DEVELOPMENT AGREEMENT
(SouthPointe Pavilions Reconfiguration)

THIS DEVELOPMENT AGREEMENT for the reconfiguration of SouthPointe Pavilions (hereinafter "**Agreement**") is made and entered into as of the date of its execution by the last signatory hereto by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska (hereinafter "**City**"), R.E.D. CAPITAL MANAGEMENT L.L.C., a Kansas limited liability company and its successors and assigns ("**Developer**") and POWDER MOUNTAIN, L.L.C., a Nebraska limited liability company and its successors and assigns ("**Powder Mountain**"). Developer and Powder Mountain are sometimes referred to herein as "**Landowners**".

RECITALS

This Agreement is entered into by the Parties hereto to define the relationship between them and to set forth their respective roles and obligations with respect to the reconfiguration of SouthPointe Pavilions ("**Project**"). Developer is the primary operator of SouthPointe Pavilions located generally north and east of the intersection of S. 27th Street and Pine Lake Road in the City of Lincoln, Lancaster County, Nebraska and legally described on Exhibit "A" ("**SouthPointe**") and is the owner of the Retail Space Lot (defined below), the west portion of the Scheels Lot (defined below) and the Garage Lot (defined below) (collectively "**Developer Property**") and legally described on Exhibit "B". Powder Mountain is the owner of the eastern portion of the Scheels Lot (defined below) and the Commercial Store Lot (defined below) ("**Powder Mountain Property**") and legally described on Exhibit "B". Developer Property and Powder Mountain Property are sometimes referred to herein as "**Landowners Property**").

A. SouthPointe was constructed and opened for business in 1999 and is a regional retail center in Lincoln attracting a significant number of visitors from outside Lancaster County to Lincoln. Further, Scheels All Sports, Inc. ("**Scheels**"), a sporting goods store that is part of SouthPointe is identified by a large number of SouthPointe shoppers as the store that draws them to SouthPointe.

B. Scheels' business model has evolved and now revolves around operating stores significantly larger in area than the approximately 76,000 square feet store that was opened originally in Lincoln at SouthPointe and continues to operate today. By way of comparison, more recent flagship stores constructed by Scheels measure approximately 220,000 square feet in area.

C. Scheels desires to operate an approximately 220,000 square feet store in Lincoln at SouthPointe consistent with its more recently constructed store in Overland Park, Kansas. After examining the current location of the Scheels store in relation to other stores at SouthPointe, it was determined by the Developer and Scheels that a simple expansion of the current Scheels store was not a feasible option.

D. The Developer and Powder Mountain LLC, the owner of commercial property located immediately east of the existing Scheels store, have applied to the City for an amendment to the Combined Use Permit / Special Permit #11F at SouthPointe for the new Scheels Store and other related improvements and the City has considered and approved the proposed amendments to the Use Permit simultaneously with this Agreement. The amended Combined Use Permit / Special Permit #11F, as may be further amended by the City from time to time, is hereinafter collectively referred to as the "**Use Permit**".

E. The Use Permit shows the following private improvements (collectively "**Private Improvements**"):

i. A new and larger Scheels store of approximately 220,000 square feet in area ("**Scheels Store**") is generally shown on the Site Plan in Exhibit "C" and on the Use Permit, including Lot 16 ("**Scheels Lot**");

ii. A new commercial store of approximately 21,800 square feet in area ("**Commercial Store**") is generally shown on the Site Plan in Exhibit "C" and on the Use Permit, including Lot 6 ("**Commercial Store Lot**").

iii. New retail stores to be located abutting portions of the Public Parking Garage to be completed at SouthPointe, totaling approximately twenty thousand square feet in area ("**Retail Space**") is generally shown on the Site Plan in Exhibit "C" and on the Use Permit, including Lot 17 ("**Retail Space Lot**").

F. The construction of the new Scheels Store and other new retail buildings to accommodate displaced and new SouthPointe tenants will reduce parking in certain areas of SouthPointe while increasing parking demand for the area as a whole.

G. City desires to take steps to make sufficient parking spaces available at SouthPointe to attract and accommodate additional visitors while preventing those visitors to SouthPointe from parking in abutting residential neighborhoods where their presence would increase the number of vehicles and amount of congestion in said neighborhoods.

H. City acknowledges the positive economic impact that a larger Scheels Store will have upon SouthPointe generally, as well as the City as a whole, through the generation of additional visitors to the shopping center and the City. City acknowledges a need to balance the desirability of increasing the economic impact of SouthPointe with a need

to protect neighboring residential neighborhoods from increased traffic and congestion.

I. Neb. Rev. Stat. §18-2142.04 authorizes the City to declare any area within its boundaries that is not within a community redevelopment area to be an enhanced employment area if the governing body of the City determines that new investment within such enhanced employment area will result in at least twenty-five new employees and new investment of two million dollars;

J. Neb. Rev. Stat. §18-2142.04 authorizes the City to perform any one or more of the following within an enhanced employment area:

(i) The acquisition, construction, maintenance, and operation of public offstreet parking facilities for the benefit of the enhanced employment area;

(ii) Improvement of any public place or facility in the enhanced employment area, including landscaping, physical improvements for decoration or security purposes, and plantings;

(iii) Construction or installation of pedestrian plazas, sidewalks, display facilities, lighting, benches or other seating furniture, sculptures, trash receptacles, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(iv) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the enhanced employment area; and

(v) Enforcement of parking regulations and the provision of security within the enhanced employment area. Neb. Rev. Stat. §18-2142.04 (Reissue 2012)

Further, said section authorizes the City to levy a general business occupation tax upon businesses within the enhanced employment area for the purpose of paying the costs associated with the Authorized Work (defined below).

K. Developer and Powder Mountain have requested that the City designate those areas of SouthPointe designated and legally described on Exhibit D an enhanced employment area ("**Enhanced Employment Area**") and impose an occupation tax of 1% on all qualifying sales in the Enhanced Employment Area in order to finance, design, construct, operate, insure, maintain, repair and replace the following authorized work (individually and collectively "**Authorized Work**"):

i. Acquisition, design and construction of a new three level public parking garage with a minimum of 950 parking stalls and related Garage Lot Improvements (defined below) and Garage Easement Improvements (defined below) (collectively "**Public Parking Garage**"). Said Public Parking Garage shall be located on (a) the real estate generally shown as Outlot B on the Use Permit and to be final platted by the Developer as an air-rights subdivision ("**Garage Lot**") and (b) an abutting and nonexclusive public use easement ("**Garage Easement**") as shown on the Site Plan on Exhibit "C" that will be conveyed to the City upon completion of the Public Parking Garage. The Garage Lot and Garage Easement are sometimes referred to herein collectively as "**Garage Area**".

a) Said Public Parking Garage includes the following improvements on the Garage Lot: site preparation, grading, drainage, utility

relocation, the parking garage structure, elevators, stairways, sidewalks and walkways, lighting, signage and display facilities, benches or other seating furniture, trash receptacles, skywalks, and vehicular driveways and roadways, and any useful or necessary utilities, pedestrian access, vehicular access or public parking improvements necessary or reasonable to construct and operate the Public Parking Garage ("**Garage Lot Improvements**").

b) Said Public Parking Garage includes the following improvements on the Garage Easement: site preparation, grading, drainage, utility relocation, vehicular roadway. flat concrete work and any useful or necessary utilities, vehicular access or public parking improvements necessary or reasonable to construct and operate the Public Parking Garage ("**Garage Easement Improvements**");

c) Said Public Parking Garage excludes, but excluding the proposed first floor Retail Space abutting the Public Parking Garage as shown on the Use Permit that will be retained and owned by the Developer. At such time as the Retail Space is constructed, it shall be done solely at the cost and expense of the Developer.

ii. Maintenance, operation, insurance, repair and replacement (collectively "**Maintain**" or "**Maintenance**") of the Public Parking Garage any other project or undertaking for the betterment of the public facilities, and other facilities for the parking of vehicles.

The Public Parking Garage is sometimes referred to as "**Public Improvements**". Construction and operation shall also include reasonable construction management fees for supervision of the construction contracts for the Public Improvements.

L. The parties agree that the Public Parking Garage described herein and other Authorized Work in the area will make the new Scheels Store feasible while also protecting nearby residential neighborhoods from additional traffic and congestion created by visitors to the shopping center parking on the residential streets.

M. Developer has represented that a larger Scheels Store will result in approximately an additional fifty full time FTEs over its current staffing level at SouthPointe. Scheels' mean annual employee earning was $41,671 in 2013, and those employees working more than thirty (30) hours per week receive a health care benefit exceeding $3,000.00 per employee annually. The average Scheels' employee benefits exceeds $10,000 including Retirement Contributions, Retirement Plan Growth, Medical/Dental Insurance, Employee Purchase Discounts, Maternity Leave Pay, and all other employment payroll taxes. Further, construction of the larger Scheels Store will result in more than $80 million in private investment in real estate and personal property at SouthPointe. During the construction period, construction of the Private Improvements and Public Parking Garage are expected to create approximately 500 full time equivalent construction jobs.

N. This Agreement sometimes describes two periods of time:

   i. "First Term" shall commence upon the Transfer Date defined below and terminate upon the earliest of the of (i) December 31, 2041, (ii) the date all the Bonds are repaid in full or (iii) the Option Closing Date defined in Section 1002 below.

ii. "Second Term" shall commence upon the expiration of the First Term and terminate upon the earlier of (i) the Useful Life Date (defined below) or (ii) the Option Closing Date defined in Section 1002 below.

O. The Developer, as operator of the Public Parking Garage, agrees to maintain the Public Parking Garage, at its own cost and expense, during the First Term and Second Term subject to reimbursement from Occupation Tax revenues only as provided for herein.

P. Developer is willing to enter into this Agreement and to redevelop parts of SouthPointe by causing the construction of the Private Improvements through a minimum estimated investment of Eighty Million and No/100 Dollars ($80,000,000.00) as generally shown on the Site Plan in Exhibit "C" and (2) the Public Improvements as shown on the Site Plan in Exhibit "C".

Q. The Private Improvements and Public Improvements shall be collectively known as the "**Project Improvements**" and are generally shown on the Site Plan in Exhibit "C". The costs of the Project Improvements are collectively known as the "**Project Costs**" and are shown on the Sources and Uses of Funds in Exhibit "E".

R. The City, Developer and Powder Mountain mutually agree that the acquisition, design, construction and Maintenance of the Project Improvements is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of the applicable laws and requirements under which the Project has been undertaken.

NOW THEREFORE, in consideration of the above recitals which are hereby made part of this Agreement and of the mutual covenants contained herein, the parties do agree as follows:

ARTICLE I.

ENHANCE EMPLOYMENT AREA & EVIDENCE OF DEVELOPER'S ABILITY

Section 101. Enhanced Employment Area. By separate Resolution (defined below), the City designated those portions of SouthPointe identified on Exhibit D to be an enhanced employment area as that term is used in Neb. Rev. Stat. §18-2142.04. The City has determined that the Private Improvements described herein to be constructed within the Enhanced Employment Area will result in at least twenty-five new employees and new investment of at least two million dollars.

Section 102. Evidence of Developer's Ability. Developer shall, within ninety (90) days following the date of this Agreement, state the amount and source of the proposed debt financing Developer intends to use in completing the Project Improvements. Prior to the start date of the construction of the Private Improvements, Developer shall state the amount and source of debt financing which has been obtained or committed to Developer for use in completing the Private Improvements. Prior to the Start Date (defined below) of the construction of the Public Improvements, Developer shall state the amount and source of debt financing which has been obtained or committed to Developer for use in completing the Public Improvements. Such information shall be provided in a form satisfactory to the Finance Director of the City. Evidence of loan commitments shall include the documents evidencing the loan commitment, and acceptance by the borrower, the purposes of the loan, the authorized use of loan funds, and the other usual and customary terms and conditions of the loan commitment.

Section 103. Evidence of Developer's Ability to Timely Commence Construction of the Private Improvements. Developer shall provide satisfactory documentation to the City that Developer has entered into a construction contract and is ready, willing, and able to commence

construction of the new Commercial Store described above in Recital E on or before September 30, 2016. Developer shall provide satisfactory documentation to the City that Developer has entered into, or has caused to be entered into, a construction contract and is ready, willing, and able to timely commence, or cause to be commenced, construction of the new Scheels Store by June 30, 2017. Submittal of such information and documentation in a form satisfactory to the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Agreement.

Section 104. Powder Mountain Consent. Under separate agreement between Powder Mountain and Developer, Powder Mountain has granted Developer the necessary rights, title and interests to implement and carry out the Developer's responsibilities and obligations under this Development Agreement. Furthermore, Powder Mountain hereby acknowledges and agrees to accept any and all obligations, duties, and restrictions on use of Powder Mountain Property that may attach to its real estate as a result of this Agreement.

ARTICLE II.

CONSTRUCTION OF PROJECT IMPROVEMENTS

Section 201. Project Improvements – Project Schematic Drawings; Exterior Drawings; Approval; Changes.

A. Conceptual Plans and Drawings for Scheels, Commercial Store, Retail Space and Public Parking Garage. Exterior conceptual plans and drawings for the Scheels Store (hereinafter "S**cheels Schematic Drawings**"), the Commercial Store (hereinafter "**Commercial Store Schematic Drawings**"), the Retail Space (hereinafter "**Retail Space Schematic Drawings**") and Public Parking Garage (hereinafter "**Garage Schematic Drawings**") to be constructed as part of the Project have been prepared by

or have been caused to be prepared by the Developer as shown on Exhibit "F". Approval of this Agreement by the City shall constitute approval of the Scheels Schematic Drawings, Commercial Store Schematic Drawings, Retail Space Schematic Drawings and Garage Schematic Drawings for the Scheels Store, Commercial Store, Retail Space and Parking Garage. The City approved Scheels Schematic Drawings, Garage Schematic Drawings, Commercial Store Schematic Drawings, and Retail Space Schematic Drawings are hereinafter referred to as "**Project Schematic Drawings**".

B. Exterior Drawings. After approval by the City of the applicable Project Schematic Drawings for the Project Improvements, the Developer shall prepare or cause to be prepared by a licensed architect or engineer selected by the Developer the exterior drawings, to include references to the materials to be used in construction of the Project Improvements (hereinafter "**Exterior Drawings**"). The Exterior Drawings shall be submitted to the Mayor for review and approval no later than thirty (30) days prior to Developer submitting an application for a building permit for the respective Private Improvement. Mayor's approval of said Exterior Drawings will not be unreasonably withheld, delayed or conditioned so long as the Exterior Drawings presented are prepared from and in substantial conformance with the Project Schematic Drawings and any other terms and conditions of this Agreement. Further, the Exterior Drawings shall include a landscaping plan that meets or exceeds the requirements of any landscape plan approved by the City as part of the Use Permit.

C. Approval. The City, acting through the Mayor, shall approve or reject the Exterior Drawings within thirty (30) days after the receipt of the Exterior Drawings. Failure of the City to reject the applicable documents within the time period stated above

shall be deemed as approval. If the City rejects the Exterior Drawings, the City shall deliver to Developer notice thereof accompanied by an explanation of the reasons for such rejection. If rejected, the Developer shall work with the architect to submit corrected Exterior Drawings within fourteen (14) days after the date of receiving the written rejection notice. Resubmitted Exterior Drawings shall be approved or rejected as provided above for original submittals.

D. Approval Limitations. Approval of the Exterior Drawings is not a substitute for and does not eliminate the requirement that Developer apply for and receive necessary building permits for construction of the Project Improvements. Likewise, approval of the Schematic Drawings or the Exterior Drawings for the Public Parking Garage is not a substitute for the requirement below that the plans for the Public Parking Garage be reviewed and approved by a professional engineer selected by the City at its sole discretion.

E. Changes. If the Project Schematic Drawings or Exterior Drawings are substantially and materially modified after City approval, any such modification shall be resubmitted to the City in accordance with this section.

Section 203. Review of Garage Construction Documents; Useful Life and Useful Life Date Defined.

A. Construction Documents. Developer shall, prior to submitting an application for a building permit for the Public Parking Garage, submit to the City for review construction documents for the Public Parking Garage prepare by a qualified and licensed engineer selected by or approved by the Developer. The Developer's engineer shall certify to a reasonable degree of certainty the expected economic life

of the Public Parking Garage in terms of years assuming the Public Parking Garage is constructed according to the construction documents presented and maintained and operated in a manner consistent with accepted industry standards ("**Useful Life**"). The term Useful Life of the Public Parking Garage may be modified below.

B. City Review. Upon receipt of said documents, the City may submit said documents to a qualified and licensed engineer of its choosing for the purpose of reviewing all aspects of the Public Parking Garage. Further, said City engineer shall analyze the Public Parking Garage plans and shall certify to the City to a reasonable degree of certainty the expected Useful Life of the Public Parking Garage in terms of years assuming the Public Parking Garage is constructed according to the construction documents presented and maintained and operated in a manner consistent with accepted industry standards. In the event the City's engineer certifies a Useful Life equal to or less than the Developer's engineer's Useful Life, then said Useful Life of the Public Parking Garage shall be the number of years certified by the City's engineer.

C. Disagreement on the Expected Economic Life. In the event the City's engineer certifies an expected economic life of the Public Parking Garage greater than the Developer's engineer's Useful Life, then the Developer may object in writing to the City. The City and Developer shall then meet within ten (10) days of said written notice and attempt to reach agreement on the Useful Life of the Parking Garage and any consensus reached shall be the Useful Life in number of years of the Public Parking Garage. In the event the City and Developer cannot reach agreement on the Useful Life of the Parking Garage within fifteen (15) days of the Developer's written objection notice, or mutual extensions of another date (collectively "**No Consensus**

Date"), then the procedure and process for determining the Useful Life in number of years shall be as follows:

i. Within fifteen (15) days from the No Consensus Date, the Developer's engineer and City's engineer shall select a third qualified and licensed engineer who will within thirty (30) days of his or her selection make an independent determination and certification of the Useful Life of the Public Parking Garage and such Useful Life shall be binding on both parties for purposes of determining the Useful Life of the Public Parking Garage to be constructed according to this Agreement. The City and Developer shall each pay one half of the respective fee of the third qualified and licensed engineer, and such expense shall not be considered an expense which may be paid using bond proceeds described below.

D. Useful Life Date. The term "**Useful Life Date**" shall be the date that results from adding the number of Useful Life years as determined by the process set forth in 203C. above to the Transfer Date (defined below).

Section 204. Construction of Public Parking Garage.

A. First Title Examination. The Developer has delivered to the City a title insurance commitment "**Title Insurance Commitment**") for an owner's title insurance policy issued by a title insurance company for the value of the Garage Lot insuring the marketability of the title to the Garage Lot. The City has reviewed the Title Insurance Commitment, including the Schedule B, I. Requirements, Schedule B, II. Exceptions, and the General Conditions, terms and conditions contained therein. The City finds the Title Insurance Commitment acceptable to the City and the Permitted Exceptions contained therein.

B. Design & Construction of Public Parking Garage. Developer at its own cost and expense, subject to reimbursement by the City as provided in this Agreement, shall design and construct or cause to be designed and constructed the Public Parking Garage identified above in Recital K. Construction of the Public Parking Garage shall be competitively bid through the City's Purchasing Division.

C. Start Date Defined; Notice. The Developer shall deliver written notice to the City of the projected start date of the construction of the Public Parking Garage ("**Start Date**") a minimum of sixty (60) days prior to the Start Date. Said projected Start Date shall be no later than December 31, 2018.

D. Second Title Examination. Upon receipt of the Developer's written notice of the Start Date, the City shall have the option to obtain for itself a title insurance commitment endorsement updating the Title Insurance Commitment as described in Section 204. A. above. Prior to thirty (30) days before the Start Date, the City shall forward to the Developer written notice of any new objection (i) to the marketability of title to the Garage Lot or (ii) to restrictions of record which affect the City's intended uses of the Garage Lot for public parking (collectively "**Title Defect**") that occurred after the date of the original Title Insurance Commitment. Any matter not objected to in said time, shall be deemed waived and shall be considered as a Permitted Exception. After receiving a written notice of such new Title Defect from the City, the Developer shall have a reasonable time to cure such new Title Defect or have the title insurance company insure over such new Title Defect, at the Developer's expense.

E. Requirements Prior to the Start Date. Prior to the Start Date of the Public Parking Garage, the Developer shall:

i. Complete, or cause to be completed, the construction of the Scheels Store;

ii. Provide, or cause to be provided, to the City the amount and source of financing with supporting documentation deemed acceptable to the City's Finance Director which has been obtained or committed to completing the Public Improvements; and

iii. Provide, or cause to be provided, satisfactory documentation to the City that construction contracts have been entered into and Developer is ready, willing, and able to timely commence construction of the Public Improvements.

iv. The City and Developer shall execute an acceptable written escrow agreement ("**Escrow Agreement'**) with an escrow agent, who is acceptable to the City and Developer pursuant to the terms and conditions described in Section 204 F. below.

F. Escrow. Prior to the Start Date, the City and Developer shall deliver in escrow pursuant to the Escrow Agreement the following documents (collectively "**Escrow Documents**"):

i. The Developer and City shall deliver to the escrow agent such affidavits, statements and other documents as are reasonably required by the Title Company ("**Title Company Requirements**") in order for the Title Company to issue a title insurance policy in the name of the City at the Transfer Date in accordance with the City's Title Insurance Commitment, including any endorsements.

ii. Developer shall execute and place in escrow an owner's affidavit on the title insurance company's form (i) representing that there are no unpaid special assessments levied against the Garage Lot as of the Transfer Date,

(ii) representing that there are no outstanding unpaid bills for labor, material, or utilities furnished to the Public Parking Garage improvements as of the Transfer Date, and (iii) agreeing to indemnify and hold harmless the City and title insurance company against all payments and expenses, including court costs and attorney's fees to the extent permitted by law, if the above representations prove inaccurate in whole or in part.

iii. Developer shall deliver to the escrow agent an executed and notarized (i) a special warranty deed ("**Warranty Deed**") in fee simple from the Developer as grantor to the City as grantee for the Garage Lot and (ii) an easement agreement ("**Easement Agreement**") for the Garage Easement for the First Term and Second Term from the Developer to the City, subject to the Permitted Exceptions. City shall deliver to the escrow agent an executed Real Estate Transfer Statement for the Garage Lot.

iv. Developers shall deliver to escrow agent the Nebraska Documentary Stamp Tax amount, if not exempt under Neb. Rev. Stat. 76-902(2), relating to the transfer of the Garage Lot.

v. The City and Developer shall execute and deliver to the escrow agent an executed and notarized temporary construction easement ("**Temporary Construction Easement**") for the Garage Area, permitting the Developer to complete any unfinished Garage Lot Improvements or Garage Easement Improvements after the Transfer Date.

The Escrow Documents will be released from escrow upon the Transfer Date as defined in Section 301 which is the date the City issues a Certificate of Completion of the Improvements for the Public Parking Garage.

G. Change Orders. Developer may from time to time request additional instructions, additional work, or omissions of work previously ordered as part of the Public Improvements by way of a change order requests to the City ("**Change Orders**"), without invalidating this Agreement. Such Change Orders may be initially approved by the City, acting through the Mayor, but shall be reduced to writing and signed by the City within the earlier of (i) 30 days of such Change Order being issued or (ii) the Transfer Date. In the event the Change Order causes a change in the construction contract price, then such adjustment will be made and credit made or payable at the Transfer Date by modification to the authorized Bonds amount.

H. Risk of Loss. Risk of loss or damage to the Garage Area shall rest with the Developer until the Transfer Date.

I. Indemnification. Developer agrees to indemnify and hold City harmless to the extent of any payments in connection with carrying out construction of the Public Improvements the City may be required to make for failure of Developer to make payments of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished materials, equipment, or supplies used in construction of the Public Improvements.

