

003737 RECORDED  
BOOK 1999 PAGE 003737

**RETURN TO:**  
**STREETAR CAMERON**  
300 NationsBank Building  
317 - Sixth Avenue  
Des Moines, IA 50309

1999 APR -5 P 12: 29

CAROL HOL, RECORDER  
DALLAS COUNTY, IOWA

**Preparer Information:**  
Individual's Name: Daniel A. Bowman  
Phone: 1-316-662-0537

**Street Address:**  
c/o Gilliland & Hayes  
20 West 2<sup>nd</sup> Avenue, Suite 200  
P. O. Box 2977  
Hutchinson, KS 67504-2977

# OF PAGES 14  
70.00 / 1.00

Space Above This Line for Recorder

## JOINT DRIVEWAY AGREEMENT

THIS JOINT DRIVEWAY AGREEMENT ("Agreement") is entered into this 26<sup>th</sup> day of March, 1999 by and between Hotel Des Moines, L.L.C., a Kansas Limited Liability Company, and KC Holdings, Inc., an Iowa Corporation.

### RECITALS

WHEREAS, Hotel Des Moines, L.L.C. is the developer of a certain tract of land located in West Des Moines, Iowa, on which a Hawthorn Suites Hotel will be constructed; and

WHEREAS, KC Holdings, Inc., is the developer of an adjacent tract of land to the east, on which a retail mall will be constructed; and

WHEREAS, certain governmental requirements mandate that Hotel Des Moines, L.L.C. and KC Holdings, Inc., share a common driveway for ingress and egress, shown on Exhibit "A" and marked "Common Drive"; and

WHEREAS, KC Holdings, Inc. has agreed to construct, maintain and landscape the driveway, and also to construct, maintain and landscape a raised berm adjacent to the property line, shown on Exhibit "A" and marked "Berm."

### AGREEMENTS

NOW, THEREFORE, Hotel Des Moines, L.L.C. and KC Holdings, Inc., in consideration of the mutual covenants set forth herein and other good and valuable consideration, hereby adopt the following restrictions and covenants for the purposes of clarifying the original intent of the Restrictive Covenants. It is agreed by the Parties that the promises made by the Parties are fully stated as follows.

BOOK 1999-3737  
PAGE 1

**ARTICLE I**  
**DEFINITIONS**

The following words, when used in this Agreement (unless the context shall prohibit), shall have the following meanings:

- (A) "Hotel Property" shall refer to that property legally described on Exhibit "B" hereto and made part hereof by reference.
- (B) "Retail Property" shall refer to that property legally described on Exhibit "C" hereto and made part hereof by reference.
- (C) "HDM" shall refer to the record owner, whether one or more persons or entities of the Hotel Property.
- (D) "KC" shall refer to the record owner, whether one or more persons or entities, of the Retail Property.
- (E) "Owners" shall refer collectively to HDM and KC.
- (F) "Common Drive" shall mean the driving path and driving entrance located on the Hotel Property and Retail Property allowing vehicular access to and from the properties and Lake Drive, West Des Moines, Iowa. The Common Drive shall encompass both curbs and all the area as encompassed by the dashed-dotted lines on the attached Exhibit A and labeled "Common Drive."
- (G) "Berm" shall mean that raised boundary on the property line separating the Hotel Property and Retail Property, as encompassed by the dashed-dotted lines on the attached Exhibit "A" and labeled "Berm."
- (H) "Landscaping" shall mean the placement of trees, shrubs, ornamentals, annuals, mulch, and other decorative improvements on the Berm and adjacent to the Common Drive, in the places and manner as indicated in Exhibit "E."
- (I) "Improved Areas" shall mean collectively the Common Drive, Landscaping and Berm.
- (J) "Maintenance Expenses" shall mean the expenses of operating and maintaining the Common Drive, Berm and/or Landscaping.
- (K) "Repair Expenses" shall mean the expenses of repairing the Common Drive, Landscaping and/or Berm.

