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GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is entered into this 8th day of July, 1994 ("Agreement Date"), by and between Brook Park Investment Co., a Nebraska corporation, ("Brook Park") and BC Real Estate Investments, Inc., a Delaware corporation, ("BC").

WHEREAS, Brook Park is the fee owner of certain real estate situated in Douglas County, Nebraska, described more particularly on the attached Exhibit "A" (the "Brook Park Property");

WHEREAS, BC is negotiating for the purchase of certain real estate situated in Douglas County, Nebraska, described more particularly on the attached Exhibit "B" (the "BC Property");

WHEREAS, Brook Park possess a perpetual ingress-egress easement along a 12-foot strip of land running the length of and lying immediately inside the south boundary line of the BC Property as shown on the site plan attached hereto as Exhibit "C" (the "Site Plan");

WHEREAS, BC wishes to acquire a term-certain ingress-egress easement covering the strip of land lying immediately inside the north boundary line of the Brook Park Property as shown on the attached Site Plan;

WHEREAS, BC additionally seeks to acquire a term-certain parking easement covering the strip of land lying immediately south of the aforementioned ingress-egress easement as shown on the attached Site Plan;

NOW, THEREFORE, in consideration of the mutual agreement set forth herein, the parties agree as follows:

1. **Grant of Easements.** Brook Park hereby grants, conveys and creates, for the benefit of the BC Property, the following easements (the "Easements):

(a) **Access Easement.** A non-exclusive easement (the "Access Easement") for vehicular and pedestrian ingress and egress over and upon the 12-foot strip of land owned by Brook Park, running the length of and lying immediately inside the north boundary line of the Brook Park Property, stretching from and to the public streets and ways abutting such piece of land (the "Access Easement Property"), as described more particularly on the Site Plan attached as Exhibit "C", for the purpose of providing access to the BC Property.

(b) **Parking Easement.** A non-exclusive easement (the "Parking Easement") over and upon the strip of land owned by Brook Park lying immediately south of the Access Easement Property (the "Parking Easement Property"), as

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described more particularly on the Site Plan attached as Exhibit "C", for the sole purpose of providing vehicular parking for BC's customers.

2. Use of Easements.

(a) BC shall only have the right to make such use of the Access and Parking Easements which are consistent with the aforesaid grant of easements and the rights granted hereunder, with the following limitations:

(i) BC shall use the Access Easement primarily as an entrance for vehicular traffic, in accordance with traffic patterns to be established consistent therewith;

(ii) BC shall use the Parking Easement to provide parking for BC's customers only and shall use its best efforts to prevent the use of the Parking Easement by BC's employees.

(b) The Access Easement and Parking Easement areas may not be modified, amended, relocated, blocked and repaired without BC's consent. No buildings or improvements may be erected on the Access Easement or Parking Easement area.

3. Term of Easements. The term of the Easements created by this Agreement shall begin on the date BC obtains title to the BC Property or August 15, 1994, whichever occurs first, (the "Commencement Date") and shall continue for five (5) years. BC shall have three (3) options to extend the term of the Easements for additional five-year periods, upon the giving of written notice to Brook Park six (6) months prior to the end of the then existing five-year period. Notwithstanding, BC shall have the right to terminate this Agreement at any time on or before the Commencement Date for any reason whatsoever, including without limitation for the failure of BC to obtain fee title to the BC Property, by sending written notice to Brook Park, in which case this Agreement shall be null and void and the parties shall have no further rights hereunder.

4. Maintenance of Easements. BC shall maintain the area granted under the Access Easement in good condition and repair. Brook Park shall maintain the area granted under the Parking Easement in good condition and repair. For purposes of this Agreement, maintenance shall include but is not limited to cleaning, snow removal, striping, repairing and resurfacing the easement areas.