J. Liens. Neither Developer nor any successors in interest to Developer shall engage in any financing or any other transaction creating any mortgage or any other monetary encumbrance or monetary lien upon the Public Improvements whether by express agreement or operation of law, or suffer any monetary encumbrance or monetary lien to be made on or attached to the Public Improvements. The pledge of the Bonds as collateral shall not constitute a monetary encumbrance or monetary lien on or attached to the Public Improvements as described in this subsection. If any

involuntary encumbrance or lien is made on or attached to the Public Improvements and which is contested by Developer, then Developer may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the Clerk of the District Court pursuant to Neb. Rev. Stat. § 52-142 to avoid or prevent foreclosure of such encumbrance or lien.

Section 205. Developer's Certificate of Completion of Improvements.

A. Certificate of Completion of Improvements. Promptly upon substantial completion by Developer of the Public Improvements in accordance with all provisions of this Agreement, and promptly after the Developer provides the City with the proper documentation that Developer's contractor or his or her subcontractors who performed labor or supplied materials, equipment or supplies in the prosecution of the Public Improvements have been properly paid, the City shall, upon request of such Developer, cause a final inspection to be made of the Public Improvements. If the work has been completed in conformance with the Exterior Drawings, the Construction Documents, and this Agreement, the City shall execute and deliver to Developer the City's acceptance to the Developer's Certificate of Completion of Improvements, the form of which is attached hereto as Exhibit "G". The acceptance of the Developer's Certificate of Completion of Improvements by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Agreement with respect to the obligations of Developer and its successors to construct the Public Improvements.

B. Failure to Complete. The Developer's Certificate of Completion of Improvements shall be recorded by Developer in the Office of the Register of Deeds for Lancaster County, Nebraska against the Garage Lot where said Public Improvements are located. If the City shall refuse or fail to execute the acceptance to a Developer's Certificate of Completion

of Improvements after a final inspection has been requested and performed, the City shall within fourteen (14) days provide Developer with a written statement indicating in what particulars Developer has failed to complete the Public Improvements in accordance with the provisions of this Agreement or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Developer to take or perform in order to obtain such acceptance.

Section 206. Title; Assignment of Warranties. Upon the City's execution of the Developer's Certificate of Completion of Improvements for the applicable Public Improvement, the City shall be the owner of the applicable Public Improvements after the Transfer Date. Within thirty (30) days of the City's execution of the Developer's Certificate of Completion of Improvements, the Developer will assign to the City in writing any and all workmanship, equipment, material or service warranties for the Public Improvements.

Section 207. Construction of Private Improvements.

A. Construction. Developer at its own cost and expense shall use commercially reasonable efforts to construct the Private Improvements as described in Recital E above in conformity with the approved Exterior Drawings, building permits, and this Agreement. The Private Improvements shall involve an estimated minimum investment of $80,000,000.

i. Architecture. All Private Improvements constructed shall meet the requirements of the Use Permit as amended. Further, the Private Improvements shall be substantially the same as the buildings shown in the Exterior Drawings that are ultimately approved by the City.

ii. Landscaping. All mechanical units constructed along with the Private Improvements shall be visually screened from public view, in particular the view

of those living in the homes located immediately north of the Scheels building and be constructed as shown on the Use Permit. Further, large trash receptacles for business use placed outside the Private Improvements shall be screened on three sides with a screen wall in harmony with the adjacent building(s) as shown on the Use Permit.

B. Permits and Approvals. Developer agrees to secure all permits and licenses necessary for construction of the Private Improvements and its intended use including, but not limited to, necessary building permits and inspections.

C. Commencement and Completion Deadline for Private Improvements. The Developer and City agree that the commencement of the Private Improvements listed herein shall occur forthwith, and in no event shall commencement of construction of the new Scheels Store occur later than May 30, 2017 unless extended by mutual agreement of the parties and shall be completed by December 30, 2019.

Section 208. Payment of Costs for Private Improvements. Developer agrees to use commercially reasonable efforts to complete construction of the Private Improvements as provided in this Agreement, and to pay, or cause to be paid, in a timely manner all persons, firms, or organizations that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements. Such payment shall be made promptly after completion of the Private Improvements in accordance with all the provisions of this Agreement relating to the obligations of Developer to construct said improvements.

Section 209. Duty to Maintain. During the First Term, Developer, and its successors, permitted lessees and permitted assigns, at its own cost and expense shall, following completion of the Private Improvements keep the same in addition to the Developer Property at SouthPointe in a safe and sanitary condition and shall take all action reasonably necessary to (a) maintain, in

good order and condition and state of repair, all interior and exterior portions of the buildings including the routine and reasonable preventive maintenance of the buildings and their service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors, and (b) maintain the grounds in a safe and sanitary condition including but not limited to sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including irrigation, replacement and replanting), removal of snow and ice from sidewalks, driveways, and parking areas, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes.

Section 210. Construction Administration. Developer shall be responsible for all components of the Project Improvements constructed by Developer including construction management, coordination of contractors and regulatory permitting and other requirements. The Developer will be solely responsible for payment of all construction costs for the Private Improvements.

Section 211. Damage or Destruction of Developer's Property.

A. Construction Period. During the construction period for the Private Improvements as well as the Public Parking Garage, Developer agrees to keep the construction area, insured, or cause the construction area to be insured, against loss or damage by fire, and other such risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount no less than the replacement value of the respective improvements under construction but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, Developer agrees to use its good faith efforts to commence restoration of the improvements

impacted by the damage to its prior condition within eighteen (18) months from the date of the damage or destruction, and shall diligently pursue the same to completion.

B. Useful Life of Public Parking Garage Period. During the First Term, Developer agrees to keep or cause others to keep the Private Improvements constructed pursuant to this Agreement as well as Landowners Property within the Enhanced Employment Area described herein insured against loss or damage by fire, and such other risk, casualties, and hazards, including construction or material defects, as are customarily covered by property or extended coverage policies in an amount not less than the replacement value thereof based upon an estimate of insurable values but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Developer or that Developer shall cause others to carry pursuant to this section may, at Developer's option, be carried under a separate and distinct insurance policy for SouthPointe or pursuant to a master policy of insurance covering other property owned by Developer or its tenants or its corporate affiliates, or any combination thereof. In the event of any insured damage or destruction during the First Term, Developer agrees to use reasonable efforts to restore the Private Improvements to their prior condition within eighteen (18) months from the date of the damage or destruction, and shall diligently pursue the same to completion.

C. Failure to Restore. In the event the Developer fails, for any reason to restore the Private Improvements described herein as provided in A and/or B above during the First Term, then the Developer shall be required to exercise its option to purchase the Public Parking Garage in the manner described in Section 1002 below. In the event Developer fails, for any reason to restore the Private Improvements described herein following the occurrence of insurable damage to such an extent that the Private Improvements are subsequently

unusable, then the Developer shall be required to either exercise its option to purchase the Public Parking Garage in the manner described below in Section 1002 or reimburse the City for the cost of demolishing the garage.

ARTICLE III.

CONVEYANCE OF THE PUBLIC PARKING GARAGE

Section 301. Transfer Date Defined. The "**Transfer Date**" shall mean the date that the City has issued a Certificate of Completion of the Public Parking Garage. Unless extended by mutual written agreement of the Parties, the Transfer Date shall be no later than December 31, 2020.

Section 302. **Transfer Date Notice**. The Developer shall deliver written notice to the City of the projected completion date for the Public Parking Garage a minimum of ninety (90) days prior to the anticipated Transfer Date.

Section 303. Third Title Examination. Upon receipt of the Developer's written notice of the Transfer Date, the City shall have the option to obtain for itself a title insurance commitment endorsement updating the Title Insurance Commitment as described in Section 204. A. and 204 D. above. Prior to thirty (30) days before the Transfer Date, the City shall forward to the Developer written notice of any new objection (i) to the marketability of title to the Garage Lot or (ii) to restrictions of record which unreasonably affect the City intended uses of the Garage Lot for Public Improvements that occurred within and after thirty (30) days before the Start Date. Any matter not objected to in said time, shall be deemed waived and shall be considered as a Permitted Exceptions. After receiving a written notice of such new Title Defect from the City, the Developer shall have a reasonable time to cure such new Title Defect or have the title insurance company insure over such new Title Defect, at the Developer's expense.

Section 304. <u>Conveyance of the Public Parking Garage</u>. Upon the City issuing a Certificate of Completion of the Improvements for the Public Parking Garage and delivery of said executed Certificate to the escrow agent (Transfer Date), the escrow agent will:

A. Deliver to the Title Company the Title Company Requirements;

B. Deliver to the Title Company the Owner's Affidavit;

C. Deliver to the City a title insurance policy in the name of the City in accordance with the City's Title Insurance Commitment;

D. Deliver to the City the Warranty Deed and the corresponding Real Estate Transfer Statement for the Garage Lot and file said Warranty Deed with the Lancaster County Register of Deeds Office;

E. Deliver to the City the Easement Agreement for the Garage Easement and file said Easement Agreement with the Lancaster County Register of Deeds Office;

F. Deliver to the City the Nebraska Documentary Stamp tax amount, if not exempt; and

G. Deliver to the Developer the Temporary Construction Easement if necessary to complete improvements related to the Garage on the Garage Lot or the Garage Easement to be installed after the Transfer Date.

Section 305. <u>Property Taxes and Assessments</u>. All real and personal property taxes, if any, for the year in which the Transfer Date occurs shall be prorated at the Transfer Date, and all prior years' taxes, interest, and other charges, if any, shall either be exempt or paid in full by Developer at or prior to the Transfer Date. Title hereunder shall be delivered free and clear of all special assessments levied or assessed or special assessment districts that have been created and ordered constructed, as of the date of this Agreement.

Section 306. Title and Possession of Project Sites. At the Transfer Date, title to and possession of the Public Parking Garage improvements shall be conveyed by the Developer to the City under the terms and conditions set forth herein.

ARTICLE IV.

OPERATION AND MAINTENANCE OF THE PUBLIC PARKING GARAGE

Section 401. Operation and Maintenance of the Public Parking Garage. Immediately after the Transfer Date, the Public Parking Garage shall be open to the public. Upon opening of the Public Parking Garage to the public and until the termination of the Second Term, the Developer agrees to assume and retain responsibility for the day to day operation and reasonable and necessary Maintenance of the Public Improvements for the First Term and Second Term. Developer shall maintain the Public Improvements in a clean, orderly manner in accordance with the City's standards for public parking structures throughout the City and as necessary for the proper operation of the Public Improvements. Operation and Maintenance of the Public Improvements includes, but is not limited to, cleaning of any and all stairwells and elevators, cleaning any and all windows, snow removal, collection and removal of any and all refuse and litter, containment and cleanup of any spills, regular inspections, replacing light bulbs, testing and maintaining elevators, performing recommended maintenance and repair of the parking surfaces and structural components of the garage, and maintaining, replacing, and replanting any landscaping located on the Parking Garage Lot.

Section 402. Hours of Public Parking Garage Operation. The Public Parking Garage shall be open and available to the public at no cost each and every day from the hours of 6:00 a.m. until 12:00 a.m. the following day. Parking shall not be limited to those persons visiting the shopping center. Likewise, Developer recognizes and understands that it may not prohibit

individuals or groups from exercising their First Amendment rights while in the Public Parking Garage except that such activities may be limited in such a manner that they do not interfere with the Public Parking Garage's primary function of providing parking to the public.

Section 403. Public Parking Garage Rules and Regulations. The City hereby adopts the Public Parking Garage Rules and Regulations for the Public Improvements as attached hereto as Exhibit "H", as may be amended from time to time by the City. By executing this Agreement, Developer acknowledges said rules and regulations and hereby agrees that it shall comply with and enforce the rules and regulations throughout the Useful Life of the Public Parking Garage or until the Option Closing Date, whichever occurs first.

Section 404. Maintaining the Public Improvements. Developer shall take any and all steps reasonably necessary to operate and Maintain the Public Improvements from the Transfer Date up to the Useful Life Date. All preventive, reasonable and necessary Maintenance performed by or caused by the Developer to be performed on the Public Improvements shall be done at the cost and expense of the Developer, subject to reimbursement as described in Article 5.

A. General Responsibilities. Developer, in general, shall have primary operator management and Maintenance responsibilities for the Public Improvements. The Developer shall provide accounting services for the Public Improvements, including, but not limited to, (a) preparing annual budgets and work schedules; (b) preparing monthly variance reports; (c) monthly accounting services related to assembling, reviewing and forwarding to the City for payment those invoices evidencing reimbursable expenses; (d) processing and coordinating payments; (e) any revision to the schedule or budget made during the month covered by the report; and (f) any other reports concerning the Public Improvements as the City may reasonably request.

B. Questions or Problems. The Developer shall be available for questions and follow up by telephone or site meetings with the City. Developer shall on or before the Transfer Date designate a local representative who shall serve as the both the City's and the public's contact in the event questions or problems arise with respect to the operation and/or maintenance of the Public Parking Garage. In turn, the City hereby designates its Director of Parking Services as its contact person for issues related to operation or maintenance of the Public Parking Garage.

C. Records. Developer shall maintain an organized filing system for all the Public Improvement documents and records. Annually, Developer shall certify that copies of all material documents and records have been delivered to the City.

Section 405. City Inspections. The City may, as part of the overall management of its parking structures throughout the City, cause an inspection of the parking structure to be made no less often than every five years beginning in the year of the fifth anniversary of the Transfer Date by an engineer of its choosing. The cost to the City of having these inspections conducted, to the extent that the cost is related to the Public Parking Garage described herein, shall be reimbursable as a Maintenance Obligation from the Tax Revenues as said terms are subsequently described in this Agreement. Upon completion of these inspections by the engineer, the City shall meet with the Developer to review the recommendations. After meeting with the Developer, the City may submit those reasonable recommendations for Maintenance made by the engineer to the Developer that the City agrees should be carried out and are in accordance with the City's standards for public parking structures throughout the City. The Developer, at its cost and expense, shall diligently pursue implementation of the City's recommended Maintenance, subject to reimbursement as set forth in Article V.

Section 406. Failure to Maintain. In the event that City becomes aware of conditions and/or circumstances within the Public Improvements that require correction or repair by the Developer, City shall immediately notify the Developer in writing through the person(s) designated by the Developer to be responsible for operating and maintaining the Public Improvements. If the Developer fails to commence to correct the condition or circumstances identified by the City within fourteen (14) days and thereafter diligently prosecute such work to completion, then the City may exercise its remedies as stated in Section 801. In addition, the City may take all necessary steps to correct or repair or cause to be corrected or repaired by a licensed, insured and reputable third party the condition or circumstances identified by the City all at the Developer's cost and expense; provided that, the City first delivers to the Developer an additional seven (7) days' prior written notice that the City will be performing such obligations, and provided further that the Developer fails to commence to perform such obligations within such additional seven (7) day period and thereafter diligently prosecute such work to completion. In the event that the City corrects or repairs a condition within the Public Improvements pursuant to the process identified in this section and is reimbursed for the cost of such repairs by the Developer, Developer shall not be entitled to reimbursement from Tax Revenues despite the correction or repair otherwise being considered a Maintenance Obligation for which such reimbursement might otherwise be allowed.

Section 407. Insurance. From the Transfer Date to the Useful Life Date, the City shall carry and maintain the following insurance for the Public Parking Garage:

A. Property Insurance. The City shall carry and maintain, from a reputable insurance company or companies, property insurance (special perils coverage) with other appropriate coverages as reasonably determined by the City, but in an amount not less than the replacement value of the Public Parking Garage, allowing for reasonable coinsurance clauses and deductibles as determined by the City in accordance with the

City's standards for public parking structures throughout the City and after review and input from the Developer.

B. Commercial General Liability Insurance. The City shall carry and maintain, from a reputable insurance company or companies, commercial general liability insurance with other appropriate coverages as reasonably determined by the City in accordance with the City's standards for public parking structures throughout the City and after review and input from the Developer. The base liability insurance policy, together with any excess liability coverage provided under blanket umbrella coverage, shall initially be no less than the amounts listed below.

   i. For bodily injury or damages, fatal or non-fatal, including product liability and automobile liability coverage, to any one person to the extent of $1,000,000.

   ii. For bodily injury or damages, fatal or non-fatal, including product liability and automobile liability insurance coverage, to two or more persons for any one accident to the extent of $1,000,000.

   iii. For property damage to the extent of $1,000,000 each occurrence, $2,000,000 aggregate.

   iv. Umbrella or Excess Coverage in the amount of $3,000,000.

C. Reimbursement and Insurance Requirements. The cost to the City of carrying the insurance described above in Section 407 A. and B. for the Public Improvements described in this Agreement shall be considered a Maintenance Obligation, and the parties agree it is reimbursable from the Tax Revenues as otherwise provided for in this Agreement. All insurance policies maintained pursuant to Section 407 A. and B. shall name the City as an insured and the Developer as an additional named insured. The City shall require its insurance company or companies to furnish to the Developer a copy of

the policy on which the Developer is named as an additional named insured. The City shall require that the insurance company or companies give the Developer thirty (30) calendar days' prior written notice of any cancellation, reduction in amount, or material change in the coverage of such insurance to the extent the City's insurer agrees to provide such a notice provision.

D. Public Parking Garage Damage. In the event of any damage or destruction to the Public Parking Garage, the City and Developer shall meet as soon as reasonably possible to assess the damage or destruction. The City and Developer shall thereafter prepare and enter into an Owner's Representative Agreement, with reasonable terms and conditions, whereby the City designates the Developer to be the City's representative to assist the City in the collection of any insurance proceeds and to cause the repairs and restoration to begin as soon as reasonably practicable and diligently pursue such repairs and restoration to completion.

Section 408. Developer Insurance. The Developer shall procure and maintain insurance coverage for its maintenance and day-to-day operations at the Public Parking Garage as described in this section. The cost of procuring and maintaining said coverage shall be considered part of the Developer's responsibilities for operation and Maintenance of the Public Improvements and as such is reimbursable as a Maintenance Obligation described in Articles IV and V. All insurance policies maintained pursuant to Section 408 A., B., and C. shall name the City as an additional insured, and Developer shall require its insurance company or companies to furnish the City with a copy of any policies on which the City is named as an additional insured. Developer shall require that the insurance company or companies give the City thirty (30) calendar days prior written notice of any cancellation, reduction in amount, or material change in

the coverage of such insurance to the extent Developer's insurer(s) agree to provide such a notice provision. The insurance required to be carried by Developer is as follows:

A. Commercial General Liability Insurance. Developer shall carry and maintain, from a reputable insurance company or companies, commercial general liability insurance with other appropriate coverages as reasonably determined by Developer. The base liability insurance policy, together with any excess liability coverage provided under blanket umbrella coverage, shall initially be no less than the amounts listed below.

   i. For bodily injury or damages, fatal or non-fatal, including product liability and automobile liability coverage, to any one person to the extent of $1,000,000.

   ii. For bodily injury or damages, fatal or non-fatal, including product liability and automobile liability insurance coverage, to two or more persons for any one accident to the extent of $1,000,000.

   iii. For property damage to the extent of $1,000,000 each occurrence, $2,000,000 aggregate.

   iv. For completed operations to the extent of $1,000,000 each occurrence.

   v. Umbrella or Excess Coverage in the amount of $3,000,000.

B. Employment Related Insurance. As a reimbursable Maintenance Obligation, the Developer, in connection with the employment of its own employees, shall pay all applicable social security, unemployment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, unemployment insurance and worker's compensation.

C. Contractor/Subcontractor Insurance. Developer shall require that all contractors and subcontractors providing equipment, materials or services directly to Developer and/or

the City have obtained, maintain and keep in force during the time in which they are involved in the performance of the services: primary third party liability insurance, automobile liability insurance, workers' compensation insurance coverage, and, if applicable, professional liability coverage.

Section 409. <u>Indemnification Related to Operating, Maintaining, and/or Repairing the Public Parking Garage</u>.

A. <u>Payment Indemnification</u>. Developer agrees to indemnify and hold City harmless to the extent of any payments in connection with operating, maintaining, and making necessary repairs to the Public Parking Garage that the City may be required to make for failure of Developer to make payments of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished labor, materials, equipment, or supplies used in operating, maintaining, or repairing the Public Improvements during the Second Term.

B. <u>Operation Indemnification</u>. To the fullest extent permitted by law, Developer shall indemnify, defend, and hold harmless the City, its officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees to the extent permitted by law, arising out of or resulting from operating, maintaining, and/or repairing the Public Improvements, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional misconduct or negligent act or omission of Developer. This section will not require Developer to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole

negligence of the City or intentional misconduct of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives termination of this Agreement.

ARTICLE V.

OCCUPATION TAX ORDINANCE, BOND AGREEMENTS & MAINTENANCE AGREEMENTS

Section 501. Occupation Tax Resolution and Occupation Tax Ordinance. The City has enacted Resolution No. _____ ("**Enhanced Employment Area Resolution**") in which the City designated a significant portion of SouthPointe as an Enhanced Employment Area. The City has enacted Ordinance No. _____ ("**Occupation Tax Ordinance**") in which the City imposes a retail business occupation tax within the Enhanced Employment Area beginning January 1, 2017. The amount of the tax imposed is one percent (1%) of all gross receipts on qualifying purchases from the Enhanced Employment Area for each calendar month derived from the businesses subject to this tax as more particularly described in the Occupation Tax Ordinance. The Occupation Tax Ordinance shall remain in effect and terminate ("**Occupation Tax Termination Date**") upon the earliest of: (i) December 31, 2041, (ii) the date all the Bonds are repaid in full and the Maintenance Reserve Account (defined below) has been fully funded or (iii) the Option Closing Date defined in Section 1002 below. At such time as one of these events occurs, the City shall take all necessary and reasonable steps to term the occupation tax forthwith.

Section 502. Tax Revenues. The Occupation Tax Ordinance will allow the City to generate and collect tax receipts ("**Tax Revenues**") to be derived from the occupation taxes imposed

against the businesses located within the Enhanced Employment Area as determined in the manner provided for in the Occupation Tax Ordinance and shall fund the obligations stated in this Agreement.

Section 503. <u>Issuance of Bonds</u>.

A. Upon the latter of (i) the City issuing a building permit for the Scheels Store or (ii) the commencement of the occupation tax for the Enhanced Employment Area described in Section 501, the City shall issue in one or more series the following occupation tax indebtedness (individually "**Bond**" and collectively "**Bonds**") as further described in the enacted Ordinance No. _____ ("**Bond Ordinance**") not to exceed Nineteen Million, Nine Hundred and Fifty Thousand and No/100 Dollars ($19,950,000.00) to fund the design, builder's risk insurance, construction, installation and financing costs of the Public Parking Garage and related improvements as shown in the Uses and Sources of Funds in <u>Exhibit "E"</u> (collectively "**Public Improvements Cost Estimate**").

B. The Bonds will be issued as "draw-down" Bonds in a principal amount not to exceed the lesser of the cost of the Authorized Work or the amount set forth above in Section 503 A. The interest rate for the Bonds shall be a simple interest rate of 8.50% from the date of "draw down". On a monthly basis, the City shall keep and maintain a record evidencing the amounts paid by, or on behalf of, the Developer for Authorized Work as "**Principal Amount Issued.**" In addition, the City shall calculate on a monthly basis the interest that has accrued on any outstanding balance of the Principal Amount Issued ("**Interest**"). The holder of the Bonds is entitled to payment of the Principal Amount Issued and the Interest accrued thereon, semi-annually, and the City shall enter such amounts of the Bonds then outstanding on its records maintained for the Bonds, all in accordance with the Bond Ordinance. More specifically, in such months in which a portion of the Interest or

Principal Amount Issued is paid to the registered owner thereof, pursuant to the provisions of this Agreement, the City shall enter on its records the amount paid toward the Principal Amount Issued and the Interest that has accrued on the Bonds as "**Principal Amount Paid**" and "**Interest Amount Paid**" and shall deduct such amount first from the Interest and then from the Principal Amount Issued of the Bonds on its records. The City shall deliver monthly statements of the Bond records to the Developer and Bond Purchaser, if other than Developer, by mail or electronic means in a similar form to that shown in Exhibit "I".