BOOK 1999-3737  
PAGE 2

**SECTION II**  
**PROPERTY SUBJECT TO THIS AGREEMENT**

All that certain land known as the Hotel Property and legally described in "B" and that known as the Retail Property and legally described in Exhibit "C" hereto shall be subject to the terms and obligations of the Agreement as set forth herein.

**SECTION III**  
**COMMON DRIVEWAY AND BERM**

1. Enjoyment: All easements to Owners hereby granted are nonexclusive rights to use the Improved Areas, which shall be appurtenant to, and inseparable from and shall pass with the title to the Hotel Property and Retail Property, subject to the following:

- (A) All terms and conditions of this Agreement;
- (B) All terms and conditions of the Protective Covenant signed by West Lakes Development Company and Farm Bureau Life Insurance Company on March 29, 1993 and recorded at Book 6836, Page 678 with the Polk County Register of Deeds, Polk County, Iowa, as such may be from time to time amended;
- (C) The right of the Owners, when acting by unanimous consent, to dedicate all or any part of the Improved Areas to any public agency, authority or utilities;
- (D) The right of the Owners and the contractors, sub-contractors, agents, and employees resulting from the terms of this Agreement to use the Common Drive, without charge, for maintenance and construction purposes at any time during which the Owners own any property described herein.
- (E) The right of the Owners, when acting by unanimous consent, to grant additional easements over and upon the Common Drive which the Owners deem necessary or desirable for the development or use of and within the Hotel Property or Retail Property.
- (F) The use of the Common Drive shall be used solely in accordance with the purposes for which the Common Drive is intended without unreasonably hindering or encroaching upon the lawful rights of the Owners; and
- (G) No such rights granted hereunder may be assigned by the Owners but shall be appurtenant to and run with the title to the Hotel Property and the Retail Property.

BOOK 1999-3737  
PAGE 3

- (H) Nothing in this Agreement shall grant a right to KC to use or offer for use, the parking spaces on the Hotel Property, nor for HDM to use or offer for use, the parking spaces on the Retail Property. KC and HDM shall use their best efforts, including the erection of appropriate signs, to ensure that only their respective customers utilize provided parking. Parking provided on the Retail Property shall be as shown on Exhibit "A." No modification or amendment to the parking plan shall be made, which could, in the reasonable opinion of HDM affect the Hotel Property or its guests, without the prior written approval of HDM.

2. Installation of Common Drive, Landscaping and Berm: KC has agreed to construct the Common Drive, Landscaping and Berm in accordance with the architectural specifications and landscaping plan attached hereto as Exhibits "D" and "E." Such construction will be completed no later than July 1, 1999, unless otherwise agreed by the Owners. All construction shall be in accordance with all local, state and national codes and regulations, including all zoning requirements, restrictive covenants and any requirements of HDM's Franchisor.

3. Maintenance and Repair, Landscape Maintenance: KC shall construct, maintain, repair and replace, and pay the cost of the necessary or desirable repair and maintenance of the Common Drive, Landscaping or Berm during the term of this Agreement. All material, labor, and contractors selected and the frequency and scope of repair, maintenance and care shall be in the sole discretion of KC, subject to HDM's right to cure as set forth in Paragraph 4 of this Section.

Repair obligations shall include, but are not limited to, those items deemed reasonably necessary or desirable to KC to repair the Common Drive, Landscaping and Berm:

- (A) Resurfacing or filling potholes in the Common Drive;
- (B) Maintaining the height and integrity of the Berm structure;
- (C) Replanting shrubs, trees or ornamentals to replace those lost through disease, accident or otherwise to maintain the original Landscaping plan;
- (D) Painting of no parking, handicapped parking or emergency lane areas on the Common Drive;
- (E) Installing signage and painting repair and replacement in connection with safety on the Common Drive;
- (F) Repairing water drainage problems the Common Drive or Berm may have;
- (G) Repairing any damage from fire, windstorm or other casualty;

BOOK 1999-3737  
PAGE 4

- (H) Replacement or repair of any and all landscaping on the land adjacent to the Common Drive damaged by acts done in connection with the use, maintenance and repair of Common Drive; and
- (I) Other general repair of the Improved Areas in a manner consistent with any current or future development by Owners and in conformity with all orders, ordinances, rulings and regulations of any and all Federal, State, County and City governments having jurisdiction, as well as in conformity with the statutes and laws of the state of Iowa and the United States of America.

