

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 4, 2007 AGENDA**

Subject:	Type:	Submitted By:
CONDITIONAL USE PERMIT — BAR AND GRILL LOT 2, SOUTHPORT EAST REPLAT THREE	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A public hearing has been advertised and a resolution has been prepared to approve a Conditional Use Permit to operate a bar and grill on Lot 2, Southport East Replat Three, located at Fantasy's Food and Fuel northeast of Southport Parkway and Giles Road.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval subject to the conditions identified by the Planning Commission.

BACKGROUND

A public hearing has been advertised and a resolution prepared for the City Council to consider an application submitted by Lylette Fields of Fields, Inc. on behalf of the property owner, Fantasy's Inc. for a conditional use permit to operate a bar and grill on Lot 2, Southport East Replat Three, located in the Fantasy's Food and Fuel complex at 7826 S. 123rd Plaza. The property is zoned C-3 Highway Commercial/Office Park District and is the site of the Fantasy's Food and Fuel development. A portion of one of the two buildings, Suites E and F, is being leased for a new business called *Island Bar and Grill*. The restaurant portion of the business is a permitted use within the C-3 district however taverns and cocktail lounges are a conditional use.

City Engineer John Kottmann and staff have reviewed the application for the conditional use permit and have the following comments:

1. The site plan for Fantasy's Food and Fuel shows 74 parking spaces to be divided among the convenience store (14 required spaces) and retail space (50 required spaces). The convenience store may also count spaces in front of the gas pumps as parking spaces.
2. To accommodate each tenant, seven parking spaces would be available per bay. Ideally, the proposed use should not exceed fourteen parking spaces in order to prevent overflow parking from affecting other businesses. However, the occupancy of the building is 104 people, so 22 parking spaces are required.
3. The applicant states that 3-4 employees will be the maximum number per working shift.

4. Both the Fire Chief and the Police Chief have reviewed the proposal and have no concerns at this time.
5. The City Engineer and staff recommend against having the beer garden, as this adds additional seating capacity which further adds to the problem of limited parking.
6. Staff is also recommending no other restaurants be allowed in the same building due to the parking requirements.

The Planning Commission held a public hearing on November 15, 2007, and recommended approval of the conditional use permit to City Council subject to the following conditions: no additional restaurants will be allowed; the applicant must demonstrate they can provide the necessary parking without negatively impacting the rest of the site; and no beer garden will be allowed.

\\Lvdcfp01\users\Administration\BRENDA\COUNCIL\07 Memos\CUP Island Bar & Grill.DOC

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A CONDITIONAL USE PERMIT FOR FANTASY'S INC. TO OPERATE A BAR AND GRILL ON LOT 2, SOUTHPORT EAST REPLAT THREE.

WHEREAS, Lylette Fields, on behalf of Fantasy's Inc. has applied for a conditional use permit for the purpose of operating a bar and grill on Lot 2, Southport East Replat Three, located at 7826 S. 123rd Plaza; and

WHEREAS, the La Vista Planning Commission has reviewed the application and recommends approval subject to no additional restaurants will be allowed, the applicant must demonstrate they can provide the necessary parking without negatively impacting the rest of the site, and no beer garden will be allowed; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit for such purposes, subject to the following conditions:

1. Based on the occupancy of the building, a minimum of 22 parking spaces are required. Parking shall not overflow outside of the parking lot onto other properties.
2. No other restaurants will be permitted in the same building.
3. The beer garden shall not be permitted. All seating shall be inside the building.