C. The stated maturity date of a Bond shall be no later than twenty (20) years from issuance and in no event later than December 31, 2041. Each Bond shall be owned by the Developer or Developer's Lender ("**Bond Purchaser**"). The Bonds shall specifically provide that any shortfall in anticipated Tax Revenues for any reason whatsoever, specifically including a decline in taxable receipts within the Enhanced Employment Area, shall be borne entirely by the Bond Purchaser without recourse of any kind against the City and that any outstanding balance remaining on the Bond at the Occupation Tax Termination Date shall be forgiven by the Bond Purchaser. The City and Developer agree that the City Finance Director on behalf of the City, with reasonable communication and cooperation with the Developer, shall have the authority to determine all the other necessary and reasonable details and mechanics of the Bonds and Tax Revenues. All determinations made by the City's Finance Director with respect to the issuance of the bonds described herein shall be subject to approval of the Mayor.

Section 504. Draw-down of Bonds. The draw-down of principal is for the funding of the eligible Authorized Work for the Public Improvements but not to exceed the Public Improvement Cost Estimate as described herein. In order to permit draw-down of principal on

the Bonds, the Developer shall submit to the City evidence of the costs of the Authorized Work for the Public Improvements to the City supported by receipts, invoices, proof of payment or other documentation satisfactory to the City to verify the expenditures were eligible costs for Authorized Work. The City shall approve or reject the same with reasons stated based upon its review of the documentation within fourteen (14) days of receipt of the same but only if inconsistent with this Agreement.

Section 505. Repayment for Bonds. The City shall, to the extent allowed by law, and then only to the extent funds are lawfully available from Tax Revenues from the issuance date of the Bonds to the Occupation Tax Termination Date, repay the Bonds with interest at a rate per annum of eight and one-half percent (8.5%). The indebtedness created by the Bonds in conjunction with this Project (including interest) shall be paid by the City solely from Tax Revenues and shall not constitute a general obligation or debt of the City.

Section 506. Repayment of Maintenance Obligations. In order to carry out Maintenance of the Public Parking Garage and as an inducement for the Developer to Maintain the Public Parking Garage, the City agrees, to the extent allowed by law and then only to the extent Tax Revenues are lawfully available from the occupation taxes until the Occupation Tax Termination Date, to pledge the Tax Revenue and reimburse the Developer no more often than monthly for the cost of the Maintenance as Authorized Work and described in Article IV, but not to exceed total cumulative maintenance costs of Four Million, Eight Hundred and Sixty-Seven Thousand and No/100 Dollars ($4,867,000.00) ("**Maintenance Obligations")** as shown in the Uses and Sources of Funds in Exhibit "E". The Maintenance Obligation assumes a three percent (3.0%) annual increase in Maintenance costs.

A. In the event the outstanding indebtedness of the Bonds are paid in full during the First Term, the City and Developer agree to estimate the remaining reasonable and necessary

Maintenance Obligations amount necessary to fund the Maintenance Obligations through December 31, 2041 ("**Maintenance Reserve Estimate**"). Thereafter, the City agrees to create a Maintenance reserve account ("**Maintenance Reserve Account**") and to the extent Tax Revenues are lawfully available, to fund the Maintenance Reserve Account from Tax Revenues up to the lesser of (i) the Maintenance Reserve Estimate or (ii) total cumulative maintenance costs of Four Million, Eight Hundred and Sixty-Seven Thousand and No/100 Dollars ($4,867,000.00) minus the amount that the City has previously funded for Maintenance Obligations.

B. The Developer shall submit no more often than monthly requests for any Maintenance Obligations reimbursement to the City supported by receipts, invoices, proof of payment or other documentation satisfactory to the City to verify the obligations and expenditures were eligible Maintenance Obligations. The City shall approve or reject the same with reasons stated based up its review of the documentation within fourteen (14) days of receipt of the same. After approval of the request for reimbursement by the City, the City shall promptly reimburse the Developer from available Tax Revenues or the Maintenance Reserve Account. The City shall deliver monthly Maintenance Obligations statements of these records to the Developer by mail or electronic means in a similar form to that shown in Exhibit "I". Any ineligible Maintenance Obligations shall immediately be repaid by Developer to the City.

C. The City is duly authorized under all applicable laws to pledge and grant a security interest in the Tax Revenue in the manner and to the extent provided in this Agreement. The Tax Revenue so pledged is and will be free and clear of any pledge, lien, charge, security interest or encumbrance, except for (i) the senior pledge of the First Priority and Second Priority items described below in Section 507 and (ii) the junior pledge and security interest

stated in the Bond Ordinance and the Fourth Priority items described in Section 507 and all corporate action on the part of the City to that end has been duly and validly taken. The Maintenance Obligations described herein are and will be valid obligations of the City in accordance with its terms and the terms of this Agreement. The City shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of and security interest granted with respect to the Tax Revenue pledged under this Agreement and all the rights of the Developer under this Agreement against all claims and demands of all persons whomsoever.

Section 507. Use of Tax Revenues. In order to support development in the Enhanced Employment Area and as an inducement for the Developer to construct the Private Improvements and Public Improvements and carry out the Maintenance of the Public Improvements, the City agrees, to the extent allowed by law and then only to the extent Tax Revenues are lawfully available to fund the reimbursement of Maintenance Obligations and repayment of the Bonds based upon the following funding priorities:

A. FIRST PRIORITY: Reimburse the City and Developer for the issuance costs of the Bonds incurred at the time of issuance of the Bonds, including bond counsel fees, and financing costs of issuing the Bonds, including any capitalized interest or reserves; and costs for title insurance commitment and title insurance policy for the Public Parking Garage (collectively "**Issuance Costs")**;

B. SECOND PRIORITY: Reimburse the City no more often than monthly for the administrative costs ("**Administrative Costs**") for the City to implement (on an annual or prorated year), collect, process and administer the Occupation Tax and Tax Revenues pursuant to the requirements of this Agreement. The City and Developer agree that one percent (1%) of the Tax Revenues generated by the occupation tax will be paid to the

City, and that amount shall be adequate, to compensate the City for its Administrative Costs described herein, including, but not limited to labor costs, eligible benefits, equipment, software, promulgated regulations, City and State of Nebraska Department of Revenue accounting, procedures, reports, audits, review and accountability and reporting measures. The City shall retain said 1% of Tax Revenues on a monthly basis for so long as the occupation tax remains in effect;

C. THIRD PRIORITY: Reimburse Developer no more often than monthly to the fullest extent possible for the Maintenance Obligations described in Section 506 and reimburse the City for any inspections in Section 405 and the City's insurance expenses described in Section 407; and

D. FOURTH PRIORITY: Payment of the principal and interest to the fullest extent possible owed to the Bond Purchaser as described in Sections 503 through 505 no less often than every six months (June and December), including the earned interest by the City on the net Tax Revenues received and cumulated between six month payment periods.

Section 508 Deficiency in Tax Revenues. Any shortfall in anticipated Tax Revenues to fund the Maintenance Obligations for any reason whatsoever, specifically including a decline in taxable receipts within the Enhanced Employment Area shall be borne entirely by the Developer without recourse of any kind against the City. Any shortfall in anticipated Tax Revenues to fund the Bonds for any reason whatsoever, specifically including a decline in taxable receipts within the Enhanced Employment Area shall be borne entirely by the Bond Purchaser without recourse of any kind against the City. In the event the Maintenance Obligations are not paid in full by the Occupation Tax Termination Date, any remaining indebtedness for Maintenance Obligations shall be forgiven by the Developer. In the event the Bonds are not retired in full in the First Term, any remaining Bond indebtedness shall be forgiven by the Bond Purchaser.

Section 509. Agreement to Pay Occupation Taxes. Developer shall include a requirement in all of its tenant leases at SouthPointe executed after the date of this Agreement to pay all occupation taxes imposed under the Occupation Tax Ordinance prior to the time the taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency shall remain in effect until the Occupation Tax Termination Date.

Section 510. City Not Liable for Deficiency. Any repayment on the Maintenance Obligations and Bonds (including interest) to be paid from Tax Revenues are limited liabilities of the City payable solely from the Tax Revenues and shall not give rise to a pecuniary liability upon the City and charge against its general credit or taxing powers. City shall use commercially reasonable efforts to attempt to collect the Tax Revenues in the Enhanced Employment Area, but the City shall not be liable for any deficiency or shortfall in the anticipated collection of the occupation tax revenue collected in the Enhanced Employment Area.

Section 511. Landowners Consent. Landowners hereby covenants and consents with respect to the designation of the Landowners Property as a portion of an enhanced employment area as

that term is described in the Community Development Law, and such covenant and consent shall be binding upon all future owners of the Landowners Property until the Occupation Tax Termination Date.

Section 512. Termination. Notwithstanding any contrary provision, the occupation tax upon the businesses within the Enhanced Employment Area shall cease upon the Occupation Tax Termination Date. In addition, the provisions of Sections 503 through 505 of this Agreement shall terminate upon the expiration of the First Term and the provisions of Sections 501, 502, and 506 through 511 of this Agreement shall terminate upon the Occupation Tax Termination Date.

ARTICLE VI.

DEFINITIONS

Section 601. Definitions.

A. Holder. For the purpose of this Agreement, the term "holder" in reference to a mortgage (defined below) shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the mortgagee.

B. Mortgage. For the purpose of this Agreement, the term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

C. Completion. For purposes of this Agreement, the term "completion" or "complete" shall mean substantial completion of the required improvements.

D. Substantial completion. For purposes of this Agreement, the term "substantial completion" is the stage in the construction progress of the improvements when they are sufficiently complete in accordance with the Exterior Drawings and when a party has

secured a temporary or permanent certificate of occupancy so that the intended party can occupy or utilize the improvements for their intended use. With respect to the commercial component of the Private Improvements, substantial completion need not include the tenant finish improvements ultimately required for occupancy by such tenants.

E. Permitted Exceptions. For purposes of this Agreement, the term "Permitted Exceptions" shall mean any matters set forth in a title insurance commitment or survey to which the future grantee does not timely object.

ARTICLE VII.

SECURITY AND RESTRICTIONS

Section 701. Collection of Taxes. Developer agrees to use its best commercially reasonable efforts to provide assistance to the City in collecting all occupation taxes levied within the Enhanced Employment Area at such time as any of Developer's tenants refuse to pay the occupation tax. Assistance, for purposes of this section, includes, but is not limited to providing contact information for Developer's tenants, including terms in future leases notifying a prospective tenant of the requirement to pay occupation taxes and making payment of such occupation taxes a condition of the lease, and other steps that may assist the City in its collection of occupation taxes.

Section 702. Property Insurance Covenant. During the First Term, Developer shall include by restrictive covenant, or other acceptable method, an enforceable obligation on Developer or other owner or tenant in possession of the Private Improvements (during construction and after completed) to maintain property insurance as required by Developer's lender.

Section 703. Condemnation. In the event that during the First Term all or a substantial portion of the Developers Property within the Enhanced Employment Area is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest, would not be obligated to pay the occupation taxes upon that portion condemned, the City shall be entitled, to the extent permitted by law, to claim against the condemning authority an interest in such property equal to the amount of principal and interest that remains outstanding on the Bonds times a Percentage at the time any award is made by the Board of Appraisers in such condemnation. The "**Percentage**" shall be determined by the numerator being the historical amount of occupation taxes collected from the condemned property and the denominator shall be the historical amount of occupation taxes collected from the Enhanced Employment Area.

Section 704. Termination of Provisions. The provisions of this Article VII shall terminate upon the end of the First Term.

ARTICLE VIII.

REMEDIES

Section 801. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any terms or conditions touching or concerning the obligations and duties assumed herein by the City, Developer, or any successors to such parties, such party (or successor) shall, upon written notice from the aggrieved party, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such thirty (30) day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided

above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Developer shall be deemed to be a curing by Developer.

Section 802. Other Rights and Remedies; No Waiver by Delay. The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

Section 803. Delay in Performance for Causes Beyond Control of Party ("Force Majeure"). For the purpose of any provisions of this Agreement, the City and Developer or their successors, or permitted assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Developer, contractors or subcontractors excepted); it being the purpose and intent of this section that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay, provided that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall, within twenty (20) days after the beginning of any such delay, notify the other party thereof, in writing, and of the cause(s) thereof.

Section 804. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement touching or concerning the Authorized Work shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

ARTICLE IX.

REPRESENTATIONS

Section 901. Development of Project. Developer represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of continued development of the Developer Property and not for the purpose of making the Developer Property available for sale.

Section 902. Restrictions on Assignments of Rights or Obligations. Developer represents and agrees that prior to issuance of the Developer's Certificate of Completion of Improvements by the City, there shall be no sale or transfer of Developer or assignment of its rights or obligations under this Agreement to any party, other than to a related entity, without the prior written approval of the City, other than mortgages and involuntary transfers by reason of death, insolvency, or incompetency. The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer;

B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds of Lancaster County, shall, for itself and its successors and assigns, and for the benefit of the City, have expressly assumed all of the obligations of Developer under this Agreement and agreed to be subject to all of the conditions and restrictions to which Developer is subject. No transfer of, or change with respect to ownership in Developer's interest in the Private Improvements or SouthPointe generally or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Private Improvements, Public Improvements, and/or SouthPointe generally had there been no such transfer or change;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to Developer in writing; and

D. Developer and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes the Private Improvements and the Authorized Work; provided that in the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Developer of any of its obligations with respect to the construction of the Private Improvements or the Public Improvements.

Nothing herein contained shall prohibit the Developer from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by its terms only, become

effective after the City has issued a Developer's Certificate of Completion of Public Parking Garage. The restrictions set forth in this section shall automatically terminate and no longer be binding on the Developer upon the issuance of the Developer's Certificate of Completion of Public Parking Garage by the City.

Section 903. <u>Restrictions on Assignments of Article IV Responsibilities</u>. Developer represents and agrees that during the First Term and Second Term, there shall be no assignment of Developer's operator rights or obligations under Article IV of this Agreement to any party, other than to a related entity, without the prior written approval of the City, other than mortgages and involuntary transfers by reason of death, insolvency, or incompetency. The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in Article IV of this Agreement by Developer;

B. Any proposed assignee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds of Lancaster County, shall, for itself and its successors and assigns, and for the benefit of the City, have expressly assumed all of the obligations of Developer under Article IV of this Agreement and agreed to be subject to all of the conditions and restrictions to which Developer is subject. No assignment, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from Article IV of this Agreement had there been no such assignment;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the assignment; and if disapproved by the City, its disapproval shall be indicated to Developer in writing; and

D. Developer and its assignee shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes the operation and Maintenance of the Public Improvements and the Authorized Work.

Nothing herein contained shall prohibit the Developer from entering into any agreement to assign or other agreement as to assignment of any interest in Article IV if such agreement can, by its terms only, become effective after the City has granted its approval.

Section 904 <u>Change in Scope, Termination of Project</u>. City and Developer agree that any material change in the scope of the Project described herein, including termination of the entire Project for any reason, except as specifically set forth herein, shall require mutual written agreement considering the established Sources and Uses of Funds for the Project and, if applicable, the costs incurred by the respective parties to date. Notwithstanding the foregoing, in the event that Developer is unable through no fault of Developer to obtain the necessary governmental approvals and permits from the City prior to the construction start of the Private Improvements or the Start Date to construct the Public Improvements as reflected on the Project Schematic Drawings, Developer may terminate this Development Agreement by delivering written notice to the City.

ARTICLE X.

CONVEYANCE OF THE GARAGE AREA TO DEVELOPER

Section 1001. Transfer to the Developer. On the Useful Life Date of the Parking Garage, or another date mutually agreeable to the City and Developer, the City shall convey the Garage area and Public Improvements to the Developer for One Dollar ($1.00).

Section 1002. **Developer Option**. Developer, shall have the right and option to purchase the Public Improvements from the City at any time from and after the Transfer Date. Developer shall exercise its option by giving the City written notice of the Developer's election ("**Exercise Date**") to exercise its option and specifying the date, time and place of closing, which date ("**Option Closing Date**") shall be neither earlier than ninety (90) days nor later than one hundred and fifty (150) days after the notice is given.

A. Qualified Appraiser. The term "**Qualified Appraiser**" shall mean an MAI appraiser who is independent and licensed, with at least ten (10) years' experience appraising commercial properties in the Lincoln, Nebraska or Omaha, Nebraska areas.

B. Purchase Price. The Purchase Price to be paid by Developer shall be the greater of (i) the outstanding balance of any Bond indebtedness or (ii) the "F**air Market Value**" of the Public Improvement on the Exercise Date, which shall be determined by a Qualified Appraiser mutually agreed to by the City and Developer less: (a) the land value of the Garage Area, (b) the outstanding balance of any Maintenance Obligations owed to the Developer, (c) the outstanding balance of any Bond indebtedness owed to the Bond Purchaser, (d) any outstanding balance that has been or will be forgiven of any indebtedness created pursuant to this Agreement in the event the Maintenance Obligations as described in Section 506 are not paid in full by the Closing Date and (e) any outstanding balance that has been or will be forgiven of any indebtedness created

pursuant to this Agreement in the event the Bonds are not retired in full by the Closing Date. If the parties do not agree as to the Qualified Appraiser within 30 days after the Exercise Date, then each party shall choose a Qualified Appraiser who shall make such determination of the Fair Market Value of the Public Improvement on the Exercise Date and submit the same to the other party (together with the information forming the basis for such determination) within seventy-five (75) days after the Exercise Date (with each party paying the fee for its own Appraiser), but if the two Qualified Appraisers do not agree as to the Fair Market Value of the Garage Option Property on the Exercise Date within fifteen (15) days thereafter, the two Qualified Appraisers shall promptly jointly select a third Qualified Appraiser. Within 30 days after his or her appointment, the third Qualified Appraiser shall (a) select one of the two initially submitted appraisals as the Fair Market Value of the Garage Option Property on the Exercise Date and such selection shall be binding upon the parties or (b) determine a Fair Market Value that is between the two initially submitted appraisals, and such value shall be binding upon the parties. The Purchase Price shall be subject to such adjustments and prorations as are customary.

C. Occupation Tax Ordinance. On or after the Closing Date, the City shall have the right to terminate the Occupation Tax Ordinance.

Section 1003. The transfer to Developer described in Section 1001 and 1002 shall be subject to the following conditions and terms:

A. Closing Date. The Useful Life Date and Option Closing Date are sometimes referred herein as "**Closing Date**".

B. Title Examination. Prior to thirty (30) days before the Closing Date, the Developer shall have the option to obtain for itself a title insurance commitment and forward to the City written notice of any objection (i) to the marketability of title to the Garage Area and Public

Improvements or (ii) to restrictions of record which unreasonably affect the Developer's intended uses of the Garage Area for parking or commercial purposes (collectively "**Title Defect**"). Any matter not objected to in said time, shall be deemed waived and shall be considered as Permitted Exceptions. After receiving a written notice of such Title Defect from the Developer, the City shall have a reasonable time to cure such Title Defect or have the title insurance company insure over such Title Defect, at the City's expense. Developer, at its expense, may purchase a title insurance policy.

C. Affidavit. City shall execute an owner's affidavit on the title insurance company's form (i) representing that there are no unpaid special assessments levied against the Garage Area as of the Closing Date, (ii) representing that there are no outstanding unpaid bills for labor, material, or utilities furnished to the Public Parking Garage improvements as of the Closing Date, and (iii) agreeing to indemnify and hold harmless the Developer and title insurance company against all payments and expenses, including court costs and attorney's fees to the extent permitted by law, if the above representations prove inaccurate in whole or in part.

D. Title and Possession**.** The conveyance and transfer of the Garage Area on the Closing Date shall be marketable fee simple title conveyed and transferred by a special warranty deed, free and clear of all liens, assessments, taxes, restrictions, and covenants, but subject to Permitted Exceptions. The conveyance of the Easement Area on the Closing Date shall be conveyed and transferred by quitclaim deed and subject to Permitted Exceptions. The conveyance and transfer of the Public Improvements shall be conveyed by warranty bill of sale, free and clear of all liens, security interest, assessments, taxes, restrictions, and covenants, but subject to Permitted Exceptions. Possession shall occur upon the closing of the Garage Area and Public Improvements.

E. Property Taxes and Assessments. All real and personal property taxes, if any, for the year in which the Closing Date occurs shall be prorated to the Closing Date, and all prior years' taxes, interest, and other charges, if any, shall either be exempt or paid in full by the City at or prior to the Closing Date. Title hereunder shall be delivered free and clear of all special assessments levied or assessed or special assessment districts that have been created and ordered constructed, as of the Closing Date.

F. Closing Costs. The City shall pay the Nebraska Documentary Stamp tax amount, if not exempt. The Developer shall pay for recording of the warranty deed.

G. No Real Estate Commissions. The parties agree that no party hereto shall be liable for any real estate broker's commission, agent's commission, or finder's fee in connection with the transaction contemplated by this Agreement; and each party warrants to the other parties that it shall indemnify and hold the other parties harmless for any and all claims of any person whomsoever for brokers' or agents' commissions or finder fees making claim through it in connection with the transaction.

ARTICLE XI

MISCELLANEOUS

Section 1101. Conflicts of Interest; City Representatives Not Individually Liable. No official or employee of the City shall be personally liable to Developer, any successors in interest or transferees of Developer, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Developer, its successors or transferees, or on any obligations under the terms of this Agreement.

Section 1102. Persons Authorized to Issue Approvals. For purposes of this Agreement and the approvals and disapprovals required hereunder, Developer shall be entitled to rely on the

written approval or disapproval of the City Council, the Mayor or the Finance Director as authorized in this Agreement, as constituting the approval or disapproval required by the City. Until City receives further written notice from Developer, City shall be entitled to rely on the written approval of Jeff McMahon, Developer's Managing Partner, Architecture & Engineering, as constituting the approval or disapproval of Developer.

Section 1103. <u>Equal Employment Opportunity</u>. Developer, for itself and its successors and transferees, agrees that during the construction and operation of the Project Improvements provided for in this Agreement, Developer will not discriminate against any employee or applicant for employment for the Developer because of race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Developer will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Section 1104. <u>Notices and Demands</u>. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or express delivery service or delivered personally as follows:

If to the City:	Mayor 555 South 10th Street Lincoln, Nebraska 68508
With a copy to:	City Attorney 555 South 10th Street

	Lincoln, Nebraska 68508
If to Developer:	R.E.D. CAPITAL MANAGEMENT L.L.C. Attn: Jeff McMahon 7500 College Blvd., Suite 750 Overland Park, KS 66210
With a copy to:	Seacrest & Kalkowski, PC, LLO Attn: Kent Seacrest 1111 Lincoln Mall, Suite 350 Lincoln, NE 68508
If to Powder Mountain	POWDER MOUNTAIN, L.L.C., c/o RED Zermatt SouthPointe II, LLC, Manager Attn: President 7500 College Blvd., Suite 750 Overland Park, KS 66210
With a copy to:	Mr. James M. Kirkland Kuckelman Torline Kirkland & Lewis 10740 Nall Ave Ste 250 Overland Park, Kansas 66211-1367

or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this section.