Maintenance obligations shall include, but are not limited to, those items deemed reasonably necessary or desirable to KC to maintain the Common Drive:

- (A) Removing snow from the Common Drive;
- (B) Sweeping the Common Drive;
- (C) Watering, fertilizing, trimming and otherwise maintaining the Landscaping;
- (D) Removing trash and debris along the Improved Areas;
- (E) Participating in investigations, or litigation including any judgements, decrees or other settlements entered therein in defense of the Improved Areas or acts of KC's service in connection with the Improved Areas; and
- (F) Other general maintenance of the Improved Areas in a manner consistent with any current or future development by Owners (or if applicable, HDM's Franchisor) and in conformity with all orders, ordinances, ruling and regulations of any and all Federal, State, County and City governments having jurisdiction, as well as in conformity with the statutes and laws of the state of Iowa and the United States of America.

KC shall have the right to enter into contracts or other agreements that it deems advisable to these ends. HDM, its employees or agents, shall not be responsible for any work performed in connection with the Improved Areas. KC shall further have the power and authority, but not the obligation, to obtain and maintain any insurance in such forms and such amounts as it may elect in accordance with the provisions of this Agreement.

4. HDM's Right to Cure: In the event HDM finds KC has failed to perform its obligations under this Agreement to construct, install, maintain or repair the Improved Areas, HDM shall notify KC in writing of its desire to have certain items of Improved Areas maintenance or repair completed. In the event such repair or maintenance is not undertaken within fifteen (15) days thereafter, except in the case of snow removal or other emergency repair or maintenance, in which case repair shall be undertaken

the same workday, HDM shall undertake to complete such repair or maintenance provided the Improved Areas Maintenance or Repair Expense is reasonable under the circumstances. HDM shall thereafter invoice KC for the cost of the Improved Area Repair or Maintenance Expense. The invoice shall be regarded as a special assessment payable within thirty (30) days of notice given to KC, and shall carry with it all other obligation and rights provided for special assessments under the terms of this Agreement.

5. Insurance Proceeds Relating to the Improved Areas: If any portion of the Improved Area is destroyed or damaged by casualty and if insurance insuring damage or destruction is in place and becomes payable to KC because of claims made of any kind or nature relating to the occurrence on or claims with respect to the Improved Area, then KC shall apply the proceeds in the manner that it deems fit to repair or restore the damaged portions. In the event HDM has exercised its right to cure as provided in paragraph 4, KC may use the proceeds to offset any special or annual assessment due in full or in part to the extent such proceeds are not sufficient to repair or restore any damage to Improved Area.

6. Condemnation, Dedication of Improved Area: In the event that any part or all of the Improved Area is condemned by the power of eminent domain or is conveyed in lieu of condemnation or is dedicated to the public by the Owners' unanimous consent, then any award or payment received by any of the Owners, KC shall be reimbursed for the cost of the improvements and the balance, representing the value of the land (without improvements) shall be prorated in the proportion 8/37ths to HDM and 29/37ths to KC. In the event that all of the Improved Area is condemned, conveyed in lieu of condemnation or dedicated to the public, this Agreement shall lapse and become null and void.

7. Discontinued Use of Improved Area: Should the use of the above described Improved Area, or part thereof at any time be permanently terminated or discontinued for a period of one (1) year, then this Agreement shall lapse and become null and void and the Property on which the Common Drive, Landscaping and Berm now exists shall run with the title and interest to each Owner in accordance with the property lot lines shown on Exhibit "A" as may be amended by a validly recorded plat hereafter.