5. Rent. BC shall pay rent to Brook Park in the amount of \$12,000 per year during the initial five-year period of this Agreement, payable in monthly installments of \$1,000 due in advance on the first day of each month. The rent for each of the three (3) five-year option periods shall be adjusted upward based on the consumer price index for all urban consumers ("CPI-U"), U.S. city average, all items (1982-84 = 100). The

adjustment for rent for the first of the three (3) five-year option periods, shall be calculated as follows: The percentage increase in the CPI between the month of the year this Agreement commences and the same month of the fifth year of this Agreement shall be multiplied by the stipulated annual rent of \$12,000. That amount shall be added to the annual rent of \$12,000. For each subsequent option, the rent shall be computed in the same manner using the first month of the prior option period and the same month of the fifth year of that option period multiplied by the then adjusted annual rent and then added to the adjusted rent. No adjustment shall be made for any option period where there is a reduction, if any, in the "CPI-U".

6. **Indemnification.** BC does hereby agree to indemnify and hold Brook Park, its officers, directors, shareholders, employees, agents and contractors harmless from any injury, claim, demand, judgment, liability, debt, damages or penalty (including attorneys' fees and costs) arising out of, resulting from, or alleged to arise out of or result from BC's use, operation or maintenance of the areas granted in the Access Easement and Parking Easement, or resulting from any actions taken in connection with the rights granted herein. BC shall maintain liability insurance regarding such Easements.

7. **Assignments, Transfers and Similar Actions.** BC shall have the right to assign or otherwise transfer its interest in the Access Easement and/or Parking Easement to a licensee, franchisee or any parent or operating subsidiary of Boston Chicken, Inc. ("Franchisor") or to a corporation with which BC may merge or consolidate without approval of Brook Park. Any other assignment or transfer is subject to Brook Park's written approval and consent, which approval and consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding such assignment or transfer, BC shall remain liable for all of its obligations under this Agreement. In no event, however, shall such assignment or transfer result in a more intense use of the Access Easement or the Parking Easement. Brook Park shall have the right to assign or otherwise transfer its interest in the Access Easement and/or Parking Easement subject to BC's written approval and consent, which approval and consent shall not be unreasonably withheld, conditioned or delayed.

If this Agreement is assigned to a Franchisee, the Franchisee shall collaterally assign this Agreement to Franchisor. Franchisee reserves the right, from time to time, (i) to collaterally assign or hypothecate this Agreement, or the rights created hereunder and its interest herein to any entity providing financing to Franchisor, and (ii) upon assignment of this Agreement by BC or Franchisee, if requested by Franchisor, such assignee shall collaterally its rights and interest herein to Franchisor and Brook Park hereby consents thereto and agrees that all of the rights contained in this Section shall apply thereto. Brook Park hereby consents to the collateral assignment of this Agreement to Franchisor and to any entity which is a party to a potential merger or consolidation with or to the acquisition of substantially all of the assets or stock of Franchisee or Franchisor and to a further collateral assignment or hypothecation by Franchisor of the interest so assigned by BC or Franchisee. If required by Franchisee or Franchisor, Brook Park

agrees promptly to execute any reasonable documents evidencing Brook Park's consent to such assignment or assignments.

8. **Signage.** BC shall place no signs, advertisements, or similar items on the License areas.

9. **Governing Law.** This Agreement and all documents referred to herein shall be governed by and construed and interpreted in accordance with the laws of the State of Nebraska.

10. **Termination and Default.** BC shall be in default of this Agreement and Brook Park shall have the right to terminate this Agreement if at any time during the term of this Agreement or any renewal period BC fails to pay rent on the aforementioned due date or if BC uses the Access Easement or the Parking Easement for any purpose other than the uses granted in this Agreement. Provided, however, that upon written notice of default by Brook Park, BC shall have 20 days to cure such default before Brook Park has a right to terminate the Agreement. In the event Brook Park is in default under this Agreement and upon written notice by BC and allowance of 20 days for Brook Park to cure such default, BC shall have the right to terminate this Agreement. Notwithstanding the foregoing, in the event either party is in default of its respective maintenance and repair obligations, such default shall not give rise to a right to terminate this Agreement. Instead, after the aforescribed notice and opportunity to cure, the other party may perform such maintenance and repairs on the defaulting party's behalf and obtain immediate reimbursement for the costs and expenses associated in correction therewith, plus interest accruing thereon at the rate of eighteen percent (18%) per annum. This provision may be specifically enforced.