NOW THEREFORE, BE IT RESOLVED, that the Conditional Use Permit presented at the December 4, 2007, City Council meeting for Fantasy's Inc. to operate a bar and grill on Lot 2, Southport East Replat Three be, and hereby is approved, and the Mayor and City Clerk be and hereby are, authorized to execute same on behalf of the City with such revisions or amendments thereto that the City Administrator may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS 4TH DAY OF DECEMBER 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**CITY OF LA VISTA
PLANNING DIVISION**

RECOMMENDATION REPORT

CASE NUMBER:

FOR HEARING OF: December 4, 2007
Report Prepared on November 27, 2007

I. GENERAL INFORMATION

- A. APPLICANT:** Lylette Fields, Fields, Inc.
- B. PROPERTY OWNER:** Fantasy's Inc.
- C. LOCATION:** 7826 S. 123rd Plaza, Suites E & F.
- D. LEGAL DESCRIPTION:** Lot 2, Southport East Replat Three
- E. REQUESTED ACTION(S):** Approval of a Conditional Use Permit
- F. EXISTING ZONING AND LAND USE:**
C-3, Highway Commercial / Office Park District and Gateway Corridor District. The site has a gas station / convenience store and a coffee kiosk under construction. Additional commercial uses have been proposed.
- G. PURPOSE OF REQUEST:** The proposal is to construct a bar and grill inside of a newly constructed commercial flex building. Also, the sidewalk in front of the bays is proposed as an outside beer garden.
- H. SIZE OF SITE:** Approx. 2,700 square feet of the building is proposed for the bar and grill. The lot is approximately 1.9 acres.

II. BACKGROUND INFORMATION

- A. EXISTING CONDITION OF SITE:** Fantasy's Food and Fuel with additional commercial flex building under construction.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
 - 1. **North:** C-3, PayPal
 - 2. **East:** C-3, Vacant
 - 3. **South:** C-3, Pinnacle Bank
 - 4. **West:** C-3, Embassy Suites
- C. RELEVANT CASE HISTORY:** This lot was re-platted as a part of Southport East Replat 3
- D. APPLICABLE REGULATIONS:**
 - 1. Section 5.12, Zoning Ordinance, regarding C-3 Zoning District

2. Section 5.17, Zoning Ordinance, regarding Gateway Corridor Dist.
3. Section 6.05, Zoning Ordinance, CUP Standards for Approval
4. Southport Architectural and Site Design Guidelines

III. ANALYSIS

- A. **COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates this property for commercial uses in the gateway corridor.
- B. **OTHER PLANS:** Building plans have been submitted and construction is underway for the restaurant portion of the business. Fantasy's Food and Fuel had a Conditional Use Permit approved and architectural design and landscaping requirements were satisfied for all buildings on Lot 2, Southport East Replat Three.
- C. **TRAFFIC AND ACCESS:**
 1. Ingress / egress will be provided via South 123rd Plaza only.
 2. The applicant did not provide number of proposed parking spaces; however, the City Engineer has calculated that 21 parking spaces would be available for the proposed bar and grill. A request was made to the owners to provide a revised site plan to show how many spaces would be provided and what parking spaces would be reserved for the Island Bar and Grill.
 3. Pedestrian sidewalks and off-site access is not provided to this site. No other modes of transportation exist to this site at this time. The only sidewalks on-site are in front of the buildings' entrances. The bar and grill proposes to use 8' x 27' of their sidewalk as a beer garden.
- D. **UTILITIES:** All utilities are available to the site.

IV. REVIEW COMMENTS:

1. The site plan for Fantasy's Food and Fuel shows 74 parking spaces to be divided among the convenience store (14 required spaces) and retail space (50 required spaces). The convenience store may also count spaces in front of the gas pumps as parking spaces.
2. To accommodate each tenant, seven parking spaces would be available per bay. Ideally, the proposed use should not exceed fourteen parking spaces in order to prevent overflow parking from affecting other businesses. However, the occupancy of the building is 104 people, so 22 parking spaces are required.
3. The applicant states that 3-4 employees will be the maximum number per working shift.
4. Both the Fire Chief and the Police Chief have reviewed the proposal and have no concerns at this time.

5. The City Engineer and staff recommend against having the beer garden, as this adds additional seating capacity which further adds to the problem of limited parking.
6. Staff is also recommending no other restaurants be allowed in the same building due to the parking requirements.

