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 REC'D Melanie - UPT
 RETURN Conway Aubrey Johnson
Hastings Ne



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 DECLARATION OF PROTECTIVE COVENANTS
 AND GRANT OF EASEMENTS

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DECLARATION OF PROTECTIVE COVENANTS
AND GRANT OF EASEMENTS

THIS DECLARATION OF PROTECTIVE COVENANTS AND GRANT OF EASEMENTS ("Declaration") is hereby made this 4th, of may 2006, by Allen Investments, L.L.C., A Nebraska limited liability company ("Allen").

1. PRELIMINARY

1.1 Purpose. Whereas, Allen plans to develop Lots 1 – 5, Allen Second Subdivision (shown on Exhibit "A") an integrated complex featuring retail sales, sit down restaurants and business and medical services.

Whereas, Allen is mindful of the concerns of the Neighbors relative to his development plans and, in consideration thereof, agrees to put into place certain protective covenants contained herein for the protection of the Neighbors.

Whereas, these protective covenants are also intended to bind, and be for the benefit of, all future property owners of Lots 1 – 5, and to generally define the usage allowed for businesses within Allen's development.

1.2 Definitions. The following terms shall have the definitions ascribed to them below.

(a) "Allen": Allen Investments, L.L.C., a Nebraska limited liability company, together with any corporation or other entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and whose current address is c/o Robert M. Allen, 1115 West Second Street, P.O. Box 987, Hastings, NE 68902-0987.

(b) "Building Area": For Lots 1, 2, and 3, the Building Area is that location where the building can be constructed pursuant to Hastings City Code, Section 34-212 (8)(b)(i)(ii)(iii); and for Lots 4 and 5, the Building Area is that location where the building can be constructed pursuant to Hastings City Code, Section 34-209, "C-0: Commercial office non-retail districts", subpart (7), "Minimum yard requirements".

(c) "Building Design Plans": (i) A Site Plan of the property depicting any building and all other improvements to be constructed on the property (such building and other improvements are referred to collectively as the "Project"); and (ii) architecturally certified Plans and Specifications of the Project, including elevations of the building, landscaping plans, and exterior signage drawings.

(d) "CAMP"; Common Area Maintenance Provisions, as found in Exhibit "B."

(e) "Consenting Owners": A Consenting owner is a fee simple title owner, including its

officers, employees, agents, heirs, successors, and assigns, and long term lessees (being defined as a Lessee with an initial lease term of at least ten years), of one or more lots of Lots 1 – 5 of Allen Second Subdivision.

(f) "Neighbors": Neighbors are those persons that are the current and/or future title fee owners of Lot 6, Block 1 South Shore Second Subdivision to the City of Hastings; Lots 1 through 9, Block 2 South Shore Second Subdivision to the City of Hastings; Lots 1 through 7, Block 3, South Shore Second Subdivision to the City of Hastings; and Lot 2 South Shore Third Subdivision to the City of Hastings.

(g) "Environmental Laws": The Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act and any other similar federal, state or local law, rule or regulation respecting Hazardous Materials, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.

(h) "Fast Food Restaurant": Restaurants which are of a similar nature as McDonalds, Burger King, and Wendy's, where most customers order and are served their food at a counter, or a motor vehicle, in packages prepared to leave the premises, or are able to be taken to a table or counter to be consumed, where most main food items are prepackaged, rather than made to order.

(i) "Floor Area": The total number of square feet in a building, whether or not actually occupied (including basement, subterranean, balcony and mezzanine space), measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

(j) "Common Area Improvements" (aka Common Area): The center pylon signs permitted under Article 4 and the landscaped areas behind Lots #4 and #5, as depicted on Exhibit "A".

(k) "Green Space Area": Is that area reserved for landscaping, lawns, trees and other vegetation on each lot as defined in Exhibit "A". The green space area as defined in Exhibit "A", shall be binding on all Owners of the respective lots depicted in said exhibit.

(l) "Ground Floor Area": The total number of square feet on the ground floor of a building, whether or not actually occupied (excluding basement, subterranean, balcony and mezzanine space), measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

The ground floor area (G.F.A.) as defined in Exhibit "A", shall be binding on all Owners' buildings that are constructed on the respective lots depicted in said exhibit.

(m) "Hazardous Materials": Underground storage tanks, petroleum and petroleum products, asbestos, PCB's, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or

materials as defined under any Environmental Laws.

(n) "Lienholder": Any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on any Lot. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to its Lot(s) by foreclosure, trustee's sale or otherwise.

(o) "National Chain Store": A company or operator that will operate a retail store, business office or other commercial operation in the development, which operation will have the standard prototypical building and will operate under the same trade name as is used by said company in at least ten (10) other separate stores or offices within Nebraska or at least thirty (30) stores or offices nationally.

(p) "Owner": The record holder of fee simple title to a Lot (including its heirs, personal representatives, successors and assigns), or a Lessee with an initial term lease of at least ten years.

(q) "Paved Area": Includes all paved areas, whether composed of concrete or asphalt, including, but not limited to, parking lots, sidewalks, curbing and any access road to Osborne Drive West.

(r) "Lot": Any of Lots 1 through 5, as shown on Exhibit "A."

(s) "Person": Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(t) "Restrictions": The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(u) "Restaurant": An establishment where foods and drink are prepared and served. Customer turnover rates are typically approximately one hour or longer. Such establishments generally serve lunch and dinner, but do not serve breakfast.

(v) "Service Facilities": Loading docks, trash compactors and enclosures, bottle storage areas, exterior coolers, electrical and refrigeration facilities, and other similar service facilities.

(w) "Development": That certain real property described as Allen Second Subdivision (Lots 1 through 5 collectively) in the City of Hastings, Adams County, Nebraska, as shown on Exhibit "A."

(x) "Drainage Plan": That certain drainage plan that is attached to these Covenants, as Exhibit "C."

1.3 Parties. Allen is the Owner of Lots 1 through 5 and is referred to herein as "Allen." Owners are all current and future Owners of one or more of Lots 1 – 5; and Neighbors are those neighbors as described in Section 1.2(f).

2. BUILDING AREA DEVELOPMENT

2.1 Building Location.

(a) Building Areas. All buildings and other structures shall be placed or constructed upon the Lots only in the Building Areas; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting the same), normal foundations, utility cabinets and meters, signs, and doors for ingress and egress may project from the Building Area into any Common Area. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto.

(b) Construction. Prior to the construction of any building or improvement within a Building Area, the Owner/Lessee of the applicable Lot shall obtain from Allen prior written approval of the building design plan(s), in accordance with the procedures set forth in Section 2.4.

(c) Undeveloped Building Area. All Building Areas on which buildings are not existing or under construction on the date the first Owner or Lessee of any Lot first opens its building for Business, shall be covered by a one inch asphalt dust cap, landscaping, or aesthetically pleasing grasses, and shall be kept trimmed and clean, so that they do not constitute a nuisance or fire hazard, at the Owner's sole expense until such time as buildings are constructed thereon.

2.2 Type and Design of Buildings.

(a) Architectural Compatibility. No more than one (1) building shall be permitted on each Lot unless the Consenting Owners have given their prior written approval in their sole and absolute discretion. Each building and other structure in the development, now and in the future, shall be of first quality construction. All buildings and structures shall be architecturally designed so that their exterior appearance, style, and elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the development. No building for which Building Design Plans have not been approved may be constructed, nor the exterior of any existing building changed in any material way (including, without limitation, signs and color), without Allen's prior written approval (which shall be obtained in accordance with the procedures set forth in Section 2.4) of the building to be constructed or modified; provided that any structural change to a building shall automatically be deemed material.

(b) Attachments. No Owner shall have the right to make any attachment whatsoever to another Owner's building (such other Owner being referred to in this subparagraph only as "Other Owner") without such Other Owner's prior written approval, which may be withheld in such Other Owner's sole and absolute discretion. If the Other Owner approves the requested attachment, the Owner making the attachment shall, prior to making such attachment, obtain the Other Owner's prior written approval (which may be withheld in its sole

and absolute discretion) of the drawings and specifications detailing the attachment. Any such attachment shall be at the sole cost and expense of the Owner making the attachment and shall be in strict conformance with the approved drawings and specifications detailing the same.

(c) Structural Integrity. No building or other structure in the Development shall be built in such a manner as to adversely affect the structural integrity of any other building or structure in the development.