#### **SECTION IV** **LIENS**

1. Effect of Nonpayment of Assessments; Remedies; Maintenance and Enforcement by HDM: If any special assessment or any part thereof as set forth in Section III, Paragraph 4 is not paid when due, the unpaid amount of the assessment shall be deemed delinquent. HDM shall notify KC of the delinquency, and the unpaid assessment shall constitute a lien against the Retail Property filed on or after the first day of the first month following the date in which payment was due. The lien shall be prior to all other liens except (a) tax assessments and (b) liens past due and unpaid on the property in accordance with this Agreement, and payments past due under a bona fide mortgage instrument of encumbrance duly recorded. The lien may be foreclosed by HDM in the manner provided by Iowa law for the foreclosure of liens, and in the event of foreclosure, the owner of the property upon which the lien exists shall pay, in addition to the assessment and any interest due, the reasonable expenses of legal

action undertaken to foreclose and enforce the lien including costs and attorney's fees. The right to foreclose the lien against the Retail property shall be in addition to all other remedies available at law or in equity, including the right to proceed personally against the owner thereof for the recovery of a personal judgment against the owner. The title acquired by any purchaser following any such foreclosure shall be subject to the provisions of this Agreement, and by so acquiring title; purchaser covenants and agrees to abide and be bound by this Agreement.


2. Payment upon Sale or Conveyance. Upon the sale, conveyance or other lawful transfer of the Retail Property, all unpaid assessments, interest, expenses and attorney fees provided for in this Agreement shall be first paid from the sales price and shall be paid by the purchaser in preference to all other assessments or charges of whatever nature except charges for taxes past due and unpaid, and payments due under bona fide mortgage instruments, if any, duly recorded. Upon request by purchaser, HDM shall provide a statement of all assessments owing by the owner prior to or following closing of purchase by purchaser.

### **SECTION V** **AMENDMENT**

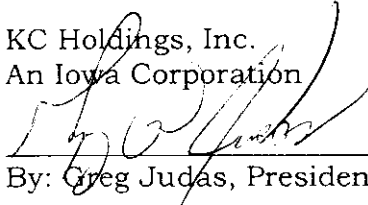
Amendment: This Agreement may only be amended by instrument in writing, approved by the Owners and duly recorded. The covenants, conditions, and restrictions of this Agreement shall run with and bind the Hotel Property and Retail Property, including any property that may become subject to this Agreement, and shall inure to the benefit of and be enforceable by the owners of the Hotel Property and Retail Property hereto and their heirs and successors for a term of thirty (30) years after the date this Agreement is recorded, at which time these covenants, conditions and restrictions shall be automatically extended for successive periods of fifteen (15) years unless all the Owners sign and record, prior to the expiration of the then current term of this Agreement, an instrument abolishing or changing the covenants, conditions and restrictions in whole or in part.

IN WITNESS WHEREOF, the undersigned parties have caused this document to be executed as of the day and year first above written.

Hotel Des Moines, L.L.C.  
A Kansas Limited Liability Company  
By: Hotel Advisors, Inc., its manager

  
By: Steven C. Olson, President

KC Holdings, Inc.  
An Iowa Corporation

  
By: Greg Judas, President

BOOK 1999-3737  
PAGE 7

STATE OF IOWA, COUNTY OF POLK, ss:

On this 30<sup>th</sup> day of March, 1999, before me the undersigned, a Notary Public in and for the said State, personally appeared Greg Judas, to me personally known, who being by me duly sworn did say he is President of KC Holdings, Inc., the corporation executing the within and foregoing instrument to which this is attached, that the instrument was signed on behalf of the corporation by authority of its Board of Directors and that Greg Judas as an officer of the corporation acknowledged the execution of this instrument to be the voluntary act and deed of the corporation by it, and him, voluntarily executed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.



