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Clay J. Dowling

REGISTER OF DEEDS

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**THIRD AMENDMENT TO MIXED USE
DEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT TO MIXED USE DEVELOPMENT AGREEMENT is made pursuant to Article XXII of the Zoning Ordinance of the City of Papillion, and entered into by and between the CITY OF PAPILLION, NEBRASKA, a municipal corporation (hereinafter referred to as "City"), and THE VENTEICHER LIMITED LIABILITY COMPANY, a Nebraska limited liability company (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, the City and Developer have entered into a certain Mixed Use Development Agreement that was approved by the City Council of the City of Papillion on November 8, 2006, by Resolution No. R06-0171, as amended by that certain First Amendment to Mixed Use Development Agreement, approved by the City Council of the City of Papillion on October 7, 2008, by Resolution No. R08-0161, as further amended by that certain Second Amendment to Mixed Use Development Agreement, approved by the City Council of the City of Papillion on October 19, 2010, by Resolution No. R10-0148 (collectively the "Development Agreement"), setting forth certain conditions with respect to the development of property owned by the Developer known as Portal Plaza South; and

WHEREAS, the Developer desires to amend the Development Agreement to include an additional civic use type as a permitted use for Lots 1 through 3, Lots 6 through 10, inclusive, Portal Plaza South, Lot 1, Portal Plaza South Replat 1, and Lots 1 and 2, Portal Plaza South Replat 2.

NOW, THEREFORE, the following is agreed between the parties hereto:

1. Capitalized Terms. All capitalized terms used in this Third Amendment shall have the meanings set forth in the Agreement except as otherwise defined herein.
2. Area of Application. This Third Amendment applies to Lots 1 through 3, Lots 6 through 10, inclusive, Portal Plaza South, Lot 1, Portal Plaza South Replat 1, and Lots 1 and 2, Portal Plaza South Replat 2.
3. Amendment #1: Exhibit D is hereby repealed and replaced with Exhibit D-1, attached hereto and incorporated herein with this reference, which is amended to:

- A. Include Civic Uses is the design guidelines for Retail, Commercial, and Office Buildings;
- B. Modify both the Retail, Commercial, and Office Buildings and Flex Space or Industrial Buildings design standards to allow the use of prefinished metal panels and prefinished metal fascia on up to 25% of façades visible from public right-of-way and to specifically allow Royal Blue as a permitted coordinating color;
- C. Require construction of buildings on Lots 1, 2, 3, 6, and 7, Portal Plaza South and Lot 2, Portal Plaza South Replat 2 to meet the Retail, Commercial, and Office Buildings design standard; and
- D. Limit construction of Flex Space Buildings or Industrial Buildings to Lots 8, 9, and 10, Portal Plaza South.

4. Amendment #2: Exhibit G-1 to the Agreement is hereby repealed and replaced with Exhibit G-1, attached hereto and incorporated herein with this reference, which is amended to:

- A. Add Religious Assembly as a permitted use with the restriction that Religious Assembly is permitted on only one lot within Portal Plaza South;
- B. Replace General Retail Services with Limited Retail Services and Large Retail Services because General Retail Services no longer exists as a use type in the Zoning Regulations; and
- C. Delete Personal Improvement Services as a permitted use because the use type no longer exists within the Zoning Regulations.

5. No Other Amendments. Except as specifically set forth herein, the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the executing parties, by their respective duly authorized agents, have entered into this Third Amendment to Mixed Use Development Agreement effective on the date of City Council approval.

This AMENDMENT approved and accepted by the CITY OF PAPILLION, NEBRASKA, this 16th day of July, 2013.



CITY OF PAPILLION, NEBRASKA, a Municipal corporation,

By: [Signature]
David P. Black, Mayor

ATTEST:

[Signature]
Elizabeth Butler, City Clerk

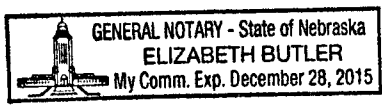
DEVELOPER:

THE VENTEICHER LIMITED LIABILITY COMPANY,
a Nebraska limited liability company,

By: [Signature]
George W. Venteicher, Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 15th day of July, 2013, by George W. Venteicher, Managing Member of The Venteicher Limited Liability Company, a Nebraska limited liability company, on behalf of said limited liability company.



