

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 19, 2007 AGENDA**

Subject:	Type:	Submitted By:
THIRD AMENDMENT TO SUBDIVISION AGREEMENT — SOUTHPORT WEST REPLAT THREE	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A resolution has been prepared to authorize the execution of the Third Amendment to the Subdivision Agreement, satisfactory in form to the City Administrator and City Attorney, for Southport West Replat Three, generally located southwest of I-80 and Giles Road.

FISCAL IMPACT

A subdivision agreement amendment has been prepared according to the city's subdivision financing policy.

RECOMMENDATION

Approval.

BACKGROUND

On August 5, 1997 the City Council adopted Resolution No. 97-101 establishing the city's subdivision financing policy regarding public funding of improvements and other costs within or serving residential subdivisions, including both residential and commercial development within the zoning jurisdiction of the City of La Vista.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE THIRD AMENDMENT TO THE SUBDIVISION AGREEMENT FOR SOUTHPORT WEST REPLAT THREE IN A FORM SATISFACTORY TO THE CITY ADMINISTRATOR AND CITY ATTORNEY.

WHEREAS, the City Council did on June 19, 2007, approve the plat for Lots 1-3, Southport West Replat Three; and

WHEREAS, the Developer, JQH-La Vista Courtyard Development, LLC, have agreed to execute a Subdivision Agreement satisfactory in form to the City Attorney and City Engineer.

NOW THEREFORE, BE IT RESOLVED, that the Third Amendment to the Subdivision Agreement presented at the June 19, 2007, City Council meeting for Southport West Replat Three be, and hereby is approved, and the Mayor and City Clerk be and hereby are, authorized to execute same on behalf of the City with such revisions or amendments thereto that the City Administrator and City Attorney may determine necessary to carry out the intent of the City Council. Prior to the City Clerk's release of the Third Amendment to the Developer, there shall have been fully executed and filed of record a written acknowledgement pertaining to the obligation of property owners within the Subdivision, or their property owner's association, to reimburse the City for the additional cost that it must pay to OPPD for decorative street lighting within the Subdivision. This shall be accomplished in a manner satisfactory to the City Administrator, in consultation with the City Attorney, prior to release of the Third Amendment to the Subdivision Agreement and prior to release of the final plat for Southport West Replat Three.

PASSED AND APPROVED THIS 19TH DAY OF JUNE 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

THIRD AMENDMENT TO SUBDIVISION AGREEMENT
(Southport West Subdivision)
(Replat of Lot 1 into Lots 1 through 3, inclusive,
Southport West Replat Three)

THIS THIRD AMENDMENT, made this _____ day of _____, 2007, to that certain Commercial Subdivision Agreement dated June 30, 2005 (herein the "Subdivision Agreement") as amended by the First Amendment thereto dated the 6th day of June, 2006 and amended by the Second Amendment thereto dated the 18th day of October, 2006. This Third Amendment pertains to Lot 1, which is to be replatted as Lots 1,2 and 3, Southport West Replat Three of the Subdivision (herein the "Replat" or "Replatted Area").

WITNESSETH:

WHEREAS, the ownership and transfers of lots occurring since the original platting of Southport West Subdivision are set forth in the First Amendment to the Subdivision Agreement and the Second Amendment to the Subdivision Agreement and there have been no further land transfers since the date of said Second Amendment.

WHEREAS, JQH - La Vista III Development, LLC (herein "JQH - La Vista") (herein the "Developer") is the owner of the land within the Replat, being Lot 1 which is the subject of this Third Amendment to Subdivision Agreement, and Developer herein wishes to replat Lot 1 into Lots 1, 2 and 3, Southport West Replat Three (herein the "Replat" or the "Replatted Area"), same being that part of the Subdivision as shown on Replat drawing attached as Exhibit "A" and consisting of approximately 19.333 acres, more or less, per Surveyor's Certificate attached as Exhibit "B" hereto, and being more specifically shown on the "Final Plat" of the Replatted Area dated 3/7/06 and attached hereto as Exhibit "C"; and

WHEREAS, City, subsequent to the filing of the Subdivision plat, did annex all of Southport West Subdivision, which annexation resulted in District being merged into the City whereupon by operation of law City did succeed in ownership to all assets of District, including but not limited to, paving, storm sewers, sanitary sewers and other public infrastructure and all easements, rights-of-way and contractual entitlements of District of every kind and description located within or without the boundaries of the Subdivision; and

WHEREAS, the parties by this Third Amendment do amend the Subdivision Agreement to include the specific understandings and agreements pertaining to this replatting.