David A. McNeill  
Notary Public

STATE OF KANSAS, COUNTY OF RENO, ss:

On this 26th day of March, 1999, before me the undersigned, a Notary Public in and for the said State, personally appeared Steven C. Olson, to me personally known, who being by me duly sworn did say he is President of Hotel Advisors, Inc., the manager of Hotel Des Moines, L.L.C., a limited liability company and that this instrument was signed on behalf of the said limited liability company by authority of its manager and that Steven C. Olson acknowledged the execution of this instrument to be the voluntary act and deed of the said limited liability company by it voluntarily executed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

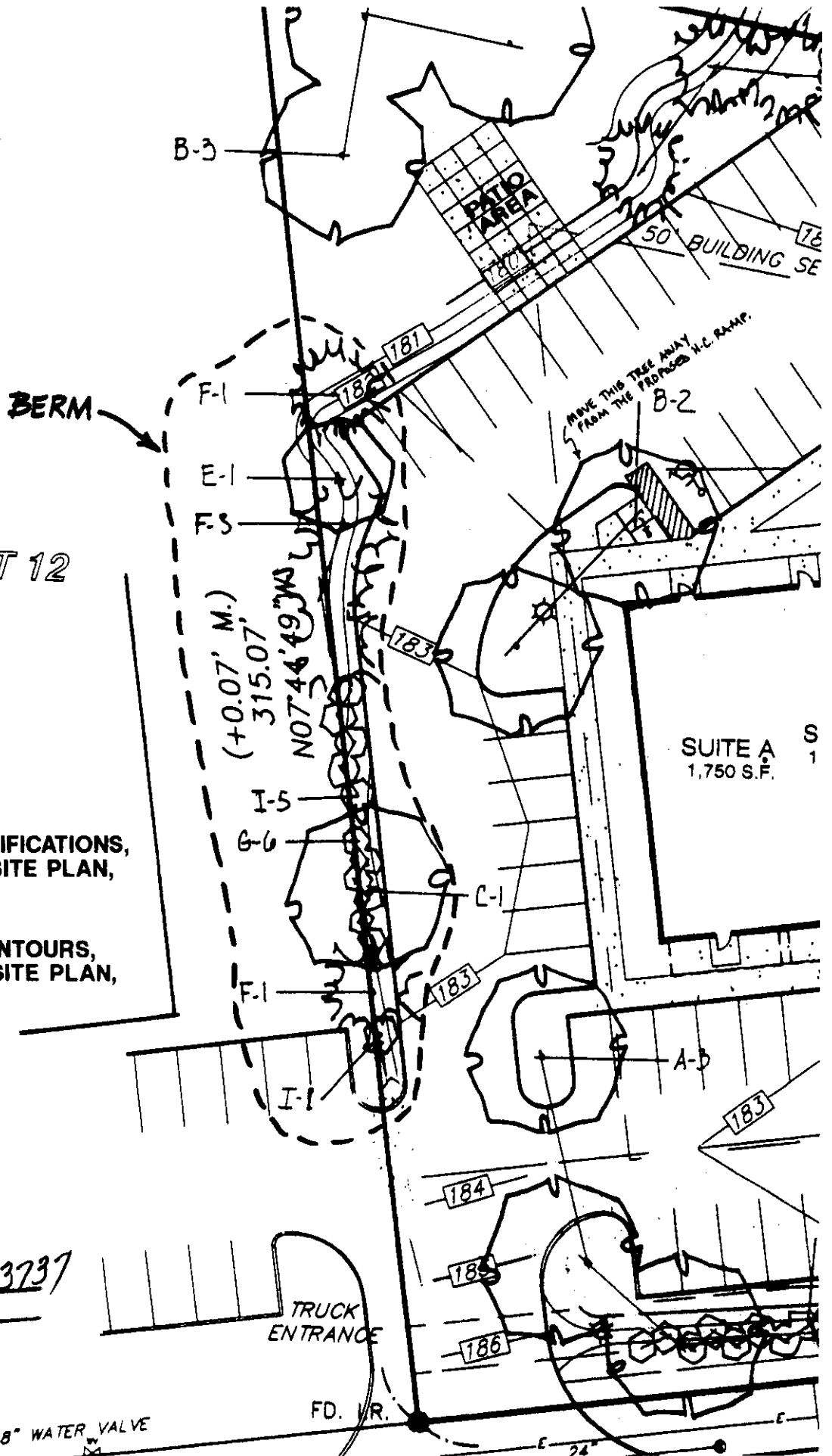
Jeanne Hett  
Notary Public



BOOK 1999-3737  
PAGE 8



# EXHIBIT A



LOT 12

SUITE A S  
1,750 S.F. 1

FOR PLANT MATERIAL SPECIFICATIONS,  
REFER TO THE APPROVED SITE PLAN,  
SHEET 3. (REVISED 1/19/99)