(d) Height of Buildings. The building height Restrictions imposed under this Subsection 2.2(d) shall be construed to apply to the general roofline of each respective building. An architectural element or feature on a building (such as an arch, cupola, dormer, steeple, or the like) which otherwise meets the design approval requirements of this Declaration may extend above the general roofline of a building by up to five (5) feet in height, with a total aggregate width of such elements or features along any single roofline of no more than twenty percent (20%) of the length of the roofline on any front, side, or back elevation. For purposes of these Restrictions, the height of a building shall be measured from the finished ground floor elevation of the building in question:

(i) All buildings and other structures in the development shall be single story with mezzanine permitted with a maximum height of 35 feet.

(e) Exterior Maintenance. Each Owner shall maintain the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class development of comparable size and nature located in the same geographic area as the development. All Service Facilities and all satellite dishes, systems, and similar equipment, shall be attractively screened from view from the customer parking areas.

(f) Direction of Entries. Each building shall face the main parking lot for the Lot on which it is located.

(g) Dumpsters. Any area within the Development which houses refuse dumpsters or garbage containers shall be completely surrounded on three sides with a wall, the exterior of which shall be of the same materials as the exterior walls of the building constructed on the Lot; the entrance to such area shall be gated with wood or wrought iron, designed to preclude public view.

(h) No Subdivision. Each lot may not be subdivided, in any manner, into smaller lots and the zoning designation shall not be changed without the prior written consent of Allen.

2.3 Construction Requirements.

(a) Standards. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in the development shall be effected as expeditiously as possible, and in such a manner as not to unreasonably interfere, obstruct or delay

(i) access to or from the development (or any part thereof), (ii) the receiving of merchandise by any business including, without limitation, access to Service Facilities. Staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the development approved in writing by Allen. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) Liens. The Contracting Party shall not permit any liens to stand against any Lot for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner of any Lot encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Owner of said Lot shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the development from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action of any kind whatsoever, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

(c) Encroachments. The Owners acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Area improvements located in the development, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the development.

2.4 Approval / Objection Procedures. Before any action requiring Allen's, the Consenting Owners' or Neighbors' approval or objection is commenced, sufficient information shall be sent to Allen,

the Consenting Owners or Neighbors to enable the same to make a reasonable decision. Allen, the Consenting Owners or Neighbors must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if anyone disapproves, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If Allen, the Consenting Owners or Neighbors object or disapprove the proposal, and fail to provide such explanation within the thirty (30) day period, such person shall be deemed to have approved the same, provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. The approvals or consents provided for herein shall not be unreasonably withheld.

2.5 Maintenance by Owner of its Landscaping and Building. Following completion of the construction of building(s), structure(s), parking lots, artificial lighting, landscaping, sidewalks and any other such betterments that may be installed, built or created by Owner(s) on any Lot, each Owner shall maintain (or require its tenants to so maintain) the same in a good, clean, aesthetically-pleasing condition, including repairing, repainting and maintaining the above described as necessary. Further, the Owner shall be responsible for the removal of papers, debris, ice, snow, refuse, and filth in or about Owner(s)' lot, including its sidewalks and parking lot.

3. EASEMENTS

3.1 Ingress and Egress. Each Owner, as grantor, hereby grants to Allen and to all other Owners in the development, their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of each Lot belonging to the other Owners, as grantees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on the grantor's Lot(s), except for those areas devoted to Service Facilities or driveup or drive through customer service facilities.

3.2 Utility Lines and Facilities.

(a) Grant of Easements. Each Owner, as grantor, hereby grants to Allen, and to all other Owners, for the benefit of Allen and each Lot belonging to the other Owners, as grantees, a nonexclusive easement under, through and across the Common Area of the grantor's Lot(s), or any area reserved for easements in the Final Plat of Allen Subdivision, for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, transmission lines, data conduit lines, gas mains and other public or private utilities (collectively, "**Utility Lines and Facilities**"). Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing Utility Lines

and Facilities to the development, provided such easements are not otherwise inconsistent with the provisions of this Declaration.

(b) Construction Requirements. All Utility Lines and Facilities shall be installed and maintained below the ground level or surface of such easements, except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including, without limitation, temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings, signs or Common Area improvements). The installation, operation, maintenance, repair and replacement of such Utility Lines and Facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Lines and Facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Lots upon which such Utility Lines and Facilities are located within thirty (30) days after the date of completion of construction of same.

(c) Relocation. At any time and from time to time, the Owner of a Lot shall have the right to relocate on its Lot any Utility Line or Facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Lot served by the Utility Line or Facility, (ii) shall not unreasonably interfere with or diminish utility service to the Lot(s) served by the Utility Line or Facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Line or Facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Lot, and (v) shall provide for the original and relocated area to be restored to their original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines and Facilities to the Owners of all Lots served by such Utility Lines and Facilities within thirty (30) days after the date of completion of such relocation.

3.3 Signs. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Lot belonging to the other Owners, as grantees, an easement under, through and across the Common Area of the grantor's Lot(s) for the installation, operation, maintenance, repair and replacement of any signs referred to in Section 4 of this Declaration and all Utility Lines and Facilities appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its sign and appurtenant Utility Lines and Facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such Utility Lines and Facilities to the Owners of all Lots upon which such Utility Lines and Facilities are

located within thirty (30) days after the date of completion of construction of same.

4. SIGNAGE, COMMON AREA AND DRAINAGE PLAN

4.1 Signs.

(a) Center Pylon Signs. Subject to governmental approval, a free-standing sign may be erected at such locations as solely determined by the owners of Lots 1 through 3 only, hereinafter referred to as "Lot Owners."

(b) Control of Designations. The Lot Owners shall be entitled to determine the designations on each of the Center Pylon Signs, subject to and in accordance with this Declaration.

(c) Cost of Center Pylon Signs. The cost of constructing, installing, maintaining, repairing and replacing each of the Center Pylon Sign structures shall be paid by the respective Owners of all Lots which are benefited thereby. The design of each Center Pylon Sign structure, and the size, design and location of sign fascia thereon, shall be subject to the prior written approval of the Lot Owners (which approval shall be obtained in accordance with the procedures set forth in Section 2.4). Notwithstanding the foregoing, a National Chain Store may use such standard fascia as they from time to time use generally in carrying on their businesses.

(d) Monument Signs. Each Owner in Lots 1 through 3 only shall have the right to install a monument sign on their respective lot for each respective business located thereon, provided that any such sign must satisfy the following requirements:

(i) No monument sign shall exceed eight (8) feet in height (measured from the ground to the highest point of the sign structure) or ten (10) feet in width;

(ii) The design and location of each monument sign shall be subject to the prior written approval of Allen as long as it remains an Owner, otherwise, 70% of the approval of the Consenting Owners of Lots 1 through 5.

(iii) No more than one designation or logo for each respective business location thereon may appear on either side of a monument sign, except that an Owner shall also be entitled to place a logo or designation for a minibank or ATM on such sign;

(iv) The Owner of the Lot on which the sign is installed shall be and remain responsible to ensure, that the sign is maintained in good condition and repair; and

(v) Each such sign shall meet all applicable laws, rules, ordinances, and regulations.

(e) Other Signs. All exterior building signs on any Lot shall be restricted to identification of the businesses or services located or provided therein, and the same shall be internally illuminated, with individual channel letters without a sign back ground, in a design and location approved by Allen. No exterior building sign shall be placed on penthouse walls, extend above the building roof, be placed at an angle to the

building, or be painted on the exterior building surface. No exterior building or free-standing sign shall utilize animated, flashing, moving or audible lights or appurtenances. No visible lamps or tubing shall be allowed on the front of any sign. All signs shall bear the UL label, and their installation shall comply with all applicable building and electrical codes. No sign shall feature any visible raceway, crossover, conduit or fastener. No sign shall feature painted lettering (as opposed to vinyl, plastic, pre-manufactured coloring, or other material of similar good quality), except that the Owner or Lessee may have painted lettering on temporary signs announcing the opening or re-opening (after remodel or reconstruction) of business, which signs shall be removed within 21 days after commencement of the grand opening or re-opening. All cabinets, conductors, transformers, neon tubes, ballast boxes, and other equipment shall be concealed. Electrical service to all building signs shall be on the meter of the Owner on whose Lot such sign is located. Each such sign shall meet all applicable laws, rules, ordinances and regulations.