V. PLANNING COMMISSION RECOMMENDATION:

The Planning Commission recommended approval of the Conditional Use Permit to allow a bar and grill in the C-3 zoning district with the following conditions:


1. The applicant shall demonstrate they can provide the necessary number of parking spaces for the bar and grill without negatively impacting the parking required for future tenants on this lot.
2. No additional restaurants will be allowed.
3. The beer garden shall not be permitted. All seating shall be inside the building.


VI. ATTACHMENTS TO REPORT:

1. Vicinity Map
2. City Engineer's Report
3. Draft Conditional Use Permit with Exhibits

VII. COPIES OF REPORT SENT TO:

1. Lylette Fields, Applicant
2. Public Upon Request

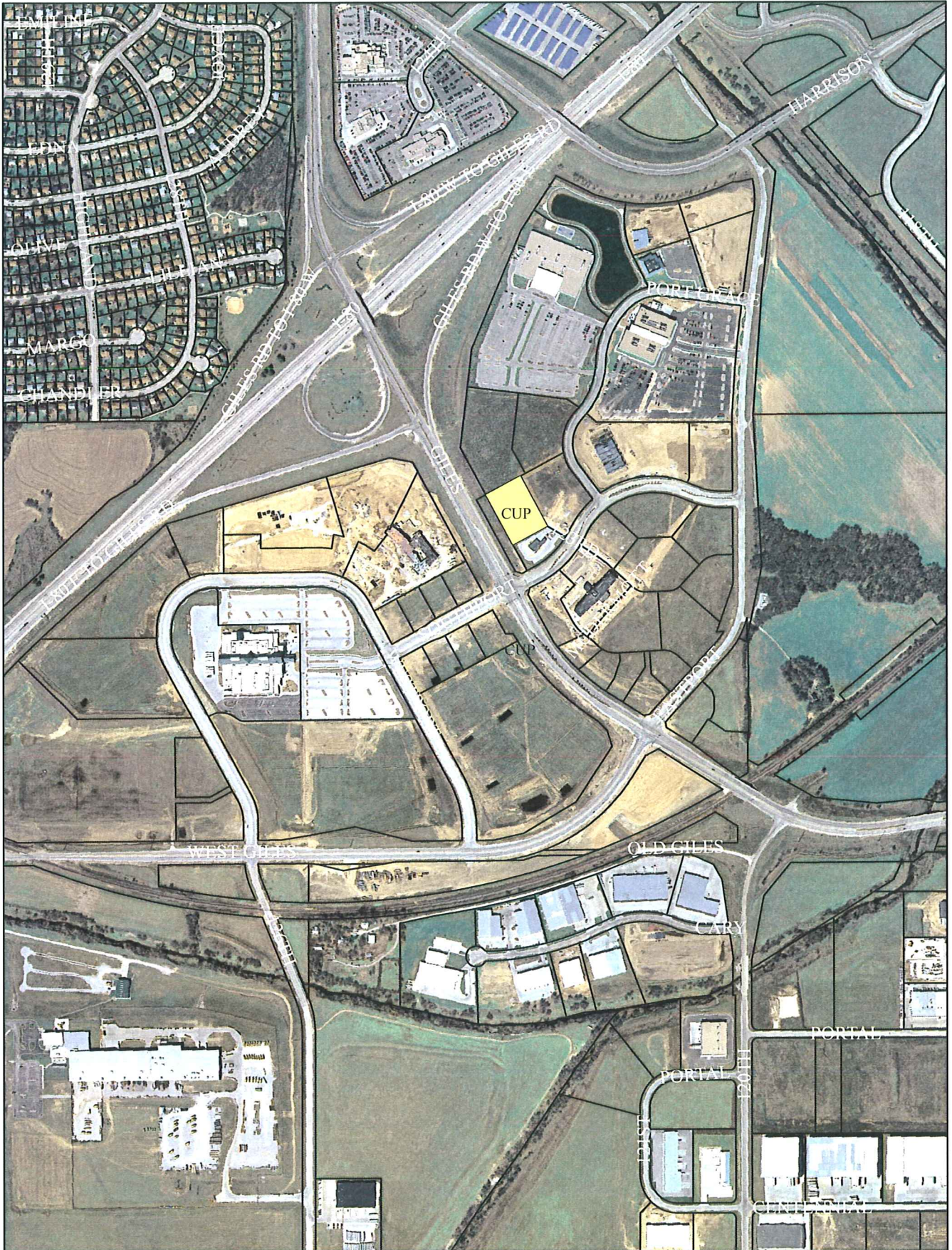

Prepared by:


Community Development Director

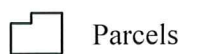
11-27-07

Date

Vicinity Map



Legend





THOMPSON, DREESSEN & DORNER, INC.
Consulting Engineers & Land Surveyors

November 12, 2007

Mr. Marcus Baker
City Planner
City of La Vista
8116 Park View Boulevard
La Vista, NE 68128

ROBERT E. DREESSEN, P.E.
NELSON J. HYMANS, P.E.
JAMES D. WARNER, L.S.
CHARLES E. RIGGS, P.E.
KA "KIP" P. SQUIRE III, P.E., S.E.
JOHN M. KOTTMANN, P.E.
ARTHUR D. BECCARD, P.E.
JOSEPH G. KOSINOVSKY, P.E.
DOUGLAS S. DREESSEN, P.E.
DEAN A. JAEGER, P.E.
RICHARD M. BROYLES, L.S.
DAVID H. NEEF, L.S.
RONALD M. KOENIG, L.S.
CHRIS E. DÖRNER, L.S.

TIMOTHY T. PAPSTEIN, P.E.
MICHAEL J. SMITH, L.S.
TROY J. NISSEN, P.E., S.E.
DOUGLAS E. KELLNER, P.E.
KEVIN L. TRUE, L.S.
GARY A. NORTON, P.E.
BRIAN L. LODES, P.E.
KURTIS L. ROHN, P.E.
JEFFREY L. THOMPSON, P.E.
DAREN A. KONDA, P.E.
MICHAEL T. CANIGLIA, L.S.
JEREMY T. STEENHOEK, P.E.
JOSHUA J. STORM, P.E.

RE: Rezoning & Conditional Use Permit Reviews 2007
Lot 2, Southport East Replat Three
Proposed Conditional Use Permit for Cocktail Lounge