NOW, THEREFORE, IT IS AGREED by Subdivider and City as follows:

1. Replattings. Subject to the terms of this Amendment, Lot 1 of Southport West Replat Two shall be replatted as Lots 1, 2 and 3 of Southport West Replat Three, as more fully shown on Exhibit "C".
2. Drainage Calculations and Map. Subdivider has provided, or shall provide, drainage calculations and a drainage map for the Replatted Area for review and approval by the City's Engineer prior to execution of the final Replat demonstrating what easements, if any, may be needed to convey storm sewers and major storm sewer events (hundred year flood) under and across the surface of the property, all of which are in a form satisfactory to the City's Engineer.

3. Perimeter Sidewalks. Developer, or its assigns, shall, at its cost, install and maintain perimeter sidewalks abutting the Replatted Area as the lots are built upon. Sidewalks are not required along Giles Road (formerly 126th Street).
4. Commercial Building Design Guide and Criteria. City's Commercial Building Design Guide and Criteria ("Commercial Criteria") dated September 15, 1999, and the Southport West Design Guidelines, the specific design criteria to be utilized within the Southport West Subdivision, including the City's Gateway Corridor Design Guidelines, all of which are incorporated into this amendment by reference and shall be applicable to commercial development within the Replatted Area. Developer agrees to abide by the provisions thereof as it may have or shall be from time to time amended or modified by the City.
5. Grading Plan. The Grading Plan for each individual lot of the Replat is to be submitted with the development plan of each individual lot.
6. Site Approval Precondition to Building Permit. Nothing herein shall be deemed a waiver or lessening of any of City's requirements for City approved site plan for any building prior to the issuance of a building permit therefor.
7. Public Access Roads or Driveways. Direct vehicular access to and from abutting streets shall be limited as indicated on the Replat. Any publicly used roads and driveways within the Replat shall be constructed to City approved specifications and shall not be less than seven inches (7") P.C. concrete paving or such greater thickness as specified in the project construction specifications as approved by City. The City shall have access to and over such roadways and driveways for any purpose it deems appropriate in the exercise of its general governmental powers, including but not limited to, inspection, police, fire and rescue and other public safety purposes, and the exercise of all rights granted to City by the terms of the Subdivision Agreement as previously amended and as amended by this Third Amendment thereto.
8. Staking Bond. Subdivider shall provide the City a staking bond satisfactory to City Engineer prior to City's release of the final plat of the Replatted Area or in the alternative the certification of a Nebraska certified engineer/certified land surveyor that such staking has been completed.
9. Tract Sewer Connection Fees. Subdivider agrees that the terms and conditions for the benefit of the City that are contained in the Subdivision Agreement and the separate Sewer Connection Agreement pertaining to the sanitary sewer system shall be equally applicable to any private sanitary sewer provided for herein and enforceable by City in respect thereto to the same extent as though the private sewer had originally been incorporated and made a part of said agreements. Tract sanitary sewer connection fees shall be due and payable to the City in the following amounts prior to the issuance of a building permit for a particular lot:

Lot 1, Southport West Replat Three	4.946 acres @ \$5,500/Ac. =	\$ 27,203
Lot 2, Southport West Replat Three	7.853 acres @ \$5,500/Ac. =	43,191
Lot 3, Southport West Replat Three	6.534 acres @ \$5,500/Ac. =	<u>35,937</u>
Total		<u>\$106,331</u>

The aforesated fee of \$5,500 per acre is the City rate now in effect and is subject to future increase. The rate in effect at time of connection to the sanitary sewer system will be the rate paid.

10. Infrastructure to be at Private Expense. The cost of all infrastructure, improvements and easements within and serving the Replatted Area, including but not limited to parking and internal street improvements, ingress and egress, sanitary sewer, storm sewer, power, CATV, gas, water, together with the cost of connection to external infrastructure shall be constructed and maintained at private expense and no part thereof shall be the responsibility of or at the expense of the City.
11. Specific Requirements of City Engineer for Replat Approval. Attached hereto as Exhibit "D" is a copy of the City Engineer's comments concerning Application for Replat. Subdivider, its successors and assigns in title, agree to fully and timely comply with all such requirements within the applicable time and sequence therein stated or designated.
12. Common Improvements/Maintenance. For purposes hereof, the following provisions shall be applicable:
 - a. Common Area Improvement Defined. The term Common Area Improvement shall mean all infrastructure and improvements constructed on, or to be constructed within or benefiting any two or more lots, or combination of lots, within the Replatted Area. Said Common Area Improvements shall include, but not be limited to, ingress and egress, roads, parking, storm drainage, storm water detention and/or retention, sanitary sewer, public utility infrastructure or services and other infrastructure needs for or benefiting more than a single lot.
 - b. Common Area Expense Defined. Common Area Expense shall include all engineering expense, including engineering costs, the costs of construction, reconstruction, modification, repair, maintenance (including clean up and clean out) and replacement of any such items or services, together with the City's costs, if any, of engineering, inspection, review and design.
 - c. Sharing of Common Area Expense. Common Area Expense shall be shared as follows:
 - c-1. Initial Cost Sharing Ratio. The owners, their successors and assigns, of the replatted lots shall be responsible for and defray the Common Area Expense in the same ratio that each of their replatted lots bears to the total land area of lots served by the improvement, to wit:

Replat Lot No.	Acres	Percent of Common Area Expense
1	4.946	25.6%
2	7.853	40.6%
3	6.534	33.8%
TOTAL	19.333	100.00%

The foregoing percentages of Common Area Expense shall prevail unless adjusted pursuant to subparagraph 12.c-2 hereof.

- c-2. Adjustment of Common Area Cost Sharing Ratios. The method of sharing Common Area Expense as set forth in subparagraph 12.c-1 above may be modified by the owners of all replatted lots agreeing to a different cost sharing as among themselves and filing with the City an application executed by all property owners within the Replatted Area to allow sharing in the designated different ratio. If the City Administrator, in consultation with the City Engineer, determines the original cost allocation is to be unfair and such requested change, if approved, will not be adverse to the City's or to the public interest, then the City Administrator may approve such application. Approval shall be discretionary. If approved, the property owners, at their expense, shall file the modification with the appropriate written approval of the City Administrator and City Engineer endorsed thereon.
- d. Filing of Record. The Developer, at its expense, shall record this Third Amendment in the land records of the Office of the Register of Deeds of Sarpy and shall cause a recorded copy thereof to be transmitted to the City Administrator. Any adjustment under subparagraph 12.c-2 above shall be similarly recorded and transmitted at Subdivider's expense. Such recordings shall include indexing the recording by individual lot.
- e. City Engineer to be Determiner. The City Engineer shall be the determiner of which improvements are required to be made and which, if any, are eligible for City support, in whole or in part.
- f. City Access/Repair, Etc. The City, its employees and agents, shall have right of entry and full access to any and all areas and improvements within the Replatted Area for purposes of inspection. In the event City determines construction, repair or maintenance is not progressing or not being performed satisfactorily or in a timely manner, City may, at its sole option and without obligation to do so, decide to undertake construction, repair and/or maintenance of any such Common Area Improvements and to assess the cost, including engineering costs and legal costs, together with interest at the rate of twelve percent (12%) per annum until paid, and City shall have a lien for the cost therefor, which lien City may file of record against the lots benefited. If said lien amount is not timely paid in full, the City may foreclose the lien for said amount with interest thereon and reasonable attorneys fees incurred by City in such foreclosure.
- g. City's Exercise of Rights Discretionary. City's and/or City Engineer's exercise of any or all of the authority herein given shall be at City's sole and absolute discretion, and City, City Engineer and City agents shall have no responsibility or liability by reason of either the nonexercise or the exercise of any such authority.
13. Special Assessments. The lots within the Replatted Area are subject to special assessments that have been levied. Prior to delivery of the plat to Subdivider, Subdivider shall have either (1) paid all installments and accrued interest on such special assessments in full, or (2) have paid the principal and all accrued interest to date on delinquent installments and shall have reapportioned the remaining principal and interest thereon to the lots as configured by the Replat. Such reapportionment shall be computed in a manner acceptable to the City Engineer. Such written reapportionment agreement and recording thereof with the County Treasurer's written acceptance thereof shall be provided to City by Developer at Developer's expense.