4.2 Outside Sales. No portion of any Common Area (except sidewalks immediately adjacent to the building in which the operator or occupant who is holding the sale is located) shall be used for the sale or display of merchandise, except as follows:

(a) The seasonal sale of merchandise shall be permitted from the parking lot located on each such Owner's respective Lot, subject to the following restrictions: (i) the Common Area shall be promptly restored to its condition immediately prior to said sale at the sole cost and expense of the Owner or occupant of the Lot on which the sales are conducted (ii) sales shall not unreasonably interfere with the free movement of vehicular traffic or with access to or from the development, or any part thereof, (iii) parking lot sales shall occur on any Lot no more than four (4) times annually, for a cumulative total of no more than sixty (60) days on any Lot, and (iv) no more than twenty (20) parking stalls may be used for seasonal sales on any such Lot at any given time.

4.3 Prohibited Activities. Picketing and distribution of pamphlets, handbills or similar materials within the development shall be prohibited.

4.4 Landscaping and Berming.

(a) Purpose and Intent. It is Allen's intent to provide for landscaping and berming within the common area as illustrated on the attached Exhibit "A."

(b) Creation of Bermed Landscaped Areas. It shall be Allen's sole responsibility to design and plant the bermed landscaped areas as depicted on the attached Exhibit "A." Without intending to limit or otherwise expand Exhibit "A," it is generally Allen's intent to create a bermed landscaped area that is approximately 25 feet wide and 6 feet high, that shall be planted with various species of bushes and trees, with the intent to create a landscaping barrier between Lots 4 and 5 in the development, and the Neighbors' homes.

4.5 Common Area Maintenance(Camp). The Owners shall be bound by all terms and conditions set forth in the CAMP, as found in attached Exhibit "B."

4.6 Drainage Plan. The Owners shall be bound by all specifications and elevations set forth in the drainage plan, as shown in Exhibit "C."

5. USE RESTRICTIONS

5.1 Fast Food, and Convenience Store Restrictions.

(a) No parts of Lots 1 through 5 shall be used as a convenience store ("C-Store") or a 24-hour store in the nature of a Circle K, 7-Eleven, AM-PM Minimart, or the like.

(b) No part of Lots 1 through 5 shall be used as a Fast Food restaurant as the same has been defined in Section 1.2(h).

5.2 General Restrictions,

(a) Retail Use Restrictions. No part of Lots 4 and 5 shall be used for any retail sales (except as otherwise provided in Section 34-209 of the Hastings city Code regarding CO-Commercial Office Districts), or restaurants, if 75% of the Neighbors object to the same.

No part of Lots 1 through 5 shall be used as a second-hand or surplus store, bowling alley, skating rink, dance hall, billiard or pool hall, massage parlor, game parlor or video arcade (which shall be defined as any store containing more than four (4) electronic games), bar, tavern, cocktail lounge, warehouse, animal kennel, mobile home park, 24-hour store, trailer court; for the renting, leasing or selling of, or displaying for the purpose of renting, leasing, selling of any boat, motor vehicle or trailer; or for any industrial purposes; or for any bankruptcy sales, or going out of business sales. Notwithstanding the foregoing, a bar shall be allowed to be operate incidentally to a restaurant operation, provided that the bar (including seating therefore, isle space, and all bar facilities) shall not exceed either 30% of the floor area or 30% of the gross sales of such restaurant.

(b) Adult Entertainment Store. No part of the development shall be used as an adult entertainment store. As used herein, "adult entertainment store" shall mean a store which has, for sale or rental, as 10% or more of its Floor Area or 150 square feet of floor area, whichever is less, any combination of the following: (i) videos, DVDs, movies, books, or magazines of a sexually-explicit or pornographic nature, not intended for general audiences; (ii) unrated movie videos or DVDs of a sexually-explicit or pornographic nature, or movie videos, with a rating of "NC-17" or higher, restricting persons under the age of 18 from purchasing or renting the same; (iii) clothing items of a sexually-oriented or explicit nature which would not be sold in stores whose customer base is family-oriented, such as Sears, J. C. Penney's, K-Mart, or other comparable department or family discount stores; or (iv) photographs, games, or other items of a sexually-explicit, pornographic, or erotic nature.

5.3 Hazardous Materials. No Owner or occupant shall use or permit the use, handling, generation, storage, release, disposal or transportation of Hazardous Materials on, about or under its Parcel except in the ordinary course of its business and in compliance with all Environmental Laws.

5.4 Lighting Restrictions. Artificial lighting that is used in the common areas and otherwise used to illuminate buildings, signs or parking lots for owners shall be of such a nature as to not project or illuminate toward the Neighbors.

6. CASUALTY AND CONDEMNATION

6.1 Casualty. If all or any portion of any building in the development is damaged or destroyed by fire or other casualty, the owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the development or any portion thereof; shall be covered by a one inch asphalt dust cap, landscaping, or aesthetically-pleasing native grasses; and shall be kept weed free, trimmed, and clean, so that they do not constitute a nuisance or fire hazard, at the Owner's sole cost and expense until buildings are reconstructed thereon.

6.2 Condemnation.

(a) Building Restoration. If all or any portion of any building in the development is taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof ("Condemnation"), the Owner of such building shall have the same obligations with respect to restoration or removal of the building and Building Area as are set forth in Section 6.1.

(b) Allocation of Award. If all or any portion of any Lot in the development is taken or damaged as a result of a Condemnation ("Condemned Lot"), the Owner of the Condemned Lot shall be entitled to the entire award or purchase price paid for the Condemned Lot; provided, however, that nothing contained herein shall affect any other person's right to seek severance damages for its Lot, provided the award of such severance damages does not reduce or diminish the amount which would otherwise be paid to the Owner of the Condemned Lot. The Owner of the Condemned Lot shall restore or cause to be restored the remaining portion of the Condemned Lot as near as practicable to the condition immediately prior to such Condemnation to the extent, but only to the extent, of any condemnation proceeds allocated by the court or condemning party, as the case may be, to such restoration and actually received by the Owner of the Condemned Lot. Any restoration of the Condemned Lot which involves a change in the configuration of the Common Area or the sizes and arrangements thereof from that shown on Exhibit "A" shall require the Consenting Owners' prior written

approval. Notwithstanding the above, this Section 6.2 is not intended to and shall not alter the allocation of any award between the Owner of a Condemned Lot and any tenant of such Condemned Lot pursuant to the terms of any lease or other agreement between the parties.

7. INDEMNIFICATION

7.1 Indemnification. Each Owner shall indemnify, defend and hold harmless the other Owners and occupants of the development from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to or death of any person or damage to or destruction of any property resulting from the willful or negligent act or omission of the indemnifying Owner.

8. GENERAL PROVISIONS

8.1 Covenants Run With the Land. Each Restriction on each Lot shall be a burden on that Lot, shall be appurtenant to and for the benefit of the other Lots and each part thereof to which its benefit runs, and shall run with the land.

8.2 Successors and Assigns.

(a) Persons Bound. This Declaration and the Restrictions created hereby shall inure to the benefit of the Owners and Neighbors and be binding upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring a Lot, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any Owner sells or transfers all or any portion of its interest in any Lot, such Owner shall, upon delivery of the Transfer Notice (as defined in subparagraph (b) below), be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title, but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Lot or any portion thereof (including, without limitation, any Owner [or Lienholder] who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Lot or portion thereof after the date of sale and conveyance of title.

(b) Transfer Notice. An Owner selling or transferring all or any portion of its interest in any Lot shall give prior written notice thereof ("Transfer Notice") to all Owners in the development. The Transfer Notice shall include at least the following information: (i) the name, current address and current phone number of the transferor, (ii) the name, current address and current phone number of the transferee, and (iii) a copy of the legal description of the Lot, or portion thereof, or other interest sold or transferred.

8.3 Duration. Except as hereinafter provided, the term of this Declaration shall be for a period of fifty (50) years ("Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the

Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years, unless 90 days prior to the date of expiration, 70% of all Consenting Owners deliver to the other Owners in the development, written notice of Termination, in which event, the Declaration shall automatically expire at the end of the Primary Period or any Extension then in effect.