FOR UPDATED GRADING CONTOURS,  
REFER TO THE APPROVED SITE PLAN,  
SHEET 2. (REVISED 3/03/99)

BOOK 1999-3737  
PAGE 9

TRUCK  
ENTRANCE

8" WATER VALVE

FD. VR.

**Exhibit "B"**  
**Legal Description of Hotel Property**

A parcel of land within Lot 12, West Lakes Office Park, Plat 3, an official plat, City of West Des Moines, Dallas County, Iowa that is more particularly described as follows:

Beginning at the Southeast corner of said Lot 12; thence to a point S82°17'06"W, 309.34 feet along the south line of lot 12 to a point; thence N07°42'54"W, 297.24 feet to a point along the north line of lot 12, thence; N79°00'00"E, 309.85 feet along the north line of said lot 12 to a point; thence S07°42'54"E, 315.00 feet along the east line of said Lot 12 to the point of beginning and containing 2.174 acres more or less.

BOOK 1999-3237  
PAGE 10

**Exhibit "C"**  
**Legal Description of Retail Property**

Lot 11, West Lakes Office Park Plat 3, an official plat, West Des Moines, Dallas County, Iowa, said tract of land contains 3.0998 acres more or less. Said tract of land together with any and all easements of record.

BOOK 1999-3737  
PAGE 11

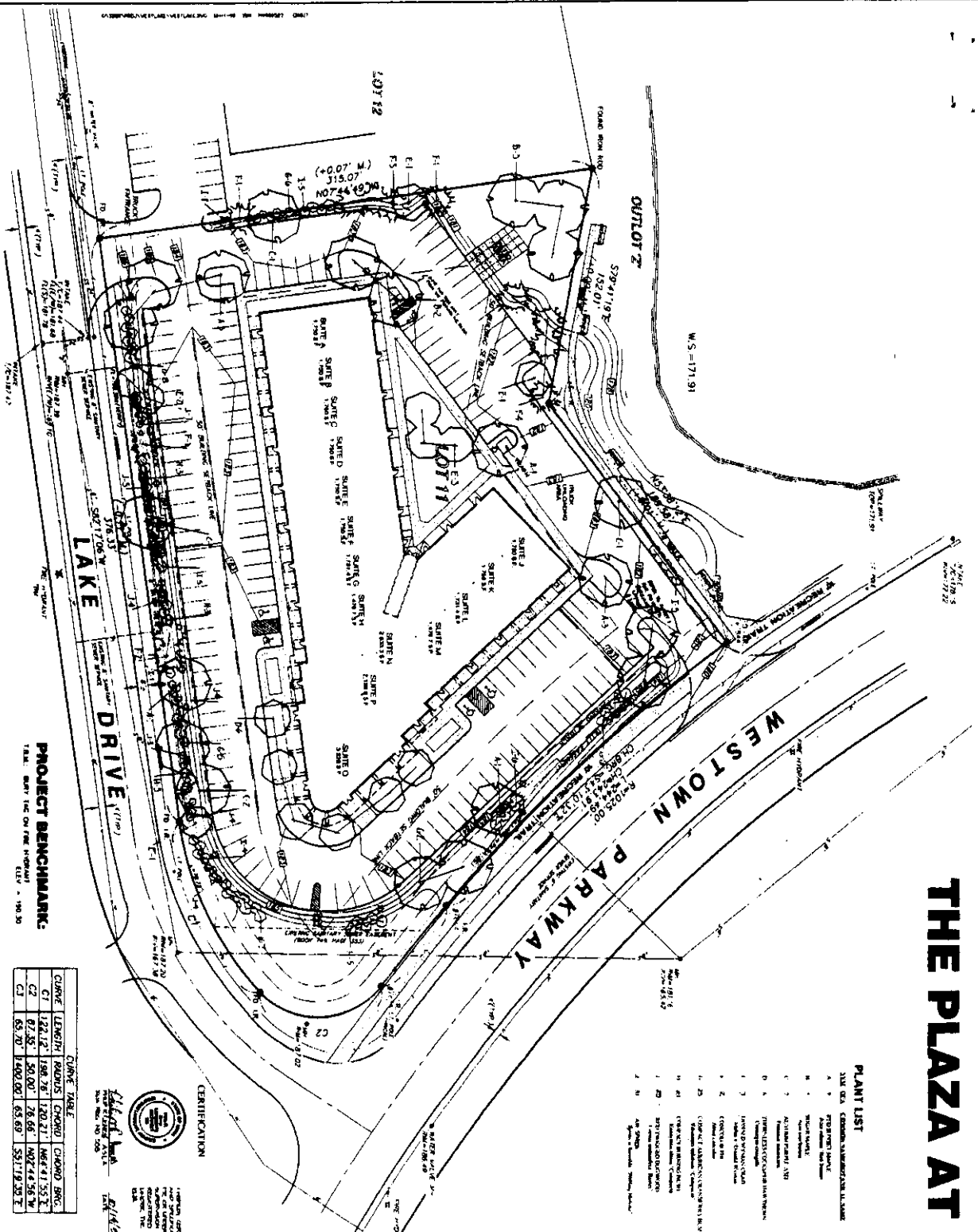
**Exhibit "D"**  
**Architectural Specifications**