Section 1105. <u>Unique and Noncompetitive</u>. Notwithstanding any contrary provisions herein, some of the Public Improvements will include design costs, improvements and construction that the City determines to be unique and not-competitive or otherwise involving professional services to the extent the same are required to coordinate, match and integrate the Public Improvements into the Project Improvements. Developer shall timely submit architect, engineer or other professional designer estimates or contractor's competitive bids for said Public Improvements in advance of requesting payment for the same to enable the City to obtain an independent review of the same by a qualified professional or contractor. The City shall approve or reject said cost estimates based on the review within ten (10) days of receipt of the same.

Where reasonable and appropriate, Developer shall utilize unit price or itemized contracts specifically showing the eligible items or quantities prior to letting or entering into the same. Overhead, overtime, incentive, office, mobilization, administration or similar generalized charges shall be allowed only as authorized by the City in advance of incurring the same. Developer agrees to assist and make any and all pertinent documents available for inspection and copying by the City or its auditors in support of the same.

Section 1106. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

Section 1107. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained herein nor any acts of any party shall be deemed or construed by the Developer or City or by any third person to create the relationship of partnership or of joint venture or of any association between the Developer and City, other than contractual relationships stated in this Agreement.

Section 1108. Developer's Right to Effectuate Exchange. The City acknowledges Buyer may undertake an Internal Revenue Code §1031 tax deferred exchange(s) of Developer's interest in the Garage Lot, and Developer's rights and obligations under this Agreement may be assigned to facilitate such an exchange(s). City agrees to cooperate with the Developer and Developer's assignee to enable Developer to qualify for such exchange(s); provided, however, such cooperation shall not require the City to incur any additional costs or liability and the City shall be able to realize all intended benefits of this Agreement.

Section 1109. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

Section 1110. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 1111. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

Section 1112. Further Assurances. Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

Section 1113. Construction. Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

Section 1114. Air Rights and Easement Understanding. In order to implement the Public Improvements and Private Improvements within SouthPointe and to create the Garage Lot, and

Retail Space Lot as buildable lots of record and to create the Garage Easement, the Developer will need to prepare and submit for the City's approval an air-rights subdivision and Easement Agreement for the Garage Easement. As part of the City's approval of an air-rights subdivision and the Easement Agreement, the Developer and City desire to express their understanding of the agreements, easements, licenses and restrictions necessary as described on Exhibit "J" to create, design, construct and Maintain the Public Improvements on the Garage Area and the Private Improvements on the Retail Space Lot and Easement Area. The Garage Easement shall contain a provision allowing the Developer to terminate and vacate without additional consideration the west section of Garage Easement abutting Lot 9 and shown on Exhibit "C" and its related improvements in the event the tenant of Lot 9 elects to expand its theater facilities.

Section 1115. Contingencies. Developer's performance of this Agreement is contingent upon the following:

A. Plat: Approval of the final plat for the Garage Lot, Scheels Lot and Retail Space Lot by the City on or before September 30, 2016, with terms and conditions acceptable to the Developer and Powder Mountain.

B. Scheels Lease: Approval and execution of a lease or lease amendment between Developer, Powder Mountain and Scheels on or before September 30, 2016, with terms and conditions acceptable to Developer, Powder Mountain and Scheels.

In the event the contingencies set forth in this section are not satisfied or waived by the Developer and Powder Mountain by the contingency deadlines described above, then the Developer and Powder Mountain shall have the option to terminate this Agreement, including the executed Exhibits hereto, by delivering written notice to the City by the contingency deadlines described above, or mutual extension thereof by the City, Developer and Powder

Mountain.

Section 1116. Recording. The City and Developer have executed the Memorandum of Development Agreement (SouthPointe Pavilions Reconfiguration), which is attached hereto as Exhibit "K". The City shall record the Memorandum of Development Agreement (SouthPointe Pavilions Reconfiguration) with the Lancaster County Register of Deeds to be indexed against the Developers Property.

Section 1117. Exhibits. The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

1. Exhibit "A"--SouthPointe Legal Description
2. Exhibit "B"—Developer Property and Powder Mountain Property Legal Descriptions
3. Exhibit "C"—Site Plan
4. Exhibit "D"-- Enhanced Employment Area
5. Exhibit "E" – Uses and Sources of Funds
6. Exhibit "F"—Project Schematic Drawings
7. Exhibit "G"-- Developer's Certificate of Completion of Improvements
8. Exhibit "H"—Public Parking Garage Rules and Regulations
9. Exhibit "I"--Form of Bond Ledger and Maintenance Obligation Ledger
10. Exhibit "J"—Air Rights Understanding
11. Exhibit "K"--Memorandum of Development Agreement (SouthPointe Pavilions Reconfiguration)

[SIGNATURE PAGES TO FOLLOW]

Executed by the City as of this _____ day of _____, 2016.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by CHRIS BEUTLER, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

(Seal)

_____
Notary Public

Executed by Developer as of this _____ day of _____, 2016.

R.E.D. CAPITAL MANAGEMENT L.L.C.,
a Kansas limited liability company

By:_____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, _____ of R.E.D. Capital Management L.L.C., a Kansas limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Executed by Powder Mountain as of this _____ day of _____, 2016.

POWDER MOUNTAIN, L.L.C., a Nebraska limited liability company

By: RED Zermatt SouthPointe II, LLC, a Delaware limited liability company, its Manager

By: _____
Steven M. Maun, President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Steven M. Maun, President of RED Zermatt SouthPointe II, LLC, a Delaware limited liability company, as Manager of POWDER MOUNTAIN, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Exhibit "A"
SouthPointe Legal Description

LEGAL DESCRIPTION
NORTHEAST CORNER OF
S. 27TH & PINE LAKE ROAD

A LEGAL DESCRIPTION OF A TRACT OF LAND COMPOSED OF LOT 19 I.T., AND A PORTION OF RIGHT-OF-WAY FOR PINE LAKE ROAD (TO BE VACATED) ALL LOCATED IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., AND OUTLOT "B" SOUTHERN HILLS 3RD ADDITION AND A PORTION OF RIGHT-OF-WAY FOR PINE LAKE ROAD (TO BE VACATED) ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 19 I.T., SAID POINT BEING 50.00 FEET NORTH OF THE CENTER LINE OF RIGHT-OF-WAY FOR PINE LAKE ROAD AND 54.47 FEET EAST OF THE WEST LINE OF SAID SECTION 19, SAID POINT BEING THE TRUE POINT OF BEGINNING, THENCE ON AN ASSUMED BEARING OF NORTH 2 DEGREES 22 MINUTES 38 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 19 I.T., A DISTANCE OF 109.52 FEET TO A POINT OF DEFLECTION, SAID POINT BEING 50.00 FEET EAST OF THE WEST LINE OF SAID SECTION 19, THENCE NORTH 0 DEGREES 02 MINUTES 24 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 19 I.T., SAID LINE BEING 50.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SECTION 19, A DISTANCE OF 100.00 FEET TO A POINT OF DEFLECTION, THENCE NORTH 2 DEGREES 41 MINUTES 52 SECONDS EAST, A DISTANCE OF 190.27 FEET TO THE NORTHWEST CORNER OF SAID LOT 19 I.T., SAID POINT BEING 59.09 FEET EAST OF THE WEST LINE OF SAID SECTION 19, AND 50.00 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 19, THENCE NORTH 5 DEGREES 11 MINUTES 44 SECONDS WEST, A DISTANCE OF 100.49 FEET TO THE SOUTHWEST CORNER OF SAID OUTLOT "B" SOUTHERN HILLS 3RD ADDITION, SAID POINT BEING 50.00 FEET EAST OF THE WEST LINE OF SAID SECTION 18, AND 50.00 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 18, THENCE NORTH 0 DEGREES 01 MINUTES 36 SECONDS EAST ALONG THE WEST LINE OF SAID OUTLOT "B", SAID LINE BEING 50.00 FEET EAST OF THE WEST LINE OF SAID SECTION 18, A DISTANCE OF 1065.74 FEET TO THE NORTHWEST CORNER OF SAID OUTLOT "B", THENCE SOUTH 89 DEGREES 58 MINUTES 24 SECONDS EAST ALONG THE NORTH LINE OF SAID OUTLOT "B", A DISTANCE OF 280.00 FEET TO A POINT OF DEFLECTION, THENCE NORTH 53 DEGREES 04 MINUTES 30 SECONDS EAST ALONG THE NORTHWEST LINE OF SAID OUTLOT "B", A DISTANCE OF 122.64 FEET TO A POINT OF DEFLECTION, THENCE NORTH 0 DEGREES 01 MINUTES 35 SECONDS EAST ALONG THE WEST LINE OF SAID OUTLOT "B", A DISTANCE OF 128.86 FEET TO THE NORTHWEST CORNER OF SAID OUTLOT "B", THENCE SOUTH 89 DEGREES 58 MINUTES 24 SECONDS EAST ALONG THE NORTH LINE OF SAID OUTLOT "B", A DISTANCE OF 935.03 FEET TO THE NORTHEAST CORNER OF SAID OUTLOT "B", THENCE SOUTH 8 DEGREES 23 MINUTES 16 SECONDS EAST ALONG THE EAST LINE OF SAID OUTLOT "B", A DISTANCE OF 87.80 FEET TO A POINT OF DEFLECTION, THENCE SOUTH 25 DEGREES 13 MINUTES 01 SECONDS EAST ALONG THE EAST LINE OF SAID OUTLOT "B", A DISTANCE OF 87.80 FEET TO A POINT OF DEFLECTION, THENCE SOUTH 42 DEGREES 02 MINUTES 45 SECONDS EAST ALONG THE NORTHEAST LINE OF SAID OUTLOT "B", A DISTANCE OF 87.80 FEET TO A POINT OF DEFLECTION, THENCE SOUTH 58 DEGREES 52 MINUTES 29 SECONDS EAST ALONG THE NORTHEAST LINE OF SAID OUTLOT "B", A DISTANCE OF 87.80 FEET TO A POINT OF DEFLECTION, THENCE SOUTH 75 DEGREES 42 MINUTES 25 SECONDS EAST ALONG THE NORTHEAST LINE OF SAID OUTLOT "B", A DISTANCE OF 87.83 FEET TO A POINT OF DEFLECTION, THENCE SOUTH 87 DEGREES 02 MINUTES 56 SECONDS EAST ALONG THE NORTH LINE OF SAID OUTLOT "B", A DISTANCE OF 30.61 FEET TO A POINT OF DEFLECTION, THENCE SOUTH 89 DEGREES 58 MINUTES 24 SECONDS EAST ALONG THE NORTH LINE OF SAID OUTLOT "B", A DISTANCE OF 791.85 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SOUTH 32ND STREET, THENCE AROUND A CURVE IN A CLOCKWISE DIRECTION HAVING A DELTA ANGLE OF 10 DEGREES 18 MINUTES 53 SECONDS, AN ARC DISTANCE OF 24.30 FEET, A RADIUS OF 135.00 FEET, AND A CHORD OF SOUTH 8 DEGREES 01 MINUTES 12 SECONDS WEST ALONG THE EAST LINE OF SAID OUTLOT "B", SAID LINE BEING THE WEST RIGHT-OF-WAY LINE OF SOUTH 32ND STREET, A DISTANCE OF 24.27 FEET TO A POINT OF TANGENCY, THENCE SOUTH 76 DEGREES 49 MINUTES 21 SECONDS EAST ALONG THE NORTH LINE OF SAID OUTLOT "B", SAID LINE BEING THE SOUTH RIGHT-OF-WAY LINE OF SOUTH 32ND STREET, A DISTANCE OF 80.00 FEET TO A POINT OF CURVATURE, THENCE AROUND A CURVE IN A COUNTERCLOCKWISE DIRECTION HAVING A DELTA ANGLE OF 07 DEGREES 59 MINUTES 45 SECONDS, AN ARC DISTANCE OF 30.00 FEET, A RADIUS OF 215.00 FEET, AND A CHORD OF NORTH 9 DEGREES 10 MINUTES 46 SECONDS EAST ALONG THE WEST LINE OF SAID OUTLOT "B", SAID LINE BEING THE EAST RIGHT-OF-WAY LINE OF SOUTH 32ND STREET, A DISTANCE OF 29.98 FEET TO A POINT OF TANGENCY, THENCE SOUTH 89 DEGREES 46 MINUTES 17 SECONDS EAST ALONG THE NORTH LINE OF SAID OUTLOT "B", A DISTANCE OF 115.80 FEET TO THE NORTHEAST CORNER OF SAID OUTLOT "B", SAID POINT BEING ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 18, THENCE SOUTH 0 DEGREES 13 MINUTES 43 SECONDS WEST ALONG THE EAST LINE OF SAID OUTLOT "B", SAID LINE BEING THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 18, A DISTANCE OF 975.00 FEET TO THE SOUTH EAST CORNER OF SAID OUTLOT "B", SAID POINT BEING 50.00 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 18, THENCE NORTH 89 DEGREES 32 MINUTES 18 SECONDS WEST ALONG THE SOUTH LINE OF SAID OUTLOT "B", SAID LINE BEING 50.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 18 , A DISTANCE OF 977.87 FEET TO A POINT OF CURVATURE, THENCE AROUND A CURVE IN A COUNTERCLOCKWISE DIRECTION HAVING A DELTA ANGLE OF 29 DEGREES 08 MINUTES 00 SECONDS, AN ARC DISTANCE OF 533.89 FEET, A RADIUS OF 1050.00 FEET, AND A CHORD OF SOUTH 75 DEGREES 53 MINUTES 43 SECONDS WEST ALONG THE SOUTHEAST LINE OF SAID LOT 19 I.T., SAID LINE BEING 50.00 FEET NORTHWEST OF AND PARALLEL WITH THE CENTER LINE OF RIGHT-OF-WAY FOR PINE LAKE ROAD, A DISTANCE OF 528.16 FEET TO A POINT OF TANGENCY, THENCE SOUTH 61 DEGREES 19 MINUTES 43 SECONDS WEST ALONG THE SOUTHEAST LINE OF SAID LOT 19 I.T., SAID LINE BEING 50.00 FEET NORTHWEST OF AND PARALLEL WITH THE CENTER LINE OF RIGHT-OF-WAY FOR PINE LAKE ROAD, A DISTANCE OF 502.67 FEET TO A POINT OF CURVATURE, THENCE AROUND A CURVE IN A CLOCKWISE DIRECTION HAVING A DELTA ANGLE OF 28 DEGREES 37 MINUTES 53 SECONDS, AN ARC DISTANCE OF 474.73 FEET, A RADIUS OF 950.00 FEET, AND A CHORD OF SOUTH 75 DEGREES 38 MINUTES 40 SECONDS WEST ALONG THE SOUTHEAST LINE OF SAID LOT 19 I.T., SAID LINE BEING 50.00 FEET NORTHWEST OF THE CENTER LINE OF RIGHT-OF-WAY FOR PINE LAKE ROAD, A DISTANCE OF 469.80 FEET TO A POINT OF TANGENCY, THENCE SOUTH 89 DEGREES 57 MINUTES 36 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 19 I.T., SAID LINE BEING 50.00 FEET NORTH OF AND PARALLEL WITH THE CENTER LINE OF RIGHT-OF-WAY FOR PINE LAKE ROAD, A DISTANCE OF 205.53 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 76.33 ACRES MORE OR LESS.

Exhibit "B"
Legal Description
Developer Property, Powder Mountain Property,
Garage Lot and Garage Easement

Developer Property:

A. Retail Space Lot (Lot 17): See below

B. Western portion of the Scheels Lot (Lot 16): See below

Powder Mountain Property:

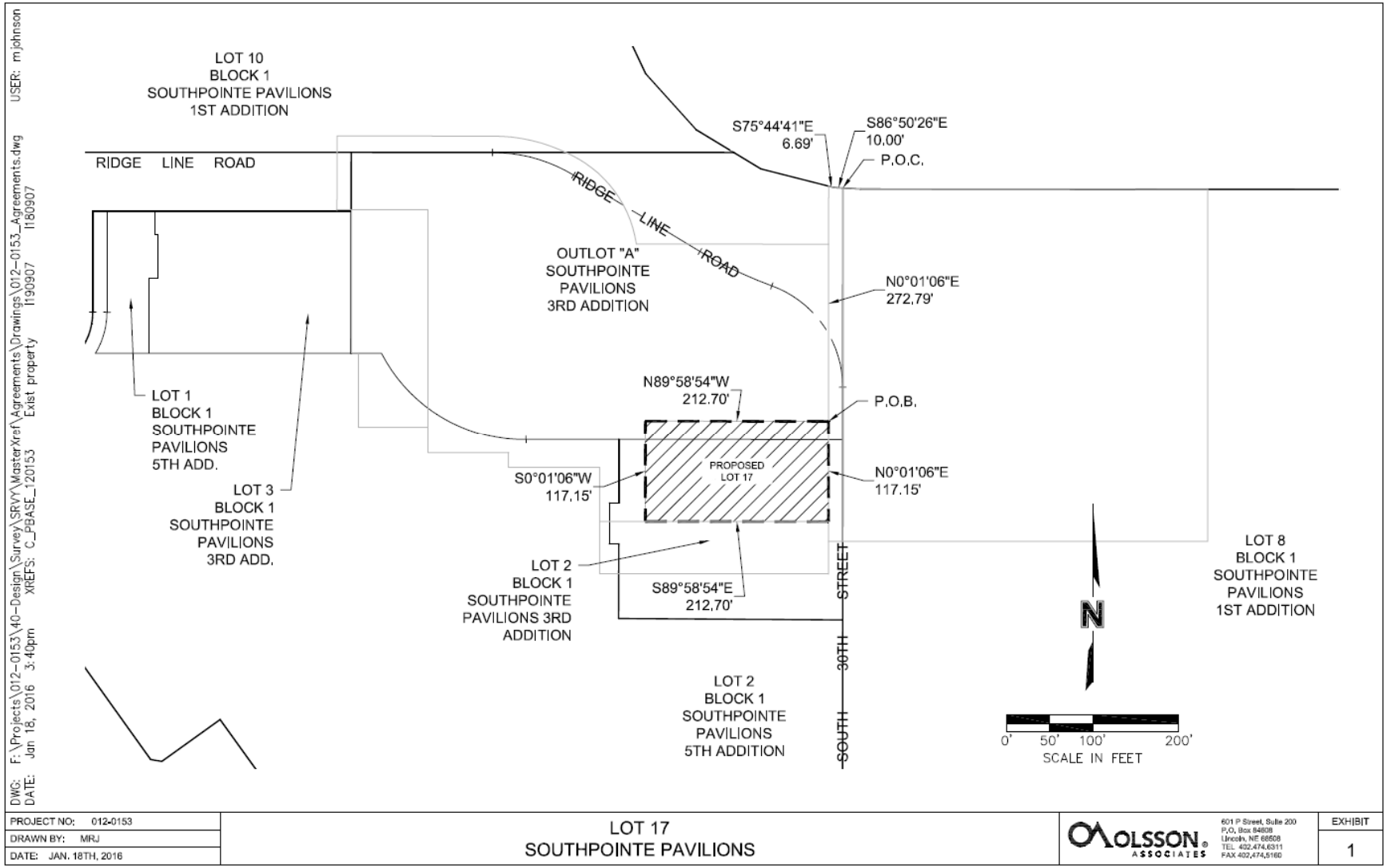
A. Eastern portion of the Scheels Lot (Lot 16): See below
B. Commercial Store Lot (Lot 6): Lot 6, Block 1, South Pointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska; See below

Future City Property:

A. Garage Lot (Outlot A): See below

B. Garage Easement: See below

Retail Space Lot (Lot 17):



Retail Space Lot (Lot 17):

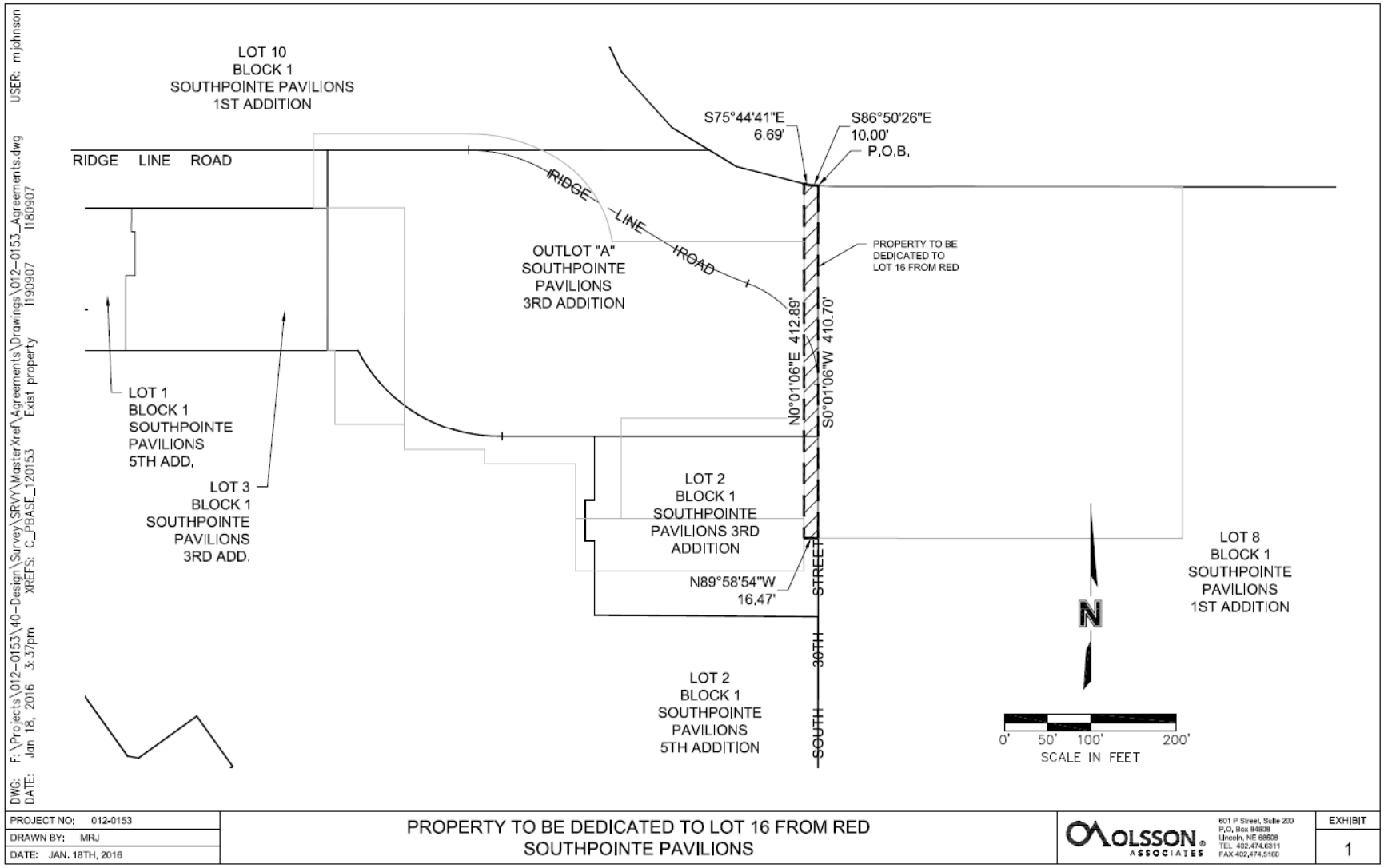
LEGAL DESCRIPTION
LOT 17

A TRACT OF LAND COMPOSED OF A PORTION OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, AND A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION; THENCE WESTERLY ON A NORTH LINE OF SAID OUTLOT "A" ON AN ASSUMED BEARING OF N86°50'26"W, A DISTANCE OF 10.00' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE N75°44'41"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 6.69' TO A POINT; THENCE S00°01'06"W, ON A LINE 16.47' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID OUTLOT "A", A DISTANCE OF 272.79' TO **THE TRUE POINT OF BEGINNING**; THENCE CONTINUING S00°01'06"W, A DISTANCE OF 117.15' TO A POINT; THENCE S89°58'54"W, A DISTANCE OF 212.70' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 117.15' TO A POINT; THENCE S89°58'54"E, A DISTANCE OF 212.70' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 24,917.38 SQUARE FEET OR 0.57 ACRES, MORE OR LESS.