8.4 Injunctive Relief. In the event of any violation or threatened violation by any person or entity of any of the Restrictions contained herein, any or all of the Owners of Lots 1 through 5, and any or all of the Neighbors as defined herein, shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

8.5 Modification and Termination. This Declaration may not be modified in any respect whatsoever or terminated in whole or in part, except with the consent of 70% of all Owners of Lots 1 through 5, and then only by written instrument duly executed and acknowledged by all of said parties and recorded in the Office of the Register of Deeds of Adams County, Nebraska; PROVIDED, that such modification or termination shall not have any validity if more than 70% of all Neighbors have filed a written objection thereto within thirty (30) days following notice of such proposed modification or termination.

8.6 Method of Approval/Objection.

(a) Whenever the consent, approval or objection of any Owner or Neighbor is required, such consent, approval or objection shall be exercised only in the following manner: Each Lot or house address shall have only one (1) vote as further defined herein. The owners (if consisting of more than one (1) person or entity) of each Lot or house address shall agree among themselves and designate in writing a single person or entity who is entitled to cast the vote for that Lot or house address. If the Owners or Neighbors cannot agree who shall be entitled to cast the single vote, or if the Owners or Neighbors fail to designate the single person or entity who is entitled to cast the vote for that Lot within thirty (30) days after receipt of request for same from any other Owner or Neighbor, then that Lot or house address shall not be entitled to vote. In the event a Lot or house address is not entitled to vote, its consent or approval shall not be necessary.

8.7 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the development to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

8.8 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any

breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

8.9 Default. A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten (10) days in the event of failure to pay money) from receipt of written notice from any Owner or Consenting Neighbor specifying the particulars in which such person has failed to perform the obligations of this Declaration, unless such person, prior to the expiration of said thirty (30) days (ten (10) days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

8.10 Notices.

(a) Delivery. All notices given pursuant to this Declaration shall be in writing and shall be given by telefacsimile, personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address or telefacsimile number set forth below (or, if a Transfer Notice has been given, to the person designated in the Transfer Notice). If a notice must be given to a person other than one designated below or in a Transfer Notice, such notice shall be sent to the person and address shown on the then current real property tax rolls of the county in which the development is located.

Allen: Robert M. Allen
Allen Investments, L.L.C.
P. O. Box 987
Hastings, NE 68902-0987

Concurrent copy to: Douglas Pauley
Conway, Pauley & Johnson, P.C.
P. O. Box 315
Hastings, NE 68902-0315

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. Any party giving notice hereunder by telefacsimile transmission shall also immediately send a hard copy of said notice to the party to whom the notice is directed, by regular mail, with a notation thereon to the effect that it was previously telecopied. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) Receipt. For the purpose of this Declaration, the term "receipt" shall mean the earlier of any

of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, (iii) in the case of a telefacsimile transmission, the date and time of receipt as shown on the confirmation of the telefacsimile transmission, or (iv) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

8.11 Waiver. The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

8.12 Attorney's Fees. In the event any party initiates or defends any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

8.13 Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

8.14 Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

8.15 No Third Party Beneficiary Rights. Except as to the Neighbors as defined in section 1.2(f) this Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

8.16 Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

8.17 Entire Agreement. This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

8.18 Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

8.19 Joint and Several Obligations. In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

8.20 Recordation. This Declaration shall be recorded in the office of the recorder of Adams County, Nebraska.

EXECUTED as of the date first set forth above.

ALLEN:
Robert M. Allen
Allen Investments, L.L.C. A Nebraska
Limited Liability Company

By Robert M. Allen

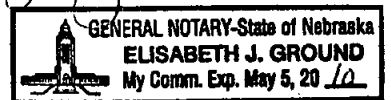
STATE OF NEBRASKA)
) ss.
COUNTY OF ADAMS)

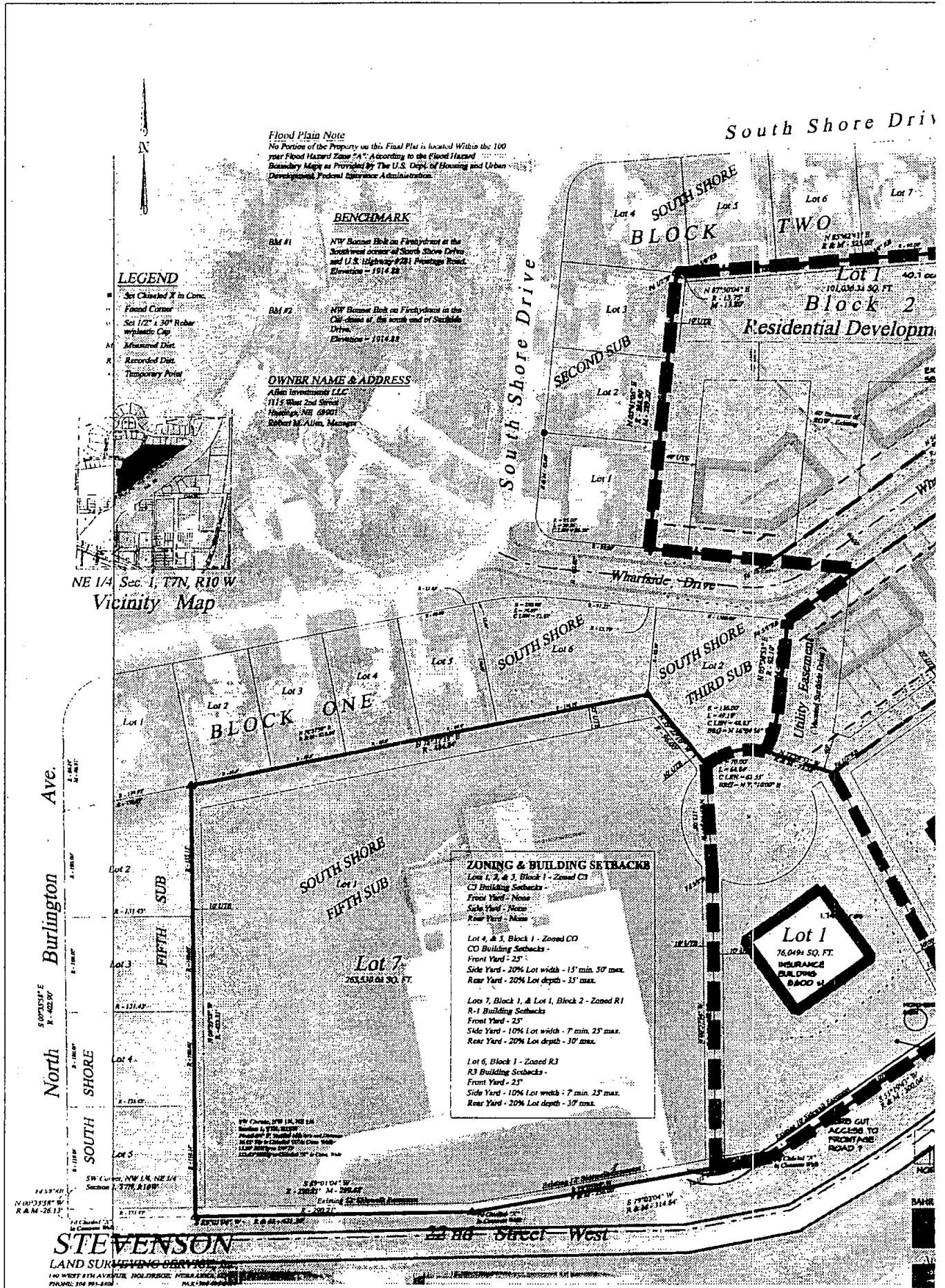
On this 4th day of May, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert M. Allen, to me known to be the Manager of Allen Investments, L.L.C., the Nebraska limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act. and deed of said LLC, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

Elisabeth J. Ground
Notary Public

- List of Exhibits and Schedules:
- Exhibit A -- Site Plan
- Exhibit B -- Common Area Maintenance Provisions
- Exhibit C -- Drainage Plan





Flood Plain Note
 No Portion of the Property on this Final Plat is located Within the 100 year Flood Hazard Zone "A". According to the Flood Hazard Boundary Maps as Provided by The U.S. Dept. of Housing and Urban Development, Federal Emergency Administration.