11. **Severability.** If any section or other portion of this Agreement, or its application, is, for any reason, declared invalid, in whole or in part, by any court or other authority or competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

12. **Grantor's Representations and Obligations.** Brook Park represents and warrants that it owns the Access and Parking Easement Properties and that it has the power and authority to enter into this Agreement. Brook Park shall maintain liability insurance on said properties.

13. **Condemnation.** If all or part of the useable Easement Properties is condemned or taken by any governmental authority, BC shall, in its sole discretion, have the option to either: i) terminate the Access Easement and/or the Parking Easement; or ii) elect to continue the Access Easement and/or the Parking Easement. If BC elects to continue the Access Easement and/or Parking Easement, the Rent shall equitably abate in proportion to the amount of the useable License Properties condemned or taken.

14. **Environmental.** Brook Park represents and warrants to BC that:

(a) the Easement Properties do not presently contain and is free from all hazardous substances and/or wastes, toxic and nontoxic pollutants and contaminants, including, but not limited to, petroleum products and asbestos ("Hazardous Substances");

(b) to the best of Brook Park's knowledge, the Easement Properties have not, in the past or prior to the Commencement Date, been used for storage, manufacture or sale of Hazardous Substances or for any activity involving Hazardous Substances;

(c) to the best of Brook Park's knowledge, no Hazardous Substances are located in the vicinity of the Easement Properties;

(d) Brook Park shall not store, manufacture, use or sell any Hazardous Substances or in the Easement Properties;

(e) Brook Park has not transported, or caused to be transported, any Hazardous Substances on, to or from the Easement Properties;

(f) Brook Park has not received and is not aware of any notification from any federal, state, county or city agency or authority relating to Hazardous Substances, in or near the Easement Properties; and

(g) to the best of Brook Park's knowledge, no underground or above ground storage tanks have ever been or are located under or on the Easement Properties.

15. **Estoppel Certificates.** Brook Park and BC agree at any time and from time to time, upon not less than ten (10) business days' prior written request from the other party or from Franchisor, to execute, acknowledge and deliver to the requesting party a statement in writing, in form and content reasonably acceptable to both parties, an estoppel certificate certifying that this Agreement is unmodified and in full force and effect (or if there have been modification, that the same is in full force and effect as modified and stating the modifications), the dates to which Rent has been paid and certifying that it is not in default (or if a default is alleged, stating the nature of the alleged default), and further certifying such other matters as the requesting party shall require. It is intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, lender, subtenant, assignee or any entity which is a party to a potential merger, consolidation with or to the acquisition of substantially all of the assets or stock of Brook Park, BC or Franchisor. In the event either party shall fail to execute and deliver any such instrument within the foregoing time period as requested, such failure shall not give rise to a right to terminate this Agreement. Instead, such party

hereby irrevocably appoints the requesting party as its attorney-in-fact to execute such instrument as its name, it being agreed that such assignment is one coupled with an interest and the statements contained in such instrument shall be deemed to be true and correct and binding on such party, who shall be estopped from denying or contesting the facts contained in such instrument.

16. **Miscellaneous.**

(a) Any and all discussions and negotiations between Brook Park and BC have been merged into this Agreement. No rights are conferred upon either party until this Agreement has been executed by the other party. Any and all representations by either of the parties or their agents made during negotiations prior to execution of this Agreement and which representations are not contained in this Agreement shall not be binding upon either of the parties.

(b) Brook Park and BC represent and warrant to each other that they have not had any dealings with any real estate brokers, finders or agents in connection with this Agreement. Brook Park and BC agree to indemnify, defend and hold each other and their successors and assigns harmless from any and all claims, costs, commissions, fees or damages by any person or firm claiming to have negotiated, instituted or brought about by this Agreement.

(c) All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any portion of this Agreement may require, the same as if such words had been fully and properly written in the number and gender.

(d) This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

(e) Brook Park and BC are not and shall not be considered joint venturers or partners and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

(f) Any legal proceedings initiated by reason of an alleged default of this Agreement must be commenced within one (1) year from the date that such alleged default occurred.

(g) No modification, alteration or amendment of this Agreement shall be binding unless in writing and executed by both parties hereto.

(h) The headings to the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way confine, limit or proscribe the scope or intent of any Section of this Agreement, nor in any way affect this Agreement.