[Seal]

[Signature]
Notary Public

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**EXHIBIT D-1
ARCHITECTURAL AND SITE
DESIGN GUIDELINES**

**Portal Plaza South
108th Street & Portal Road
Papillion, Nebraska**

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1. INTRODUCTION

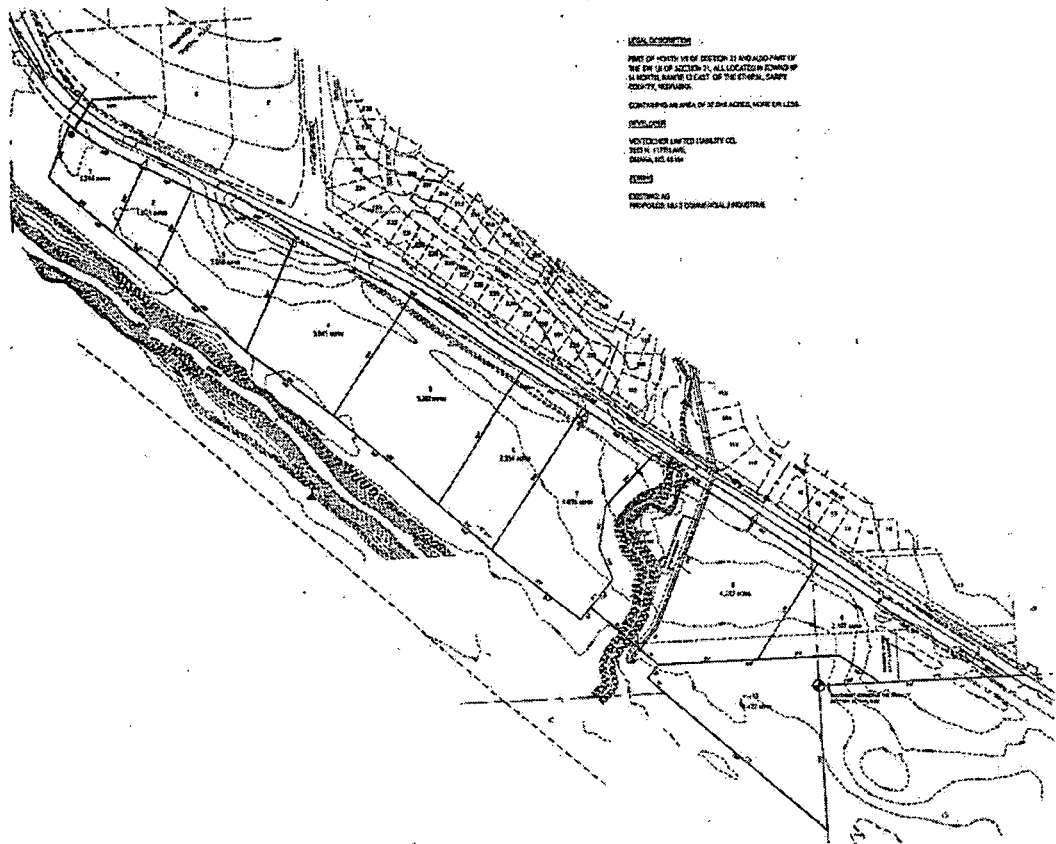
The City of Papillion, Nebraska, desires to create a visually attractive and functional multi-use project within the City of Papillion, along Portal Road. All projects along this road will project an image of high quality construction and design commensurate with a gateway corridor.

The Owners of Portal Plaza South propose these Development Guidelines as the basis of design and construction of all individual lots within Portal Plaza South. These guidelines deal with the design of the site, buildings and structures, plantings, signs and other items that may be visible to the public.

The criteria contained herein are not intended to restrict imagination, innovation, or variety, but rather to assist in focusing on design principles that can result in creative solutions that will develop a satisfactory visual appearance within the Portal Plaza South development, preserve taxable values, and promote the public health, safety, and welfare.

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2. GEOGRAPHIC AREA



3. DEFINITIONS

Appearance. The outward aspect visible to the public.

Appropriate. Sympathetic, or fitting, to the context of the site and the whole community.