BENCHMARK

- BM #1 NW Corner Bolt on Firehydrant at the Southeast corner of South Shore Drive and U.S. Highway #281 Postage Road. Elevation = 1914.22
- BM #2 NW Corner Bolt on Firehydrant at the Old-Home at the south end of Saddle Drive. Elevation = 1914.22

LEGEND

- Set Chained X in Conc.
- Found Corner
- Set 1/2" x 30" Rebar w/Plastic Cap
- Measured Dist.
- Recorded Dist.
- Temporary Point

OWNER NAME & ADDRESS

ASB Investments LLC
 1115 River 2nd Street
 Highgate, NH 09001
 Robert M. Allen, Manager

NE 1/4, Sec. 1, T7N, R10W
 Vicinity Map

ZONING & BUILDING SETBACKS

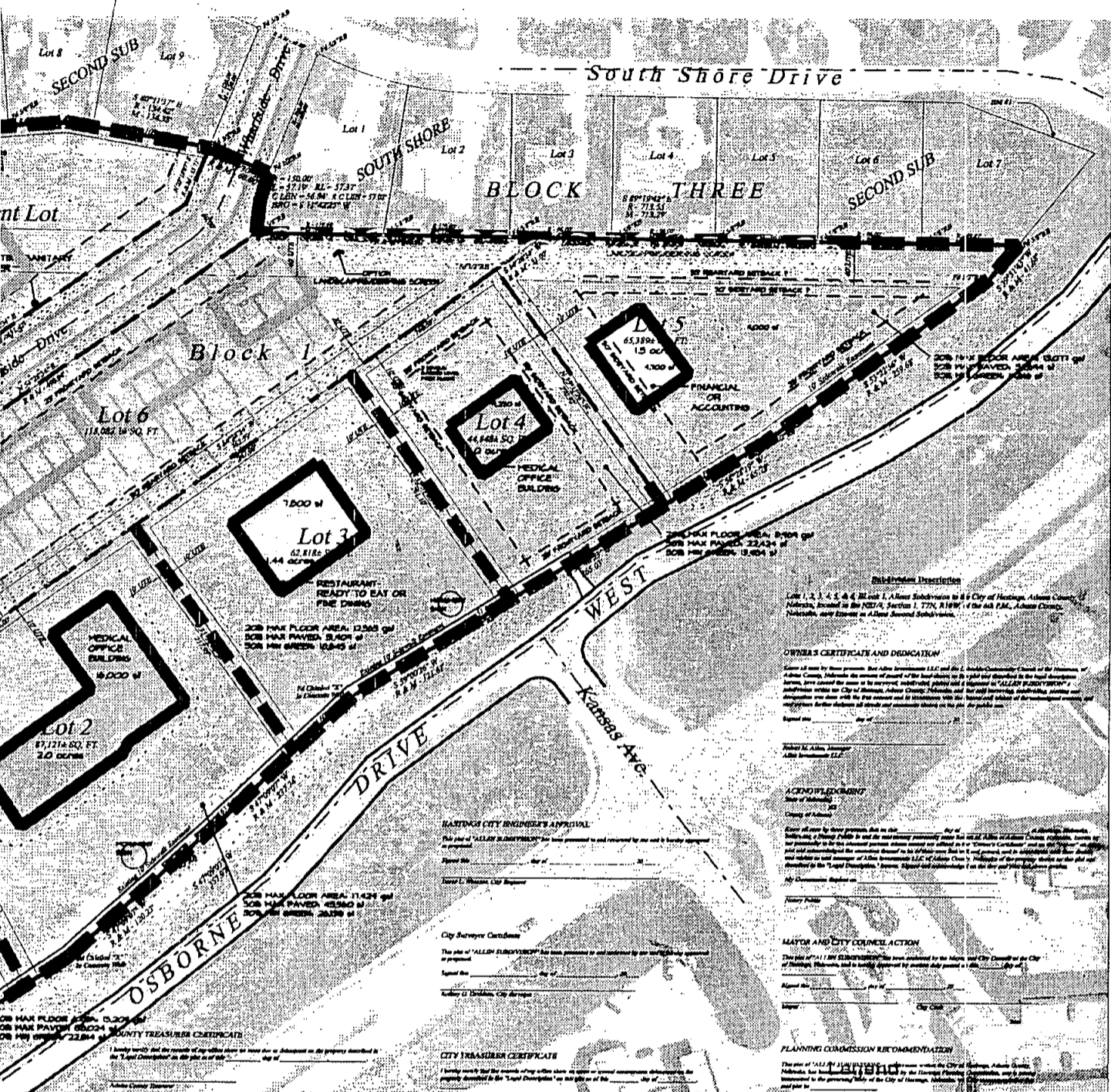
- Lots 1, 2, & 3, Block 1 - Zoned C3
 C3 Building Setbacks -
 Front Yard - None
 Side Yard - None
 Rear Yard - None
- Lots 4, & 5, Block 1 - Zoned C3
 C3 Building Setbacks -
 Front Yard - 25'
 Side Yard - 20% Lot width - 15' min. 50' max.
 Rear Yard - 20% Lot depth - 35' max.
- Lots 7, Block 1, & Lot 1, Block 2 - Zoned R1
 R-1 Building Setbacks -
 Front Yard - 25'
 Side Yard - 10% Lot width - 7' min. 25' max.
 Rear Yard - 20% Lot depth - 30' max.
- Lot 6, Block 1 - Zoned R3
 R3 Building Setbacks -
 Front Yard - 25'
 Side Yard - 10% Lot width - 7' min. 25' max.
 Rear Yard - 20% Lot depth - 30' max.

STEVENSON
 LAND SURVEYING SERVICE
 140 WEST 8TH AVENUE, HOLDENSBURG, MISSOURI, 64588
 PHONE: 314-991-8400 FAX: 314-991-8401

200332

ALLEN SECOND SUBDIVISION
AN ADDITION TO THE CITY OF HASTINGS, ADAMS COUNTY, NEBRASKA
FINAL PLAT

A REPLAT OF LOTS 1 THRU 6, BLOCK 1, ALLENS SUBDIVISION TO THE CITY
OF HASTINGS, LOCATED IN THE NE 1/4 OF SECTION 1, T7N, R10W, OF THE
6TH P.M., IN THE CITY OF HASTINGS, ADAMS COUNTY, NEBRASKA



Subdivision Description
Lots 1, 2, 3, 4, 5 & 6 Block 1, Allen Subdivision to the City of Hastings, Adams County, Nebraska, located in the NE 1/4 of Section 1, T7N, R10W, of the 6th P.M., Adams County, Nebraska, now shown in Allen Second Subdivision.

OWNER'S CERTIFICATE AND DEDICATION
I, the undersigned, do hereby certify that the above described lots and blocks have been laid out and dedicated to the City of Hastings, Nebraska, and that the same are now shown in the final plat of the Allen Second Subdivision.

ACKNOWLEDGMENT
I, the undersigned, do hereby certify that the above described lots and blocks have been laid out and dedicated to the City of Hastings, Nebraska, and that the same are now shown in the final plat of the Allen Second Subdivision.

HASTINGS CITY ENGINEER'S APPROVAL
This plat of ALLEN SECOND SUBDIVISION has been presented to and reviewed by me and I hereby approve it as proposed.

CITY SURVEYOR CERTIFICATE
This plat of ALLEN SECOND SUBDIVISION has been presented to and reviewed by me and I hereby approve it as proposed.

CITY TREASURER CERTIFICATE
I hereby certify that the amount of any taxes due on any or several lots or blocks of the property described in the 'Legal Description' on this plat as of the _____ day of _____, 2006.

MAYOR AND CITY COUNCIL ACTION
This plat of ALLEN SECOND SUBDIVISION has been presented to the Mayor and City Council of the City of Hastings, Nebraska, and is hereby approved for record on this _____ day of _____, 2006.

PLANNING COMMISSION RECOMMENDATION
This plat of ALLEN SECOND SUBDIVISION has been presented to the Planning Commission of the City of Hastings, Nebraska, and is hereby approved for record on this _____ day of _____, 2006.

Site Plan
Scale: 1" = 60' x 30'
Prepared by: Derek Christensen
Checked by: _____
City of Hastings
Number of Lots: _____
Date: 1 May 2006
Project #: 106120

WATSON
I do hereby certify that, under my recent survey, this plat was prepared from an actual survey completed this 3rd day of November, 2005 and is correct to the best of my knowledge.

LEGAL NOTICE
I do hereby certify that, under my recent survey, this plat was prepared from an actual survey completed this 3rd day of November, 2005 and is correct to the best of my knowledge.

Exhibit "B"

4.5 COMMON AREA MAINTENANCE PROVISIONS

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COMMON AREA MAINTENANCE PROVISION**1. Recitals.**

1.1 Allen and the Owners desire to provide for the common operation, cleaning, maintenance, repair, replacement and insurance of the Common Area within the development as hereinafter provided. Definitions contained in the "Declaration of Protective Covenants and Grant of Easements" (Declaration) are controlling herein.