Friday, January 15, 2016
F:\Projects\012-0153\40-Design\Survey\SRVY\MasterXref\Agreements\Documents\LOT 17.doc

Western portion of the Scheels Lot (Lot 16):



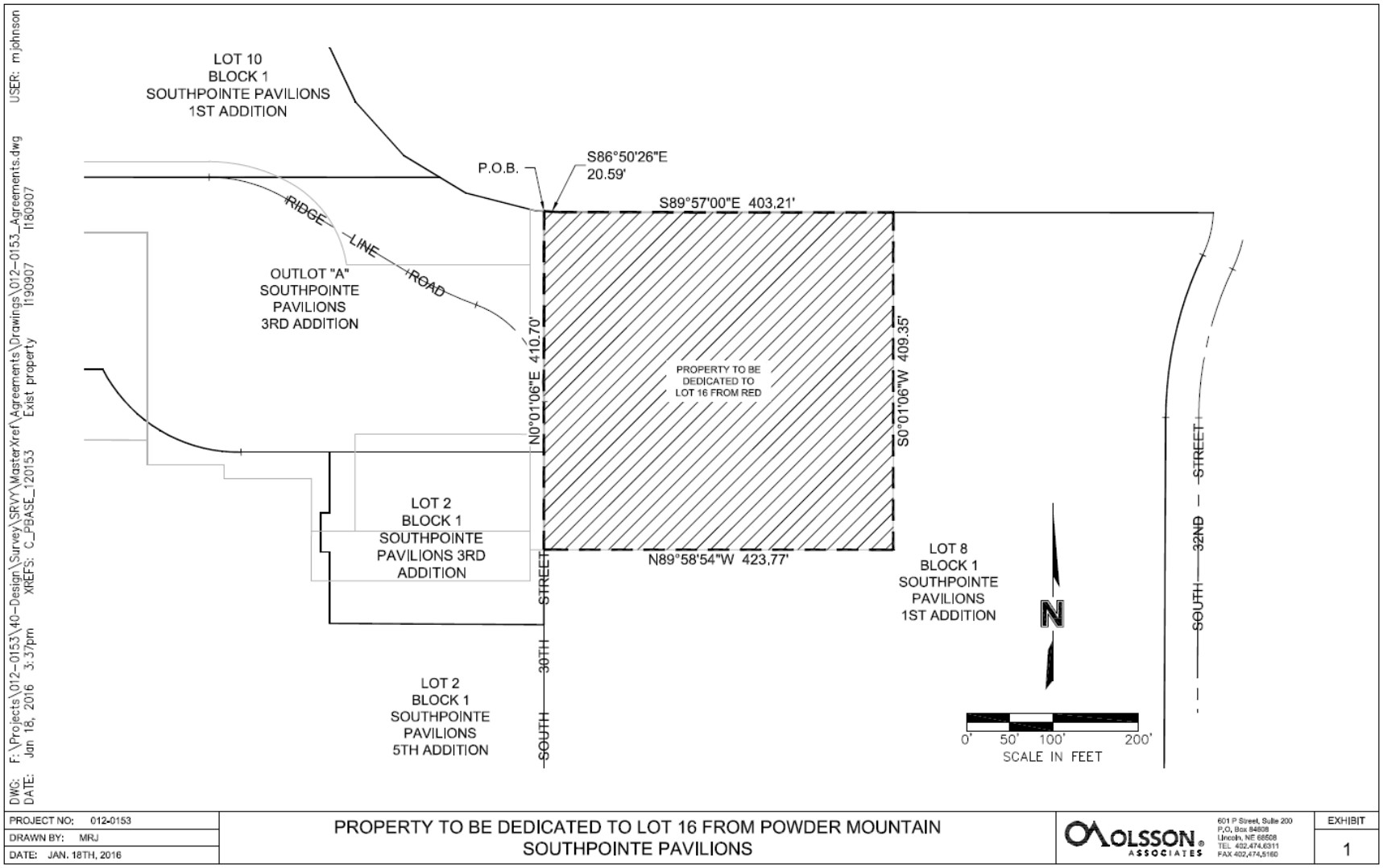
Western portion of the Scheels Lot (Lot 16):

LEGAL DESCRIPTION
DEDICATE TO LOT 16 FROM RED

A TRACT OF LAND COMPOSED OF A PORTION OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, AND A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE SOUTHERLY ON THE EAST LINE OF SAID OUTLOT "A", AND ON THE EAST LINE OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID LINE BEING THE WEST LINE OF SAID LOT 8 ON AN ASSUMED BEARING OF S00°01'06"W, A DISTANCE OF 410.70' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 16.47' TO A POINT; THENCE N00°01'06"E, ON A LINE 16.47' WEST OF AND PARALLEL WITH THE EAST LINES OF SAID LOT 2, AND OUTLOT "A", A DISTANCE OF 412.89' TO A POINT OF INTERSECTION WITH A NORTH LINE OF SAID OUTLOT "A"; THENCE S75°44'41"E, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 6.69' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE S86°50'26"E, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 10.00' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 6,776.66 SQUARE FEET OR 0.16 ACRES, MORE OR LESS.

Eastern portion of the Scheels Lot (Lot 16):



Eastern portion of the Scheels Lot (Lot 16):

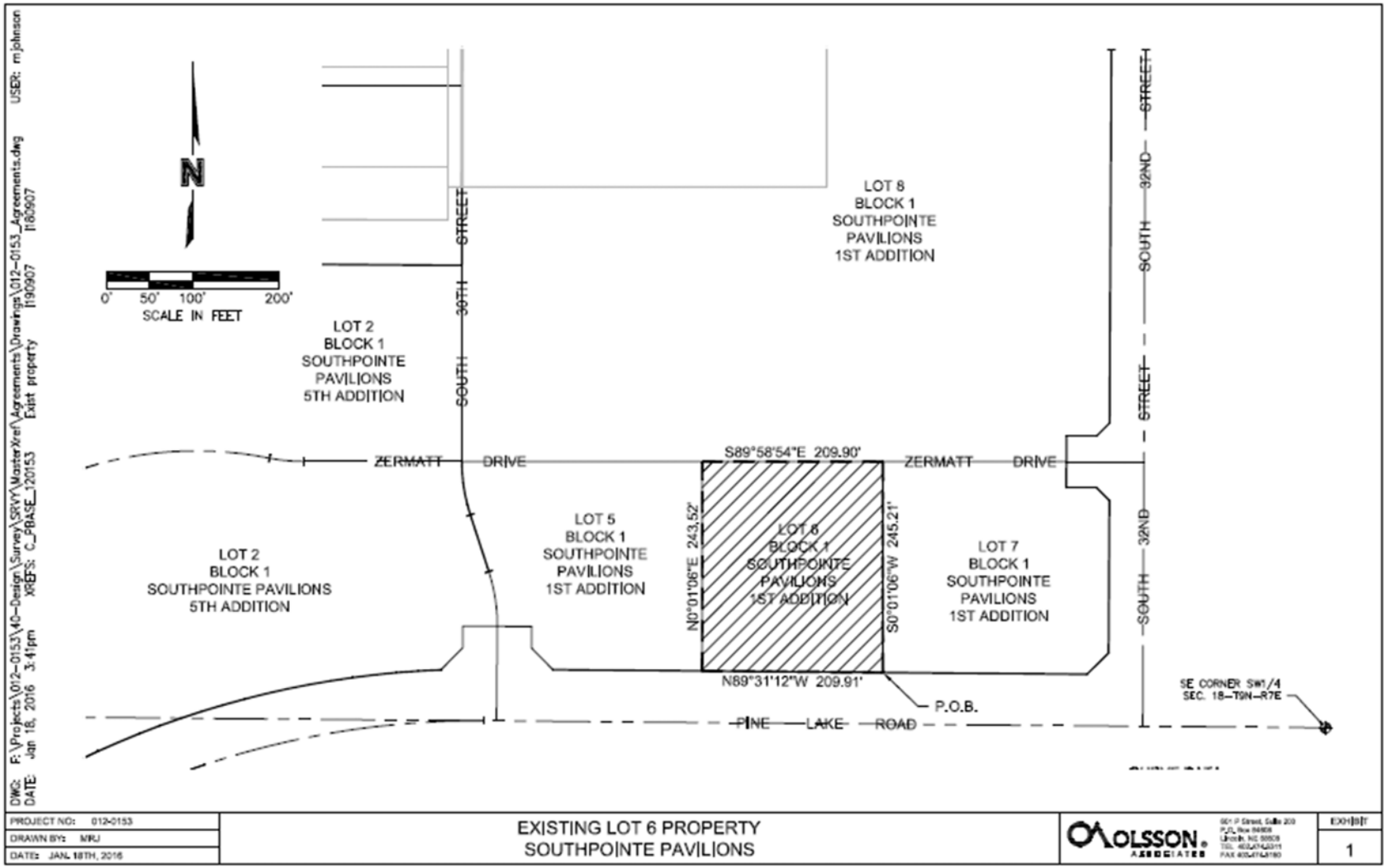
LEGAL DESCRIPTION
DEDICATE TO LOT 16
FROM POWDER MOUNTAIN

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 8, BLOCK 1, SOUTH POINTE PAVILIONS 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION, SAID POINT BEING THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE EASTERLY ON A NORTH LINE OF SAID LOT 8 ON AN ASSUMED BEARING OF S86°50'26"E, A DISTANCE OF 20.59' TO A NORTH CORNER OF SAID LOT 8; THENCE S89°57'00"E, ON A NORTH LINE OF SAID LOT 8, A DISTANCE OF 403.21' TO A POINT; THENCE S00°01'06"W, A DISTANCE OF 409.35' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 423.77' TO A POINT OF INTERSECTION WITH THE WEST LINE OF SAID LOT 8; THENCE N00°01'06"E, ON THE WEST LINE OF SAID LOT 8, A DISTANCE OF 410.70' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 173,530.23 SQUARE FEET OR 3.98 ACRES, MORE OR LESS.

Friday, January 15, 2016
F:\Projects\012-0153\40-Design\Survey\SRVY\MasterXref\Agreements\Documents\Dedicate to Lot 16 from Powder Mountain.doc

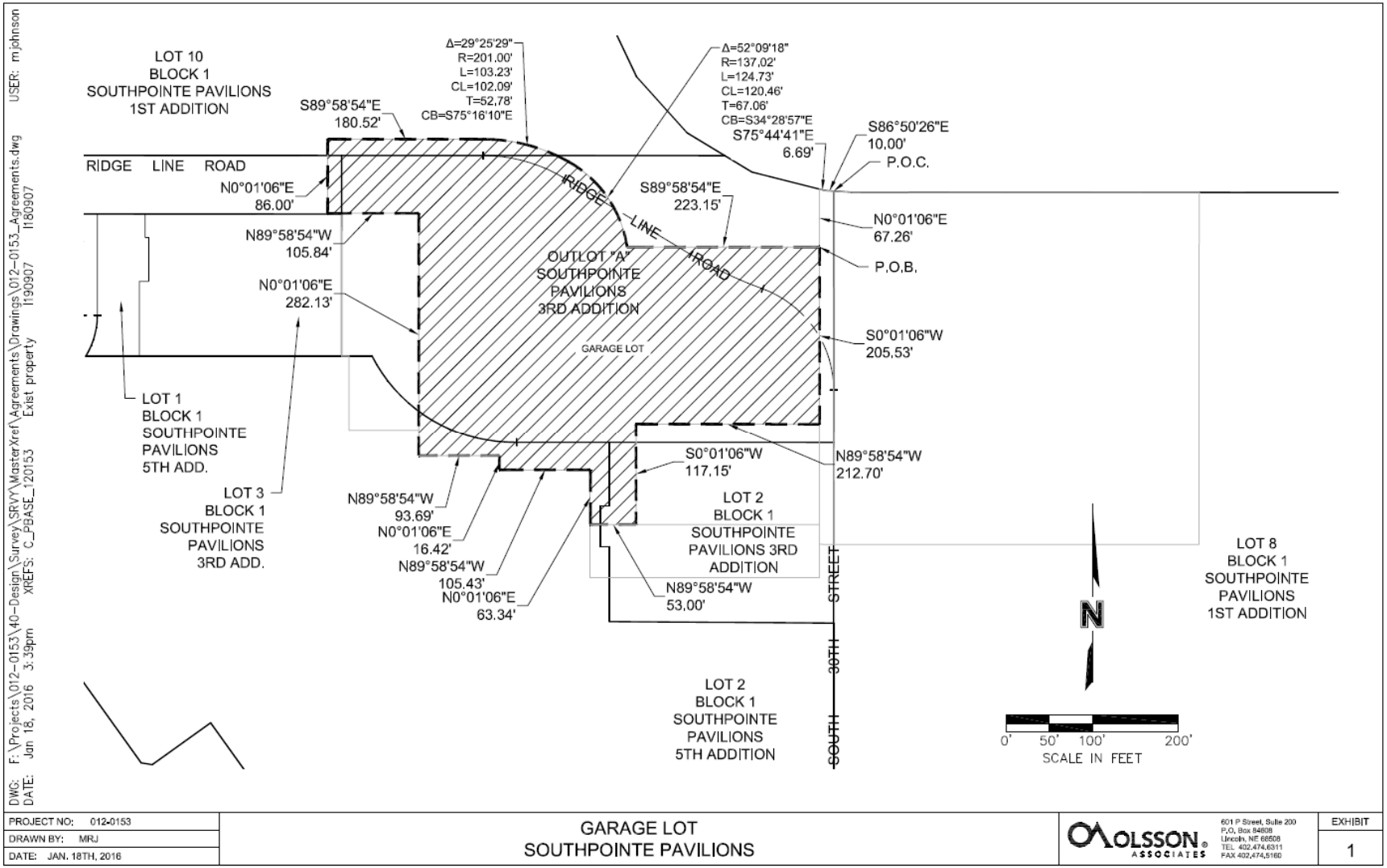
Commercial Store Lot (Lot 6):



Commercial Store Lot (Lot 6):

Lot 6, Block 1, South Pointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska

Garage Lot (Outlot A):



Garage Lot (Outlot A):

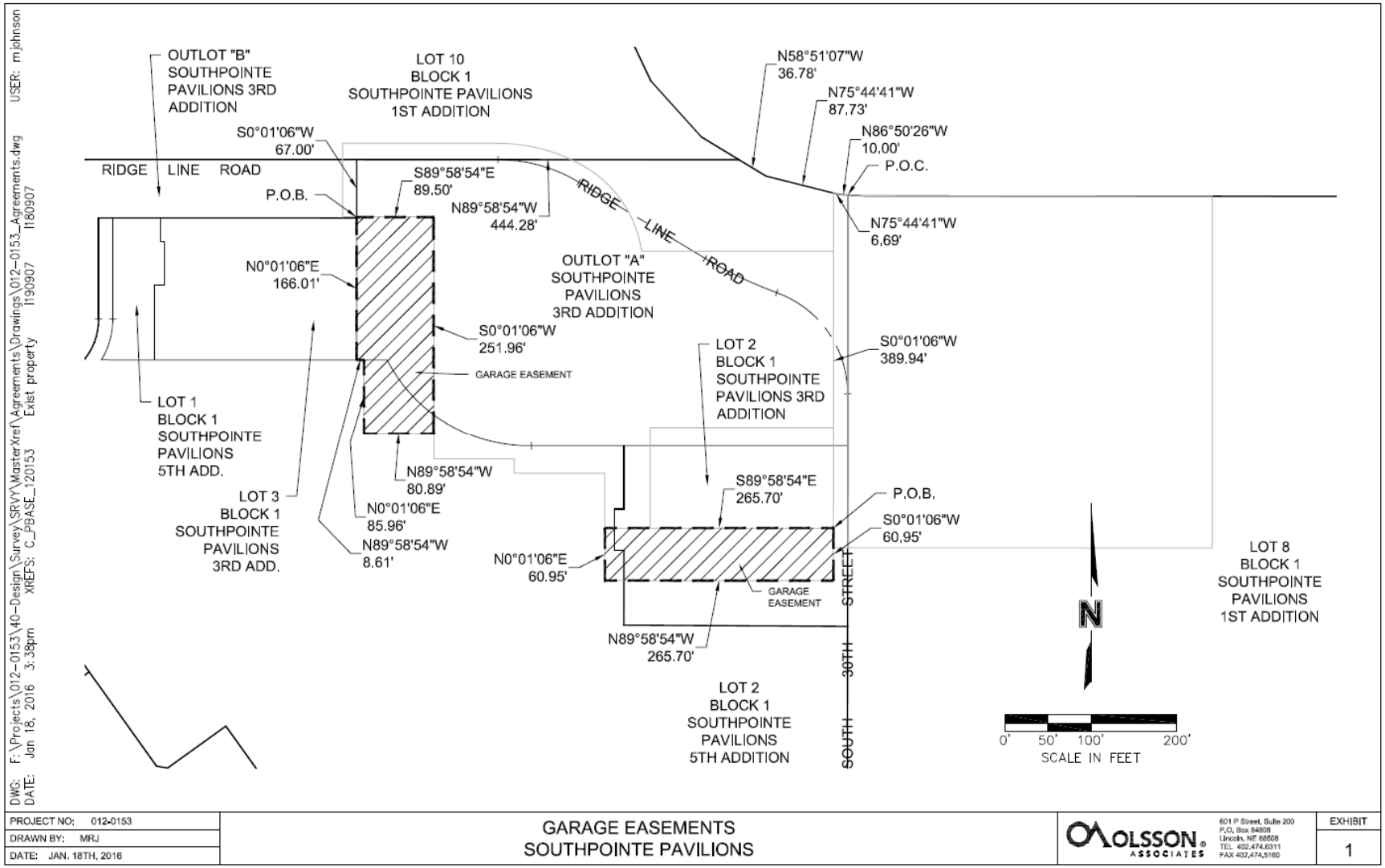
LEGAL DESCRIPTION
GARAGE

A TRACT OF LAND COMPOSED OF A PORTION OF OUTLOTS "A" AND "B", SOUTHPOINTE PAVILIONS 3RD ADDITION, A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, AND A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION; THENCE SOUTHERLY WESTERLY ON A NORTH LINE OF SAID OUTLOT "A" ON AN ASSUMED BEARING OF N86°50'26"W, A DISTANCE OF 10.00' TO NORTH CORNER OF SAID OUTLOT "A"; THENCE N75°44'41"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 6.69' TO A POINT; THENCE S00°01'06"W, ON A LINE 16.47' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID OUTLOT "A", A DISTANCE OF 67.26' TO **THE TRUE POINT OF BEGINNING**; THENCE CONTINUING S00°01'06"W ON THE EAST LINE OF SAID OUTLOT "A", A DISTANCE OF 205.53' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 212.70' TO A POINT; THENCE S00°01'06"W, A DISTANCE OF 117.15' TO A POINT; THENCE S89°58'54"W, A DISTANCE OF 53.00' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 63.34' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 105.43' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 16.42' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 93.69' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 282.13' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 105.84' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 86.00' TO A POINT; THENCE S89°58'54"E, A DISTANCE OF 180.52' TO A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 29°25'29", A RADIUS OF 201.00', AN ARC LENGTH OF 103.23', A CHORD LENGTH OF 102.09', A TANGENT LENGTH OF 52.78', AND A CHORD BEARING OF S75°16'10"E, TO A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 52°09'18", A RADIUS OF 137.02', AN ARC LENGTH OF 124.73', A CHORD LENGTH OF 120.46', A TANGENT LENGTH OF 67.06', AND A CHORD BEARING OF S34°28'57"E TO A POINT; THENCE S89°58'54"E, A DISTANCE OF 223.15' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 145,425.18 SQUARE FEET OR 3.34 ACRES, MORE OR LESS.

Friday, January 15, 2016
F:\Projects\012-0153\40-Design\Survey\SRVY\MasterXref\Agreements\Documents\Garage.doc

Garage Easement:



Garage Easement:

LEGAL DESCRIPTION
GARAGE EASEMENT

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, AND A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER, COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION; THENCE N86°50'26"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 10.00' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE N75°44'41"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 6.69' TO A POINT; THENCE S00°01'06"W, ON A LINE 16.47' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID OUTLOT "A", AND 16 47' WEST OF AND PARALLEL WITH THE EAST LINE OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, A DISTANCE OF 389.94' TO **THE TRUE POINT OF BEGINNING**; THENCE CONTINUING S00°01'06"W ON A LINE 16.47' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 2, A DISTANCE OF 60.95' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 265.70' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 60.95' TO A POINT; THENCE S89°58'54"E, A DISTANCE OF 265.70' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 16,194.41 SQUARE FEET OR 0.37 ACRES, MORE OR LESS.

TOGETHER WITH THE FOLLOWING:

A TRACT OF LAND COMPOSED OF A PORTION OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, AND A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION; THENCE N86°50'26"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 10.00' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE N75°44'41"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 87.73' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE N58°51'07"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 36.78' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE N89°58'54"W, ON THE NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 444.28' TO THE NORTHWEST CORNER OF SAID OUTLOT "A", SAID POINT BEING THE NORTHEAST CORNER OF OUTLOT "B", SOUTHPOINTE PAVILIONS 3RD ADDITION; THENCE S00°01'06"W, ON A WEST LINE OF SAID OUTLOT "A", SAID LINE BEING A EAST LINE OF SAID OUTLOT "B", A DISTANCE OF 67.00' TO **THE TRUE POINT OF BEGINNING**; THENCE S89°58'54"E, A DISTANCE OF 89.50' TO A

POINT; THENCE S00°01'06"W, A DISTANCE OF 251.96' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 80.89' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 85.96' TO A POINT OF INTERSECTION WITH A SOUTH LINE OF SAID OUTLOT "A"; THENCE N89°58'54"W, ON A SOUTH LINE OF SAID OUTLOT "A", A DISTANCE OF 8.61' TO A SOUTHWEST CORNER OF SAID OUTLOT "A", SAID POINT BEING THE SOUTHEAST CORNER OF LOT 3, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION; THENCE N00°01'06"E, ON A WEST LINE OF SAID OUTLOT "A", SAID LINE BEING THE EAST LINE OF SAID LOT, AND ON AN NORTHERLY EXTENSION OF SAID LINES, A DISTANCE OF 166.01' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 21,810.42 SQUARE FEET OR 0.50 ACRES, MORE OR LESS.