Appurtenances. The visible, functional objects accessory to and part of buildings.

Architectural concept. The basic aesthetic idea of a building, or group of buildings or structures, including the site and landscape development, that produces the architectural character.

Architectural feature. A prominent or significant part or element of a building, structure, or site.

Architectural style. The characteristic form and detail, as of buildings of a particular historic period.

Attractive. Having qualities that arouse interest or pleasure in the observer.

Berm. A raised form of earth to provide screening or to improve the aesthetic character.

Bufferyard. A landscaped area intended to separate and partially obstruct the view of two adjacent land uses or properties from one another. Various built landscape features maybe included within the bufferyard that may include pedestrian walkways, retaining walls signage or utilities.

City. City of Papillion

Code. The Municipal Code of the City of Papillion.

Cohesiveness. Unity of composition between design elements of a building or a group of buildings and the landscape development.

Compatibility. Harmony in the appearance of two or more external design features in the same vicinity.

Conservation. The protection and care that prevent destruction or deterioration of historical or otherwise significant structures, buildings, or natural resources.

Cornice. A horizontal molded projection that crowns or completes a building or wall.

Developer/Owner. The author of these guidelines.

Eclectic. Choosing what appears to be the best from diverse sources, systems, or styles.

Exterior building component. An essential and visible part of the exterior of a building.

External design feature. The general arrangement of any portion of a building, sign, landscaping, or structure and including the kind, color, and texture of the materials of such portion, and the types of roof, windows, doors, lights, attached or ground signs, or other fixtures appurtenant to such portions as will be open to public view from any street, place, or way.

Flex Space / Industrial Building. A generic term for uses combining light manufacturing and warehousing with store front retailing. Usually having a large rear door access and a retail appearance to the front.

Industrial Building. A type of construction comprising large open spaces with high clearance that provide dock door access.

Landscape. Plant materials, topography, and other natural physical elements combined in relation to one another and to man-made structures.

Light cut-off angle. An angle from vertical, extending downward from a luminaire, which defines the maximum range of incident illumination outward at the ground plane.

Logic of design. Accepted principles and criteria of validity in the solution of the problem of design.

Mechanical equipment. Equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes.

Miscellaneous structures. Structures, other than buildings, visible from public ways. Examples are: memorials, stagings, antennas, water tanks and towers, sheds, shelters, fences and walls, kennels, transformers, drive-up facilities.

Office Building. A type of construction characteristic of a single or multi-tenant use with a controlled access point and shared common areas.

Plant materials. Trees, shrubs, vines, ground covers, grass, perennials, annuals, and bulbs.

Proportion. Balanced relationship of parts of a building, landscape, structures, or buildings to each other and to the whole.

Scale. Proportional relationship of the size of parts to one another and to the human figure.

Screening. Structure of planting that conceals from view from public ways the area behind such structure or planting.

Retail Building-Large Box. A type of construction defined as over 20,000 S.F. occupied by one business.

Retail Building-Small Shops. A type of construction comprised of many businesses each with an individual entry point where Individual Tenants are smaller than 20,000 S.F.

Retail Building-Outlot or Pad Sites. A type of construction characteristically a free standing structure on a defined parcel, usually housing one business.

Shrub. A multi-stemmed woody plant other than a tree.

Site break. A structural or landscape device to interrupt long vistas and create visual interest in a site development.

Street hardware. Man-made objects other than buildings that are part of the streetscape. Examples are: lamp posts, utility poles, traffic signs, benches, litter containers, planting containers, letter boxes, fire hydrants.

Streetscape. The scene as may be observed along a public street or way composed of natural or man-made components, including buildings, paving, planting, street hardware, and miscellaneous structures.

Structure. Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground.

Utilitarian structure. A structure or enclosure relating to mechanical or electrical services to a building or development.

Utility hardware. Devices such as poles, crossarms, transformers and vaults, gas pressure regulating assemblies, hydrants, and buffalo boxes that are used for water, gas, oil, sewer, and electrical services to a building or a project.

Setback. The required distance from a building wall or overhang to the property line.

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4. PORTAL PLAZA SOUTH VISION

It is anticipated that this development will be built out with the following project types:

- Retail Small Shops and Retail Outlots or Pad Buildings
- Flex Space Buildings
- Office Buildings (single or multi-story)
- Industrial Buildings

These building types and land uses are more specifically described in Exhibit G of the Mixed Use Development Agreement.

As a gateway development to the City of Papillion, it is important for Portal Plaza South to pull the diverse project types listed above together into a development that has a sense of place and visual continuity created by common:

- Style
- Site Elements
- Building Materials and Building Elements
- Color Palettes

Each of the unifying elements listed above are discussed in more detail within their respective sections of this document.

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5. PORTAL PLAZA SOUTH STYLE

I. BUILDING MASSING

A. Walls

1. All facades of each building must be designed to be architecturally interesting through the use of massing and plane changes to create shadows and depth. Building elements such as covered arcades, stepping the facade or recessed entries are suggested to create this building massing requirements. Building facades not visible from public right of ways may provide less interesting design.

B. Roofs

1. All buildings shall have roofs or parapets that conceal any roof top mechanical units. If sloped roofs are used, the pitch shall be 6/12. Pitched roofs shall be composed of standing seam metal in the darker green color range.

II. BUILDING MATERIALS

A. Civic, Retail, Commercial and Office Buildings

1. Buildings constructed on Lots 1, 2, 3, 6, and 7, Portal Plaza South and Lot 2, Portal Plaza South Replat 2 shall comply with the Civic, Retail, Commercial and Office Buildings requirements. Buildings constructed on Lots 8, 9, and 10, Portal Plaza South shall comply with either the Civic, Retail, Commercial and Office Buildings requirements or the Flex Space or Industrial Buildings requirements.
2. Building facades visible from the public right-of-way shall be composed of the following percentages of building material cumulated over all visible facades:
 - a. 50% or more but not to exceed 80% of the facade, Clay Brick in the earth tone color ranges and Clear Glass with natural aluminum mullions.
 - b. Up to 50% of the façade may be Synthetic Stucco (E.I.F.S.), Painted Rock faced Concrete Block, Precast Concrete, wood siding or fiber cement board siding in the earth tones; except that Synthetic Stucco (E.I.F.S.) is not permitted in lowest four feet along the ground of any façade.
 - c. Up to 25% of the façade may be prefinished metal panels and prefinished metal fascia.
 - d. 10% of the façade may be a material that is not listed in the previous material list.
3. Building facades that are not visible from a public right-of-way may be composed of approved materials for visible facades or: Synthetic Stucco (E.I.F.S.), Painted Rock Faced Concrete Block or Precast Concrete, except that Synthetic Stucco (E.I.F.S.) is not permitted in lowest four feet along the ground of any façade.
4. All colors shall be selected from the color palette of Appendix A. Ten percent (10%) of the facades may be a coordinating color to the color palette of Appendix A including Royal Blue.

B. Flex Space Buildings or Industrial Buildings

1. Flex Space Buildings or Industrial Buildings shall be limited to Lots 8, 9, and 10, Portal Plaza South.
2. Building facades visible from the public right-of-way shall be composed of the following building material cumulated over all visible facades:
 - a. 80% Decorative Block or Brick and clear or tinted glass.
 - b. Up to 25% of the façade may be prefinished metal panels and prefinished metal fascia.
 - c. 10% synthetic Stucco (EIFS), painted rock faced concrete block or laminated panels in natural aluminum color; except that Synthetic Stucco (E.I.F.S.) is not permitted in lowest four feet along the ground of any façade.
 - d. 10% of the façade may be a coordinating color or material that is not listed as an accent to the design.

- e. See Appendix D for sample elevations.
 - f. See Appendix A for color palettes.
3. Building facades that are not visible from a public right-of-way may be composed of approved materials for visible facades or: Synthetic Stucco (E.I.F.S.), Painted Rock Faced Concrete Block or Precast Concrete, except that Synthetic Stucco (E.I.F.S.) is not permitted in lowest four feet along the ground of any façade.
 4. All colors shall be selected from the color palette of Appendix A. Ten percent (10%) of the facades may be a coordinating color to the color palette of Appendix A including Royal Blue.

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6. SITE ELEMENTS

I. SITE REQUIREMENTS

A. Public Sidewalks.

1. All public right of ways shall be provided with a concrete walk with a minimum width of 4' per City of Papillion standards. All buildings within Portal Plaza must have pedestrian walkways and public walks connected to the perimeter.

B. Buffering

1. A thirty-foot wide bufferyard shall be provided along 107th Street.
2. A thirty-foot wide bufferyard shall be provided along Portal Road.
3. A ten-foot wide bufferyard shall be provided along Giles Road.

C. Interior Green Space

1. A five foot wide green space shall be provided along all interior lot lines unless lots are combined.
2. Parking lots shall be planted per City of Papillion requirements. A minimum of 6% of the total parking lot area shall be pervious and planted with a combination of trees, shrubs and perennials.

D. Plant Materials

1. Plant Materials shall meet City of Papillion's size standards. Plantings shall be consistent with Exhibit B.

E. Site Lighting

1. All site lighting, parking lot lighting shall be as manufactured by Kim RA17-CAS16-534188A and RA25 CAL25-642508, illustrated in Appendix B. Other manufacturers of equal or greater quality may be approved by the Planning Director, provided that the style of lighting is consistent throughout the Portal Plaza South development.
2. Lighting within any overhead canopy, including the lens, shall be recessed with down cast fixtures.
3. Lighting shall be downcast and cut-off shields shall be used to reduce off-site glare.

F. Roof Top Mechanical Screens. All roof top mechanical units shall be screened not less than 90% of the vertical plane from the base to the top of the mechanical equipment from view from public rights-of-way through the use of permanent architectural screens that are integrated with the overall design of the building.

1. The screen shall be constructed from the following:
 - a. Building Materials listed for the building's project type.
 - b. Pitched roof elements of materials consistent with the roof material of the building.

G. Ground Level Mechanical Screens. All ground level mechanical units shall be screened not less than 90% of the vertical plane from the base to the top of the mechanical equipment from view from public rights-of-way through the use of permanent architectural screens that are integrated with the overall design of the building.

1. The screen shall be constructed from the following:
 - a. Building Materials listed for the building's project type.
 - b. Combination of coniferous vegetation and berms.

H. Refuse Screening. All trash or refuse receptacles shall be screened from view from public right-of-ways through the use of architectural screens that are integrated with the overall design of the building and located next to the building.

1. The screen shall be constructed from the following:
 - a. Building Materials listed for the building's project type
 - b. Wooden fencing and chain link fencing are not acceptable materials
2. The gate shall be constructed of a steel frame with wood or decorative metal facing.

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3. If the refuse container is integrated with the dock area, the dock screening may be sufficient and will be determined by the Planning Director at the time of Building Permit Site Plan Review.
 4. Landscape screens may not be used to satisfy this requirement.
- I. Dock Screening (No loading dock shall face a public right-of-way) All loading docks shall be screened from view from public rights-of-way through the use of one of the following:
1. Architectural screens that are integrated with the overall design of the building and constructed of Building Materials listed for the building's project type.
 2. Landscape screen of a density to screen 80% of the dock area from view within 3 years of planting. View shall be 80% screened all 12 months of the year.
- J. Interior Vehicular Circulation
1. Parking lots shall be connected from lot to lot within the development to minimize the use of Portal Road for interior trips, except that connections across outlots are not required.
 2. Truck routes, truck parking, and loading zones should be oriented to the rear of the buildings to minimize conflict with other vehicular and pedestrian traffic.
- K. Outdoor Storage
1. Outdoor Storage is prohibited in the front yard of any lot within Portal Plaza South.
 2. Outdoor Storage shall be enclosed within a perimeter fence that meets the following requirements:
 - a. Is 80% Opaque
 - b. Constructed of steel, vinyl, aluminum, wood, masonry, or similar material approved by the Planning Director. Chain link fence with vinyl slats is not permitted.
 - c. An exception to the opaque and materials requirement may be granted by the Planning Director where sufficient landscape buffering is provided and visibility from a public right-of-way is limited.
 3. Commercial Vehicles parked for more than 72 hours shall be considered outdoor storage. The intent of this is to limit the long term parking of large trucks or trailers in a visible location.
 4. Overnight and weekend parking of regularly used Commercial Vehicles should occur at the rear of the lot.