2. Maintenance Standards.

2.1 Commencing on the date any business first opens its building for business (the "Opening"), the Maintenance Director shall, except as hereinafter provided, maintain the Common Area reasonably required for operation of said business pursuant to the standards of first-rate shopping centers in the same geographical area as the development. The Common Area to be maintained, shall only be those areas that are created, built and established by Allen for the common good of all owners.

Said maintenance shall include, without limitation, the following:

(a) Removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(b) Maintaining landscaped areas (including, without limitation, those on the perimeter of the development, to the extent that improvements have been installed in such areas, or, in perimeter areas on which landscaping has not been installed, keeping the same weed-free, clean, and free of trash and debris); maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs, trees and other landscaping as is necessary;

(c) Maintaining, repairing and replacing, when necessary, any Common Area walls, including, without limitation, all fences, walls or barricades;

(d) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements which have been constructed (with the cost of all such items being allocated between the Owners of all buildings and improvements serviced or to be serviced by said facilities on the basis of their respective Building Areas);

(e) Keeping any Center Pylon Signs (as described in the Declaration) lighted at such times mutually agreed in writing by the businesses designated thereon;

(f) Arranging for the provisions of security services in the development, to the extent deemed reasonable and necessary by the Consenting Owners; and

(g) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall remain responsible and liable for management of the performance of all of said services in accordance with the terms of this Common Area Maintenance Provisions (CAMP) and for management of the performance of any such third party or parties under any such contract or contracts.

2.2 In addition to the foregoing, from the date of the Opening, the Maintenance Director shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring the Maintenance Director against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the Common Areas. Such insurance shall be the primary policy for the coverage of the above-listed claims, except to the extent that such claims arise out of an Owner's willful or negligent acts or omissions, and shall be written with an insurer licensed to do business in Nebraska. Allen, and all persons who now or hereafter own or hold portions of the development, or any leasehold estate or other interest therein as their respective interests may appear, (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for personal injury or bodily injury or death of any one person, \$2,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000 per occurrence. The Maintenance Director shall furnish Allen and all other owners with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be cancelled, materially changed or nonrenewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the holders of such certificates.

2.3 Anything in this Article 2 to the contrary notwithstanding, the Maintenance Director shall not be responsible for the maintenance or insurance of any Service Facilities (as defined in the Declaration), including payment for utilities used in the operation of such Service Facilities, or for driveup or drive through customer service facilities, or for any parking lots or landscaping established by the owners, which facilities and areas shall be maintained and paid for by the Owners thereof in good and clean condition and repair and in a quality and condition comparable to the quality and condition of the maintenance of the balance of the Common Area. In addition, the Owners of the Lot(s) on which said facilities and areas are located shall at all times (a) provide and maintain or cause to be provided and maintained commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring all persons who now or hereafter own or hold

portions of said facilities or any leasehold estate or other interest therein as their respective interests may appear against claims for personal injury, bodily injury or death or property damage or destruction occurring in, on or about said facilities, and (b) indemnify, defend and hold harmless the Owners and occupants of all other Lots from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about said facilities and arising out of the performance or nonperformance of any of the obligations of the Owners of the Lot(s) on which said facilities are located set forth in this Section 2.3, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees. Said insurance shall be written with an insurer licensed to do business in Nebraska and in the amounts set forth in Section 2.2 above. The insurance which an Owner is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this CAMP.

2.4 The Maintenance Director agrees to indemnify, defend and hold harmless the Owners from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about the Common Area and arising out of the performance or nonperformance of any of the obligations of the Maintenance Director set forth in this CAMP, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

3. Lighting.

3.1 It is agreed that any artificial lighting for the Common Area shall remain on while a majority of the businesses in the development are open for business, or otherwise agreed by owners. If artificial lighting for a time later than the foregoing ("**After Hours Lighting**") is needed by any Owners or occupants, then such artificial lights to service such Owners or occupants shall be separately metered or otherwise measured or reasonably estimated and all expenses thereof shall be paid by such Owners or occupants to the extent appropriate. Such Owners or occupants shall pay a reduced proportion of the expense of lighting the balance of the Common Area according to the extent to which such Owners or occupants are lighting the Common Area by separately metered lights.

4. Taxes.

4.1 Each Owner shall pay direct to the county treasurer when due the real property taxes and other special taxes and assessments assessed against the Owner's building(s) or Lot(s), including the portion of the Common Area on such Owner's Lot(s); subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments.

5. Maintenance Director.

5.1 The Owners hereby appoint Allen as its Initial Maintenance Director of the development Common Areas from and after the date the first business opens its building for business.

5.2 70% of the Consenting Owners (as defined in the Declaration) may remove the Maintenance Director, in which event the Consenting Owners shall immediately appoint another person to be the Maintenance Director for the Development.

5.3 The Maintenance Director shall have the right, upon giving ninety (90) days prior written notice to the Consenting Owners to resign as Maintenance Director, in which event the Consenting Owners shall appoint another person to be the Maintenance Director

6. Reimbursement of Maintenance Director.

6.1 The Maintenance Director shall contract for and pay for all of the items enumerated as maintenance and insurance expenses in Article 2 herein, pursuant to the provisions of this Article 6.

6.2 From and after the Opening, each Owner shall pay the Maintenance Director, on the first day of each calendar month, an amount equal to the Owner's monthly portion of such Owner's pro rata share of the entire estimated Budget for the First partial Maintenance Budget Year (i.e., if the First Partial Maintenance Budget Year has 6 months, said Owner's monthly portion would be 1/6 of said Owner's pro rata share of the entire Budget for the First Partial Maintenance Budget Year). Thereafter, each Owner shall pay the Maintenance Director on the first day of each calendar month an amount equal to one-twelfth (1/12th) of such Owner's pro rata share of the entire estimated Budget for the applicable Maintenance Budget Year.

Allen represents that its estimated budget shall not exceed \$4000.00 annually. The estimated budget may be increased annually, as needed, but not by more than 3%. Except as set forth herein, the estimated budget may not be exceeded, except with the approval of 80% of the Owners.

6.3 Commencing with the fifth (5th) anniversary of this Declaration the Owners of all Lots shall be responsible to contribute to all Common Area maintenance expenses, whether or not building(s) have been constructed on their Lot(s), in accordance with the chart in Section 7.2.

6.4 If the Maintenance Director is required to incur an extraordinary cost or expense during any Maintenance Budget Year for an Unforeseen Expense (defined below), then each Owner shall pay to the Maintenance Director such Owner's share of such costs within thirty (30) days of receipt of the Maintenance Director's statement and reasonable backup documentation therefor. Upon the occurrence of such Unforeseen Expense, the Maintenance Director shall provide each Owner with the best and earliest notice feasible under the circumstances. For purposes of this Section 6.4, an "Unforeseen Expense" qualifying for payment outside the Budget shall include only an emergency situation necessitating repair or replacement which presents an imminent threat or danger of irreparable harm to person or property, as

to which delay would cause further threat or damage or would further endanger person or property.

6.5 The Maintenance Director agrees to perform its duties under this Article 6 on a nonprofit basis (except as to the management fee described below) with the objective of keeping expenses at a reasonable minimum. The Maintenance Director may charge a management fee, to include all service and administrative charges, of ten percent (10%) of each Owner's pro rata share of Common Area expenses; provided such management fee shall not apply to amounts spent for capital expenditures to the extent any single such expenditure exceeds Three Thousand Five Hundred Dollars (\$3,500.00), or to utilities or insurance. The Common Area expenses shall not include any costs incurred by Maintenance Director for the services of a manager or management company or for office overhead or compensation of its employees, except to the extent covered by the management fee provided for in this Section 6.5.

7. Billing for Expenses.

7.1 Within ninety (90) days following the end of each Maintenance Budget Year, the Maintenance Director shall furnish to each Owner who is obligated to contribute to the Common Area expenses for the Maintenance Budget Year just expired, a statement covering the actual Common Area expenses for the Maintenance Budget Year, the amount of the Owner's share of Common Area expenses for that Maintenance Budget Year, and the monthly payments made by such Owner during that Maintenance Budget Year for said expenses. The Maintenance Director shall deliver to any Owner copies of such additional documents and records concerning Common Area expenses as are reasonably requested to verify the accuracy and content of the statements therefor. If an Owner's share of the Common Area expenses for the Maintenance Budget Year in question exceeds such Owner's prior payments, the Owner shall pay the Maintenance Director the deficiency within thirty (30) days after receipt of such annual statement. If the Owner's payments for the Maintenance Budget Year exceed the Owner's actual share of Common Area expenses, such Owner, at its election, may either offset the excess against Common Area expenses later to come due to the Maintenance Director or request reimbursement from the Maintenance Director, which reimbursement shall then be provided without delay.

7.2 On the fifth (5th) anniversary of this Declaration, the following shall be the proportionate share of the total Common Area expenses to be borne by each Owner for any year, based on the land area within such Owner's Parcel(s):

	Percent
Lot 1	22.5%
Lot 2	26.1%
Lot 3	18.7%
Lot 4	13.5%
Lot 5	19.3%

7.3 The Maintenance Director shall not be entitled to reimbursement from any Owner (or its tenants or agents) for any item of Common Area maintenance or insurance expense (including the ten percent [10%] service charge described in Article 6 above) for which a bill is not submitted to said Owner (or its tenants or agents, as it may direct) within one hundred eighty (180) days after the end of the Maintenance Budget Year in which said expense is incurred.

8. Effect of Sale by Owner.

8.1 In the event an Owner sells all or any portion of its interest in its building or Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under these Provision after the sale and conveyance of title, but shall remain liable for all obligations prior to the sale and conveyance of title. The new Owner of any such Lot or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under these Provisions with respect to such Lot or portion thereof after the date of sale and conveyance of title.

9. Default.

9.1 In the event any Owner fails or refuses to pay when due its share of any bill for the Common Area maintenance and insurance expenses described above (including the ten percent [10%] service charge described in Article 6 above), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses (including the ten percent [10%] service charge described in Article 6 above) of the defaulting Owner ("Curing Party") for reimbursement plus interest from and after the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of (a) the highest rate allowed by law, and (b) the rate two percent (2%) above the reference rate of interest charged from time to time to corporate borrowers of the highest credit standard by Wells Fargo, Hastings, NE, (the lesser rate being hereinafter referred to as the "Default Rate"). Furthermore, the Curing Party shall have a lien on the Lot of the defaulting Owner for the amount of said expenses (including the ten percent [10%] service charge described in Article 6 above) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Lot until such dispute is settled by final court decree or mutual agreement.

9.2 In the event an Owner fails to pay when due all taxes and assessments described in Article 4 above, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and any other Owner ("Curing Owner") may thereafter pay

such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Owner shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Owner shall have a lien on the Lot of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

9.3 In the event, any Owner fails to perform any other provision herein, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner may thereafter institute legal action against the defaulting Owner for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) day period and such Owner is diligently proceeding to rectify the particulars of such failure.

9.4 In the event any Owner, or the Maintenance Director, fails to perform any of the provisions herein, which failure continues for a period of thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from any Owner or Consenting Neighbor specifying the particulars of such failure, such failure shall constitute a default and any Owner or Consenting Neighbor may thereafter institute legal action against the Owner or Maintenance Director for specific performance, declaratory or injunctive relief, or any other remedy provided by law, and/or may perform the obligations of the Owner or Maintenance Director specified in said notice of default, and offset the cost thereof from amounts due the Maintenance Director; provided, however, that the Owner or Maintenance Director shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Owner or Maintenance Director is diligently proceeding to rectify the particulars of such failure.

10. Lien for Expenses or Taxes.

10.1 The lien provided for in Article 9 above shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the development is located, signed and verified, which shall contain at least:

- (a) An itemized statement of all amounts due and payable pursuant hereto;
- (b) A description sufficient for identification of that portion of the real property

of the defaulting Owner which is the subject of the lien;

- (c) The name of the Owner or reputed Owner of the property which is the subject of the lien; and
- (d) The name and address of the Curing Owner or Curing Party.

10.2 The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the person curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

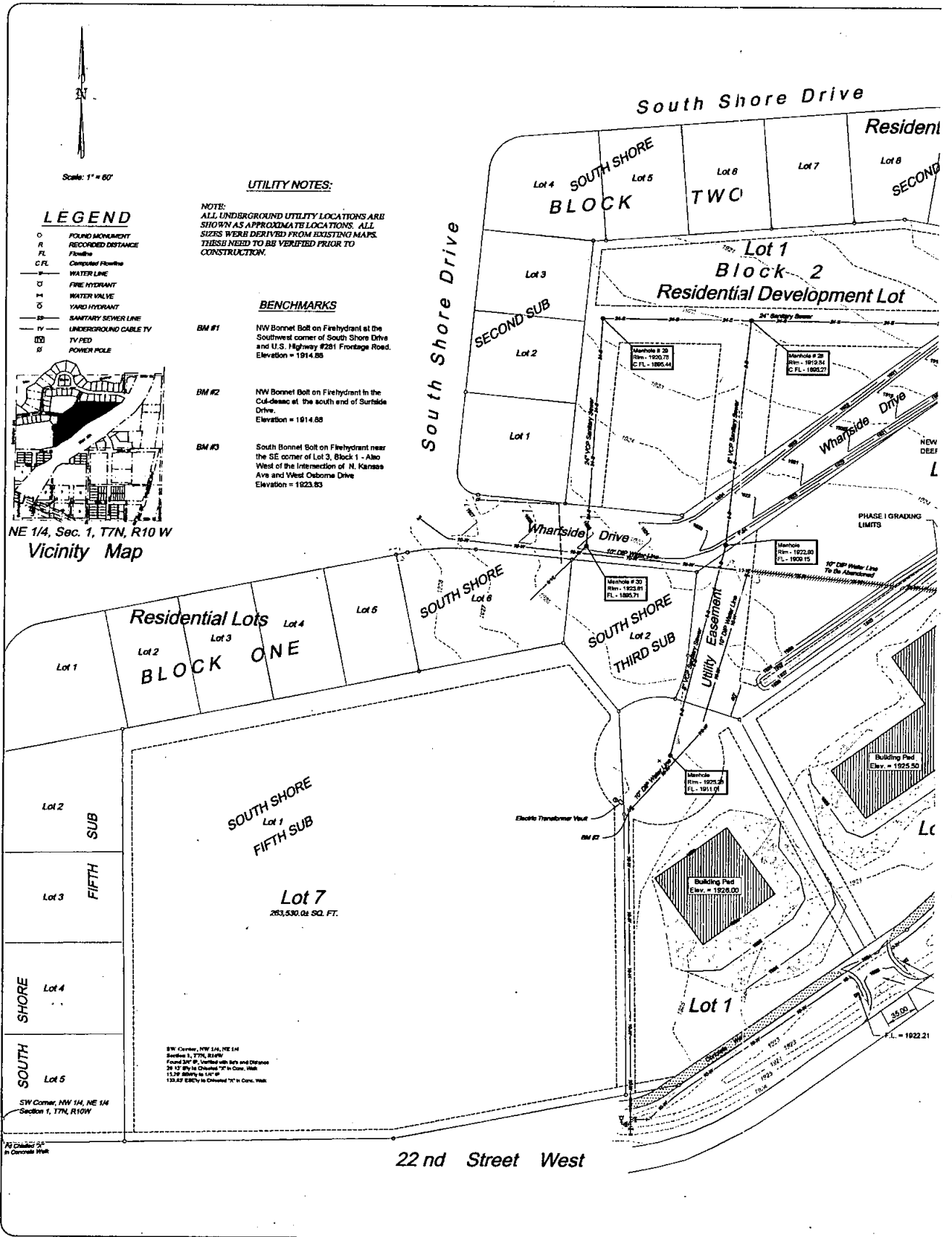
11. Responsibility if No Maintenance Director.

11.1 In the event the Maintenance Director was ever responsible for the maintenance, insurance and lighting of common areas, if there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the maintenance, insurance and lighting of its own Lot(s) according to the standards herein enumerated. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of Articles 9 and 10 shall apply.

11.2 In the event there should at any time cease to be a Maintenance Director, each Owner agrees to indemnify, defend and hold harmless the Owners and occupants of all other Lots from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring on the indemnifying Owner's Lot(s) and arising out of the performance or nonperformance of any of the obligations of the Owner of said Lot(s) set forth in Section 11.1, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

12. Assignment of duties and tasks to Owner.

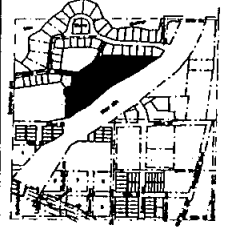
12.1 The Maintenance Director and any Owner may allocate or assign, as between themselves, any duty or task set forth herein. Any duty or task so assumed by the Owner, shall be performed at the Owner's sole cost and expense. Any failure of the Owner to so perform any such duty or task, may be assumed again by the Maintenance Director, and billed according to the provisions herein.



Scale: 1" = 60'

LEGEND

- FOUND MONUMENT
- R RECORDED DISTANCE
- FL Flagline
- CFL Computed Flagline
- WATER LINE
- FIRE HYDRANT
- ⊕ WATER VALVE
- YARD HYDRANT
- SANITARY SEWER LINE
- UNDERGROUND CABLE TV
- TV TV PED
- POWER POLE



UTILITY NOTES:

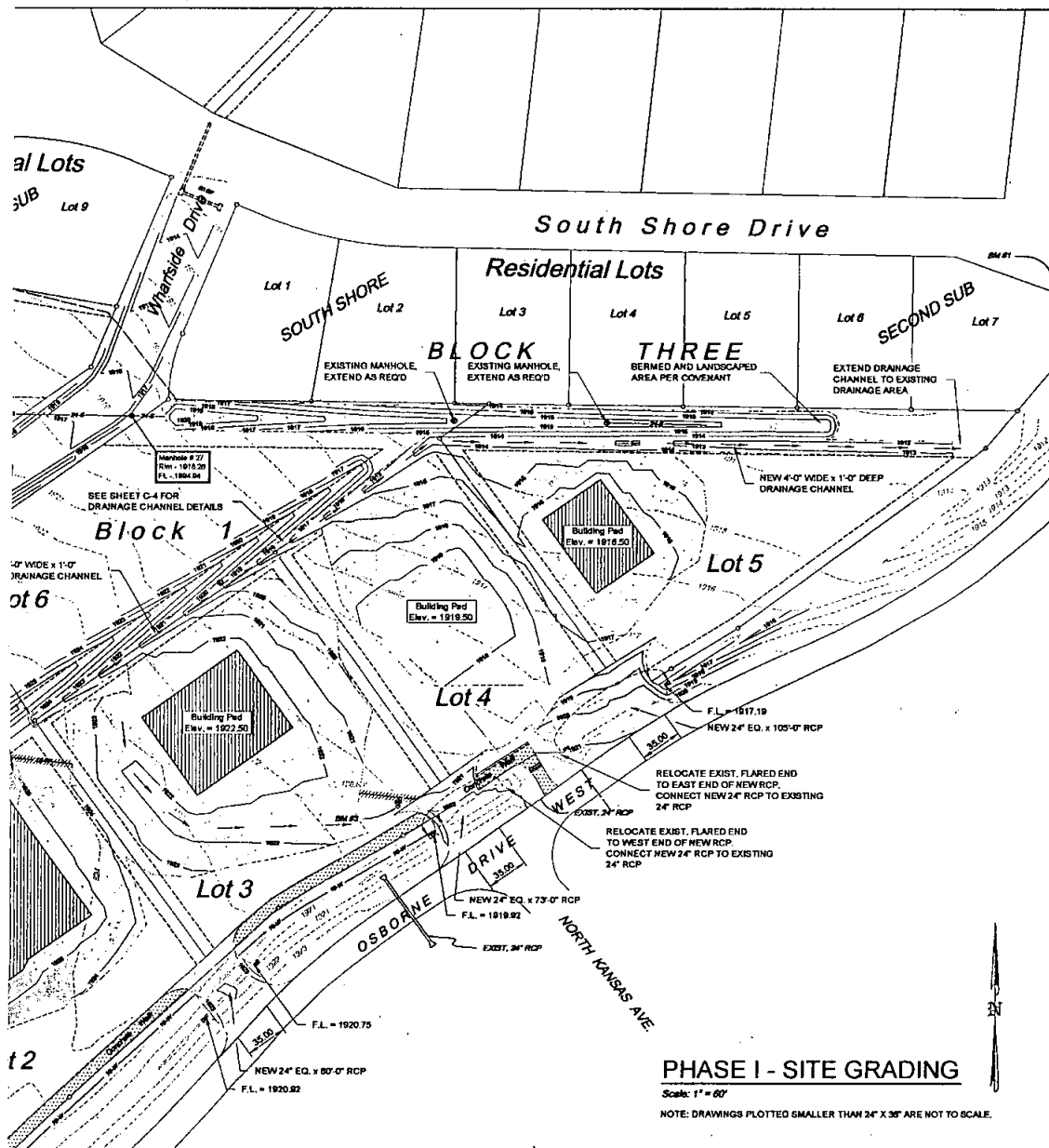
NOTE: ALL UNDERGROUND UTILITY LOCATIONS ARE SHOWN AS APPROXIMATE LOCATIONS. ALL SIZES WERE DERIVED FROM EXISTING MAPS. THESE NEED TO BE VERIFIED PRIOR TO CONSTRUCTION.

BENCHMARKS

- BM #1 NW Bonnet Bolt on Firehydrant at the Southwest corner of South Shore Drive and U.S. Highway #281 Frontage Road. Elevation = 1914.68
- BM #2 NW Bonnet Bolt on Firehydrant in the Cut-de-sac at the south end of Surtside Drive. Elevation = 1914.68
- BM #3 South Bonnet Bolt on Firehydrant near the SE corner of Lot 3, Block 1 - Also West of the Intersection of N. Kansas Ave and West Osborne Drive. Elevation = 1923.93

SW Corner, NW 1/4, NE 1/4
Section 1, T7N, R10W
Found 2" x 4" iron, verified with S&D and Distance
38.12' (S) to Chiselled "N" in Core, with
13.26' (S) to 147' W
133.87' (E) to Chiselled "N" in Core, with

31832



PHASE I - SITE GRADING

Scale: 1" = 60'
NOTE: DRAWINGS PLOTTED SMALLER THAN 24" X 36" ARE NOT TO SCALE.

EARTHWORK PHASE I	
CUT	724 YD ³
FILL	4,833 YD ³
FACTOR	1.4
BORROW	-8,042 YD ³

EST. QUANTITIES			
ITEM	DESCRIPTION	QTY.	U.O.M.
1	24" Ø OR EQUAL R.C.P.	298.00	L.F.
2	24" Ø OR EQUAL FLARED END SECTION	4.00	EA.
3	WATER VALVE RISER BOX	1.00	EA.
4	ADJUST EXISTING MANHOLE	1.00	EA.
5			

- NOTES**
- BUILDING SIZE AND LOCATION ARE BASED ON ALLEN INVESTMENT L.L.C. PRELIMINARY PLANNING AND ARE ILLUSTRATIVE OF AN ACCEPTABLE SIZE AND LOCATION.
 - PURCHASER MAY ALTER LOT GRADING AND LAYOUT AT THEIR OWN EXPENSE AND WITH APPROVAL OF ALLEN INVESTMENT L.L.C. AND THE CITY OF HASTINGS.
 - CONCRETE PAVEMENT AT THE ENTRANCE IS TO BE PROVIDED BY FUTURE LOT OWNERS AND IS NOT BEING SUPPLIED BY ALLEN INVESTMENT L.L.C.
 - EACH DRIVE SHALL BE CONSTRUCTED AT THE LOCATION AND DIMENSIONS SHOWN UNLESS APPROVED OTHERWISE.
 - DRIVES SHALL BE 8" THICK AND CONSTRUCTED OF 478/4000 CONCRETE. AVE. SIZE SHOWN IS 332 SQ. YARDS.
 - UTILITY CONTRACTOR SHALL LOCATE FIRE HYDRANTS OUTSIDE THE DRIVES AS DIRECTED BY HASTINGS UTILITIES.

ALLEN SECOND SUB-DIVISION
SITE GRADING / IMPROVEMENTS
HASTINGS, NEBRASKA

WDA W DESIGN ASSOCIATES
Consulting Engineers and Architects
McCook, Nebraska 68001
Hastings, Nebraska 68021

DWG: 012-0802-01
DRAWN: T.A.B.
CHECKED:
REVISIONS:
LCT 4 ENT. (4/1/05)

C

DATE: MARCH, 2006

SCALE: 1" = 60'
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