Monday, January 18, 2016
F:\Projects\012-0153\40-Design\Survey\SRVY\MasterXref\Agreements\Documents\Garage Ease.doc

Exhibit "C"
Site Plan

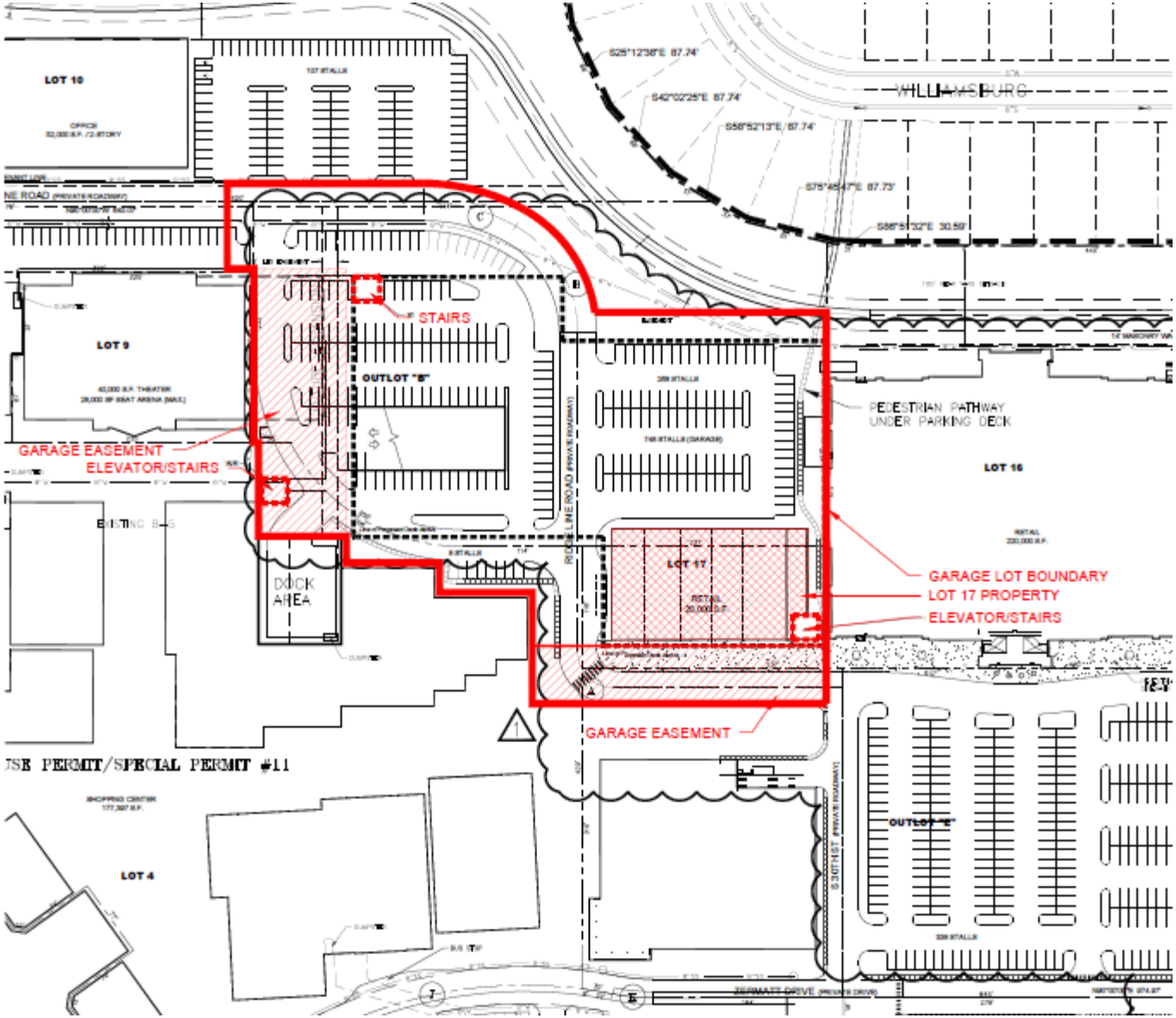
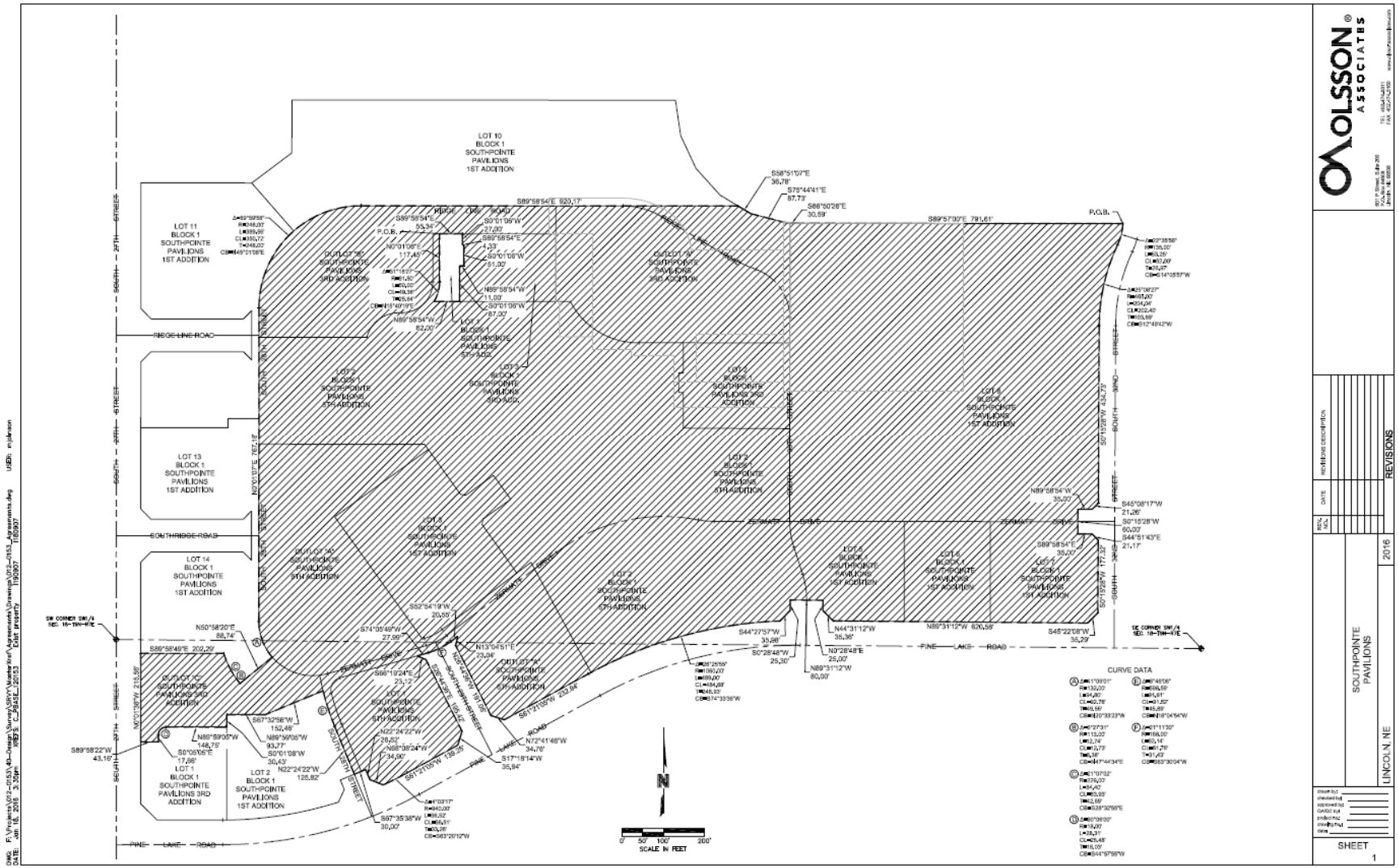
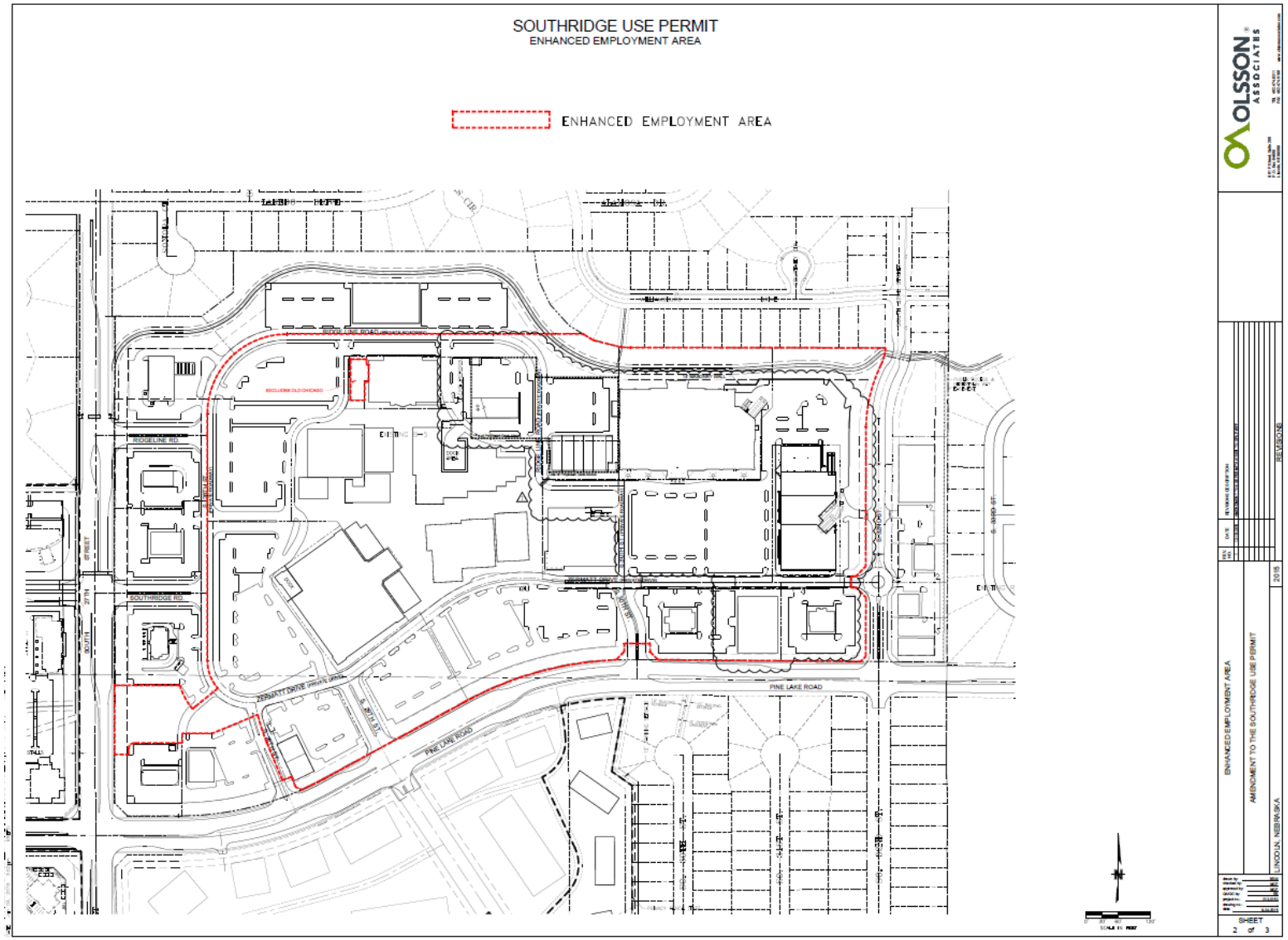

LOT 10
LOT 9
STAIRS
OUTLOT "B"
GARAGE EASEMENT
ELEVATOR/STAIRS
DOCK AREA
LOT 17
RETAIL 20,000 S.F.
PEDESTRIAN PATHWAY UNDER PARKING DECK
LOT 16
GARAGE LOT BOUNDARY
LOT 17 PROPERTY
ELEVATOR/STAIRS
GARAGE EASEMENT
USE PERMIT/SPECIAL PERMIT #11
LOT 4
OUTLOT "E"
WILLIAMSBURG

Exhibit "D"
Enhanced Employment Area




SOUTHRIDGE USE PERMIT
ENHANCED EMPLOYMENT AREA
ENHANCED EMPLOYMENT AREA
RIDGELINE ROAD
SOUTHRIDGE RD.
ZERNATT DRIVE
PINE LAKE ROAD
OLSSON ASSOCIATES
ENHANCED EMPLOYMENT AREA
AMENDMENT TO THE SOUTHRIDGE USE PERMIT
LINCOLN, NEBRASKA
SHEET
2 of 3

Legal Description for Enhanced Employment Area

LEGAL DESCRIPTION
ENHANCED EMPLOYMENT AREA

A TRACT OF LAND COMPOSED OF LOTS 3, 5, 6, 7, AND 8, BLOCK 1, SOUTHPOINTE 1ST ADDITION, OUTLOTS "A", "B", AND "C", SOUTHPOINTE PAVILIONS 3RD ADDITION, LOTS 2 AND 3, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, OUTLOT "A" AND LOT 1, SOUTH POINTE PAVILIONS 6TH ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., AND IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., ALL IN THE CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION, SAID POINT BEING ON A WEST RIGHT-OF-WAY LINE OF SOUTH 32ND STREET, SAID POINT BEING **THE TRUE POINT OF BEGINNING** AND A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 22°35'56", A RADIUS OF 135.00', AN ARC LENGTH OF 53.25' ON A EAST LINE OF SAID LOT 8, SAID LINE BEING WEST LINE OF SAID RIGHT-OF-WAY, HAVING A CHORD LENGTH OF 52.90', A TANGENT LENGTH OF 26.97', AND A CHORD BEARING OF S14°05'57"W TO AN EAST CORNER OF SAID LOT 8, SAID POINT BEING A POINT OF REVERSE CURVATURE FOR A CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 25°08'27", A RADIUS OF 465.00', AN ARC LENGTH OF 204.04' ON A EAST LINE OF SAID LOT 8, SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, HAVING A CHORD LENGTH OF 202.40', A TANGENT LENGTH OF 103.69', AND A CHORD BEARING OF S12°49'42"W TO AN EAST CORNER OF SAID LOT 8; THENCE S00°15'28"W, ON A EAST LINE OF SAID LOT 8, SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 434.73' TO AN EAST CORNER OF SAID LOT 8; THENCE S45°08'17"W, ON A SOUTHEAST LINE OF SAID LOT 8, SAID LINE BEING A NORTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 21.26' TO EAST CORNER OF SAID LOT 8; THENCE N89°58'54"W, ON A SOUTH LINE OF SAID LOT 8, SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 35.00' TO A SOUTH CORNER OF SAID LOT 8; THENCE S00°15'28"W, ON A EAST LINE OF SAID LOT 8, AND ON A EAST LINE OF LOT 7, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION, SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 60.00' TO A NORTH CORNER OF SAID LOT 7; THENCE S89°58'54"E, ON A NORTH LINE OF SAID LOT 7, SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 35.00' TO A NORTH CORNER OF SAID LOT 7; THENCE S44°51'43"E, ON A NORTHEAST LINE OF SAID LOT 7, SAID LINE BEING A SOUTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 21.17' TO AN EAST CORNER OF SAID LOT 7; THENCE S00°15'28"W, ON A EAST LINE OF SAID LOT 7, SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 177.32' TO AN EAST CORNER OF SAID LOT 7; THENCE S45°22'08"W, ON A SOUTHEAST LINE OF SAID LOT 7, SAID LINE BEING A NORTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 35.29' TO THE SOUTHEAST CORNER OF SAID LOT 7, SAID POINT BEING ON A NORTH RIGHT-OF-WAY LINE OF PINE LAKE ROAD, SAID POINT BEING 60.00' NORTH OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9

NORTH, RANGE 7 EAST; THENCE N89°31'12"W, ON THE SOUTH LINE OF SAID LOT 7, AND ON THE SOUTH LINE OF LOTS 6 AND 5, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION, SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY. SAID LINE ALSO BEING 60.00' NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 620.58' TO THE SOUTHWEST CORNER OF SAID LOT 5; THENCE N44°31'12"W, ON A SOUTHWEST LINE OF SAID LOT 5, SAID LINE BEING A NORTHEAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 35.36' TO A SOUTH CORNER OF SAID LOT 5; THENCE N00°28'48"E, ON A WEST LINE OF SAID LOT 5, SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 25.00' TO A SOUTH CORNER OF SAID LOT 5; THENCE N89°31'12"W, ON A SOUTH LINE OF SAID LOT 5, AND ON A SOUTH LINE OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 80.00' TO A SOUTH CORNER OF SAID LOT 2; THENCE S00°28'48"W, ON A EAST LINE OF SAID LOT 2, SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 25.30' TO AN EAST CORNER OF SAID LOT 2; THENCE S44°27'57"W, ON A SOUTHEAST LINE OF SAID LOT 2, SAID LINE BEING A NORTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 35.98' TO THE SOUTHEAST CORNER OF SAID LOT 2, SAID POINT BEING A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 26°25'55", A RADIUS OF 1,060.00', AN ARC LENGTH OF 489.00' ON A SOUTH LINE OF SAID LOT 2, AND ON A SOUTHEAST LINE OF OUTLOT "A", SOUTHPOINTE PAVILIONS 6TH ADDITION, SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A CHORD LENGTH OF 484.68', A TANGENT LENGTH OF 248.93', AND A CHORD BEARING OF S74°33'36"W TO A SOUTH CORNER OF SAID OUTLOT "A"; THENCE S61°21'05"W, ON A SOUTHEAST LINE OF SAID OUTLOT "A", SAID LINE BEING NORTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 232.94' TO A SOUTH CORNER OF SAID OUTLOT "A"; THENCE N72°41'46"W, ON A SOUTH LINE OF SAID OUTLOT "A", SAID LINE BEING NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 34.76' TO A SOUTHWEST CORNER OF SAID OUTLOT "A", SAID POINT BEING ON A EAST RIGHT-OF-WAY LINE OF SOUTH 29TH STREET; THENCE N26°44'36"W, ON A WEST LINE OF SAID OUTLOT "A", SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 191.05' TO A WEST CORNER OF SAID OUTLOT "A"; THENCE N13°04'51"E, ON A WEST LINE OF SAID OUTLOT "A", SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 23.04' TO A SOUTH CORNER OF SAID OUTLOT "A"; THENCE S52°54'19"W, ON A SOUTHEAST LINE OF SAID OUTLOT "A", SAID LINE BEING A NORTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 20.55' TO A SOUTH CORNER OF SAID OUTLOT "A", SAID POINT BEING A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 21°11'30", A RADIUS OF 168.00', AN ARC LENGTH OF 62.14' ON A SOUTHEAST LINE OF SAID OUTLOT "A", SAID LINE BEING A NORTHWEST LINE OF SAID RIGHT-OF-WAY, A CHORD LENGTH OF 61.78', A TANGENT LENGTH OF 31.43', AND A CHORD BEARING OF S63°30'04"W, TO A SOUTH CORNER OF SAID OUTLOT "A"; THENCE S74°05'49"W, ON A SOUTH LINE OF SAID OUTLOT "A", SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 27.99' TO A NORTH CORNER OF LOT 1, SOUTHPOINTE PAVILIONS 6TH ADDITION; THENCE S66°19'24"E, ON A NORTH LINE OF SAID LOT 1, SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 23.12' TO AN EAST CORNER OF SAID LOT 1; THENCE S26°44'36"E, ON A EAST LINE OF SAID

LOT 1, SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 195.42' TO AN EAST CORNER OF SAID LOT 1; THENCE S17°18'14"W, ON A EAST LINE OF SAID LOT 1, SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 35.94' TO THE SOUTHEAST CORNER OF SAID LOT 1, SAID POINT BEING ON A NORTHWEST RIGHT-OF-WAY LINE OF PINE LAKE ROAD; THENCE S61°21'05"W, ON A SOUTHEAST LINE OF SAID LOT 1, SAID LINE BEING A NORTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 139.25' TO A SOUTH CORNER OF SAID LOT 1, SAID POINT BEING A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 04°03'17", A RADIUS OF 940.00', AN ARC LENGTH OF 66.52' ON A SOUTHEAST LINE OF SAID LOT 1, SAID LINE BEING A NORTHWEST LINE OF SAID RIGHT-OF-WAY, A CHORD LENGTH OF 66.51', A TANGENT LENGTH OF 33.28', AND A CHORD BEARING OF S63°20'12"W TO A SOUTH CORNER OF SAID LOT 1; THENCE N68°08'24"W, SOUTH LINE OF SAID LOT 1, SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 34.90' TO A SOUTH CORNER OF SAID LOT 1; THENCE N22°24'22"W, ON A WEST LINE OF SAID LOT 1, SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 26.62' TO A SOUTH CORNER OF SAID LOT 1; THENCE S67°35'38"W, ON A SOUTH LINE OF SAID LOT 1, AND ON A SOUTH LINE OF OUTLOT "A", SOUTHPOINTE PAVILIONS 6TH ADDITION, SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 30.00' TO THE SOUTHWEST CORNER OF SAID OUTLOT "A"; THENCE N22°24'22"W, ON A WEST LINE OF SAID OUTLOT "A", A DISTANCE OF 125.82' TO AN WEST CORNER OF OUTLOT "A", SAID POINT BEING POINT TO A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 08°46'06", A RADIUS OF 598.59', AN ARC LENGTH OF 91.61' ON A WEST LINE OF SAID OUTLOT "A", A CHORD LENGTH OF 91.52', A TANGENT LENGTH OF 45.89', AND A CHORD BEARING OF N18°04'54"W TO A SOUTHEAST CORNER OF OUTLOT "C", SOUTHPOINTE PAVILIONS 3RD ADDITION; THENCE S67°32'56"W, ON A SOUTH LINE OF SAID OUTLOT "C", A DISTANCE OF 152.46' TO A SOUTH CORNER OF SAID OUTLOT "C"; THENCE N89°59'05"W, ON A SOUTH LINE OF SAID OUTLOT "C", A DISTANCE OF 93.77' TO A SOUTH CORNER OF SAID OUTLOT "C"; THENCE S00°01'06"W, ON A EAST LINE OF SAID OUTLOT "C", A DISTANCE OF 30.43' TO A SOUTH CORNER OF SAID OUTLOT "C"; THENCE N89°59'05"W, ON A SOUTH LINE OF SAID OUTLOT "C", A DISTANCE OF 148.75' TO A SOUTH CORNER OF SAID OUTLOT "C", SAID POINT BEING A POINT OF CURVATURE FOR A CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 90°06'00", A RADIUS OF 18.00', AN ARC LENGTH OF 28.31' ON A SOUTHEAST LINE OF SAID OUTLOT "C", A CHORD LENGTH OF 25.48', A TANGENT LENGTH OF 18.03', AND A CHORD BEARING OF S44°57'55"W, TO AN EAST CORNER OF SAID OUTLOT "C"; THENCE S00°05'05"E, ON A EAST LINE OF SAID OUTLOT "C", A DISTANCE OF 17.66' TO A SOUTH CORNER OF SAID OUTLOT "C"; THENCE S89°58'22"W, ON A SOUTH LINE OF SAID OUTLOT "C", A DISTANCE OF 43.16' TO THE SOUTHWEST CORNER OF SAID OUTLOT "C", SAID POINT BEING ON A EAST RIGHT-OF-WAY LINE OF SOUTH 27TH STREET RIGHT-OF-WAY, SAID POINT BEING 60.00' EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M.; THENCE N00°01'38"W, ON THE WEST LINE OF SAID OUTLOT "C", SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, SAID LINE BEING 60.00' EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 215.56' TO THE NORTHWEST CORNER OF SAID OUTLOT "C";

THENCE S89°58'49"E, ON A NORTH LINE OF SAID OUTLOT "C", A DISTANCE OF 202.29' TO A NORTH CORNER OF SAID OUTLOT "C", SAID POINT BEING A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 21°07'02", A RADIUS OF 229.00', AN ARC LENGTH OF 84.40' ON A EAST LINE OF SAID OUTLOT "C", A CHORD LENGTH OF 83.93', A TANGENT LENGTH OF 42.69', AND A CHORD BEARING OF S28°32'55"E TO A NORTH CORNER OF SAID OUTLOT "C", SAID POINT BEING A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 06°27'31", A RADIUS OF 113.00', AN ARC LENGTH OF 12.74' ON A NORTH LINE OF SAID OUTLOT "C", A CHORD LENGTH OF 12.73', A TANGENT LENGTH OF 6.38', AND A CHORD BEARING OF N47°44'34"E TO A NORTH CORNER OF SAID OUTLOT "C"; THENCE N50°58'20"E, ON A NORTHWEST LINE OF SAID OUTLOT "C", A DISTANCE OF 88.74' TO NORTHEAST CORNER OF SAID OUTLOT "C", SAID POINT BEING ON A SOUTHWEST LINE OF OUTLOT "A", SOUTHPOINTE PAVILIONS 6TH ADDITION, SAID POINT BEING A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 41°09'01", A RADIUS OF 132.00', AN ARC LENGTH OF 94.80' ON A SOUTHWEST LINE OF SAID OUTLOT "A", A CHORD LENGTH OF 92.78', A TANGENT LENGTH OF 49.55', AND A CHORD BEARING OF N20°33'23"W TO A WEST CORNER OF SAID OUTLOT "A"; THENCE N00°01'07"E, ON A WEST LINE OF SAID OUTLOT "A", AND ON THE WEST LINE OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, AND ON A WEST LINE OF OUTLOT "B", SOUTHPOINTE PAVILIONS 3RD ADDITION, A DISTANCE OF 767.18' TO A WEST CORNER OF SAID OUTLOT "B", SAID POINT BEING A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 89°59'58", A RADIUS OF 248.00', AN ARC LENGTH OF 389.56' ON A NORTHWEST LINE OF SAID OUTLOT "B", A CHORD LENGTH OF 350.72', A TANGENT LENGTH OF 248.00', AND A CHORD BEARING OF N45°01'06"E, TO A NORTH CORNER OF SAID OUTLOT "B"; THENCE S89°58'54"E, ON THE NORTH LINE OF SAID OUTLOT "B", AND ON THE NORTH LINE OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, A DISTANCE OF 920.17' TO A NORTHEAST CORNER OF SAID OUTLOT "A"; THENCE S58°51'07"E, ON A NORTHEAST LINE OF SAID OUTLOT "A", A DISTANCE OF 36.78' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE S75°44'41"E, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 87.73' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE S86°50'26"E, ON A NORTH LINE OF SAID OUTLOT "A", AND ON A NORTH LINE OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION, A DISTANCE OF 30.59' TO A NORTH CORNER OF SAID LOT 8; THENCE S89°57'00"E, ON A NORTH LINE OF SAID LOT 8, A DISTANCE OF 791.61' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 2,286,026.44 SQUARE FEET OR 52.48 ACRES, MORE OR LESS.

