW Partners, LLC own approximately 15.1 acres and are collectively referred to herein as "SPW"); the current land owners mentioned above are collectively referred to herein as "Current Landowners"; the actual

amount and description of land to be acquired to be determined by survey in the replatting process.

4. Developer and the Current Landowners will apply to have the land replatted and subdivided for the Project in accordance with the City's subdivision regulations. Design, layout, features, landscaping, materials, finish and quality of the Project and improvements thereof will be subject to approval of the Developer and City in accordance with applicable review and approval processes.
5. The Developer will be responsible for 100% of the costs of the Outlet Center and Entertainment District and Phase II improvements, including all land, design, construction, equipping and financing costs, and specifically: (1) securing funding for the first mortgage debt and any accompanying loan guarantee requirements; (ii) cash equity investment; and, (iii) any cost overruns necessary to complete the Development.
6. The City at its sole cost will acquire land and design, construct, and own on approximately 63 acres of land within the area of Vehicle Off-Street Parking District No. 1 of the City of La Vista, Nebraska ("Public Land") such streets, additional public parking and other public improvements as depicted and described on Exhibit B attached hereto ("Public Improvements"); the actual amount and description of land to be acquired by the City for said Public Improvements to be determined by survey in the replatting process. The City will enter into negotiations and contracts directly with the Current Landowners of the Public Land, Heritage (approximately 23.14 acres), and SPW (approximately 39.5 acres).
7. Total cost of the City for Public Land and Public Improvements is estimated to be \$45.7 million, excluding contingency, capitalized interest, professional fees and issuance costs of any financing. City acquisition of Public Land and construction of Public Improvements will be conditioned on approval of detailed specifications for the Public Improvements and related costs to the satisfaction of the City. The City's acquisition of Public Land and construction of Public Improvements, and any related financing, will be subject to compliance with appraisal and all other applicable requirements of Nebraska statutes on terms and conditions the City determines are satisfactory.
8. Schedules for development, commencement, construction, completion and opening of Phase I improvements by Developer and Public Improvements by

City will be based on rolling schedules to achieve specified milestones, as approved by the City and Developer. By way of example, specified milestone dates will include: issuance of a building permit; commencement of construction; completion of construction; and, the grand opening date for Phase I.

9. The City will pay for the acquisition of Public Land and construction of Public Improvements in such manner as the Mayor and City Council determine necessary or appropriate, including, but not limited to, issuance of general obligation bonds, to be paid from generally applicable taxes of the City, which in the discretion of the City shall include City receipts from the general business occupation tax described below.
10. For purposes of paying eligible public costs of authorized work, including costs of Public Land and Public Improvements and any related financing, the City by Ordinance will designate an enhanced employment area within Southport West as depicted on Exhibit C and impose on all businesses and users of space within said area a general business occupation tax at a currently projected rate of 2% of gross revenues, pursuant to Neb. Rev. Stat. Section 18-2142.04 ("GBOT"). City receipts from the GBOT will be used by the City to pay the following public costs, with priority of payment in the order listed:
 - a. First, to pay principal and interest of any City financing for Public Land or Public Improvements acquired or constructed by the City, including establishment and replenishment of proper reserves for such purposes.
 - b. Second, to pay costs of operation, maintenance, replacement and repair of the Public Land and Public Improvements, including establishment and replenishment of proper reserves for such purposes, as permitted and approved by the City pursuant to Neb. Rev. Stat. Section 18-2142.04.
 - c. Third, to pay other public expenses within the enhanced employment area that qualify as authorized work under Neb. Rev. Stat. Section 18-2142.04, as approved by the City.

Not in limitation of the foregoing, the existing retail store owned and operated by Cabela's Retail, Inc. in Southport West, and the Theaters will be included in the enhanced employment area and subject to the GBOT described above. The Embassy Suites Hotel, Courtyard Hotel and Conference Center in Southport

West ("Hotels/Conference Center") will not be included in the enhanced employment area or subject to the GBOT described above.

11. Voters of the City on November 2, 2010 approved use of the City's local option sales taxes within an area designated by the City to encourage investment in redevelopment or tourism development in the area, pursuant to the Nebraska Advantage Transformational Tourism and Redevelopment Act, also known as LB 1018 ("NATTRA" or "Act"). Subject to compliance with requirements of the Act, including required application, qualification, certification, approval and agreement, Developer will be entitled to the direction of sales taxes on eligible purchases within the area designated in the NATTRA application as approved for up to 10 years, to be used as Developer determines, including for use in the development of the Project for capital improvements, or the financing thereof, and Developer's operating costs. Developer will be responsible for ensuring full compliance with NATTRA and qualification thereunder, including ensuring that all agreements, instruments and documentation are obtained and in place with tenants, other users of space in the development and other persons so approved incentives under the Act are directed in the manner specified in the Developer's application, as approved. Further, though preexisting businesses in or adjacent to boundaries of a project in some cases may be included for purposes of qualifying the project for incentives under the Act, only sales taxes arising with respect to new businesses commencing operations within the boundaries of the project as part of the development will be eligible for direction to the Developer. Sales taxes with respect to any preexisting businesses will be excluded and ineligible for direction under the Act. Any transfer of incentives or rights therein shall be subject to requirements of the Act and governing documents. City will cooperate with respect to any permitted transfer.
12. The Hotels/Conference Center and proposed Theaters may be included in the project area for purposes of qualifying the Project under NATTRA. Sales taxes with respect to the Theaters will be eligible for direction to the Developer under NATTRA. However, sales taxes with respect to the Hotels/Conference Center will not be eligible for direction under NATTRA. Further, the Cabela's retail store in Southport West will not be included in the project area for purposes of NATTRA, and sales taxes with respect to said store will not be subject to direction to the Developer. Incentives under NATTRA will be subject to such conditions as the Developer and City agree in writing, including conditions regarding completion, opening and operation of the Project within and at specified timeframes and levels.

13. The Developer at its cost will be responsible for control, operation, maintenance, replacement and repair of the Outlet Center and Entertainment District, including maintenance and upkeep of Developer Land, in good and working order, condition and repair and in accordance with the prevailing standards from time to time for developments and improvements of similar size, kind and quality. The Developer's responsibilities with respect to the Outlet Center, Entertainment District and Developer Land shall include security, maintenance, snow removal, landscaping and other appropriate responsibilities.
14. The City at its cost will be responsible for control, operation, maintenance, repair and replacement of the Public Improvements, including maintenance and upkeep of Public Lands, in good and working order, condition and repair and in accordance with prevailing standards from time to time for improvements and areas of similar size, kind and quality. The City's responsibilities with respect to the Public Improvements and Public Lands shall include security, maintenance, snow removal, landscaping and other appropriate responsibilities.
15. The City of La Vista will cooperate with the Developer in efforts to market and attract visitors to the City via the Southport area to the extent permitted by applicable law.
16. The Developer will proceed with Phase II improvements when it determines they are warranted, subject to satisfaction of all applicable processes, approvals and requirements, and definitive documents at that time.
17. The development and matters described in this Memorandum will be subject to the following conditions in addition to those specified above, without legal challenge:
 - a. Developer compliance with applicable requirements, including deadlines, of local, state and federal laws, rules, regulations, policies, processes and procedures with respect to the development, Developer improvements and all related actions and matters. For example, contemplated improvements, subdividing the land, and NATTRA incentives require certain applications, notices, hearings, processes, reviews, approvals, documents, instruments, agreements and other requirements, all of which must occur or be obtained to proceed.
 - b. All required actions and approvals, including City approvals with respect to the Public Land, Public Improvements and issuance of any financing,

on such terms and conditions as the City determines satisfactory and in accordance with all applicable laws, rules, policies, procedures, regulations and requirements.

- c. Developer satisfaction of various conditions to City approvals, financing, acquisition and commencement of construction of Public Land and Public Improvements, including Developer obtaining lease commitments for specified percentages of tenantable space of the Project, commitments of equity and financing required for Developer Land and improvements, and commencement of construction of Developer improvements, which conditions will be determined and specified in writing in form and content satisfactory to the City and Developer.
- d. Agreements of the undersigned and such other parties as the City determines appropriate to actions of the City within or with respect to the subdivision, Public Land, Public Improvements or any financing, including actions related to incentives under NATTRA, GBOT and any other taxes or revenues of the City from or with respect to the subdivision or operations therein, and covenants of said persons not to challenge the same, which covenants will be recorded by Developer and enforceable as covenants running with the land and binding on all successors and assigns, and similar provisions acceptable to the City included in all leases and other agreements binding all tenants and other users of space within the Project area to the same.
- e. Developer agreement to its continued ownership, management, control and operation of the Phase 1 improvements, in form and content satisfactory to the City and Developer.
- f. Such noncompete agreements of Developer, City and/or other key persons or parties with respect to the Project, in form and content satisfactory to the City and Developer.
- g. Such due diligence, information, security and assurances of the Developer as agreed by the City and Developer.
- h. Definitive agreements, documents and instruments as the parties determine necessary or appropriate and in such form and content each party thereto determines satisfactory.

- i. Compliance with all applicable local, state and federal laws, rules, policies, procedures and regulations.
- j. Times for performance will be of the essence.
- k. Such other written terms and conditions as the parties agree.

This memorandum in no way constitutes a legally binding agreement upon any party and is for discussion purposes only. Each party reserves the right, in its sole and absolute discretion, not to proceed with these preliminary discussions unless or until one or more legally binding agreements as the parties determine are necessary or appropriate are negotiated, approved, fully executed and delivered in form and content satisfactory to each party thereto.

We look forward to the continued, positive working relationship for this exciting development proposal in Southport West.

Dated this _____ day of _____, 2011.

The City of La Vista, Nebraska

The Cordish Companies, Inc.

BY: _____

ITS: _____

DATE: _____

BY: [Signature]

ITS: Representative

DATE: 2/1/11

Southport West Partners, LLC

SPW Partners, LLC

BY: [Signature]

ITS: Managing Member

DATE: 2/1/11

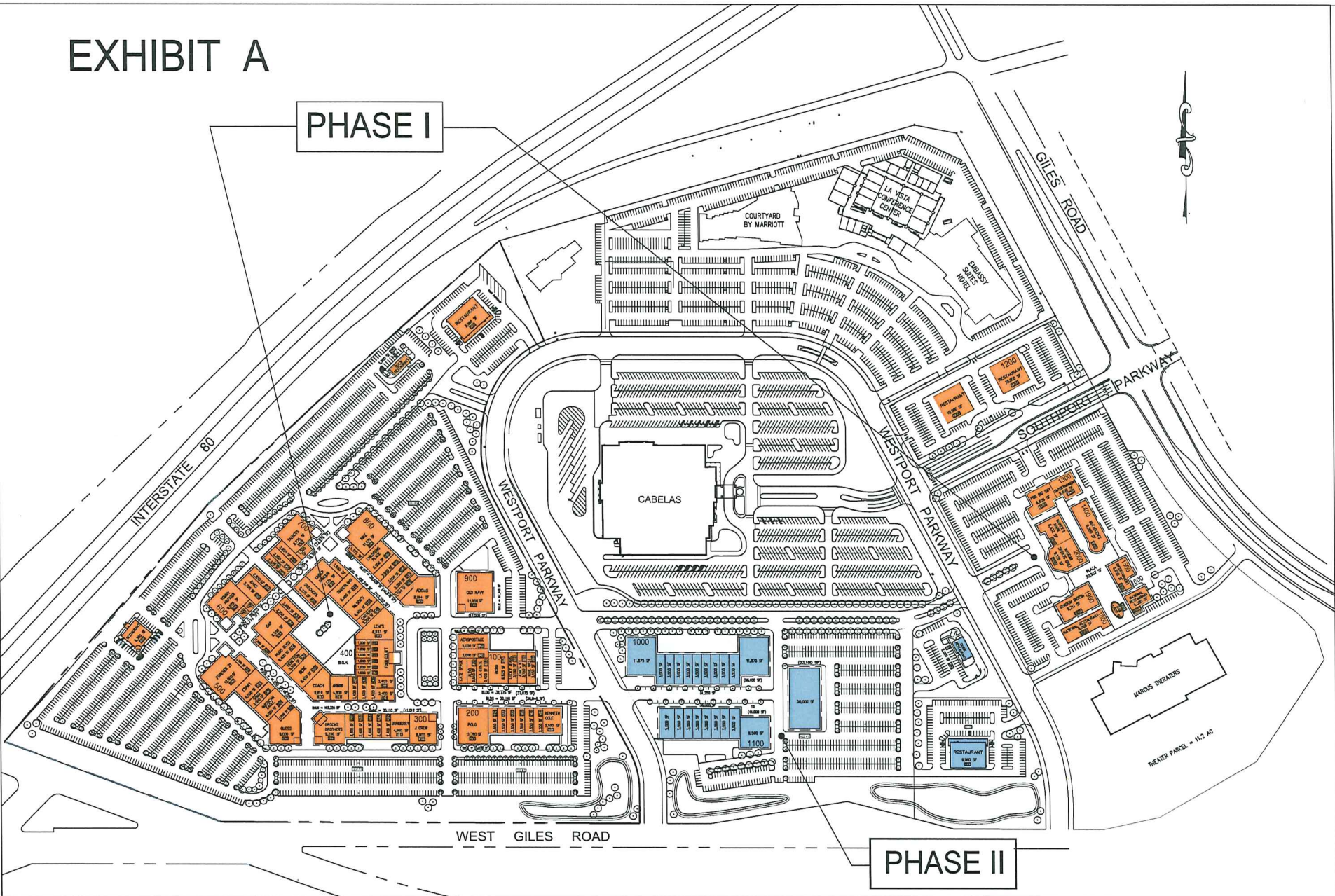
BY: [Signature]

ITS: Managing Member

DATE: 2/1/11

EXHIBIT A

PHASE I

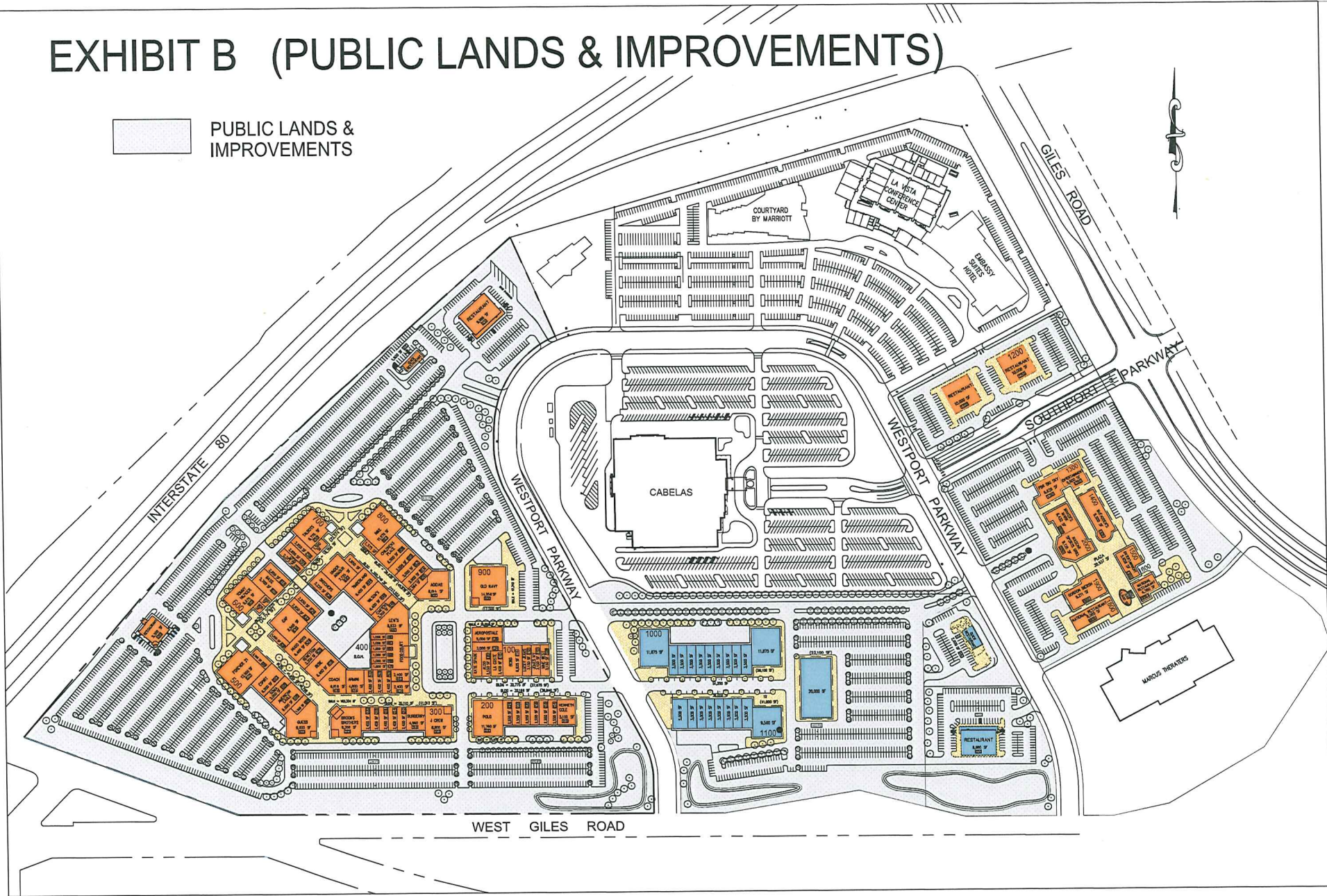


PHASE II

SOUTHPORT WEST
OMAHA, NEBRASKA

EXHIBIT B (PUBLIC LANDS & IMPROVEMENTS)

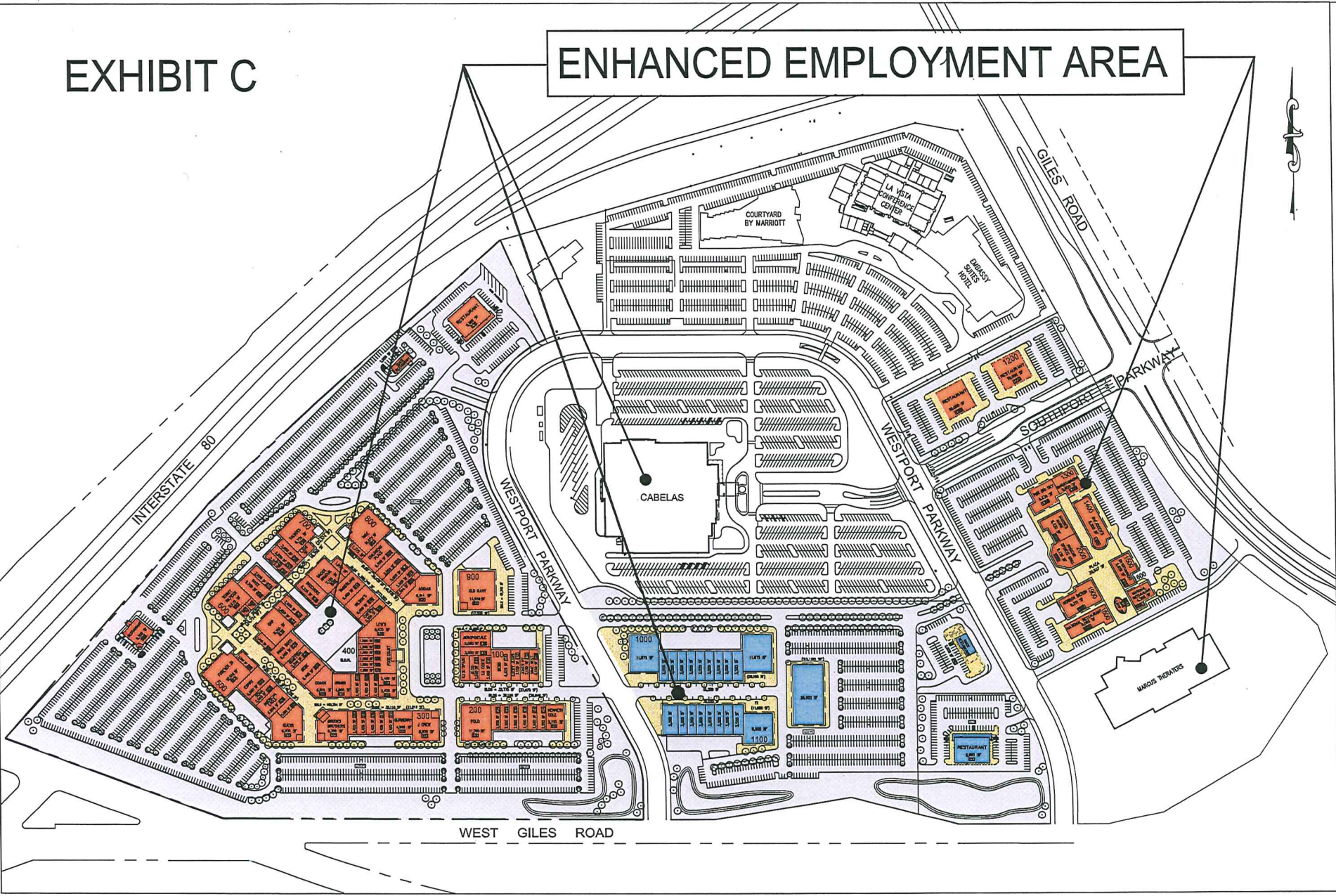
 PUBLIC LANDS & IMPROVEMENTS



SOUTHPORT WEST
OMAHA, NEBRASKA

EXHIBIT C

ENHANCED EMPLOYMENT AREA



SOUTHPORT WEST
OMAHA, NEBRASKA