All Parking Lot paving shall be 7" P.C.C. with 6" integral concrete curbs. Installed in accordance with the "American Concrete Institute Guide for Design and Construction" of concrete parking lots. All pavement is non-reinforced with contraction joints every 12'.

BOOK 1999-3737  
PAGE 12

# THE PLAZA AT WEST LAKES

## EXHIBIT E



**PLANT LIST**

NO.	SYM.	COMMON NAME	HT.	WID.
1	PL	PLANTING		
2	PL	PLANTING		
3	PL	PLANTING		
4	PL	PLANTING		
5	PL	PLANTING		
6	PL	PLANTING		
7	PL	PLANTING		
8	PL	PLANTING		
9	PL	PLANTING		
10	PL	PLANTING		
11	PL	PLANTING		
12	PL	PLANTING		
13	PL	PLANTING		
14	PL	PLANTING		
15	PL	PLANTING		
16	PL	PLANTING		
17	PL	PLANTING		
18	PL	PLANTING		
19	PL	PLANTING		
20	PL	PLANTING		

**CURVE TABLE**

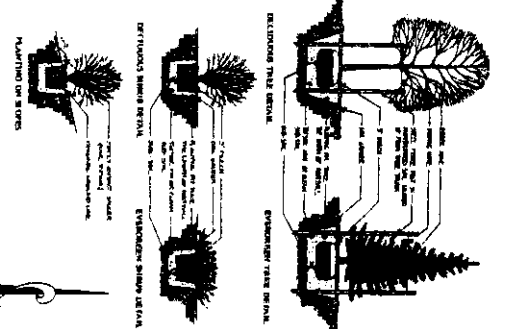
CURVE	LENGTH	RADIUS	CHORD	CHORD BEG.	CHORD END.
C1	124.12	198.78	120.21	1067.41 S E	
C2	97.85	50.00	78.66	1067.44 S E	
C3	65.70	100.00	63.69	1057.19 S E	

**CERTIFICATION**

I, **[Signature]**, Landscape Architect, do hereby certify that the above is a true and correct copy of the original as shown to me by the client and that the same is a true and correct copy of the original as shown to me by the client.