EXCEPT THE FOLLOWING

A TRACT OF LAND COMPOSED OF LOT 1, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, SAID POINT BEING A NORTHEAST CORNER OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, SAID POINT **BEING THE TRUE POINT OF BEGINNING**; THENCE EASTERLY ON THE NORTH LINE OF SAID LOT 1 ON AN ASSUMED BEARING OF S89°58'54"E, A DISTANCE OF 55.34' TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE S00°01'06"W, ON A EAST LINE OF SAID LOT 1, A DISTANCE OF 27.00' TO AN EAST CORNER OF SAID LOT 1; THENCE S89°58'54"E, ON A NORTH LINE OF SAID LOT 1, A DISTANCE OF 4.33' TO AN EAST CORNER OF SAID LOT 1; THENCE S00°01'06"W, ON A EAST LINE OF SAID LOT 1, A DISTANCE OF 51.00' TO AN EAST CORNER OF SAID LOT 1; THENCE N89°58'54"W, ON A SOUTH LINE OF SAID LOT 1, A DISTANCE OF 11.00' TO AN EAST CORNER OF SAID LOT 1; THENCE S00°01'06"W, ON A EAST LINE OF SAID LOT 1, A DISTANCE OF 87.00' TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE N89°58'54"W, ON THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 62.00' TO THE SOUTHWEST CORNER OF SAID LOT 1, SAID POINT BEING A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 31°18'27", A RADIUS OF 91.50', AN ARC LENGTH OF 50.00' ON A WEST LINE OF SAID LOT 1, A CHORD LENGTH OF 49.38', A TANGENT LENGTH OF 25.64', AND A CHORD BEARING OF N15°40'19"E TO A WEST CORNER OF SAID LOT 1; THENCE N00°01'06"E, ON A WEST LINE OF SAID LOT 1, A DISTANCE OF 117.45' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 8,976. 45 SQUARE FEET OR 0.21 ACRES, MORE OR LESS.

THE ENHANCED EMPLOYMENT AREA CONTAINS A TOTAL CALCULATED AREA OF 2,277,049.91 SQUARE FEET OR 52.27 ACRES, MORE OR LESS.

Thursday, January 14, 2016
F:\Projects\012-0153\40-Design\Survey\SRVY\MasterXref\Agreements\Documents\Employment Area.doc

Exhibit "E"
Sources and Uses of Funds

SOURCES		
Private Capital		84,006,907
Occupation Tax - Public Parking Garage		19,950,000
Occupation Tax - Maintenance Obligations		4,867,000
TOTAL SOURCES	$	108,823,907

USES		
Public Parking Garage - Development & Construction		19,950,000
Maintenance Obligations		4,867,000
Private Improvements - Scheels		72,416,511
Private Improvements - Relocations/ Other New Constr.		5,289,878
Project Contingency		6,300,518
TOTAL USES	$	108,823,907

Exhibit "F"
Project Schematic Drawings

Scheels

West Elevation

North Elevation

South Elevation

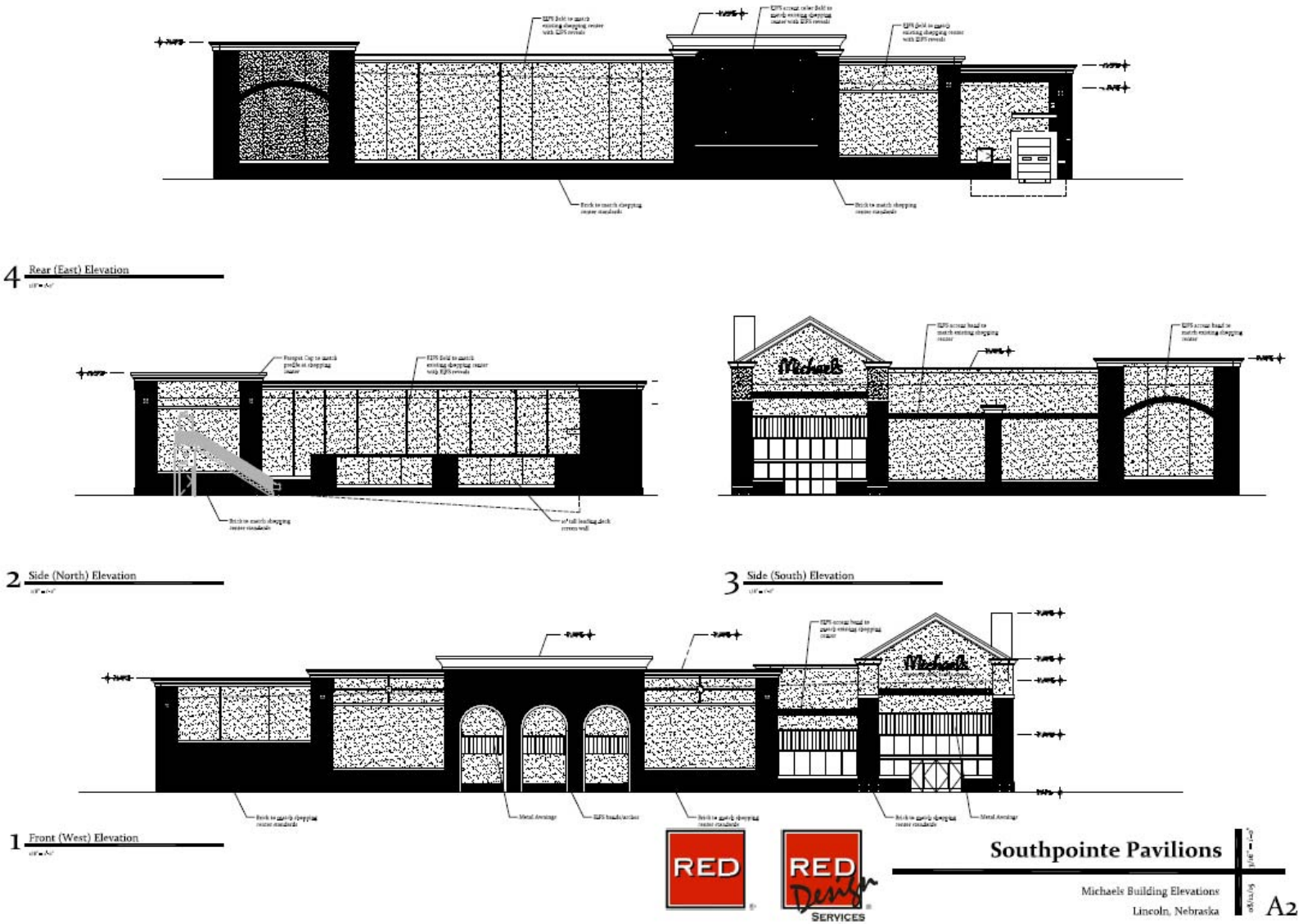
East Elevation

Proposed SCHEELS Relocation
Lincoln, NE
11.24.15

RED

SOUTHPOINTE PAVILIONS

Commercial Store



Retail Space

Parking Garage

Elevation - Garage South Enlarged bay
1/8" = 1'-0"

Elevation - Garage North
1/16" = 1'-0"

Elevation - Garage West
1/16" = 1'-0"

Elevation - Garage South
1/16" = 1'-0"

Proposed SCHEELS Relocation
Lincoln, NE
11.24.15

RED

SOUTHPOINTE PAVILIONS

Exhibit "G"
Certificate of Complement of Public Parking Garage

Return to:
City Attorney's Office
Attention: Tim Sieh
555 South 10th Street
Lincoln, NE 68508

CERTIFICATE OF COMPLETION OF
PUBLIC PARKING GARAGE

KNOW ALL PEOPLE BY THESE PRESENTS: That the City of Lincoln, Nebraska, a Nebraska municipal corporation, hereinafter called "**City,"** hereby makes the conclusive determination and certification that, with regard to the Public Parking Garage situated in the City of Lincoln, Lancaster County, Nebraska, as more particularly described in Attachment 1 attached hereto ("**Garage Lot**"), all the improvements required to be constructed upon the above-described Garage Lot have been satisfactorily completed in accordance with the requirements of the DEVELOPMENT AGREEMENT (SouthPointe Pavilions Reconfiguration) **("Agreement")** by and between CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska (hereinafter "**City**") and R.E.D. CAPITAL MANAGEMENT L.L.C., a Kansas limited liability company **(**hereinafter "**Developer**") and its successors and assigns, said Agreement dated as of _____, 2016, and recorded as Instrument No._____, in the office of the Register of Deeds for Lancaster County, Nebraska.

The City further makes the conclusive determination that the Public Parking Garage (as defined in the Agreement) to the above-described Garage Lot are presently in conformance with the Agreement.

IN WITNESS WHEREOF, the City has executed this instrument as of this _____ day of _____, 2016.

Executed by the City as of this _____ day of _____, 2016.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by CHRIS BEUTLER, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

(Seal)

_____
Notary Public

Executed by Developer as of this _____ day of _____, 2016.

R.E.D. CAPITAL MANAGEMENT L.L.C.,
a Kansas limited liability company

By:_____

Title: _____

STATE OF_____)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, _____ of R.E.D. Capital Management L.L.C., a Kansas limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Attachment "1"
Garage Lot Legal Description

LEGAL DESCRIPTION
GARAGE

A TRACT OF LAND COMPOSED OF A PORTION OF OUTLOTS "A" AND "B", SOUTHPOINTE PAVILIONS 3RD ADDITION, A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, AND A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 5TH ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION; THENCE SOUTHERLY WESTERLY ON A NORTH LINE OF SAID OUTLOT "A" ON AN ASSUMED BEARING OF N86°50'26"W, A DISTANCE OF 10.00' TO NORTH CORNER OF SAID OUTLOT "A"; THENCE N75°44'41"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 6.69' TO A POINT; THENCE S00°01'06"W, ON A LINE 16.47' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID OUTLOT "A", A DISTANCE OF 67.26' TO **THE TRUE POINT OF BEGINNING**; THENCE CONTINUING S00°01'06"W ON THE EAST LINE OF SAID OUTLOT "A", A DISTANCE OF 205.53' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 212.70' TO A POINT; THENCE S00°01'06"W, A DISTANCE OF 117.15' TO A POINT; THENCE S89°58'54"W, A DISTANCE OF 53.00' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 63.34' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 105.43' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 16.42' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 93.69' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 282.13' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 105.84' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 86.00' TO A POINT; THENCE S89°58'54"E, A DISTANCE OF 180.52' TO A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 29°25'29", A RADIUS OF 201.00', AN ARC LENGTH OF 103.23', A CHORD LENGTH OF 102.09', A TANGENT LENGTH OF 52.78', AND A CHORD BEARING OF S75°16'10"E, TO A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 52°09'18", A RADIUS OF 137.02', AN ARC LENGTH OF 124.73', A CHORD LENGTH OF 120.46', A TANGENT LENGTH OF 67.06', AND A CHORD BEARING OF S34°28'57"E TO A POINT; THENCE S89°58'54"E, A DISTANCE OF 223.15' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 145,425.18 SQUARE FEET OR 3.34 ACRES, MORE OR LESS.

Friday, January 15, 2016
F:\Projects\012-0153\40-Design\Survey\SRVY\MasterXref\Agreements\Documents\Garage.doc

Exhibit "H"
Public Parking Garage Rules and Regulations

These Rules and Regulations ("**Regulations**") for SouthPointe Public Parking Garage, including its real estate lot, are established by the City of Lincoln, Nebraska ("**City**") and may be amended from time to time by the Mayor.

1. City Public Parking Garage Rules and Regulations. The City's rules and regulations, as may be amended from time to time, for public parking garages shall apply to the SouthPointe Public Parking Garage, except as stated below.
2. Free Parking. The intended purpose of the Public Parking Garage is for the public to park their vehicles on a daily basis. No patrons shall be charged for parking its vehicle in the Public Parking Garage. The Public Parking Garage are for the patrons of the SouthPointe and its surrounding areas. The Public Parking Garage shall not be used by commercial operators for carpooling patrons to other areas of the City.
3. Hours of Operations. The Public Parking Garage shall be open from _____ AM to _____ PM during the days that the SouthPointe Pavilions shopping center is open for business. No overnight parking shall be allowed, without the prior approval of the Public Parking Garage operator.
4. No Parking. Parking in a "No Parking" area is strictly prohibited. A patron's vehicle must be completely parked in a designated parking stall.
5. Building Emergency/Safety. A patron of the Public Parking Garage shall comply with all safety, fire protection and evacuation regulations any applicable governmental agency. A patron is prohibited from disarming, misusing, altering or removing safety, security or fire devices in the Public Parking Garage. Storage of flammable or explosive materials anywhere in the Public Parking Garage is strictly prohibited.
6. Personal Property. Each patron assumes full risk and sole responsibility for placing his or her personal property and vehicle (collectively "**Personal Property**") in the Public Parking Garage. The City and its operator will not be held responsible/liable for theft of, vandalism or damages caused to, Personal Property.
7. Responsibility for Damage. Each patron is responsible for damages to Personal

Property or rule violations caused by a patron.

8. Compliance with Law. Patrons shall abide by these Regulations and all laws and ordinances.
9. Hazardous Activity. Patrons agree not to participate in activities which are potentially hazardous to other patrons or any other persons on or near the Public Parking Garage. The City and its operators shall not be held responsible for any injury that results from participation in hazardous or potentially hazardous activity.
10. No Loitering. Patrons shall not loiter in the Public Parking Garage or use the Public Parking Garage as play or recreation areas.
11. Appearance of Property. Patrons are prohibited from posting signs, signals, illuminations, symbols, advertisements or any type of equipment or foreign object on, inside, or outside the Public Parking Garage.
12. Patron Upkeep. Patrons are expected to place trash in proper waste containers.
13. Refuse Access. The City and its operator reserves the right to refuse access to any persons the City or its operators in good faith judges to be a threat to the safety or property of the Public Parking Garage and/or its other patrons or Personal Property.
14. Amendments and Additional Regulations. The City has the power to alter or replace these Regulations or create additional Regulations in order to preserve the physical condition, safety, appearance, and quiet enjoyment of the Public Parking Garage and its patrons and Personal Property.
15. Penalties. The City or City's operator on behalf of the City may tow vehicles at the patron's expense and/or impose fines or penalties for violations of these Regulations.

Exhibit "I"
Form of Bond Ledger and Maintenance Obligation Ledger

BOND LEDGER

	Outstanding Beginning Principal Balance	Tax Revenue Available For Debt Service	Current Interest Earned	Current Interest Paid	Unpaid Interest Paid	Unpaid Interest Balance	Principal Amount Issued	Principal Amount Paid	Outstanding Ending Principal Balance
Month 1	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,000.00	$ -	$ 1,000.00
Month 2	$ 1,000.00	$ -	$ 7.08	$ -	$ -	$ 7.08	$ 1,000.00	$ -	$ 2,000.00
Month 3	$ 2,000.00	$ -	$ 14.17	$ -	$ -	$ 21.25	$ -	$ -	$ 2,000.00
Month 4	$ 2,000.00	$ 1,000.00	$ 14.17	$ 14.17	$ 21.25	$ -	$ -	$ 964.58	$ 1,035.42
Month 5	$ 1,035.42	$ 1,000.00	$ 7.33	$ 7.33	$ -	$ -	$ -	$ 992.67	$ 42.75
Month 6	$ 42.75	$ -	$ 0.30	$ -	$ -	$ 0.30	$ -	$ -	$ 42.75
Month 7	$ 42.75	$ -	$ 0.30	$ -	$ -	$ 0.61	$ 1,000.00	$ -	$ 1,042.75

.
.
.
.

MAINTENANCE LEDGER

	Available Beginning Balance	Amount Paid	Available Ending Balance
Month 0			$ 4,867,000.00
Month 1	$ 4,867,000.00	$ 10,000.00	$ 4,857,000.00
Month 2	$ 4,857,000.00	$ 15,000.00	$ 4,842,000.00
Month 3	$ 4,842,000.00	$ 5,000.00	$ 4,837,000.00
Month 4	$ 4,837,000.00	$ 7,000.00	$ 4,830,000.00
Month 5	$ 4,830,000.00	$ 7,000.00	$ 4,823,000.00
Month 6	$ 4,823,000.00	$ 7,000.00	$ 4,816,000.00
Month 7	$ 4,816,000.00	$ 1,000.00	$ 4,815,000.00

.
.
.
.

Exhibit "J"
Air Rights & Easement Understanding

In order to implement the Public Improvements and Private Improvements within SouthPointe and to create the Garage Lot, and Retail Space Lot as buildable lots of record and to create the Garage Easement, the Developer will need to prepare and submit for the City's approval an air-rights subdivision. As part of the City's approval of an air-rights subdivision and the Easement Agreement, the Developer and City desire to express their understanding below of the agreements, easements, licenses and restrictions necessary to create, design, construct and Maintain the Public Improvements on the Garage Area and the Private Improvements on the Garage Easement and Retail Space Lot.

CONSTRUCTION DUTIES; AGREEMENTS TO PROVIDE EASEMENTS, LICENSES AND RESTRICTIONS

A. GENERAL CONSTRUCTION DUTIES; INCORPORATION OF PLANS. This Article is to provide detail as to the design, construction and Maintenance obligations of the parties relating to the connected and interrelated Public Improvements to be located upon the Garage Area and the Retail Space as Private Improvements to be located upon the Retail Space Lot and Garage Easement. The design, construction and Maintenance duties of the parties for their respective improvements shall be further defined as indicated on the construction documents, approved and signed by the parties, copies of which will be filed in the office of the City Clerk of the City. Such construction documents and the design, construction and Maintenance duties assigned to each party thereby shall be interpreted in accordance with commonly accepted architectural and engineering standards for any construction duty not assigned by written notations on such construction documents.

B. INTENTION. It is the intention of City and the Developer that the Private Improvements and Pubic Improvements shall have all necessary and reasonably desirable easements for support, installation, construction, maintenance, repair, replacement, improvement, ingress and egress for the Public Improvements and Private Improvements as shown on the construction documents. City and Developer deem it desirable to impose a general plan of easements, covenants, conditions, reservations, and restrictions to provide for the foregoing.

C. DECLARATION. In order to effectuate the foregoing, the City and Developer do hereby certify and declare that each does hereby establish the covenants, conditions, restrictions, and reservations hereinafter contained for the design, installation, construction, protection, maintenance, repair, replacement, improvement, ingress and egress, and development of the Public Improvements and Private Improvements shown on the approved construction documents. These covenants, conditions, restrictions, easements, and reservations shall run with the land for the First Term and Second Term, and each lot thereof, and shall be binding upon all persons having or acquiring any right, title, or interest therein or any portion thereto, and shall inure to the benefit of and bind each owner thereof and their respective successors and assigns in interest.

D. MUTUAL COOPERATION. The design, construction, and Maintenance of the Public Improvements and Private Improvements are dependent upon the continued cooperation and good faith of the owners and users of all of the interrelated uses therein. Such cooperation shall be required of all parties interested in any phase or element of the Public Improvements and Private Improvements. Every covenant, restriction, or easement herein stated shall be construed in recognition of this interdependence and need for continued mutual cooperation. Any easement or license herein or hereinafter granted by the owner or user of any of the lots or interests in the Garage Lot, Retail Space Lot or Garage Easement Area or the use or enjoyment of the public or for another owner or user of any other interest shall be without additional consideration and shall be liberally

construed with the intention of providing such rights and privileges as may be reasonably necessary or convenient to adequately and properly operate the benefited facilities and properties without encroaching or interfering needlessly with the subservient facility or property. No person or entity involved with or interested in any part of the Project Area shall take any action or permit any action to be taken to interfere with the free beneficial use and enjoyment of any easement provided for herein or hereafter, or as may be expressly agreed by the interested parties, or as may be necessary for proper maintenance or repairs.

E. AGREEMENT TO GRANT EASEMENTS, COVENANTS, AND RIGHTS FOR USE AND ENJOYMENT. It is recognized and agreed by the parties hereto that their mutual cooperation in granting to each other the necessary and desired rights, licenses and easements to enter and make use of portions of their respective properties both temporarily during construction and permanently after construction, is required in order for any and all of the Public Improvements and Private Improvements to be functional and useful. Such easements, licenses and rights as are then presently definable or describable are to be granted in one or more operating agreements or other documents and instruments. It is recognized by the parties that various items will be discovered which will require the granting of additional easements and licenses for the proper and convenient functioning of the various improvements. It is hereby agreed that such rights, licenses and easements as may be necessary for the reasonable and proper operation of the Public Improvements and Private Improvements shall be granted by each party to the other without additional consideration being required; provided, that such easements, rights, or licenses shall (i) be required only for the most necessary and practical route reasonably feasible and in conformity with applicable codes and regulations, and (ii) be limited to areas or routes so as not to interfere with the operation of permitted activities in the areas in or adjacent to such easement or license areas, and (iii) provide for or permit reasonable Maintenance in such a manner as to not interfere with the use

of areas adjacent to such easement and license areas, and (iv) shall be subject to the owner of the benefited property being responsible for payment of any construction costs of any alterations or renovations related to same, and (v) shall be to the extent and duration necessary to assure the benefited property to be in compliance with applicable codes and laws, and to provide a reasonable and beneficial use to the benefited property for the required purposes. Such easements, licenses and rights to be conveyed in subsequent instruments shall include, without in any way being intended to be limited to, such items as temporary construction access and use, construction, supportive structures and Maintenance. The granting of any easement, right or license which shall cause an on-going and regular cost to the subservient property shall be subject to agreement providing for payment of such costs to be made on behalf of the benefited property.