Review of Updated Site Plan
TD² File No. 171-345.12

Marcus:

I have reviewed the updated Site Plan that you provided to me via e-mail on November 8, 2007 for the total development on Lot 2, Southport East Replat Three. The applicant has indicated that the Subway sandwich shop shown on the site plan is no longer a tenant and is to be disregarded. The site plan indicates that there are 89 parking stalls on the site. However, this figure includes counting the 16 cars at the fuel islands as parking stalls. A problem with this approach is that not all customers of the Fantasy's facility will stop at the fuel islands. There will be a certain amount of customers that stop to buy items other than fuel. The basis on which to make this estimation is not addressed by the parking regulations and therefore becomes a matter of judgment. From having visited Fantasy's stores at various locations, it is my observation that there are often times when there are 6 to 8 cars parked in front of the store and not at fuel pumps.

In my opinion the parking requirements are as follows:

USE

STALLS REQUIRED

Fantasy's C-Store non-fuel sales	7 (Based on observations)
Fantasy's Fuel Islands	16
General Retail Space	29.4 (Based on 5,885 sf @ 1/200 sf)
Coffee Kiosk	1.3 (Based on 192 sf @ 1/150 sf)
Taco Del Mar	13.6 (Based on 40% of 34 person capacity)
Total	67 Stalls w/o Island Bar & Grill

The total number of parking stalls on the site (including the fuel island spaces) is 89. This leaves 22 stalls for the proposed Island Bar & Grill. The applicant has indicated that there may be 10 to 12 employees during the peak shift. We think this may be overstated. The applicant needs to identify the proposed occupant capacity of the facility so that we can make a determination as to the adequacy of 22 parking stalls for this business.

Mr. Marcus Baker
November 12, 2007
Page 2

The conversion of any other bays in the facility to restaurant type uses will further increase the parking demand and it may be appropriate to include a limitation in this use permit, if approved, to specify no other restaurant type uses beyond those included in this plan.

Submitted by,

THOMPSON, DREESSEN & DORNER, INC.

A handwritten signature in black ink, reading "John M. Kottmann". The signature is written in a cursive style with a large, stylized initial "J".

John M. Kottmann, P.E.

JMK/jlf

cc: File

City of La Vista Conditional Use Permit

Conditional Use Permit for a Tavern and Cocktail Lounge

This Conditional Use Permit issued this 4th day of December, 2007, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Fantasy's, Inc. ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate a tavern and cocktail lounge upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 2, Southport East Replat 3 located in the NE ¼ Section 18 and the NW ¼ Section 17, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of locating and operating a tavern and cocktail lounge; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area designated on Exhibit "A" hereto for a tavern and cocktail lounge, said use hereinafter being referred to as "Permitted Use or Use".

Conditions of Permit

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
 - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives shall be provided to the City and attached to the permit as Exhibit "A". Specifically, based on the occupancy of the building, a minimum of 22 parking spaces shall be designated for the bar and grill. Parking for the use shall not overflow outside of the parking lot onto other properties.
 - b. Hours of operation for the use will be from 7 a.m. – 1:00 a.m. seven days a week.
 - c. There will be a maximum of four (4) employees working at any given time at the tavern.
 - d. The use will be comprised of 2,666 sq. feet of building space; all seating for the permitted use shall be inside the building.
 - e. Adequate parking (22 parking stalls) shall be provided on-site to accommodate the maximum number of patrons and employees (104 occupants) in attendance at any one time between the hours of operation.
 - f. No additional restaurants, taverns, or cocktail lounges will be permitted within the same building as

- the tenants of the permitted use.
- g. The premises shall be developed and maintained in accordance with the site plan (Exhibit "A") as approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.
 - h. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles and those approved in writing by the City.
 - i. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete.
 - j. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, ADA and FAA.
 - k. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
 - l. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
 - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval, if the violation continues after written notice from the City to Owner and a reasonable time was given for Owner to cure such violation.
 4. In respect to the Gateway Corridor Overlay District and Southport East Design Guidelines:
(All design guidelines have been followed in original Conditional Use Permit for Fantasy Food and Fuel)
 5. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
 - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
 - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
 - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
 6. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
 - a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
 - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
 - c. Owner's construction or placement of a storage tank, structure or other improvement on the premises

not specified in this permit.

- d. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
7. If the permitted use is not commenced within one (1) year from December 4, 2007, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
8. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
9. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Miscellaneous

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

Contact Name and Address: Mike Schramek
Fantasy's, Inc.
8930 So. 137th Circle
Omaha, NE 68138
(402) 891-9455

Effective Date:

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By _____
Douglas Kindig, Mayor

Attest:

Pamela A Buethe, CMC
City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

By: _____

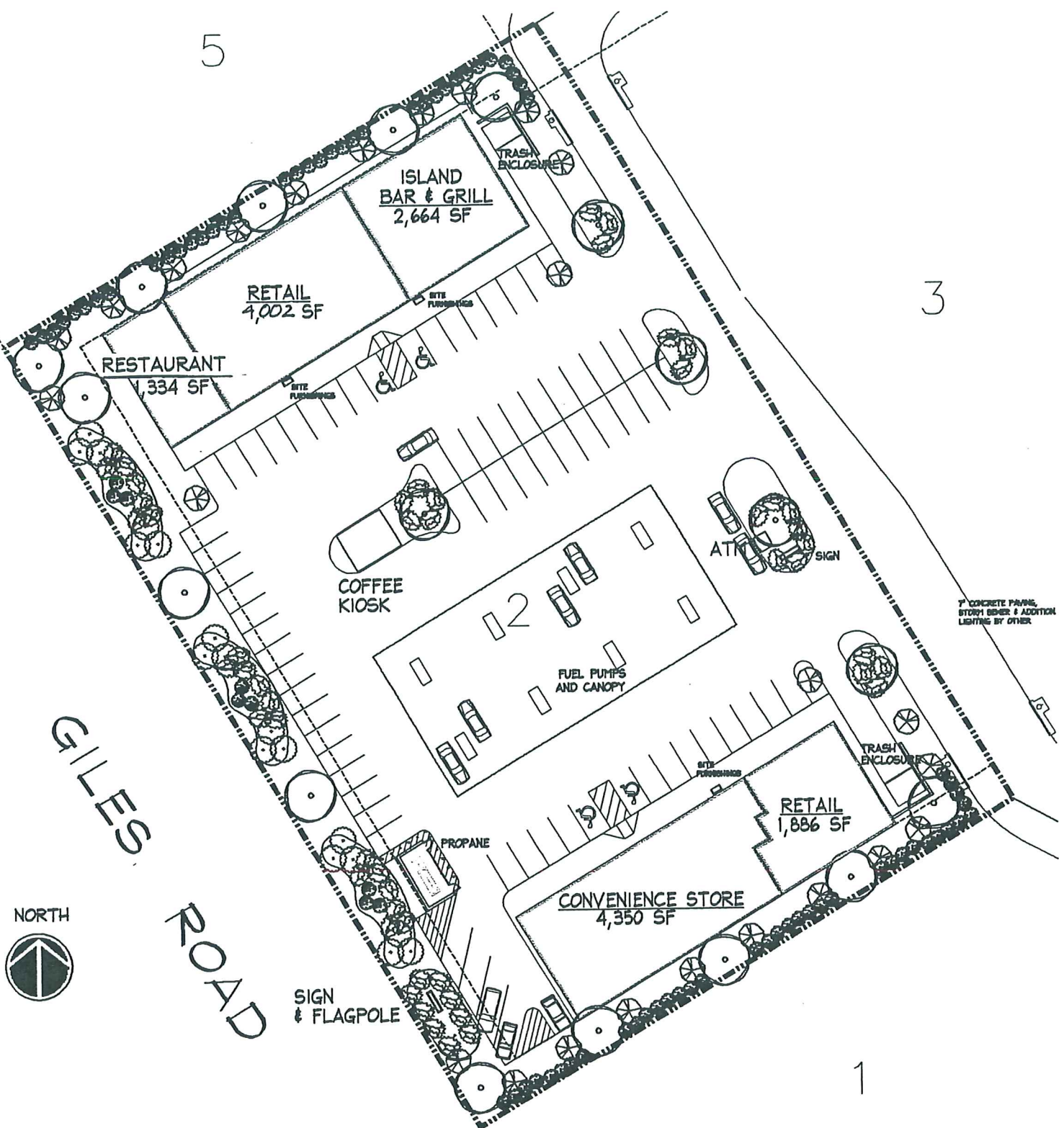
Title: _____

Date: _____

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3

1



C-STORE
RETAIL
RESTAURANT
RESTAURANT (Island Bar & Grill)

4,350 SF/300
5,884 SF/200
SEATING 34 x 40%
SEATING 52 x 40%

15 STALLS
30 STALLS
14 STALLS
21 STALLS

80 STALLS REQUIRED/89 STALLS PROVIDED
(NOTE: 16 STALLS @ GAS ISLANDS)

SOUTHPORT SQUARE SITE PLAN

LOT 2, REPLAT III
SOUTHPORT EAST SUBDIVISION
LA VISTA, NEBRASKA

SCALE: 1" = 50'-0"

11/8/2007 REV.

EXHIBIT "A"