**[Signature]**  
Landscape Architect  
No. 1000

**DATE:** 8/14/98



**UTILITY SYMBOLS**

**PROJECT BENCHMARK:**  
TAB. 1001 (100' HIGH POINT) ELEV. = 100.50

**LANDSCAPE PLAN**

**THE PLAZA AT WEST LAKES**

98-156-S  
SHEET 3 OF 3

**Bookshop Engineering Company**  
3501 144th Street  
Ste. 100, Shoreline, WA 98148

**DATE:** 8/14/98

**PROJECT:** THE PLAZA AT WEST LAKES

**BOOK PAGE 27**

# PLANT LIST

SYM	QUA	COMMON NAME/BOTANICAL NAME	SIZE	ROOT
A	9	RED SUNSET MAPLE <i>Acer rubrum</i> 'Red Sunset'	3"-3 1/2" Cal	B/B
B	5	SUGAR MAPLE <i>Acer saccharum</i>	2"-2 1/2" Cal	B/B
C	7	AUTUMN PURPLE ASH <i>Fraxinus americana</i>	2"-2 1/2" Cal	B/B
D	6	THORNLESS COCKSPUR HAWTHORN <i>Crataegus crusgalli</i>	8-10" Ht	B/B
E	1	DONALD WYMAN CRAB <i>Malus x 'Donald Wyman'</i>	1 3/4 Cal	B/B
F	12	CONCOLOR FIR <i>Abies concolor</i>	8-10" Ht	B/B
G	25	COMPACT AMERICAN CRANBERRY BUSH <i>Viburnum trilobum</i> 'Compacta'	30" Ht	Cont
H	21	COMPACT BURNING BUSH <i>Euonymus alatus</i> 'Compacta'	30" Ht	Cont
I	29	RED TWIGGED DOGWOOD <i>Cornus stolonifera</i> 'Bailey'	36" Ht	Cont
J	31	AW. SPIREA <i>Spiraea x buxoides</i> 'Anthony Waterer'	20" Ht	Cont

## LANDSCAPING NOTES:

1. ALL SEEDING, SODDING AND LANDSCAPING SHALL BE IN ACCORDANCE WITH THE CITY OF WEST DES MOINES STANDARD SPECIFICATIONS, UNLESS SPECIFIED OTHERWISE.
2. SOD ALL DISTURBED AREAS WITHIN CONTRACT LIMITS, UNLESS NOTED OTHERWISE.
3. STAKE SOD ON ALL SLOPES 3:1 OR GREATER.
4. PLANT QUANTITIES ARE FOR CONTRACTORS CONVENIENCE, THE DRAWING SHALL PREVAIL IF CONFLICT OCCURS.
5. ALL PLANT MATERIAL SHALL CONFORM TO THE AMERICAN STANDARD FOR NURSERY STOCK (ANSI Z60.1 - 1986).
6. CONTRACTOR SHALL GUARANTEE ALL PLANT MATERIAL FOR A PERIOD OF ONE YEAR FROM DATE OF INSTALLATION.
7. IT IS THE CONTRACTORS RESPONSIBILITY TO REMOVE IDENTIFICATION TAGS AND CORDS ON ALL PLANT MATERIAL PRIOR TO THE COMPLETION OF THE CONTRACT.
8. CONTRACTOR SHALL PLACE SHREDED BARK MULCH AROUND ALL TREES, SHRUBS AND GROUND COVER BEDS TO A DEPTH OF 3 INCHES, UNLESS NOTED.
9. STAKE AND WRAP ALL DECIDUOUS TREES IMMEDIATELY AFTER PLANTING. STAKE ALL TREES ACCORDING TO THE STAKING DETAIL. CONTRACTOR SHALL ADJUST AND MAINTAIN GUYING TENSION THROUGHOUT THE PLANT ESTABLISHMENT PERIOD.
10. THE LANDSCAPE CONTRACTOR SHALL HAVE ALL UTILITIES LOCATED BEFORE STARTING ANY SITE WORK OR PLANTING. THE CONTRACTOR IS RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES.
11. NO LANDSCAPE MATERIAL SHALL BE SUBSTITUTED WITHOUT THE AUTHORIZATION OF THE LANDSCAPE ARCHITECT.
12. ALL EDGING SHALL BE BLACK DIAMOND EDGING OR APPROVED EQUAL, UNLESS SPECIFIED OTHERWISE.