Exhibit "K"
Memorandum of Development Agreement

Return to:
City Attorney's Office
Attention: Tim Sieh
555 South 10th Street
Lincoln, NE 68508

MEMORANDUM OF DEVELOPMENT AGREEMENT
(SouthPointe Pavilions Reconfiguration)

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT (SouthPointe Pavilions Reconfiguration) ("**Memorandum**") is made and entered into as of the date of execution hereof by the last signatory hereto as indicated below (the "**Effective Date**") by and between by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska (hereinafter "**City**"). R.E.D. CAPITAL MANAGEMENT L.L.C., a Kansas limited liability company and its successors and assigns (hereinafter "**Developer**") and POWDER MOUNTAIN, L.L.C., a Nebraska limited liability company and its successors and assigns ("**Powder Mountain**"). Developer and Powder Mountain are sometimes referred to herein as "**Landowners**".

1. **Developer Property**. Developer is the primary operator of SouthPointe Pavilions located generally north and east of the intersection of S. 27th Street and Pine Lake Road in the City of Lincoln, Lancaster County, Nebraska ("**SouthPointe**") and is the owner of the real estate described on Exhibit 1 ("**Developer Property**"). Powder Mountain is the owner of the real estate described on Exhibit 1 ("**Powder Mountain Property**") Developer Property and Powder Mountain Property are sometimes referred to herein as "Landowners Property").

2. **Development Agreement**. The City, Developer and Powder Mountain have entered into that certain Development Agreement dated as of this even date, to allow for the expansion and improvement of SouthPointe, including the construction of certain Private Improvements on the Developer Property and Powder Mountain Property as described in Exhibit 1 and construction of certain Public Improvements on a portion of the Developer Property ("**Garage Lot**") as described on Exhibit 1.

3. **Enhanced Employment Area**. The Developer Property and Powder Mountain Property are located within an Enhanced Employment Area as defined in the Nebraska Community Development Law and the businesses and users of space located within the Enhanced Employment Area are subject to payment of an occupation tax adopted by the City of Lincoln for certain transactions within the Enhanced Employment Area. The occupation taxes so captured by the City shall be used to fund the obligations stated in the Development Agreement.

4. **Terms, Covenants and Conditions**. This Memorandum is subject in each and every respect to the terms, covenants and conditions of the Development Agreement between the parties hereto. A full and correct copy of the Development Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska. This Memorandum is executed and delivered with the understanding and agreement that the same shall not in any manner or form whatsoever, alter, modify or vary the rents and other terms, covenants and conditions of the Development Agreement.

5. **Inquiries.** Further inquiries regarding this Memorandum may be made to the following parties:

If to the City:	Mayor 555 South 10th Street Lincoln, Nebraska 68508
If to Developer:	R.E.D. CAPITAL MANAGEMENT L.L.C. Attn: Jeff McMahon 7500 College Blvd., Suite 750 Overland Park, KS 66210
With a copy to:	Seacrest & Kalkowski, PC, LLO Attn: Kent Seacrest 1111 Lincoln Mall, Suite 350 Lincoln, NE 68508
If to Powder Mountain	POWDER MOUNTAIN, L.L.C., c/o RED Zermatt SouthPointe II, Manager Attn: President 7500 College Blvd., Suite 750 Overland Park, KS 66210
With a copy to:	Mr. James M. Kirkland Kuckelman Torline Kirkland & Lewis 10740 Nall Ave Ste 250 Overland Park, Kansas 66211-1367

[SIGNATURE PAGES TO FOLLOW]

Executed by the City as of this _____ day of _____, 2016.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by CHRIS BEUTLER, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

(Seal)

_____
Notary Public

Executed by Developer as of this _____ day of _____, 2016.

R.E.D. CAPITAL MANAGEMENT L.L.C.,
a Kansas limited liability company

By:_____

Title: _____

STATE OF_____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, _____ of R.E.D. Capital Management L.L.C., a Kansas limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Executed by Powder Mountain as of this _____ day of _____, 2016.

POWDER MOUNTAIN, L.L.C., a Nebraska limited liability company

By: By: RED Zermatt SouthPointe II, LLC, a Delaware limited liability company, its Manager

By: _____
Steven M. Maun, President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Steven M. Maun, President of RED Zermatt SouthPointe II, LLC, a Delaware limited liability company, as Manager of POWDER MOUNTAIN, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, a _____ _____, as Manager of POWDER MOUNTAIN, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Exhibit 1
Legal Description
Developer Property and Powder Mountain Property

Developer Property:

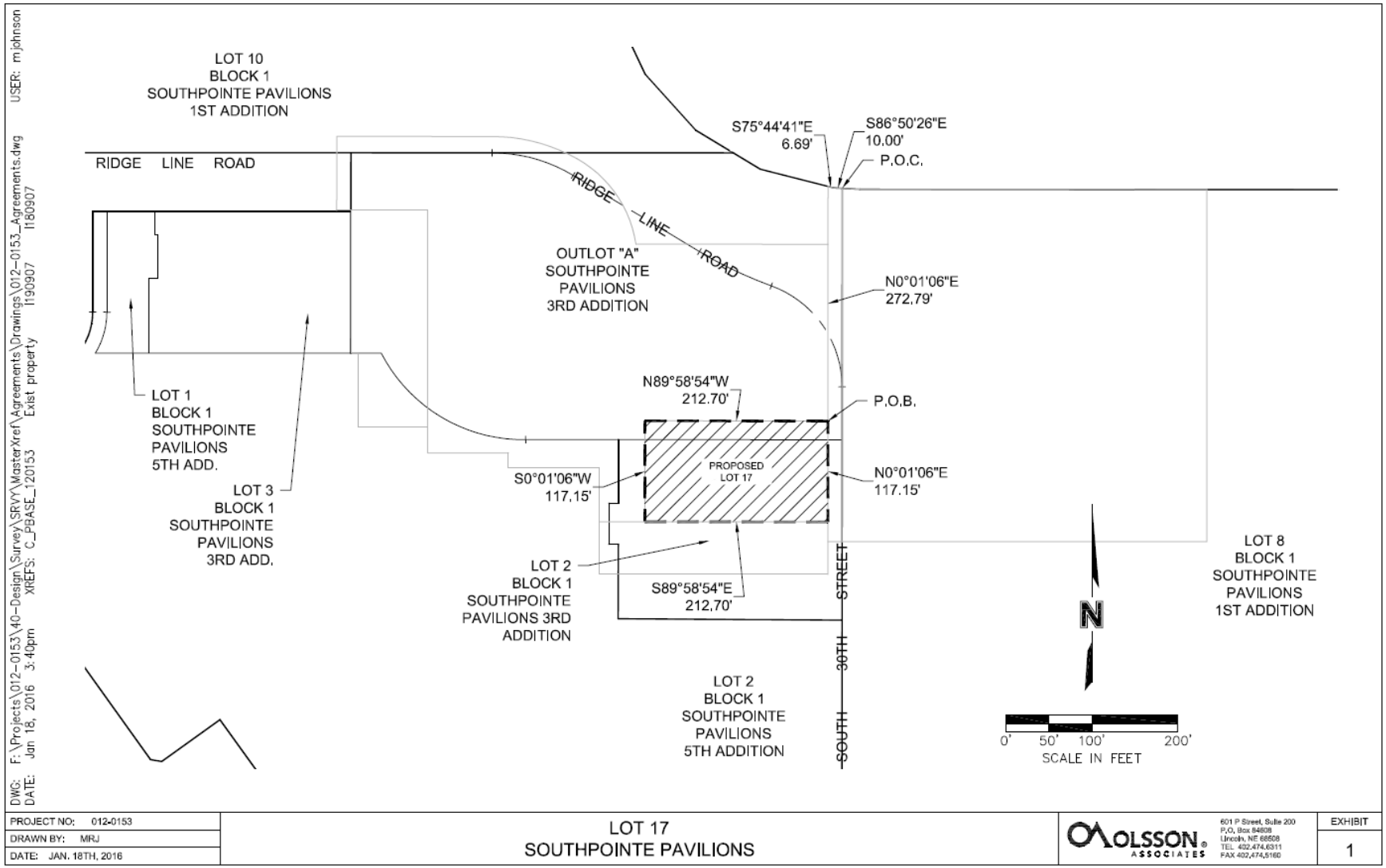
A. Retail Space Lot: See below

B. Western portion of the Scheels Lot: See below

Powder Mountain Property:

A. Eastern portion of the Scheels Lot: See below
B. Commercial Store Lot (Lot 6): Lot 6, Block 1, South Pointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska; See below

Retail Space Lot (Lot 17):



Retail Space Lot (Lot 17):

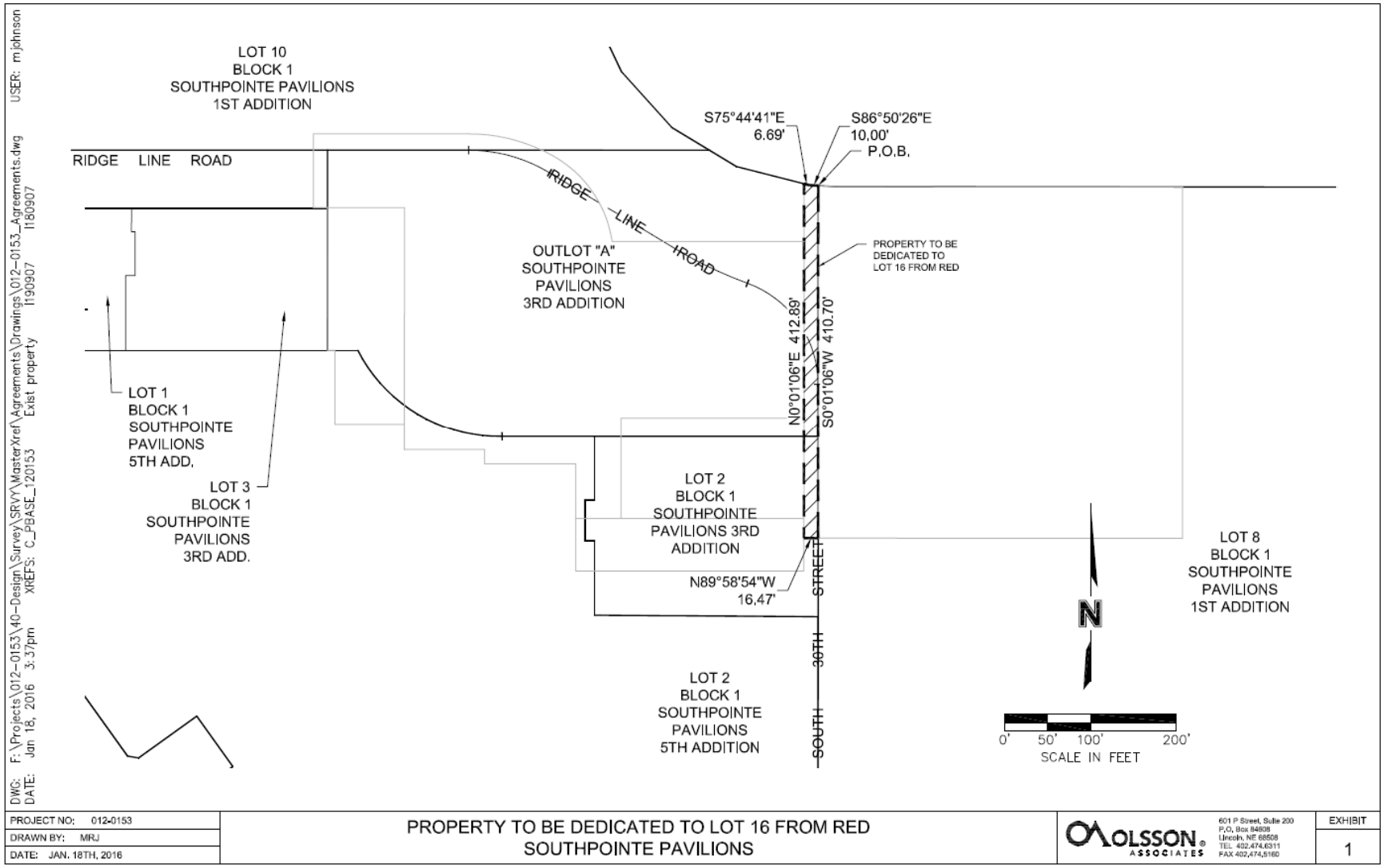
LEGAL DESCRIPTION
LOT 17

A TRACT OF LAND COMPOSED OF A PORTION OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, AND A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION; THENCE WESTERLY ON A NORTH LINE OF SAID OUTLOT "A" ON AN ASSUMED BEARING OF N86°50'26"W, A DISTANCE OF 10.00' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE N75°44'41"W, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 6.69' TO A POINT; THENCE S00°01'06"W, ON A LINE 16.47' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID OUTLOT "A", A DISTANCE OF 272.79' TO **THE TRUE POINT OF BEGINNING**; THENCE CONTINUING S00°01'06"W, A DISTANCE OF 117.15' TO A POINT; THENCE S89°58'54"W, A DISTANCE OF 212.70' TO A POINT; THENCE N00°01'06"E, A DISTANCE OF 117.15' TO A POINT; THENCE S89°58'54"E, A DISTANCE OF 212.70' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 24,917.38 SQUARE FEET OR 0.57 ACRES, MORE OR LESS.

Friday, January 15, 2016
F:\Projects\012-0153\40-Design\Survey\SRVY\MasterXref\Agreements\Documents\LOT 17.doc

Western portion of the Scheels Lot (Lot 16):



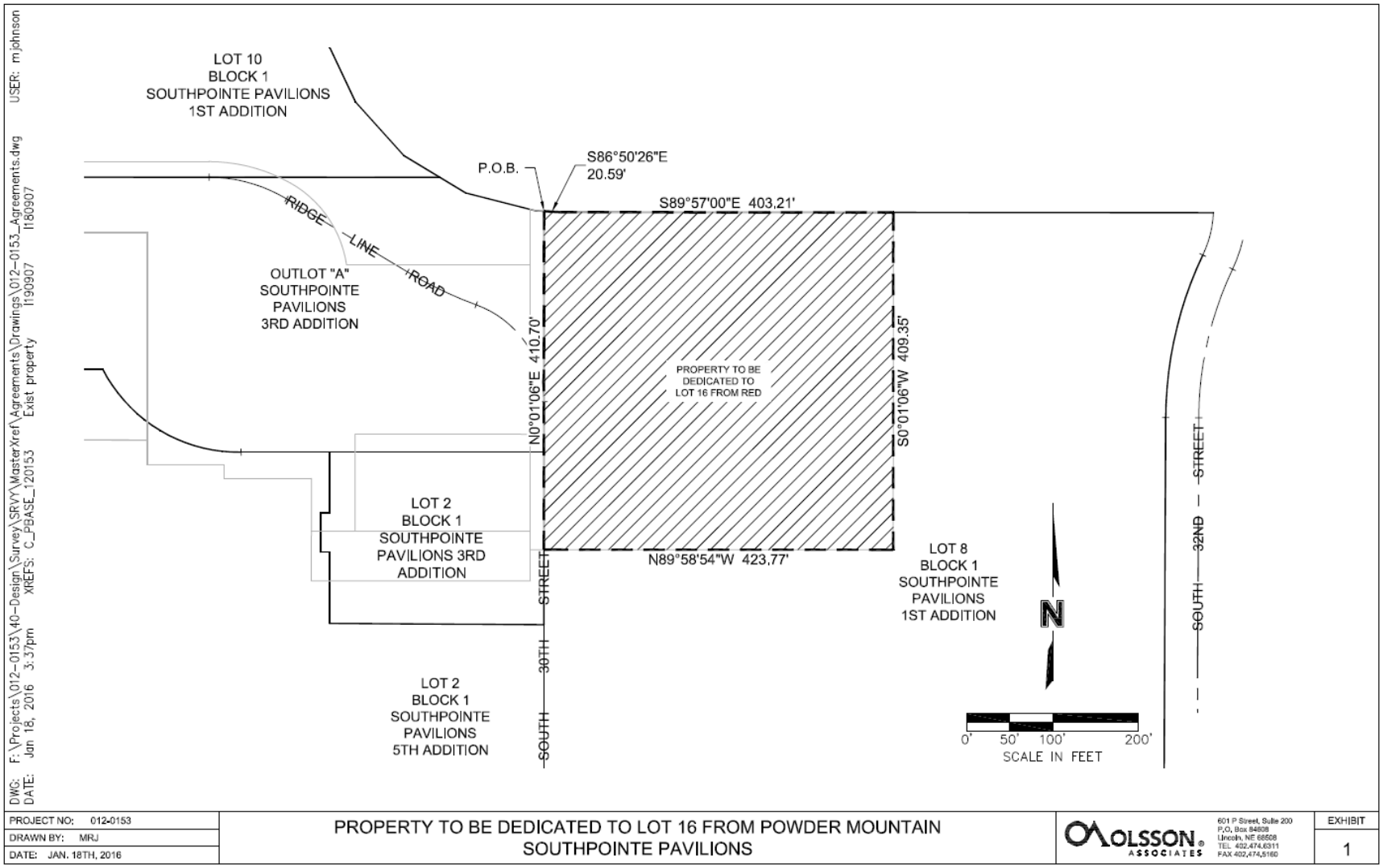
Western portion of the Scheels Lot (Lot 16):

LEGAL DESCRIPTION
DEDICATE TO LOT 16 FROM RED

A TRACT OF LAND COMPOSED OF A PORTION OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, AND A PORTION OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE SOUTHERLY ON THE EAST LINE OF SAID OUTLOT "A", AND ON THE EAST LINE OF LOT 2, BLOCK 1, SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID LINE BEING THE WEST LINE OF SAID LOT 8 ON AN ASSUMED BEARING OF S00°01'06"W, A DISTANCE OF 410.70' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 16.47' TO A POINT; THENCE N00°01'06"E, ON A LINE 16.47' WEST OF AND PARALLEL WITH THE EAST LINES OF SAID LOT 2, AND OUTLOT "A", A DISTANCE OF 412.89' TO A POINT OF INTERSECTION WITH A NORTH LINE OF SAID OUTLOT "A"; THENCE S75°44'41"E, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 6.69' TO A NORTH CORNER OF SAID OUTLOT "A"; THENCE S86°50'26"E, ON A NORTH LINE OF SAID OUTLOT "A", A DISTANCE OF 10.00' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 6,776.66 SQUARE FEET OR 0.16 ACRES, MORE OR LESS.

Eastern portion of the Scheels Lot (Lot 16):



Eastern portion of the Scheels Lot (Lot 16):

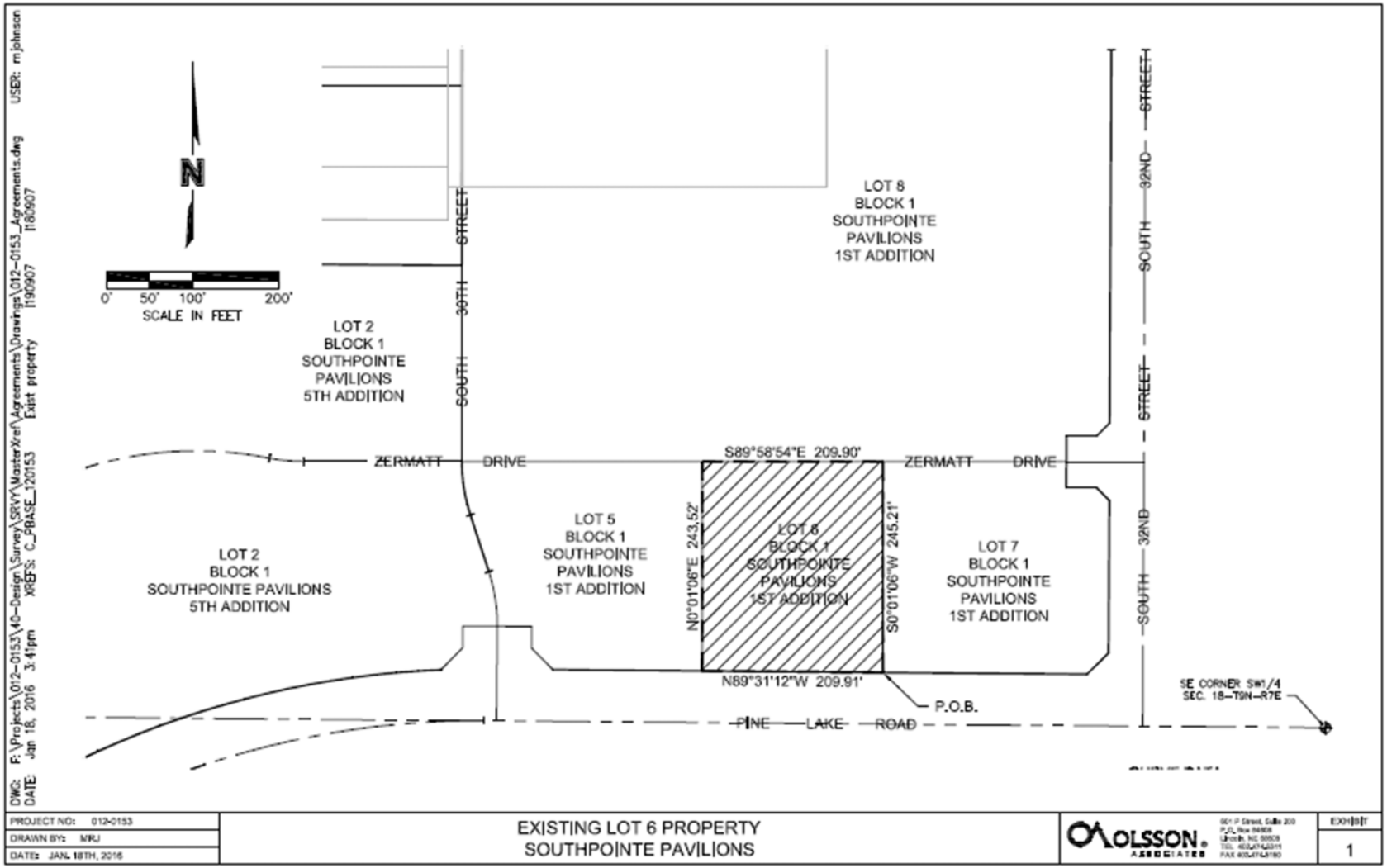
LEGAL DESCRIPTION
DEDICATE TO LOT 16
FROM POWDER MOUNTAIN

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 8, BLOCK 1, SOUTH POINTE PAVILIONS 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 8, BLOCK 1, SOUTHPOINTE PAVILIONS 1ST ADDITION, SAID POINT BEING THE NORTHEAST CORNER OF OUTLOT "A", SOUTHPOINTE PAVILIONS 3RD ADDITION, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE EASTERLY ON A NORTH LINE OF SAID LOT 8 ON AN ASSUMED BEARING OF S86°50'26"E, A DISTANCE OF 20.59' TO A NORTH CORNER OF SAID LOT 8; THENCE S89°57'00"E, ON A NORTH LINE OF SAID LOT 8, A DISTANCE OF 403.21' TO A POINT; THENCE S00°01'06"W, A DISTANCE OF 409.35' TO A POINT; THENCE N89°58'54"W, A DISTANCE OF 423.77' TO A POINT OF INTERSECTION WITH THE WEST LINE OF SAID LOT 8; THENCE N00°01'06"E, ON THE WEST LINE OF SAID LOT 8, A DISTANCE OF 410.70' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 173,530.23 SQUARE FEET OR 3.98 ACRES, MORE OR LESS.

Friday, January 15, 2016
F:\Projects\012-0153\40-Design\Survey\SRVY\MasterXref\Agreements\Documents\Dedicate to Lot 16 from Powder Mountain.doc

Commercial Store Lot (Lot 6):



Commercial Store Lot (Lot 6):

Lot 6, Block 1, South Pointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska