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[After recording, return to Thomas F. Flaherty, 409 South 17th Street, Suite 500, Omaha NE 68102]

**DECLARATION OF COVENANTS, CONDITIONS,
 RESTRICTIONS AND EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is made as of this 12th day of October, 2006, by ELK CREEK PINE, LLC, a Nebraska limited liability company ("Declarant").

Recitals

A. Declarant is the owner of certain real property situated in Douglas County, Nebraska, legally described as follows:

Lots 1 through 9 and Outlots 1 through 3, inclusive, all in Elk Creek Pines, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (the "Property").

B. Declarant intends by this Declaration to impose upon the Property covenants, conditions, restrictions and easements, and to establish a general plan for the improvement, development, maintenance, use and operation of the Property consistent with a first class commercial office and retail center.

C. By virtue of the recording of this Declaration, the Property shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved and mortgaged or otherwise encumbered subject to the provisions of this Declaration, and every grantee of any interest in the Property or any portion thereof, by acceptance of a deed or other conveyance of such interest, and every Owner of the Property or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof.

D. Declarant desires to form a Nebraska nonprofit corporation to be known as the Elk Creek Pines Property Owners Association, Inc. for the purposes of, among other things, holding title to and otherwise controlling the Common Area; improving, maintaining and administering the

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Common Area; enforcing this Declaration; and collecting, disbursing and enforcing the obligations in respect of Assessments; all subject to the powers, rights and duties reserved by Declarant as set forth in this Declaration.

E. Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants running with the Property and shall be binding upon the present owner of the Property and its successors and assigns, and upon all subsequent owners of the Property or any portion thereof or any Improvements, together with their respective grantees, successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, Declarant hereby imposes the following covenants, conditions, restrictions and easements on and with respect to the Property, which shall run with the equitable and legal title to the Property and shall be for the benefit or burden, as the case may be, of Owners, Lessees and Mortgagees of the Property or any portion thereof, and their respective heirs, legal representatives, successors and assigns.

ARTICLE 1. DEFINITIONS

1.1 Architectural Committee. "Architectural Committee" shall mean the Architectural and Development Control Committee created pursuant to Article 5 below.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of the Association, as they may from time to time be amended or restated, filed with the Nebraska Secretary of State.

1.3 Assessments. "Assessments" shall mean all regular assessments described in Section 11.5, special assessments described in Section 11.6, reimbursement assessments described in Section 11.7 and capital improvement assessments described in Section 11.8 below.

1.4 Association. "Association" shall mean and refer to Elk Creek Pines Property Owners Association, Inc., the Nebraska nonprofit corporation (and its successors and assigns) organized by Declarant to exercise the rights, powers and duties set forth in this Declaration.

1.5 Board. "Board" shall mean and refer to the Board of Directors of the Association.

1.6 Bylaws. "Bylaws" shall mean the Bylaws of the Association, as they may from time to time be amended or restated.

1.7 City. "City" shall mean the City of Omaha, Nebraska.

1.8 Common Area. The term "Common Area" shall mean and refer to those portions of the Property owned by the Association in fee or against which an easement has been imposed under this Declaration, the plat of the Subdivision, by separate easement, deed or other enabling instrument, and any other areas with respect to which the Association has assumed in writing administrative or maintenance responsibilities. The initial Common Area is described and depicted on Exhibit "B" attached hereto and incorporated herein by this reference.

1.9 Declaration. "Declaration" shall mean this "Declaration of Covenants, Conditions, Restrictions and Easements, as it may be amended or supplemented from time to time.

1.10 Development Guidelines. "Development Guidelines" shall mean the development guidelines and standards and the review and approval procedures prepared and issued from time to time by the Architectural Committee pursuant to Article 5.

1.11 Development Plan. "Development Plan" means the plan for development of the Property depicted, generally, on Exhibit "A" annexed hereto and by this reference incorporated herein.

1.12 Exempt Property. "Exempt Property" shall mean (i) all Common Area owned in fee by the Association, and (ii) all land and improvements owned by or dedicated to and expressly accepted by the City of Omaha, Nebraska or other political subdivision of the State of Nebraska for so long as the City or other public or governmental authority is the owner thereof. In no event shall any Lot be considered Exempt Property.

1.13 Improvements. "Improvements" shall mean all land preparation and excavation, buildings, outbuildings, structures, underground installations, slope and grade alterations, lighting, roads, walkways, curbs, gutters, storm drains, sanitary sewers, drainageways, utilities, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, patio areas, wind-breaks, plantings, planted trees and shrubs, sidewalks, poles, flags, signs, storage or display areas, loading areas, docks, water detention and water retention areas, fountains, water features, ponds, recreational facilities and all other structures, land development or landscaping improvements of every type and kind, except public improvements installed or to be installed by Sanitary Improvement District #536 ("S.I.D.") and which by the terms of the Mixed Use Development Agreement are to be financed and maintained by such S.I.D.

1.14 Lessee. "Lessee" shall mean the owner of a leasehold interest (including any sub-tenancy) or license or other occupancy right in or in respect of any Improvement or any Lot or a portion thereof.

1.15 Lot. "Lot" shall mean any duly platted lot within the boundaries of the Property or any platted lot created pursuant to any subsequent administrative subdivision, replat, revision or amendment thereof; provided however, the term "Lot" shall not include any Exempt Property.

1.16 Member. "Member" shall mean and refer to every person or entity who is a Member of the Association pursuant to Article 4.

1.17 Mixed Use Development Agreement. "Mixed Use Development Agreement" means the Mixed Use Development Agreement relating to the Property between Declarant and the City, as the same may be amended or supplemented from time to time.

1.18 Mortgage. "Mortgage" means an instrument recorded or filed in the office of the Douglas County Register of Deeds encumbering a Lot or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration, including, without limitation, a deed of trust. "Mortgage" does not mean or include an instrument creating or evidenc-

ing solely a security interest in personal property arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in a Lot (such as a leasehold mortgage).

1.19 Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust.

1.20 Owner. "Owner" shall mean any person or entity which is the record owner of fee simple interest title to any Lot or Lots, including, without limitation, one who holds equitable title to a Lot or Lots under a recorded land contract, and includes any Mortgagee or other lienholder in actual possession of a Lot or Lots.

1.21 Period of Declarant Control. "Period of Declarant Control" means the time period commencing on the date of recording of this Declaration and continuing (i) for a period of five (5) years, or (ii) as long as Declarant owns at least three (3) Lots, whichever is later, unless and until Declarant elects, in its discretion, to transfer, relinquish and/or surrender all of its rights and obligations under this Declaration in the manner set forth in Article 17.

1.22 Person. "Person" shall mean and refer to a natural person, corporation, partnership, limited liability company, trust or any other legal entity or association.

1.23 Plat. "Plat" shall mean the final subdivision plat for the Property approved by the City Council and recorded in the official records of Douglas County, Nebraska, and any amendments, administrative subdivisions, minor plats or other modifications thereof.

1.24 Prime Rate. "Prime Rate" shall mean the annual rate of interest quoted in the Money Rates Section of The Wall Street Journal (Midwest Edition) as the "Prime Rate".

ARTICLE 2. GENERAL PROVISIONS

2.1 Establishment of Restrictions. Declarant hereby declares that the Property shall be held, transferred, sold, leased, subleased, conveyed and occupied subject to the conditions, covenants, restrictions, easements and reservations set forth in this Declaration, each and all of which are for the benefit of the Property and the Owners and Lessees of any interest therein and their respective occupants, successors and assigns, and may be enforced against such Owners and Lessees jointly or jointly and severally.

2.2 Purpose of Restrictions. The purpose of these covenants and restrictions is to promote proper development, use, improvement and maintenance of the Property; to protect the Owner of each Lot against improper development, use and maintenance of any Lot; to prevent the erection on the Property of structures built of improper design or materials; to encourage the erection of attractive improvements at appropriate locations; to prevent haphazard and inharmonious improvements; to enhance and protect the value, desirability and attractiveness of all the Property; to provide for the location, use and maintenance of temporary and permanent easements for ingress and egress, parking and landscaping, utility, fire protection, security and storm drainage facilities; to promote the welfare and safety of the occupants, Lessees and Owners of the Lots, and in general to

provide for high quality improvements on the Property in accordance with a uniform plan of development.

ARTICLE 3. THE ASSOCIATION

3.1 Formation of Association. The Association shall be a nonprofit corporation formed under the laws of the State of Nebraska, and upon its incorporation it shall be charged with the duties and empowered with the rights prescribed by law and set forth herein and in the Bylaws and in the Articles.

3.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board shall adopt Bylaws to govern the affairs of the Board and the Association. Except as otherwise provided herein or in the Articles or Bylaws, all acts of the Association shall be made and authorized only by the vote of a majority of the members of the Board. The Board may also appoint various committees at its discretion and may contract with a Person to serve as a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association.

3.3 Powers. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Nebraska, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws or this Declaration. It shall have the power to do any lawful acts that may be authorized, required, or permitted to be done by the Association under this Declaration (including any rights, duties and responsibilities assigned by Declarant from time to time pursuant to Article 16), the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

- (a) commence and maintain actions to restrain and enjoin any actual or threatened breach of this Declaration or to enforce by mandatory injunction or otherwise any of the provision of this Declaration;
- (b) pay taxes, special assessments and other liabilities which are or would become a lien on the Property;
- (c) levy assessments and perfect and enforce liens as hereinafter provided;
- (d) enter into contracts to perform the duties set forth herein, including, without limitation, the maintenance and repair of the Common Area;
- (e) adopt, amend and repeal rules and regulations;
- (f) enter onto any Lot to enforce the provisions of this Declaration;
- (g) enter into contracts with Owners, the City, the S.I.D or other governmental authority regarding the maintenance of landscaped areas, parking areas or other areas;

- (h) landscape and maintain any areas within the Property;
- (i) purchase such insurance as is necessary or appropriate; and
- (j) borrow funds to pay costs of operation or capital improvement costs, secured by Assessments revenues due for succeeding years or by assignment or pledge of rights against delinquent Owners; provided, however, that the vote of a majority of the Owners, and the vote of Declarant during the Period of Declarant Control, shall be required to borrow in excess of one year's budgeted expenses of the Association.

3.4 Rules and Regulations. The Board may adopt, amend and repeal rules and regulations concerning all aspects of the Association's rights, activities and duties. The rules and regulations may govern and restrict the use of any area of the Property; provided, however, that the same shall not discriminate among Members, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. Upon adoption, the rules and regulations shall have the same force and effect as if set forth herein. After the expiration of the Period of Declarant Control, any amendment to the rules and regulations must be approved by a majority vote of the Members.

3.5 Limitation of Liability. No member of the Board or Architectural Committee, or the Declarant, or any agent, employee or officer of Declarant, shall be liable to any Owner, Lessee, contract purchaser or other person, including the Association, for any damage or loss suffered or claimed on account of any act or omission of any such person or entity if such person or entity acted in good faith and did not engage in willful misconduct.

3.6 Articles and Bylaws. Neither the Articles nor the Bylaws shall be amended or interpreted in a manner that is inconsistent with this Declaration.

ARTICLE 4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1 Memberships. Each Owner, including the Declarant, shall have one membership for each Lot owned by such Owner. In the event of a subdivision or re-subdivision of any Lot or portion thereof, the number of memberships attributable thereto may be changed by the Declarant during the Period of Declarant Control or by resolution of the Board thereafter.

4.2 Transfer of Memberships. An Owner shall, upon becoming the record Owner of a Lot, automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Such membership shall be appurtenant to and pass with the ownership of such Lot. A membership may not be transferred, pledged or alienated in any way, except as appurtenant to a transfer of ownership of a Lot. Any attempt to transfer a membership except as appurtenant to the transfer of ownership of a Lot shall be void and shall not be reflected upon the Association's books and records.

4.3 Voting; Multiple Owners; Appointment of Agent. Each Owner shall have one vote for each membership owned as provided in Section 4.1 above. All voting pursuant to the terms of

this Declaration shall be made in accordance with the provisions of this Section 4.3. Each vote must be cast as a single unit. If a Lot is owned by more than one Person, all of the Persons with a record ownership in such Lot shall, simultaneously with or immediately after their acquisition of such Lot, deliver to the Association a written instrument appointing one natural person as the attorney-in-fact for such Persons, which natural person shall be authorized to receive notices of Assessments and other notices or demands, cast votes hereunder, and take any and all actions required or permitted to be taken by an Owner under the terms of this Declaration. An Owner may change its attorney-in-fact by written notice to the Association as set forth above, which change shall be effective only upon actual receipt of such notice by the Association. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. If more than one Person casts or attempts to cast a vote in respect of a Lot, and the Board is unable to determine with reasonable certainty which Person is entitled to vote in respect of such Lot, all such votes shall be deemed void.

4.4 Initial Board of Directors. The initial Board of the Association shall consist of not less than three Directors, shall be appointed by Declarant upon the incorporation of the Association, and shall include a representative selected by the Owner of Lot 1. During the Period of Declarant Control, Declarant shall have the sole right, in its absolute discretion, to appoint and remove the Directors of the Board, other than the representative selected by the Owner of Lot 1; however, Declarant may temporarily or permanently relinquish its right to appoint or remove some or all of the Directors at any time as provided in Article 16. If Declarant relinquishes its appointment rights, the Members (including the Declarant) shall then elect all Directors as provided in the Bylaws.

4.5 Subsequent Board. After the expiration of the Period of Declarant Control, the Members (including Declarant) shall elect the Directors as provided in the Bylaws, and the Bylaws may provide for staggered terms and lengths of terms for Directors which are different than those initially set forth in this Declaration and may provide for a greater number of Directors than is set forth herein; provided, however, that in no event shall there be fewer than three Directors. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members.

4.6 Administration and Compliance. If the Articles or Bylaws are in any way inconsistent with this Declaration, then this Declaration shall prevail and control. Each Owner and Lessee of a Lot shall comply with, and shall cause their respective invitees to comply with, the provisions of this Declaration, the Articles and Bylaws, the Development Guidelines and the rules of the Association, as amended from time to time, and failure to so comply shall be grounds for (a) the recovery of damages or injunctive relief, and (b) such other relief, by legal proceedings or otherwise, as are available by reason of this Declaration or by law.

ARTICLE 5 ARCHITECTURAL AND DEVELOPMENT CONTROL COMMITTEE

5.1 Committee Composition. The Architectural Committee shall be organized by the Declarant and shall consist of the Owners of Lots 1, 7 and 8.

5.2 Assignment of Architectural Committee Membership. By written notice to the other members of the Architectural Committee, the Owner of either Lot 7 or Lot 8 (or both of them) may

permanently and irrevocably assign the right to serve on the Architectural Committee appurtenant to such Lot to the Owner of another Lot ("Assignee Lot") and, from and after the date of any such assignment, the right to serve on the Architectural Committee shall be appurtenant to the Assignee Lot.

5.3 Resignations; Vacancies; Removals. Any member of the Architectural Committee may, at any time, resign from the Architectural Committee upon written notice to the other members of the Architectural Committee and Declarant, during the Period of Declarant Control, and thereafter by a vote of a majority of the members of the Architectural Committee, may appoint a successor member to the Architectural Committee. If a member of the Architectural Committee habitually neglects or fails to discharge such member's duties as a member of the Architectural Committee, as reasonably determined by Declarant during the Period of Declarant Control and thereafter by a majority of the members of the Architectural Committee, Declarant, during the Period of Declarant Control, and a majority of the remaining members of the Architectural Committee thereafter, may discharge such member from the Architectural Committee and appoint a successor member.

5.4 Powers and Duties. The Architectural Committee shall have all of the powers and authority conferred upon it by this Declaration and by the Articles and Bylaws, and shall have the right to hire and retain services of engineers or other consultants and professionals as they deem necessary to perform the duties of the Architectural Committee. It shall be the duty of the Architectural Committee to perform the functions required of it by this Declaration; to consider and act upon all applications and plans, specifications and other documents submitted to it pursuant to the terms hereof; to adopt Development Guidelines, including appropriate procedures for plan submittal and review; and to perform all other duties delegated to and imposed upon it by this Declaration. The Board shall determine the compensation, if any, to be paid to the members of the Architectural Committee.

5.5 Meetings. The Architectural Committee shall meet as often as it, in its sole discretion, shall deem necessary to properly perform its duties hereunder. The vote or written consent of two members (or a majority of the members in the event the Architectural Committee consists of more than three members) shall constitute the act of the Architectural Committee. The Architectural Committee shall keep written records of all actions taken by it.

5.6 Development Guidelines. The Development Guidelines, and any amendments thereto, shall supplement, interpret and implement the provisions hereof by setting forth (a) standards and procedures for Architectural Committee review, and (b) guidelines for Improvements which shall include, but not be limited to, guidelines for architectural design, site plans, floor plans, setbacks and building envelopes, exterior elevations, height limitations, landscape plans, irrigation plans, color schemes, signage, exterior lighting, finishes and materials.

ARTICLE 6. EASEMENTS

6.1 Easements for Common Area. Declarant expressly reserves and grants for itself, its successors and assigns, and the Owners and their respective successors and assigns, the following non-exclusive easements in respect of the Property, the approximate locations of which are shown on Exhibits "B, C, D and E" annexed hereto and by this reference incorporated herein, and the exact location of each of which easements will be determined by the Architectural Committee, as

evidenced by plans for development of each Lot as approved by the Architectural Committee, and thereafter further evidenced by an instrument recorded in the office of the Register of Deeds of Douglas County, Nebraska describing each such easement area with particularity:

- (a) *Ingress and Egress Easement.* Non-exclusive easements over that portion of the Property consisting of paved streets, roadways, and parking areas for the purpose of vehicular access to and from each Lot and (i) each other Lot, (ii) the public streets now or hereafter abutting or located on any portion of the Property, and (iii) the parking areas now or hereafter abutting or located on any portion of the Property, all as approximately shown on Exhibit "B".
- (b) *Pedestrian Easement.* Non-exclusive easements over that portion of the Property consisting of walkways, as approximately shown on Exhibit "C", for the purpose of pedestrian access to and from each Lot and (i) each other Lot, (ii) the public streets now or hereafter abutting or located on any portion of the Property, (iii) the walkways now or hereafter abutting or located on any portion of the Property, and (iv) the parking areas now or hereafter abutting or located on any portion of the Property.
- (c) *Parking Easements.* Non-exclusive easements for the purpose of vehicular parking in those areas of the Property designated for vehicular parking, as approximately shown on Exhibit "B", limited however, to those portions of each Lot which are improved by the Owner thereof as, and designated by the Owner thereof as, vehicular parking spaces, subject however to the right of the Owner of a Lot to designate, by appropriate signage, that the portion of such Lot which is not shown on Exhibit "B" as part of the parking and circulation easement is reserved for the exclusive use and benefit of such Owner, and its Lesees, employees, agents and invitees, and further subject to the right to install, maintain and utilize parking lights, loading docks external to Improvements, and pedestrian walkways within the parking easement areas.
- (d) *Sanitary Sewer Easement.* Non-exclusive easements to S.I.D. #536 for the purpose of constructing, installing, using, maintaining and repairing sanitary sewer systems, sewer lines and related facilities on, across and under certain portions of the Property as approximately shown on Exhibit "D".
- (e) *Storm Sewer Easement.* Non-exclusive easements to S.I.D. #536 to be formed by Declarant for the purpose of constructing, installing, using, maintaining and repairing storm drainage facilities on, across and under certain portions of the Property as approximately shown on Exhibit "E".

6.2 City Approval of Easement Locations. The easement locations shown on Exhibits "B, C, D and E" are preliminary only. Prior to obtaining building permits from the City for construction of an improvement on any Lot, the easement location, size and use shall be subject to Architectural Committee approval as herein described.

6.3 General. Each of the easements provided for in this Declaration shall be deemed to be established upon recordation of this Declaration, and shall thence forth be deemed to run with the

land for the use and benefit of the Lots, the Owners thereof, and the named beneficiaries and their respective successors and assigns, and all such easements shall be superior to all other encumbrances against or in favor of any portion of the Property. No grant or reservation of easements herein shall be deemed to be a grant of easements or dedication to the public or to create any other rights in favor of the public, except as otherwise expressly provided herein.

6.4 Right of Entry. During regular business hours and upon reasonable notice. The Board and its respective members, employees and agents, shall have the right to enter upon and inspect any Lot and the Improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and none of them shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Notwithstanding the foregoing, in the event of an emergency originating on or threatening any Lot, the Board and its members, employees and agents, shall have the right at any time without prior notice to enter such Lot and the Improvements thereon.

ARTICLE 7.

ARCHITECTURAL CONTROL AND REGULATION OF IMPROVEMENTS

7.1 Approval of Plans.

- (a) *Approval Required.* Except for initial public improvements constructed and installed by SID #536, and except for the site plan, building elevations and building materials in respect of Lot 1 as contained in the Mixed Use Development Agreement, no Improvement shall be constructed, erected, placed, expanded, added to, altered, maintained or permitted to remain on the Property, and no alterations or other work which alters the exterior appearance of any Lot or Improvement, until plans and specifications for, and a statement of proposed use of the Improvements, together with such other documentation required under the Development Guidelines (collectively the "Application"), have been submitted to and approved in writing by the Architectural Committee.
- (b) *Processing Fee.* As a means of defraying its expenses, the Architectural Committee may institute and require the payment of a reasonable processing fee to accompany the Application for each building or other construction project submitted. If resubmission of an Application is necessary, the Architectural Committee may require payment of an additional processing fee.
- (c) *Governmental Regulations.* All Applications submitted to the Architectural Committee hereunder shall comply with any and all laws, rules, regulations and ordinances applicable to the Property.
- (d) *Basis for Disapproval.* The Architectural Committee shall have the right to disapprove an Application submitted to it, whether a preliminary or final submittal, if any part of it is:
 - (i) not in accordance with this Declaration, the Development Plan, the Mixed Use Development Agreement, the Development Guidelines, or the Plat;

- (ii) incomplete;
 - (iii) not in compliance with applicable ordinances, laws or regulations of the City, Douglas County, state, federal or other governmental agencies;
 - (iv) deemed by the Architectural Committee to be contrary to the best interests of the Property or the Owners; or
 - (v) incompatible with the architectural style, quality or aesthetics of existing Improvements or development plans for proposed Improvements.
- (e) *Approval of Plans.* If the Architectural Committee has not approved or disapproved an Application within sixty (60) days after its actual receipt by the Architectural Committee, Applicant may notify the Architectural Committee in writing of its failure to approve or disapprove the Application ("Second Request"). If the Architectural Committee fails to approve or disapprove the Application within sixty (60) days after receipt of the Second Request, the Application shall be deemed approved.
- (f) *Time for Commencing and Completing Construction.* Upon receipt of final approval from the Architectural Committee pursuant to this Section, and upon receipt of any necessary approvals from the City, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved construction, refinishing, alterations, excavations and landscaping. In all cases, construction shall be commenced within twelve (12) months of the date of such approval and completed within thirty-six (36) months after the date of such approval, or the approval given or deemed given pursuant to this Article shall be deemed revoked. The Architectural Committee may, upon written request made and received prior to the expiration of the time for commencement of construction or completion (as the case may be), extend in writing the period of time within which construction must be commenced or completed. After completion of any Improvement, the Owner shall deliver to the Architectural Committee a copy of "As Built" drawings with respect to all Improvements located on the Lot.
- (g) *Construction Without Approval.* If any Improvement is erected, constructed, placed, maintained, replaced, substantially remodeled, rebuilt or reconstructed upon any Lot, or the exterior design of any Improvement is altered in any manner whatsoever, or any different use commenced upon any Lot, other than in accordance with this Declaration, such Improvement or use shall be deemed to have been undertaken in violation of this Declaration. Upon written notice from the Board, such Improvement in violation of this Declaration shall be removed or altered so as to conform to this Declaration, and any such use in violation of this Declaration shall cease or be changed so as to conform to this Declaration. If any Owner or Lessee fails to accomplish such removal or alteration of an Improvement or cessation or change of use within thirty (30) days after receipt of such notice, or has failed to commence and diligently pursue such remedial action if it cannot be completed within thirty (30)

days, then such Owner or Lessee and any other party in breach of this Declaration shall be subject to the enforcement procedures set forth in Article 15.

- (h) *Disclaimer of Liability.* Declarant the Architectural Committee, the Board, and the respective members, agents, officers and employees thereof, shall not be liable for any damage or loss suffered or claimed by an Owner, Lessee or any other Person who submits an Application. Any person or entity who submits an Application shall forever defend, indemnify and hold the Declarant, the Architectural Committee, the Board, and the respective members, employees, officers and agents of each, harmless from all damage, loss or liability (including reasonable attorney fees) arising from (i) any defects in any plans, drawings, specifications or other documentation submitted in any Application, or revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; (ii) the approval or disapproval of any Application, whether or not defective; (iii) the construction or performance of any work, whether or not pursuant to an approved Application; or (iv) the development of any Lot.
- (i) *No Representations or Warranties.* In no event shall an approval by the Architectural Committee of any Application, or any written or oral statements made by the Board or any officer or employee of the Association, Declarant or any employee or officer or agent of Declarant, or the Architectural Committee or any member, agent or employee thereof, be deemed to constitute in any way representations or warranties of any kind, express or implied, with regard to the Application or any plans, drawings, specifications or other documentation constituting a part of the Application, including without limitation representations or warranties regarding compliance with zoning, subdivision or land use laws, or compliance with any other applicable codes, regulations or laws, or with regard to fitness for a particular purpose.
- (j) *Presumption of Compliance; Estoppel Certificate.* After the expiration of one (1) year from the date the Architectural Committee receives from an Owner either (i) a copy of the certificate of occupancy issued by the applicable governmental authority for any Improvement, or (ii) a notice of completion with respect to such Improvement, then said Improvement shall, as regards purchasers and Mortgagees in good faith and for value, be deemed to be in compliance with the provisions of this Article 7 unless a notice of non-compliance or non-completion with respect thereto has been executed by Declarant, the Architectural Committee or the Board and recorded in the office of the Register of Deeds of Douglas County, Nebraska, or unless legal proceedings shall have been instituted to enforce compliance or completion with respect to said Improvement.

7.2 Waivers. The Architectural Committee is hereby authorized and empowered to grant waivers for Improvements or uses prohibited or regulated by this Declaration or the Development Guidelines and further to grant reasonable requests for relief from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties or to prevent unnecessary hardship in the application of the provisions contained herein. Notwithstanding the foregoing, the Architectural Committee shall not grant such a waiver to any Owner unless:

- (a) such Owner has obtained all necessary City and other required governmental approvals;
- (b) the Improvements or the uses which are requested under the request for the waiver are consistent in design, character, appearance and quality of construction with other Improvements and uses;
- (c) the Improvements or the uses requested under the request for waiver are otherwise subject to and conform with all applicable laws, City ordinances, rules and regulations, including, but not limited to, zoning regulations of any governmental agency or political entity having jurisdiction over the Property; and
- (d) the vote of the members of the Architectural Committee on the request for waiver is unanimous.

No waiver granted pursuant to this Section 7.2 shall constitute a waiver of any provision of this Declaration as applied to any other Person or portion of the Property, and the grant of a waiver shall not obligate the Architectural Committee to grant other waivers. In addition to the waiver powers provided herein, the Architectural Committee shall be empowered to issue from time to time reasonable interpretations of the intent of the provisions of this Declaration or the Development Guidelines, which interpretations shall not constitute waivers of the provisions of this Declaration, but shall be deemed to further the implementation of this Declaration in a manner consistent with its provisions.

ARTICLE 8. MAINTENANCE OF PROPERTY

8.1 Maintenance.

- (a) *Maintenance of Undeveloped Lots.* Except as otherwise provided herein, all undeveloped portions of each Lot shall be maintained at all times by the Owner in a well-maintained condition, free of unsightly, unattractive or noxious weeds or other growth or the accumulation of rubbish, junk, debris or hazardous materials thereon.
- (b) *Maintenance During Construction.* All construction activities shall be carried out in an orderly and timely manner and all partially completed Improvements shall be kept in an orderly condition during construction. Any construction equipment or building materials stored on a Lot shall be kept only in areas approved by the Architectural Committee, and the Architectural Committee may also require screening of such storage areas. All portable toilets shall be located at least fifty (50) feet from the boundary lines of the Lot and shall be emptied as often as necessary to ensure the absence of odors. Silt run off and dust from all construction sites shall be controlled at all times. If trucks entering and leaving the Lot deposit mud or dust on any streets or walkways, the Owner of the Lot on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets in a clean condition on a daily basis, as determined by the Architectural Committee. If the provisions

hereof conflict with the provisions of the Development Guidelines with respect to construction activities, the more restrictive provision shall control.

(c) *Maintenance of Completed Improvements.* Each Owner shall maintain or cause to be maintained, at its expense, its Lot, including any adjacent public right-of-ways, and all Improvements completed thereon (except those Common Area Improvements maintained by the Association) in a well-maintained, clean, neat and attractive condition at all times and shall comply with all governmental health, fire, building and safety ordinances, codes, regulations and requirements applicable thereto. Such maintenance requirements shall include, without limitation, the following:

(i) maintaining paved surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally approved by the Architectural Committee, or such substitute as is equal in appearance, quality, use and durability to that originally approved and installed;

(ii) removing all paper, mud and sand, snow and ice, trash, debris, filth and refuse and sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(iii) placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;

(iv) operating, keeping in repair and replacing, where necessary, artificial lighting facilities (including lighted signs);

(v) maintaining all signs and all perimeter walls and exterior building walls (including but not limited to all retaining walls) and other exterior surfaces in a good condition and state of repair and in compliance with the approved Application;

(vi) maintaining, mowing, weeding, thinning, trimming, watering, fertilizing, cultivating and pruning all landscaped areas, including any adjacent public right-of-ways, to maintain the same in a neat, well-groomed condition, and replacing as necessary dead or dying shrubs and other landscaping; and

(vii) promptly removing all graffiti or other similar markings from all perimeter walls, exterior building walls and other exterior surfaces, paved areas and other portions of any Improvements.

8.2 Common Area Maintenance. The Association shall maintain the Common Area, including Improvements within the Common Area and all landscaping within the Common Area, in good condition and repair, and replace the same as may be necessary from time to time.

ARTICLE 9. DEVELOPMENT STANDARDS

9.1 Parking; Loading Areas. No on-street parking of any nature whatsoever will be

permitted on public streets bordering or within the Property, except as permitted under the terms of the Mixed Use Development Agreement. Paved on-site parking shall be provided by each Owner on its Lot sufficient to accommodate all parking needs for employees, visitors, Lessees and invitees. Notwithstanding prior approvals of parking layouts by the Architectural Committee, the Declarant, the City, or any other governmental jurisdiction or authority, if parking requirements increase on any Lot as a result of any change in use or number of employees or invitees, additional on-site parking shall be provided on said Lot to satisfy the intent of this Section. All loading areas and loading docks shall be off-street, must be placed in side or rear yards, and must be visually screened from streets and adjoining property.

9.2 Refuse Collection Areas. All exterior refuse collection areas and receptacles shall be screened by building walls or screen walls, and all dumpster enclosures shall also meet the requirements of the City. All dumpsters and containers shall remain within screening walls. The location of all such enclosures shall allow for adequate ingress and egress by collection trucks within the boundaries of the Lot.

9.3 Exterior Storage Areas and Service Yards. No storage shall be permitted between any public street and the respective building setback line of any building. Storage areas shall be located in the least visible area of each Lot. All outdoor storage areas and service yards shall be visually screened from streets and adjoining property by a continuous screen wall or fence. No work in progress, stored merchandise, inventory or racks shall extend above the height of such screen wall or fence.

9.4 Equipment. All roof-mounted equipment and ventilators projecting above the roof parapet of any building shall be screened by an enclosure designed and painted to be compatible with the building. No wall-mounted equipment shall be permitted on the front or sides of any such building. Electrical and mechanical equipment must be placed in side or rear yards, and the same must be screened from view by walls or dense landscaping. No above-ground storage tanks shall be allowed on any of the Lots.

9.5 Signs. All signs shall comply with the zoning ordinances of the City and the Development Guidelines and must be approved prior to installation by the Architectural Committee and the City. No roof signs shall be permitted, and all approved signage shall consist of predominantly individual letter signage. All signs shall be designed as an integral part of the building to which they relate and shall be compatible with the exterior architecture of such building with regard to location, scale, color and lettering.

9.6 Utility Lines and Antennas. Except as may be approved by the Architectural Committee, no utility lines or wires or other devices for the communication or transmission of electric current, gas, power or signals (including telephone, television, microwave or radio signals), shall be constructed, placed, or maintained anywhere in or upon any Lot other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in or under buildings or other structures in a manner approved by the Architectural Committee. Antenna dishes or other devices for the transmission or reception of telephone, television, microwaves, or radio signals may be placed on any building or other Improvement on any Lot only in strict compliance to the Development Guidelines and with the prior written approval of the Architectural Committee. Nothing contained herein shall be deemed to prohibit the

erection or use of temporary power or telephone facilities incidental to the construction or repair of Improvements on any Lot.

9.7 Landscaping. Every Lot upon which Improvements are constructed shall be landscaped in accordance with the Application submitted to and approved by the Architectural Committee. An automatic irrigation system complying with the standards set forth in the Development Guidelines shall be installed and maintained in good repair in all landscaped areas.

9.8 Restriction on Further Subdivision; Property Restrictions and Rezoning.

- (a) *No Further Subdivision Without Approval*. No Lot shall be subdivided or separated into smaller Lots by any Owner by deed, ground lease or otherwise, and no portion less than the entirety of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner by deed, ground lease or otherwise, without the prior written approval of Declarant during the Period of Declarant's Control, and thereafter by the Architectural Committee.
- (b) *Plats; Site Plans*. No subdivision plat or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot unless the provisions thereof (including any site plan required by the City) have first been approved in writing by the Declarant during the Period of Declarant's Control, and thereafter by the Architectural Committee.
- (c) *Rezoning, Waivers, Variances, and Special Use Permits to be Approved*. No application for rezoning of any Lot, and no application for waivers, variances or special use permits, shall be filed with any governmental authority unless the proposed use of the property has been approved by the Declarant during the Period of Declarant's Control and thereafter by the Architectural Committee, and unless the proposed use otherwise complies with this Declaration and the general plan of development of the Property.

9.9 Retention and Drainage. Drainage plans for each Lot shall be reviewed and approved by the Architectural Committee, and no change in the drainage pattern or drainage Improvements may be made without the prior written approval of the Architectural Committee. An Owner shall not at any time fill, block or obstruct any drainage facilities or drainage structures on its Lot and each Owner shall repair and maintain all drainage facilities and drainage structures located on its Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within any drainage areas which may impede the flow of water under, over or through said areas.

9.10 Development Guidelines. Each Owner shall comply with all architectural and development standards adopted and set forth in the Development Guidelines, as the same may be from time to time. In the event of a conflict between this Declaration and the Development Guidelines, the more restrictive provision shall control.

9.11 Effect of Other Limitations. Any limitations on Improvements contained herein or in the Development Guidelines are supplemental to any controls established by zoning, subdivision,

building, health, fire or other applicable codes and regulations, and to the Mixed Use Development Agreement, and the more restrictive provision shall apply in each instance.

ARTICLE 10.
USE RESTRICTIONS

10.1 Permitted Uses. Except as otherwise provided herein or in the Development Guidelines, and subject to all other provisions of this Declaration, all uses permitted under the terms of the Mixed Use Development Agreement, as amended from time to time, shall be allowed on and in respect of each Lot.

10.2 Specific Prohibited Uses. Specific operations and uses which will not be permitted on any Lot (except as expressly provided herein) are the following:

- (a) *Banking and Lending*. Banking or lending uses, including the acceptance of funds for deposit or the making, originating or production of loans, whether as a bank, thrift institution, savings bank, credit union, loan production office, mortgage banker or check cashing business, shall be permitted only on Lot 1.
- (b) *ATM Facilities*. Exterior free-standing drive up or drive through ATM (automated teller machine) facilities are permitted only on Lot 1.
- (c) *Agriculture; Animals*. Agricultural uses, including animal husbandry, commercial breeding businesses or feed lots. No animal, livestock, poultry or fowl of any kind shall be maintained on or in any Lot, except for: (a) reasonable numbers of generally recognized domestic pets maintained within a fully-enclosed building in connection with the retail sale to the public of such pets in a pet store (but not in connection with the operation of a commercial breeding business), provided that the same do not make an unreasonable amount of noise or create a nuisance; (b) animals undergoing treatment in a veterinary office or hospital, or being temporarily boarded in such an office or hospital in connection with such treatment, provided that (i) such use is approved by the Architectural Committee as provided in Section 10.4 below, (ii) such animals do not make an unreasonable amount of noise or create a nuisance, and (iii) such boarding facilities shall be fully enclosed in a manner approved in advance by the Architectural Committee.
- (d) *Residential/Lodging*. Any residential use including mobile home parks, trailer courts, recreational vehicle parks, camping or labor camps; provided, however, that hotel/motel uses shall be permitted.
- (e) *Storage Yards; Garages*. Storage yards for bulk materials; truck, bus, or heavy equipment garages or service facilities; or tent shelters (except temporary use thereof for promotional events as may be approved in advance in writing by Declarant or the Architectural Committee, either of whom may prescribe requirements and conditions to be met to engage in such temporary use).
- (f) *Food or Plant Products Processing*. Manufacturing or processing of fish products,

sauerkraut, vinegar, sugar beets, coffee roasting, chocolate or cocoa products; grain mills, grain storage bins and elevators; feed grain manufacturing and/or processing; seed treatment, processing or extraction of oil; processing of paper or wood pulp.

- (g) *Animal Products Processing.* Fat rendering; stockyards or slaughtering of animals; meat smoking or packing.
- (h) *Wrecking and Salvaging Operations.* Auto wrecking and salvage; junk yards; house movers and related machinery and equipment; storage or wrecking yards; metals crushing or separating for salvage; waste paper or glass recycling or other recycling operations.
- (i) *Mining/Exploration; Excavation.* Surface mining operations, including mining of aggregate or minerals; subsurface mining of any kind; drilling for and/or the removal of gas, oil or hydrocarbons or geothermal steam; any commercial excavation of materials for building or construction.
- (j) *Heavy Manufacturing; Smelting; Refining.* Manufacture of bricks, blocks or concrete precast items such as pipe or construction shapes, processing of cement, clay, cinders, aggregate or pumice; concrete and asphaltic concrete mixing plants; saw mills or planing mills; plating works; battery manufacturing; refining of petroleum or other hydrocarbon products; manufacturing or distillation of chemicals, including paint, insecticides and herbicides; smelting of metals; rolling or stamping of metal; foundry casting; steel fabrication; sand blasting yards.
- (k) *Sewage/Garbage.* Sewage disposal or treatment plants; equipment yards for septic tanks or cesspool servicing; or the processing of garbage, dead animals, refuse or silage.
- (l) *Facilities and Events.* Cemeteries; stadiums; carnivals, circuses, rodeos and the like.
- (m) *Vehicle Storage.* Vehicle storage.
- (n) *Fireworks Storage or Sales.* Sale or storage of fireworks and other pyrotechnics (retail or wholesale).
- (o) *Sexually Oriented Business.* Adult arcades, adult bookstores, adult video stores, adult cabarets, adult motels, adult motion picture theaters, adult theaters, escort agencies, nude model studios, and sexual encounter centers.

10.3 Nuisances; Objectionable Activities. No Owner, Lessee or other Person shall create a nuisance on any Lot or use any Lot for any activity or purpose which is determined by the Board or the Committee, in its sole and absolute discretion, to be objectionable due to sound, odor, visual effect or physical impact, or which in the opinion of the Board or the Architectural Committee will disturb or tend to disturb other Owners or Lessees, or which is deemed by the Board or the Architectural Committee to constitute a nuisance. Included among the uses, activities or operations prohibited hereunder because of their detrimental effect upon the general appearance, enjoyment and

use of the Property, and their conflict with the reasonable standards of appearance and maintenance required by this Declaration are the following, including without limitation uses, activities or operations which produce or are accompanied by the following characteristics:

- (a) Any vibration, noise, sound or disturbance that is objectionable due to intermittence, beat, frequency, shrillness, loudness or pulsating effect.
- (b) Any sign or lighting which is flashing, pulsating, rotating or intermittent, or is not focused downward or away from adjacent Lots, unless otherwise approved by the Architectural Committee pursuant to Section 7.1.
- (c) Any walking or message signs (except time and temperature), unless otherwise approved by the Architectural Committee pursuant to Section 7.1.
- (d) Any rubbish, trash or debris of any kind placed or permitted to accumulate upon or adjacent to any Lot.
- (e) Any electro-mechanical or electromagnetic disturbance or radiation.
- (f) Any air pollution or water pollution, including without limitation any dust, dirt or flyash in excessive quantities.
- (g) Any emission of odor, or noxious, caustic or corrosive gas or matter, whether toxic or non-toxic.
- (h) Any firing or detonation of ammunition or explosives or the storage, display or sale of explosives or fireworks.
- (i) Open burning of paper, trash, debris, garbage or construction materials of any kind.

10.4 Special Permitted Uses. Operations and uses which are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if approved in writing by Declarant during the Period of Declarant Control and, thereafter, by the Board and the Architectural Committee. Any approval or disapproval shall be in the sole and absolute discretion of Declarant during the Period of Declarant Control and, thereafter, by the Board and the Architectural Committee.

10.5 Compliance With Laws. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Property which is in violation of any applicable governmental law, regulation, rule, ordinance or code, including without limitation all zoning and other ordinances, regulations and codes of the City.

ARTICLE 11. FUNDS AND ASSESSMENTS

11.1 Creation of Lien; Personal Obligation for Assessments. Declarant hereby covenants, and each successive Owner, by acceptance of a deed to a Lot, whether or not expressed in such deed,

is deemed to covenant and agree to pay to the Association the Assessments which the Board is authorized to levy pursuant to the provisions of this Declaration. No Assessment shall be levied against, or payable by virtue of the ownership of, any of Outlots 1 through 3. All Assessments, which shall include all late charges, interest, costs and reasonable attorney fees due with respect thereto, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which each Assessment is levied. Each Assessment, including interest, costs and reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment became due and owing. The personal obligation for delinquent Assessments shall not pass to said Person's successors in title, unless expressly assumed by them. If more than one Person is or was the Owner of a Lot, the personal obligation to pay such Assessment respecting such Lot shall be both joint and several.

11.2 Purpose of Assessments. Assessments shall be used to enhance, maintain and protect the desirability, attractiveness and safety of the Property; for the improvement and maintenance of the Common Area and the improvements therein and intended functions thereof; to reimburse the Association for the costs incurred in enforcing this Declaration, the Articles, Bylaws, Development Guidelines and/or rules adopted by the Board or the Architectural Committee; and for the common good and benefit of the Property, the Association and the Members, as determined by the Board.

11.3 Budgets and Financial Statements of the Association. The following financial information shall be regularly prepared and distributed by the Board to all Members of the Association:

- (a) Within seventy-five (75) days after the end of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, and distribute to all Members of the Association an operating budget for the next fiscal year setting forth the estimated revenues and expenses for said fiscal year and the total cash reserves of the Association currently available for expenditures.
- (b) After the close of the Association's fiscal year, the Board shall prepare and distribute to each Member a balance sheet and a statement of actual expenses and income for the preceding fiscal year.

11.4 Accounts. The Association shall maintain one or more operating accounts into which the Board shall deposit all other funds paid to the Association as Assessments or otherwise received by the Association as provided in this Declaration. All funds shall be held in trust by the Association for the use and benefit of its Members.

11.5 Regular Assessments.

- (a) *Purpose.* Regular assessments shall be used for all expenses incurred by the Association for (i) the administration, operation, maintenance, repair and replacement of the Common Area and any Improvements therein, including all taxes and insurance; and (ii) carrying out the duties, rights and obligations of the Association, including the Board and the Architectural Committee, as provided for in this Declaration.

- (b) *Date of Commencement of Regular Assessments.* The regular assessments provided for in this Article 11 shall commence as to all Lots on the first day of the month following the later of (i) the incorporation of the Association, or (ii) the conveyance of the first Lot to an Owner; provided, however, that Declarant may, at its option, delay the start of regular assessments so long as Declarant elects to perform all maintenance and other obligations of the Association at its sole cost and expense.
- (c) *Budget.* On or about Sixty (60) days prior to the end of each fiscal year of the Association, beginning with the first full fiscal year after regular assessments commence, the Board shall meet for the purpose of establishing the regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review an operating statement showing income and expenses for the preceding fiscal year, a preliminary budget, any written comments received from any Member, and any other information available to it and, after making adjustments that the Board deems appropriate, without a vote of the Members of the Association, shall establish an operating budget and the regular assessment for the forthcoming year.
- (d) *Payment of Assessments.* Regular assessments shall be due and payable by the Owners to the Association in four equal quarterly installments on or before the first day of April, July, October and January, or at such other intervals and on such other dates as the Board shall designate.
- (e) *Failure to Fix Regular Assessments.* Failure by the Board to establish the amount of regular assessments hereunder before the expiration of any fiscal year shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the Assessments, or any installment thereof, for that or any subsequent year, and the Assessment levied for the preceding year shall continue until a new Assessment is fixed.

11.6 Special Assessments.

- (a) *Purpose.* Special assessments may be levied by the Board from time to time during any fiscal year if the Board determines that the estimated total amount of funds necessary to defray the expenses of the Association for a given fiscal year is or will become inadequate to meet expenses due to unanticipated delinquencies or costs and fees incurred to enforce this Declaration, costs of construction or unexpected repairs, replacements or reconstruction of Improvements in the Common Area, or if funds are otherwise required for any activity or purpose of the Association permitted under this Declaration.
- (b) *Levy.* The Board shall determine the approximate amount necessary to pay the expenses set forth in Subsection (a) above, and, based on such determination, levy the special assessment.
- (c) *Time and Manner of Payment.* The Board may, in its discretion, prorate a special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Lot. Special assessments shall be due and payable within

thirty (30) days after a Member receives written notice from the Board specifying the amount of the special assessment, unless the Board specifies in such notice a later date of payment.

11.7 Reimbursement Assessment. The Board may levy a reimbursement assessment against any Owner who fails to comply in any respect with this Declaration, the Articles, Bylaws, the rules promulgated by the Board or the Development Guidelines, or as otherwise permitted elsewhere in this Declaration, in an amount equal to any monies expended by the Association in remedying an Owner's failure to comply under this Declaration, or in the amount of a fine or penalty imposed pursuant to this Declaration. All such reimbursement assessments shall be paid to the Association within ten (10) days after demand.

11.8 Capital Improvement Assessment.

- (a) *Purpose.* Capital improvement assessments may be levied by the Association for the purpose of paying, in whole or in part, the cost of construction of any Improvements deemed reasonably necessary by the Board for the benefit of the Property.
- (b) *Levy.* The Board shall determine the approximate amount necessary to pay the cost of such capital improvements and, based on such determination, levy the capital improvement assessment.
- (c) *Time and Manner of Payment.* Capital improvement assessments shall be due and payable by all Owners in such installments and on such date(s) as the Board shall designate for the payment thereof.

11.9 Rate of Assessment. All Assessments (other than a reimbursement assessment levied against an Owner pursuant to Section 11.7) shall be fixed at a uniform rate and levied based upon the number of Lots (excluding Outlots 1 through 3) owned by each Owner in relationship to the total number of Lots (excluding Outlots 1 through 3) at the time the Assessment is levied or imposed, as reflected in the records of the Association.

11.10 Estoppel Certificate. The Board, on not less than twenty (20) days prior written request and for a reasonable fee to be established from time to time by the Board, shall execute, acknowledge and deliver to the party making such request a written statement certifying whether or not a particular Owner is in default as to its Lot under the provisions of this Declaration, and further stating the date to which installments of Assessments have been paid as to such Lot. Any such certificate may be relied on by a prospective purchaser of the Lot or a Mortgagee, but reliance on such certificate shall not extend to any default (except one involving the payment of Assessments) as to which the Board had no actual knowledge.

ARTICLE 12.
COLLECTION OF ASSESSMENTS; ASSESSMENT LIENS

12.1 Right to Enforce. The right to collect and enforce Assessments, including all related interest, late charges, costs and fees, is vested in the Board acting for and on behalf of the Association. The Board, or its authorized representative, may enforce the obligations of Owners to pay

Assessments by commencement and maintenance of a suit at law or in equity, or the Board may enforce the continuing lien against the Owner's Lot by judicial foreclosure proceedings. Any suit to recover a money judgment for unpaid Assessments, together with all other amounts described in this Article 12, may be maintained with or without foreclosing or waiving the lien rights.

12.2 Notice of Default; Interest; Late Charges; Creation of Lien. Failure to make payment of any Assessment or installment thereof on or before the due date shall constitute a default and all amounts that are delinquent shall bear interest at a rate per annum equal to five percent (5%) more than the Prime Rate on the date of default (and shall adjust thereafter as the Prime Rate changes from time to time) and, if not paid within ten (10) days, a late charge of five percent (5%) shall also be due on the outstanding balance, and all costs and expenses incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorney fees and costs, shall be part of the Assessment past due and the full amount thereof shall be a lien against such Lot ("Assessment Lien"). An Assessment Lien shall not be foreclosed until the Board or its authorized representative has delivered written notice of default ("Default Notice") to the delinquent Owner or Owners not less than fifteen (15) days before commencement of any proceedings to enforce such lien.

12.3 Notice of Lien; Foreclosure. After delivery of the Default Notice, the Association may record a notice of Assessment Lien against the Lot of the defaulting Owner. In addition, the Association may proceed to foreclose the Assessment Lien provided for in this Article in any manner provided or permitted for the foreclosure of mortgages in the State of Nebraska (including the right to recover any deficiency). The Association shall not be obligated to release any Assessment Lien until all delinquent Assessments, including interest, late charges, attorney fees and collection costs, have been paid in full, whether or not all such amounts are set forth in the recorded notice. On becoming delinquent in the payment of any Assessments or installments thereof, each delinquent Owner shall be deemed to have absolutely assigned all rents, issues and profits of his Lot to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

12.4 No Offsets. All Assessments shall be payable in full, without deduction of offset.

12.5 Priority; Subordination of Lien to First Mortgages.

- (a) *Priority of Lien.* An Assessment Lien shall be superior to all charges, liens and encumbrances, including without limitation all mortgages and deeds of trust (except as provided in Subsection (b) below), federal and state tax liens, judgment liens, and liens for labor or materials.
- (b) *Subordinate to First Mortgages.* Notwithstanding the foregoing, an Assessment Lien shall be subordinate and subject to the lien for governmental taxes and assessments which is deemed superior hereto by applicable law and the lien of any first Mortgage encumbering a Lot which is recorded prior to the Assessment Lien, but only as to advances or disbursements made pursuant to said Mortgage prior to the time the Assessment Lien is placed of record, and provided further, that each such first

Mortgage must have been made in good faith and for value and have been duly recorded in the office of the Douglas County Register of Deeds prior to the recording of the Assessment Lien. Where the holder of a first Mortgage or other purchaser of a Lot obtains title to the same as a result of foreclosure, such title holder shall not be liable for Assessments chargeable to such Lot which became due prior to its acquisition of title to such Lot. An Assessment Lien shall not be subordinate to the lien of any Mortgage which is junior to a first Mortgage.

12.6 Transfer of Property. After the sale of any Lot, the selling Owner or Owners shall not be personally liable for any Assessment levied on such Lot after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. However, except as provided in Section 12.5 with respect to a transfer of a Lot pursuant to foreclosure proceedings, the transferred Lot shall remain subject to the lien securing payment of all Assessments, including Assessments levied prior to the date of transfer. The selling Owner(s) shall also remain personally liable for all Assessments and charges levied on such Lot prior to any such transfer.

12.7 Other Enforcement Measures. In addition to the other remedies set forth in this Article, the Board shall have the right to suspend the right to vote of any Owner who is in default on any Assessments.

ARTICLE 13. DESTRUCTION OR CONDEMNATION OF COMMON AREA

13.1 Repair. Within a reasonable time after damage or destruction of all or any portion of the Common Area, the Board shall cause the same to be repaired, reconstructed and restored substantially to the same condition as the same existed prior to such damage or destruction.

13.2 Insurance Proceeds Insufficient. If the proceeds of insurance available to the Association are insufficient to cover the cost of repair, reconstruction and restoration of the damaged or destroyed portions of the Common Area, the Board shall be authorized to specially assess all Owners for the additional funds required to effect such repair, reconstruction and restoration.

13.3 Eminent Domain. The Board shall represent all Members in connection with any condemnation proceeding regarding the Common Area and shall be entitled to negotiate and settle with the condemning authority and to make a voluntary sale to the condemning authority in lieu of legal action. All condemnation proceeds regarding the Common Area shall be paid to the Association and shall be used by the Board for the purposes set forth in Section 11.2, after paying any costs or fees incurred by the Board in negotiating, settling or contesting the condemnation.

ARTICLE 14. DURATION, MODIFICATION AND TERMINATION

14.1 Duration of Covenants. This Declaration, and all covenants, conditions, restrictions and easements herein, shall continue and remain in full force and effect at all times with respect to the Property and each part thereof (subject, however, to the right to amend and terminate as provided in Section 14.2 below) for a period of thirty (30) years, commencing on the date this Declaration is recorded in the Office of the County Recorder of Douglas County, Nebraska. From and after said

date, this Declaration, as amended from time to time, shall be automatically extended for successive periods of ten (10) years each, unless earlier terminated as provided in Section 14.2 below.

14.2 Termination or Modification. This Declaration may be terminated, modified, or amended with respect to all or any portion of the Property, by Declarant alone until the expiration of the Period of Declarant Control. Thereafter, this Declaration may be terminated, modified or amended in whole or in part with respect to all or any portion of the Property by a vote of Owners holding title to two-thirds (66%) of the Lots.

ARTICLE 15. ENFORCEMENT

15.1 Enforcement by Board; Right to Perform.

- (a) *Failure to Maintain Improvements and Lots.* Upon a failure to maintain and repair in accordance with Section 8.1 above, or to perform any other obligations thereunder, the Board shall notify the offending Owner in writing of such failure. If such failure is not cured by the Owner or its Lessee within thirty (30) days from the date such notice is given to the Owner, the Board, or its designated agent or contractors, shall have the right, in addition to the rights set forth in Section 15.2, to enter upon the Lot for the purpose of maintaining, restoring or repairing said Improvement or Lot. The costs incurred by the Board in restoring, maintaining or repairing said Improvement or Lot, together with a charge for the overhead of the Board and the Association in an amount equal to twenty-five percent (25%) of such costs, shall constitute a reimbursement assessment in accordance with Section 11.7 hereof.
- (b) *Failure to Install Landscaping.* If the landscaping in respect of any Lot has not been installed in accordance with Section 9.7 hereof, the Board shall notify the Owner of such Lot in writing that the required landscaping is to be installed within thirty (30) days from the date of such notice. If the required landscaping has not been installed within such thirty (30) day period, the Board or its designated agent or contractors shall have the right, in addition to the rights set forth in Section 15.2, to enter upon the Lot and install the required landscaping. All costs incurred by the Board in installing such landscaping, together with a charge for the overhead of the Board and the Association in an amount equal to twenty-five percent (25 %) of such costs, shall constitute a reimbursement assessment in accordance with Section 11.7 hereof.
- (c) *Other Covenants.* Declarant or the Board or their duly authorized agents shall have the right, upon violation or breach of any other covenant, restriction or easement set forth herein, if such violation or breach continues for a period of thirty (30) days after written notice thereof is given to the Owner, to enter upon the Lot where such violation or breach exists, and summarily remedy such violation or breach, and all costs and expenses incurred in effecting such remedy shall constitute a reimbursement assessment in accordance with Section 11.7 hereof.

- (d) *Inspection Rights.* Declarant or members of the Board or Architectural Committee, or authorized representatives thereof, shall have the right from time to time, during reasonable hours, to enter upon and inspect any Lot and the Improvements thereon for the purpose of determining whether or not the provisions of this Declaration have been, or are being, complied with, and the exercise of such rights shall not be deemed a trespass upon such Lot.
- (e) *Other Enforcement Measures.* In addition to other remedies set forth herein, the Board shall have the right to suspend a defaulting Owner's right to vote during the period any default continues to exist.

15.2 Additional Remedies: Rights of Other Owners. In addition to the rights and remedies set forth in Article 12 and Section 15.1 above, in the event of any breach, default, non-compliance, violation or failure to perform or satisfy any of the covenants, conditions, restrictions or easements contained in this Declaration by an Owner or by a Lessee or other Person with respect to a Lot (collectively referred to herein as a "default"), and the default is not cured within thirty (30) days after written notice describing the default is given to such Owner by Declarant (or if any such default is not reasonably capable of being cured within such thirty (30) day period, then if such Owner has not commenced to cure the default promptly after such notice is given and does not thereafter diligently continue to prosecute such cure to completion), then Declarant, the Association or any Owner may enforce any one or more of the following rights or remedies, or any other rights or remedies available at law or in equity. All rights and remedies set forth in this Declaration or available at law or in equity shall be cumulative and not mutually exclusive.

- (a) *Damages.* Declarant, the Association or any such Owner may bring a suit for damages arising from or caused by such default.
- (b) *Declaratory Relief.* Declarant, the Association or any Owner may bring suit for declaratory relief.
- (c) *Injunctive Relief; Specific Performance.* Declarant, the Association or any Owner may bring an action for specific performance to enforce compliance with this Declaration, or for injunctive relief to enjoin a violation of the Declaration.

15.3 Rights of Lenders. No default under or violation of any provision of this Declaration shall affect the lien of any Mortgage securing a loan made in good faith and for value with respect to the financing, or any refinancing, of any Lot or portion thereof, or any Improvement thereon.

15.4 Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any provision of this Declaration shall be deemed to be a waiver by that party of any right available upon the recurrence or continuance of said violation or the occurrence of a different violation. Neither Declarant nor the Board shall have a duty to take any action to enforce the provisions of this Declaration.

15.5 No Liability Regarding Enforcement. Neither Declarant, the Board or any member thereof, the Architectural Committee or any member thereof, nor their successors or assigns (if such Persons have acted in good faith, without intentional misconduct), shall be liable to any Owner or

Lessee of any Lot by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in regard to the enforcement or failure to enforce any provision of this Declaration.

ARTICLE 16.
RESERVED RIGHTS OF DECLARANT

16.1 Right to Use Common Area. During the Period of Declarant Control, Declarant shall have, and hereby reserves the right to, reasonable use of the Common Area in connection with the promotion, development and marketing of Lots. The rights of Declarant shall include, without limitation, the right (i) to erect and maintain on any part of the Common Area and on any portion of the Property owned by Declarant, such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper from time to time in connection with the promotion, development and marketing of Lots; and (ii) to use vehicles and equipment on the Common Area or any portion of the Property owned by Declarant for promotional, development and marketing purposes.

16.2 Right to Construct Additional Improvements Within Common Area. Subject to prior Board approval, during the Period of Declarant Control, Declarant shall have, and hereby reserves the right, to construct additional Improvements within the Common Area from time to time for the improvement and enhancement of the Common Area and of the Property, and for the benefit of the Association.

16.3 Right to Complete Development of the Property. During the Period of Declarant Control, Declarant shall have, and hereby reserves the right (i) to subdivide or re-subdivide or split or combine any portion of the Property or otherwise to complete development of Lots; (ii) to construct or alter Improvements on any Lot owned by Declarant; (iii) to maintain offices for construction, sales, promotion or leasing purposes or other similar facilities on any Lot owned by Declarant or by the Association; and (iv) with the approval of the Association or the Architectural Committee, to excavate, cut, fill or grade any Lot owned by Declarant; to construct, alter, demolish or replace or renovate any Improvements owned by Declarant; to alter its construction plans or design or to rezone or amend its master plan or any development documents agreed to by Declarant and the City; or to permit any activity, use or improvement by Declarant on any Lot owned by Declarant

16.4 Right to Approve Change in the Use of Common Area. During the Period of Declarant Control, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, change or alter the use of the Common Area or any Outlot, cause a Mortgage to be recorded against the Common Area, or use Common Area other than for the benefit of the Members.

16.5 Declarant's Right to Grant Additional Easements. During the Period of Declarant Control, Declarant shall have, and hereby reserves the right to grant or create, temporary or permanent easements from time to time for construction, access, utilities, drainage or other purposes in, on, under, over and across any Lot or other portion of the Property owned by Declarant.

16.6 Right to Convey Additional Property for Use as Common Area. During the Period of Declarant Control, Declarant shall have, and hereby reserves, the right to convey additional real property and any Improvements thereon to the Association at any time and from time to time for use

as Common Areas, and the Association shall be obligated to assume ownership of and administrative and maintenance responsibilities therefor in accordance with Section 8.2.

16.7 Amending Plat. During the Period of Declarant Control, Declarant shall have, and hereby reserves, the right to record amendments to the Plat from time to time. Each Owner of a Lot shall promptly approve and sign any such Plat or consent to Plat and shall promptly return the same to Declarant, provided that such Plat does not alter the size or configuration of said Owner's Lot.

16.8 Reserved Rights Do Not Create Obligations. The foregoing rights in favor of Declarant shall not in any way be construed as creating any obligation on the part of Declarant to exercise any such rights or to perform any of such activities, construct any Improvements, convey any property or grant any easements referred to in this Article.

ARTICLE 17. ASSIGNMENT OF DECLARANT'S RIGHTS AND DUTIES

Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant from time to time, in its discretion, to any Person who agrees to assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignment, such Person assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by Declarant in this Declaration. Any assignment made under this Article shall be in recordable form and shall be recorded in the office of the Register of Deeds of Douglas County, Nebraska. Notwithstanding any provision of this Declaration to the contrary, Declarant may, at any time and from time to time without the consent of the Board or Owners, temporarily or permanently relieve itself of all or a portion of its rights and obligations under this Declaration by filing in the Register of Deeds of Douglas County, Nebraska, a notice stating that Declarant has surrendered the rights and obligations specified therein, and upon the recording of such notice, said powers and obligations so specified shall immediately vest in the Board unless otherwise specified therein.

ARTICLE 18. ADDITIONAL PROVISIONS

18.1 Constructive Notice and Acceptance of Declaration. Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in a Lot or Lots.

18.2 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Douglas County, Nebraska, and each Person with rights hereunder hereby waives the right to sue or be sued in any other place.

18.3 Mutuality and Reciprocity. This Declaration is made for the direct, mutual and reciprocal benefit of each and every Lot within the Property; shall create mutual, equitable servitudes

upon each Lot in favor of every other Lot; and shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between the respective Owners, their heirs, successors and assigns.

18.4 Declarant's Disclaimer. Declarant makes no warranties or representations that the plans presently envisioned for the development of the Property can or will be carried out, or that any Lot is or will be committed to or developed for any particular use. In addition, while Declarant has no reason to believe that any of the provisions of this Declaration are or may be unenforceable, Declarant makes no representations or warranties as to enforceability. Declarant shall have no liability for the development of the Property or the enforcement of this Declaration.

18.5 Headings. Headings, where used herein, are inserted for convenience of reference only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

18.6 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the same shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired and in full force and effect.

18.7 Notices.

- (a) *To Declarant or Architectural Committee.* Any and all notices, or other communication made pursuant hereto, shall be in writing and shall be deemed properly delivered, given to or received by Declarant or the Architectural Committee, as the case may be (i) when personally delivered, or (ii) four (4) business days after being mailed by certified or registered mail, postage prepaid, in either case to the Declarant or the Architectural Committee at the following address:

Elk Creek Pine, LLC
c/o Noddle Companies
1125 South 103rd Street, Suite 450
Omaha, Nebraska 68124
Attn: Jay Noddle

Declarant or the Architectural Committee may change its address by (i) giving notice to all Owners, or (ii) giving notice to the Board at the principal office of the Association, or (iii) recording a Notice of Change of Address in the office of the Register of Deeds of Douglas County, Nebraska.

- (b) *To Owners.* A notice to any Owner shall be deemed duly given, delivered and received (i) when personally delivered, or (ii) four (4) business days after mailing by certified or registered mail, postage prepaid, in either case to the address of the Owner's Lot or to such other address as the Owner has specified in writing to the Association.

18.8 Exhibits. All Exhibits attached hereto are incorporated herein by this reference and shall constitute a part of this Declaration.

18.9 Requirements of City. The covenants and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the City and the provisions of the Mixed Use Development Agreement. In the event of a conflict or inconsistency between the provisions of this Declaration, the requirements, codes or ordinances of the City applicable to the Property, or the provisions of the Mixed Use Development Agreement, the more restrictive requirement shall govern.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:
ELK CREEK PINE, LLC, a Nebraska limited liability company

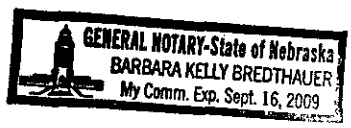
By [Signature]
Title: Jay B. Noddle, Vice President

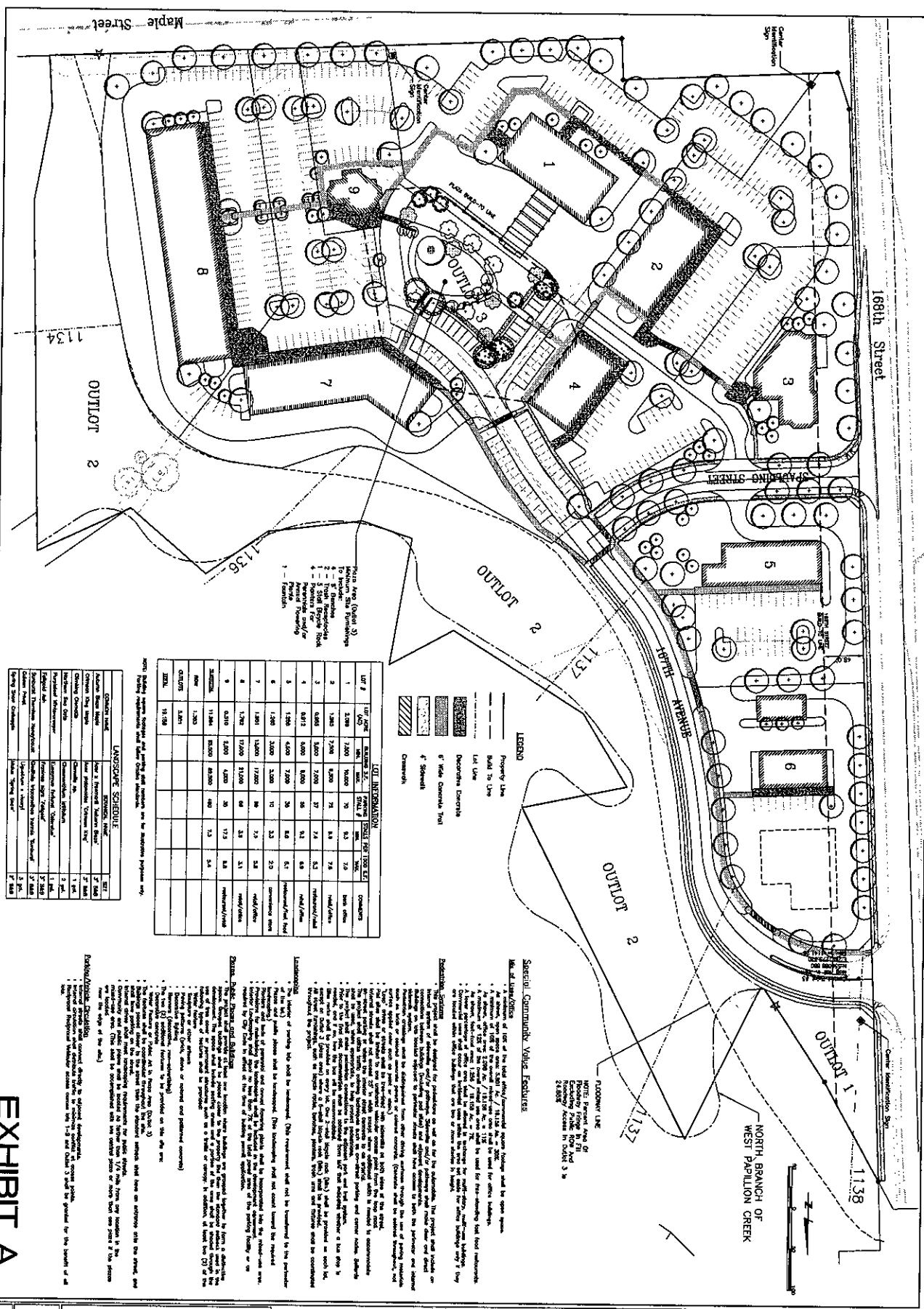
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 12th day of October, 2006, by Jay B. Noddle, a Vice President of ELK CREEK PINE, LLC, a Nebraska limited liability company, on behalf of the company.

[SEAL]

[Signature]
Notary Public





- Notes: 1 - 18" x 18" x 18" Planting
 2 - 12" x 12" x 12" Planting
 3 - 12" x 12" x 12" Planting
 4 - 12" x 12" x 12" Planting
 5 - 12" x 12" x 12" Planting
 6 - 12" x 12" x 12" Planting
 7 - 12" x 12" x 12" Planting
 8 - 12" x 12" x 12" Planting
 9 - 12" x 12" x 12" Planting

LOT INFORMATION

LOT #	LOT AREA (SQ. FT.)	MAXIMUM SQ. FT. PER LOT	MINIMUM SQ. FT. PER LOT	MAXIMUM HEIGHT (FEET)	MINIMUM SETBACK (FEET)	COMMENTS
1	1,200	1,200	1,200	70	8.3	7.5
2	1,200	1,200	1,200	70	8.3	7.5
3	1,200	1,200	1,200	70	8.3	7.5
4	1,200	1,200	1,200	70	8.3	7.5
5	1,200	1,200	1,200	70	8.3	7.5
6	1,200	1,200	1,200	70	8.3	7.5
7	1,200	1,200	1,200	70	8.3	7.5
8	1,200	1,200	1,200	70	8.3	7.5
9	1,200	1,200	1,200	70	8.3	7.5
TOTAL	10,800	10,800	10,800	70	8.3	7.5

LANDSCAPE SCHEDULE

ITEM	DESCRIPTION	QUANTITY	PLANT SPECIES
1	18" x 18" x 18" Planting	100	1.00
2	12" x 12" x 12" Planting	200	2.00
3	12" x 12" x 12" Planting	200	2.00
4	12" x 12" x 12" Planting	200	2.00
5	12" x 12" x 12" Planting	200	2.00
6	12" x 12" x 12" Planting	200	2.00
7	12" x 12" x 12" Planting	200	2.00
8	12" x 12" x 12" Planting	200	2.00
9	12" x 12" x 12" Planting	200	2.00

Special Community Value Features

1. The use of a wide variety of plant species and colors to create a vibrant and colorful landscape.

2. The use of a variety of plant heights and textures to create a dynamic and layered landscape.

3. The use of a variety of plant colors and textures to create a vibrant and colorful landscape.

4. The use of a variety of plant heights and textures to create a dynamic and layered landscape.

5. The use of a variety of plant colors and textures to create a vibrant and colorful landscape.

6. The use of a variety of plant heights and textures to create a dynamic and layered landscape.

7. The use of a variety of plant colors and textures to create a vibrant and colorful landscape.

8. The use of a variety of plant heights and textures to create a dynamic and layered landscape.

9. The use of a variety of plant colors and textures to create a vibrant and colorful landscape.

10. The use of a variety of plant heights and textures to create a dynamic and layered landscape.

EXHIBIT A

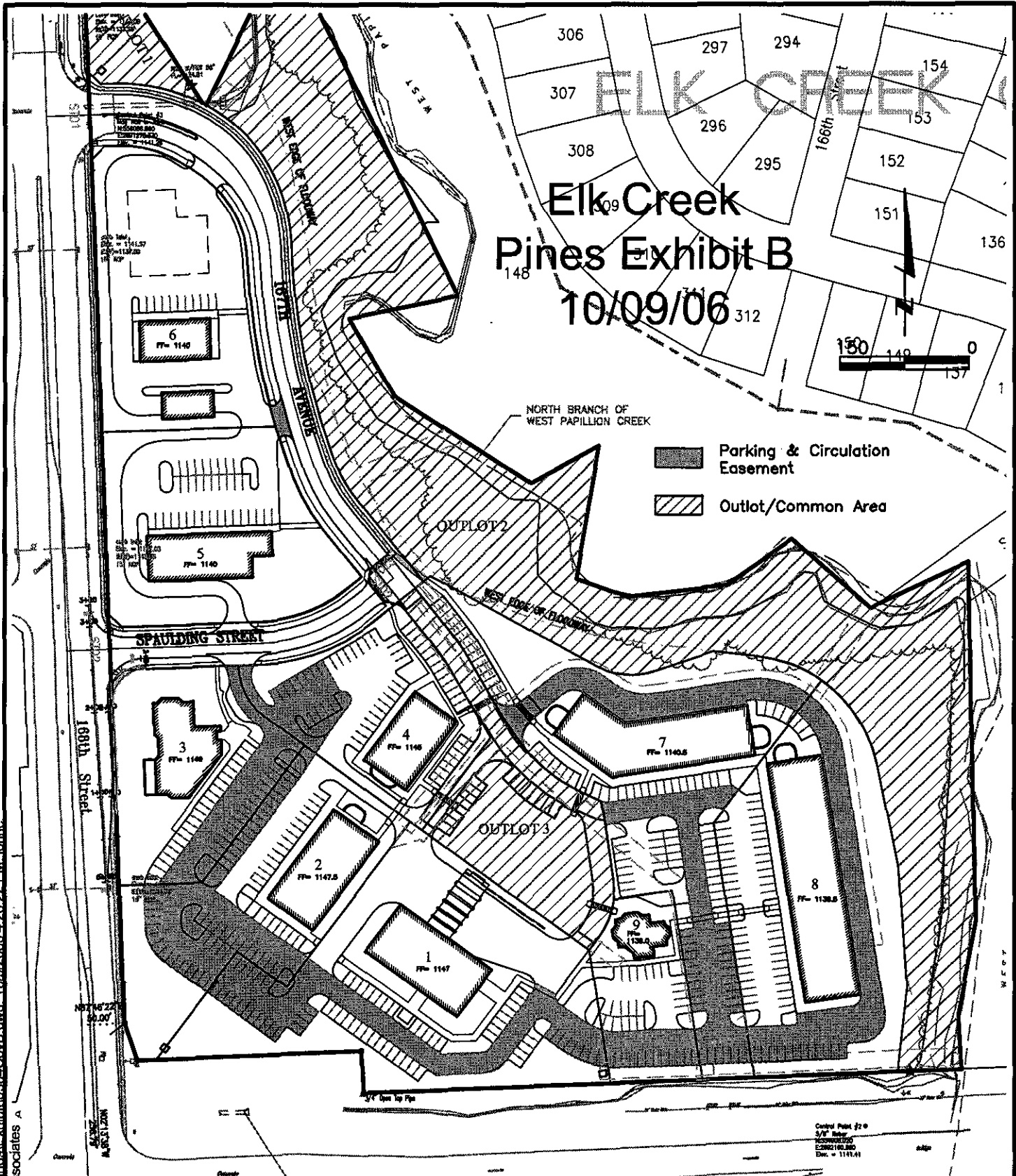
Lamp, Rynearson & Associates, Inc.
 14716 West Dodge Road, Suite 100
 Omaha, Nebraska 68154-2027
 WWW.LRA-INC.COM
 (P) 402.496.3798
 (F) 402.496.2730

SPECIAL COMMUNITY VALUE DEVELOPMENT/LANDSCAPE PLAN

1 of 1

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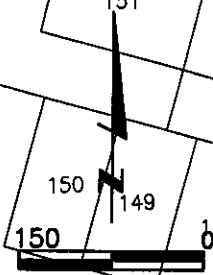
Lamp, Rynearson & Associates, Inc.

14710 West Dodge Road, Suite 100
Omaha, Nebraska 68154-2027

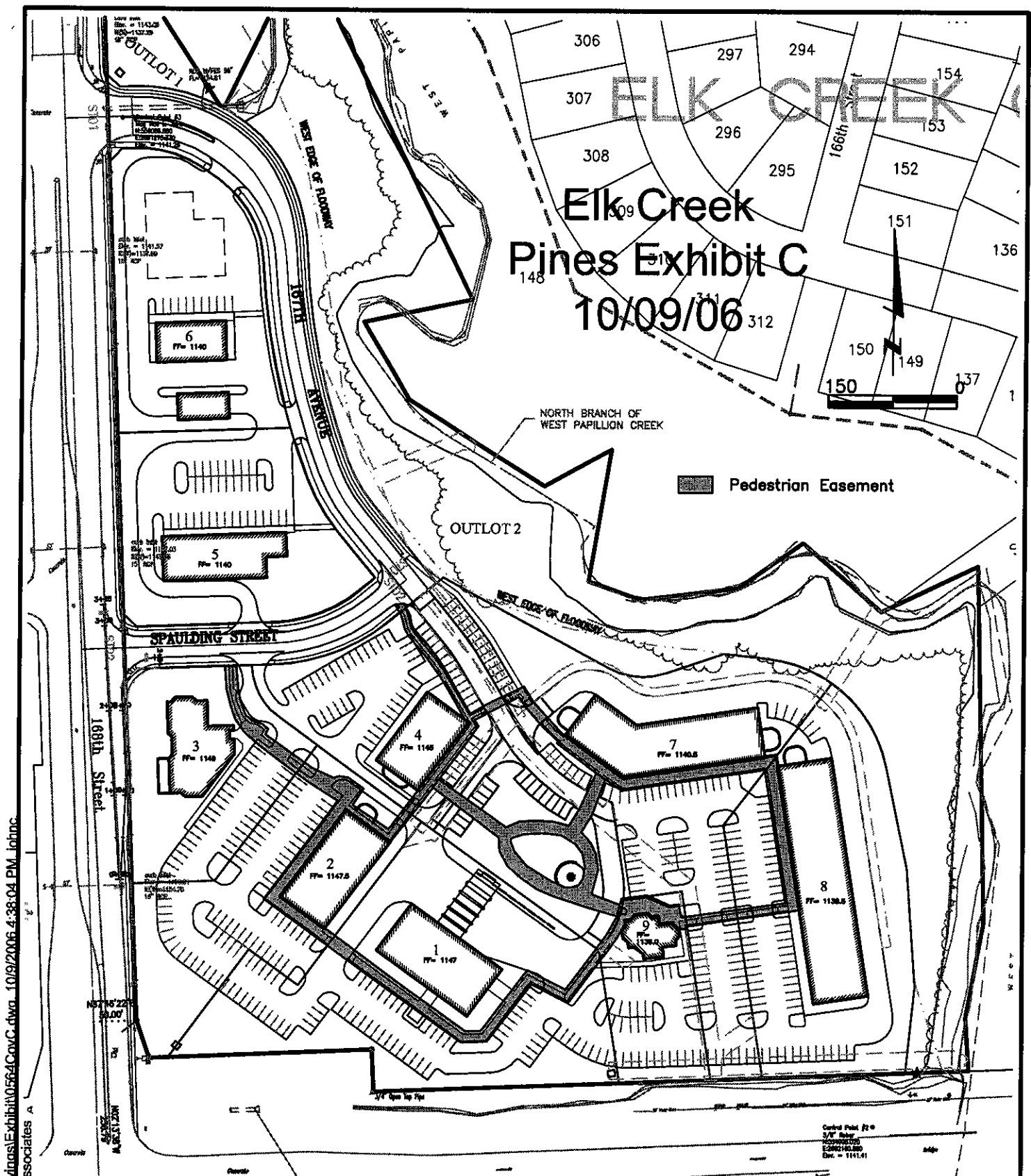
WWW.LRA-INC.COM

(Ph) 402.496.2498
(Fax) 402.496.2730

Elk Creek Pines Exhibit C 10/09/06



Pedestrian Easement



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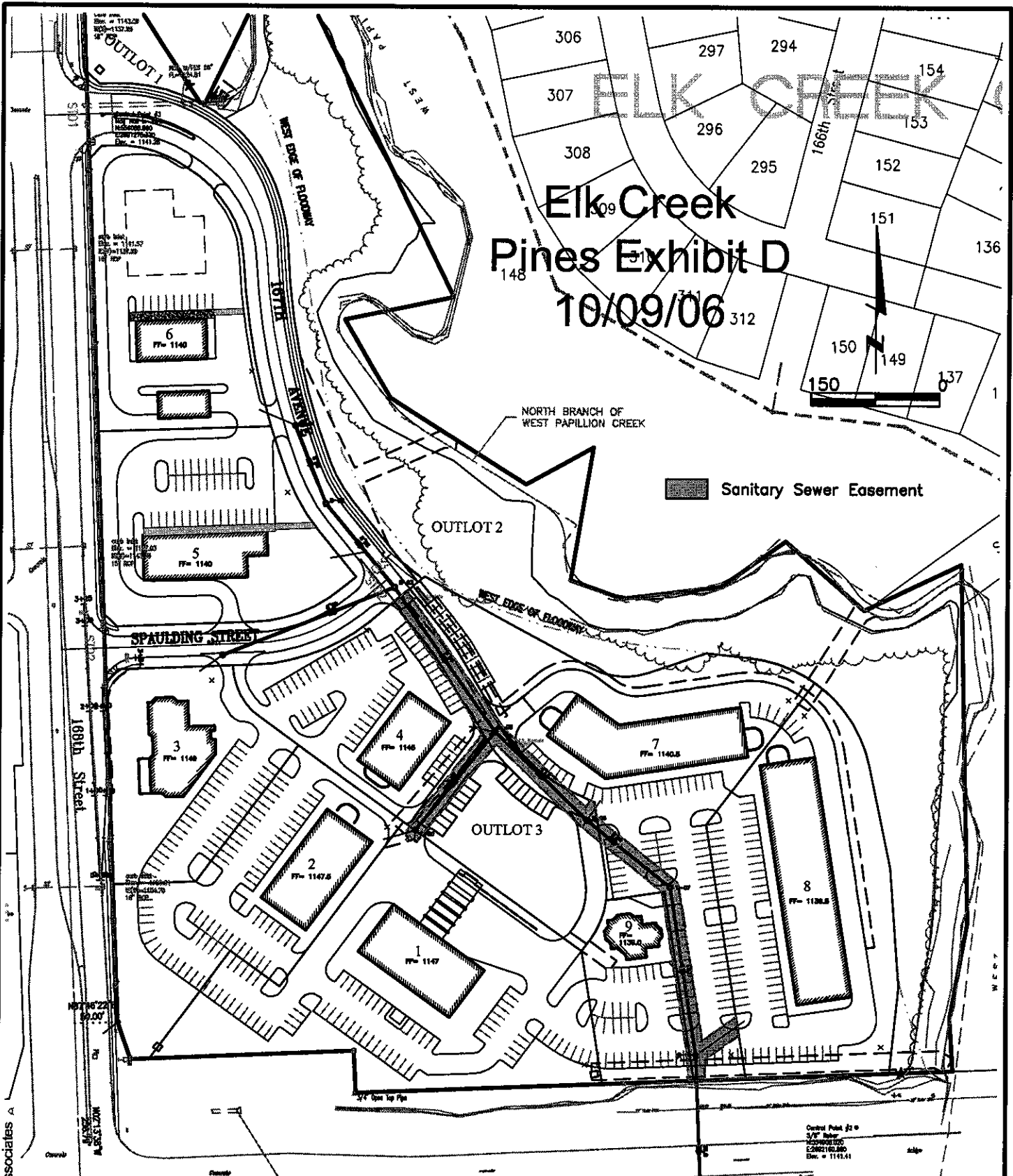
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Elk Creek Pines Exhibit D 10/09/06



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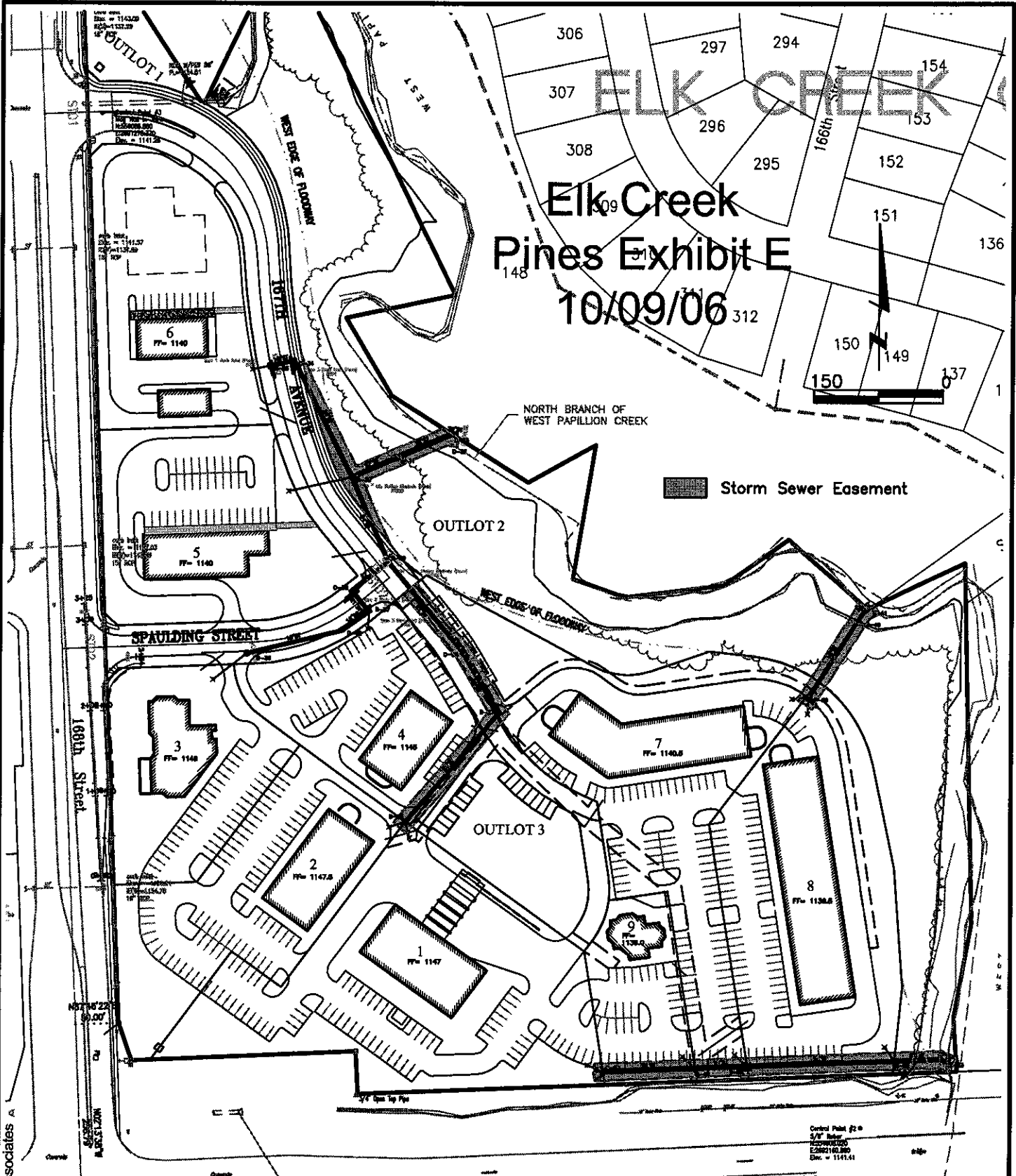
14710 West Dodge Road, Suite 100
Omaha, Nebraska 68154-2027

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(Ph) 402.496.2498
(Fax) 402.496.2730

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Elk Creek Pines Exhibit E 10/09/06



Storm Sewer Easement

Control Point #2
3/4" Inset
E200210.800
Dec. = 1147.41

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