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7. COLOR PALETTES

In order to encourage a proper balance of vitality and cohesiveness within the Portal Plaza South development, color ranges have been developed. The inspiration for these color ranges is native Nebraska landscape colors. Any material or paint must coordinate with these sample color ranges. Ten percent (10%) of any facade may have an accent color that is compatible with these color ranges. Refer to Appendix A.



8. SIGNAGE

All signage shall comply with the CC Community Commercial regulations of the City of Papillion Zoning Ordinance.

Signage requirements specific to the Portal Plaza Development are as follows:

1. All building signs shall be individual can letters. Color of letters is up to the Building Owner or Tenant.
2. All freestanding signs shall be Monument type. Pole signs are not permitted.
3. Exhibit F illustrates the maximum size for the Conceptual Monument Sign.

Exhibit G-3

Permitted Uses¹

I. Office Use Types

- A. General Office
- B. Financial Services
- C. Medical Offices

II. Civic Use Types²

- A. Administration
- B. Child Care Center
- C. Clubs (except that outdoor athletic fields are not permitted)
- D. College and University Facilities
- E. Cultural Services
- F. Day-Care Services (Adult)
- G. Postal Services
- H. Preschool
- I. Religious Assembly³

III. Commercial Use Types

- A. Automotive rental and sales⁴
- B. Auto Services (including car washes)
- C. Business Support Services
- D. Cocktail Lounge⁵
- E. Commercial Recreation (Controlled Impact – Indoor Only)
- F. Construction Sales and Services
- G. Consumer Services
- H. Food Sales
 - i. Convenient Food Sales
 - ii. Limited Food Sales
 - iii. General Food Sales
- I. Kennels⁶
- J. Liquor Sales⁷
- K. Personal Services
- L. Pet Services
- M. Restaurants
 - i. Restaurant (drive-in or fast food)⁸
 - ii. Restaurant (general)
- N. Retail Services
 - i. Limited
 - ii. Large
- O. Veterinary Services

IV. Industrial use Types⁹

- A. Custom Manufacturing
- B. Light Industry

- C. Warehousing
- D. Mini Storage with Outdoor Storage

¹ Any required 150 foot buffer will be measured from the closest building line or interior wall of the civic use to the closest parallel building line or interior wall of the commercial or industrial use. The enclosed outdoor play area for Child Care Centers and Preschools shall be used as the measuring point should it extend further than the wall. Any requirement related to adjacent bays shall also include bays in separate adjacent but non-adjoining buildings

² Civic Uses (except Postal Services) shall not be located within 150 feet of Cocktail Lounges or Liquor Sales and shall not be located in bays adjacent to Light Industry or Warehousing Uses.

³ Religious Assembly shall be limited to not more than one lot within Portal Plaza South.

⁴ Automotive rental and sales are restricted to not more than four lots within Portal Plaza South. Not more than four vehicles for sale or rent may be displayed/stored outside the building or rear yard; and may not be displayed/stored in a required parking area or bufferyard.

⁵ Cocktail Lounge is not permitted within 150 feet of any Civic Use (other than Postal Service).

⁶ Kennels are limited to indoor boarding, except that outdoor play/exercise areas may be located in a rear yard if properly screened in accordance with the Site Requirements for Outdoor Storage set forth in the Agreement (Exhibit D, Section K). Outdoor play/exercise areas may only be used on a temporary basis throughout the day. Kennels that have an outdoor play/exercise area shall not be located an adjacent bay of a Child Care Center or Preschool.

⁷ Liquor Sales is not permitted within 150 feet of any Civic Use (except Postal Services).

⁸ A maximum of fifty (50%) percent of the overall mixed use area may be used for any of the above-referenced uses; provided, however, that there shall be a twelve percent (12%) maximum on the overall mixed use area that may be used for free-standing fast food restaurants.

⁹ Light Industry and Warehousing are not permitted within any bay that is adjacent to any Civic Use (except Postal Services).

RJR (E)

CITY OF PAPIILLION
 David P. Black, Mayor
 Elizabeth Butler, City Clerk
 122 East Third Street
 Papillion, Nebraska 68046
 Phone 402-597-2021
 Fax 402-339-0670
 E-Mail: cityclerk@papillion.org