14. Ownership Representation. The undersigned signatory on the proposed Final Plat of Southport West Replat Three and to the Third Amendment to the Subdivision Agreement, to wit, JQH - La Vista III Development, LLC does warrant and represent that it has executed the Final Plat for Southport West Replat Three and this Third Amendment to Subdivision Agreement by and on behalf of JQH - La Vista III Development, LLC, and that it owns 100% of the Replatted Area at date of execution of this Third Amendment and that at date of recording will own 100%.
15. Covenants Running With the Land. The obligations and agreements of Developer herein are perpetual covenants running with the land and shall be binding on the Developer and all of Developer's successors and assigns in title. The covenants herein shall be cumulative to, and not in lieu of, prior covenants running with the land or amendments thereto. City shall have the right, but not the obligation, to enforce any and all covenants.
16. Planned Unit Development. Build out of the Replatted Area will be in compliance with the applicable provisions of the Planned Unit Development plan and overlay.
17. Amendment of Declaration of Covenants. The Declaration of Covenants, Conditions, Restrictions and Easements for Southport West Subdivision dated July 5, 2005, and recorded in the office of the Sarpy County Register of Deeds that same date as Instrument No. 2005-22478 were amended by a First Amendment thereto filed the 24th day of May, 2006 and recorded in the records of the Register of Deeds of Sarpy County as Instrument No. 2006-17152. The parties to this Third Amendment do agree to abide by the terms of such Declaration of Covenants as so amended.
18. "No Build" Zone on Lot 18. JQH - La Vista CY Development, LLC has agreed with Heritage-Westwood La Vista to create a "no build" easement area on reconfigured Lot 18 that is parallel to and twenty-four feet (24') north of that portion of the south property line of Lot 18 that abuts Lots 19 and 20, Southport West Subdivision. The parties hereto agree that said easement shall be noted on the final plat of the Replatted Area prior to recording thereof, or recorded in some other manner acceptable to the City.
19. Access Easements. It is understood that the location of one or more currently designated access easements for the Replatted Area may have to be relocated to meet the needs of owners within the Replatted Area as such time as plans for build out of the Replatted Area are finalized, or sooner. Such redesignation may occur by either amendment of Replat Three prior to its recording, or, in accordance with Section 2-A(5) of the Southport West Subdivision Agreement.
20. Exhibit Summary. The Exhibits proposed by E & A Consulting Group, Inc. engineers for the Subdivider, attached hereto and made a part hereof, are as follows:

Exhibit "A":	Composite Drawing of Replat Three.
Exhibit "B":	Surveyor's Certificate.
Exhibit "C":	Final Plat of Southport West Replat Three.
Exhibit "D":	City Engineer's requirements for approval of replatting.

21. Right to Enforce. Provisions of this Amendment may be enforced at law or in equity by the owners of land within the Replatted Area and may be enforced by the City at law, in equity or such other remedy as City determines appropriate.
22. Ratification. In all other respects, the Subdivision Agreement shall not be affected hereby, and is hereby ratified and confirmed.
23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents, hereto affix our signatures the day and year first above written.

EXECUTED by JQH - La Vista III Development, LLC this ____ day of _____, 2007.

JQH - LA VISTA III DEVELOPMENT, LLC, a
Missouri limited liability company

By: The Revocable Trust of John Q. Hammons
dated December 28, 1989, as Amended
and Restated, its manager

By: _____
John Q. Hammons, Trustee

ACKNOWLEDGMENT OF NOTARY

STATE OF MISSOURI)
COUNTY OF GREENE)

On this ____ day of _____, 2007, before me a Notary Public, duly commissioned and qualified in and for said County, appeared John Q. Hammons, personally known by me to be the Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as Amended and Restated, the manager of JQH - La Vista III Development, LLC, and the identical person whose name is affixed to the foregoing Third Amendment to Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed as said Trustee and the voluntary act and deed of said Trust and said limited liability company.

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

Notary Public

**COUNTERPART TO THIRD AMENDMENT
COMMERCIAL/INDUSTRIAL SUBDIVISION AGREEMENT
SOUTHPORT WEST SUBDIVISION**

EXECUTED by Heritage-Westwood La Vista, LLC this _____ day of _____,
2007.

HERITAGE-WESTWOOD LA VISTA, LLC

ATTEST:

By: WDG La Vista, LLC, its Manager

By: _____
Michael J. Bowen, Its Manager

ACKNOWLEDGMENT OF NOTARY

STATE OF _____)
COUNTY OF _____)

On this _____ day of _____, 2007, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Michael J. Bowen, personally known by me to be the Manager of WDG La Vista, LLC, the Managing Member of Heritage-Westwood La Vista, LLC, and the identical person whose name is affixed to the foregoing Third Amendment to Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability companies.

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

Notary Public

**COUNTERPART TO THIRD AMENDMENT
COMMERCIAL/INDUSTRIAL SUBDIVISION AGREEMENT
SOUTHPORT WEST SUBDIVISION**

EXECUTED by the City of La Vista this ____ day of _____, 2007.

ATTEST:

CITY OF LA VISTA, a Nebraska municipal
corporation

Pamela A. Buethe, City Clerk

By _____
Douglas Kindig, Mayor

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF SARPY)

On this ____ day of _____, 2007 , before me a Notary Public, duly
commissioned and qualified in and for said County, appeared Douglas Kindig, personally known
by me to be the Mayor of the City of La Vista, and Pamela A. Buethe, to me personally known to
be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to
the foregoing Third Amendment to Subdivision Agreement, and they acknowledged the
execution thereof to be their voluntary act and deed and the voluntary act and deed of said City.

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

Notary Public