(i) This Agreement shall be binding upon and insure to the benefit of the parties, their heirs, administrators, executors, successors and assigns.

(j) Time is of the essence of this Agreement and each provision; provided, however, if the final (but not any interim) date of any period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of the United States of America, the final date of such period shall be extended to the next business day.

(k) If either party is delayed or prevented from performing any of its obligations under this Agreement by reason of strike, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or any other cause beyond either party's control, the period of such delay or such prevention shall be deemed added to the time period herein provided for the performance of any such obligation by either party.

(l) Brook Park acknowledges that any plans or specifications of BC and BC's and Franchisor's trademarks and service marks, including without limitation, "Boston Chicken", are the sole property of BC and/or Franchisor, as the case may be, and Brook Park shall not have any rights to same.

17. **Litigation.** BC agrees to effect a dismissal with prejudice of the lawsuit pending in the District Court of Douglas County, Nebraska, at Docket 925, Page 895 captioned "Gary R. Peterson and Joseph T. Dizone, Jr. v. Brook Park Investment Co." and release its lis pendens against the Easement Properties when and if this Agreement commences. If this Agreement is terminated by either party prior to the Commencement Date, all rights under said lawsuit and lis pendens shall be reserved.

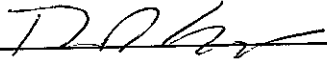
18. **Non-disturbance Agreements.** If reasonably required, BC shall have the right to obtain non-disturbance agreements from any superior lien holders on the Easement Properties. During the first ninety (90) days of the initial lease term, in the event BC is unable to obtain necessary non-disturbance agreements, BC shall have the option of terminating this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

BROOK PARK INVESTMENT CO.

By: 
Its: President


BC REAL ESTATE INVESTMENTS, INC.

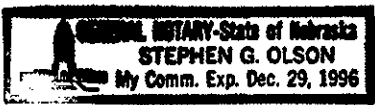
By:  J.E.H.
Its: Thomas R. Sprague
Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 8th day of July, 1994, before me, a notary public in and for said county and state, personally came Robert S. Sprague, President of Brook Park Investment Co., known to me to be the identical person who signed the foregoing License Agreement and acknowledged the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said company.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

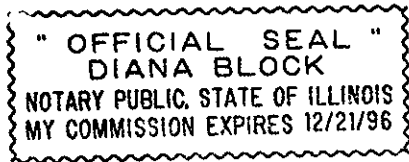

Notary Public



ILLINOIS
STATE OF NEBRASKA)
 DUPAGE) ss.
COUNTY OF DOUGLAS)

On this 12th day of JULY, 1994, before me, a notary public in and for said county and state, personally came THOMAS ASPRODUK, VICE PRESIDENT of BC Real Estate Investments, Inc., known to me to be the identical person who signed the foregoing License Agreement and acknowledged the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said company

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.



Diana Block
Notary Public

EXHIBIT "A"

SWNE

Parcel A:

That part of the NE 1/4 of Section 10, T15N, R12E of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the SW corner of said NE 1/4; thence North (assumed bearing) on the West line of said NE 1/4, 288.00 feet; thence East, 80.00 feet to the point of beginning, said point also being the N.W. corner of a tract of land as described in Deed Book 1520 at Page 419 of the Douglas County Records and hereinafter called Tract "A"; thence East on the Northerly line of said Tract "A," 15.00 feet; thence North on the Northerly line of said Tract "A," 12.00 feet; thence East on the Northerly line of said Tract "A," 85.00 feet; thence South on the Easterly line of said Tract "A," 27.00 feet to the N.W. corner of a tract of land described in Deed Book 1640 at page 728 of the Douglas County records and hereinafter called Tract "B"; thence N89°57'12"E on the Northerly line of said Tract "B," 52.00 feet to a point of curve; thence Northeasterly on the Northerly line of said Tract "B" on a 148.45 foot radius curve to the left (chord bearing N84°34'33"E; chord distance 27.82 feet), an arc distance of 27.87 feet; thence North, 232.96 feet; thence West 179.70 feet; thence South on a line 80.00 feet East of and parallel to the West line of said NE 1/4, 220.63 feet to the point of beginning.

EXHIBIT "B"

LEGAL DESCRIPTION:

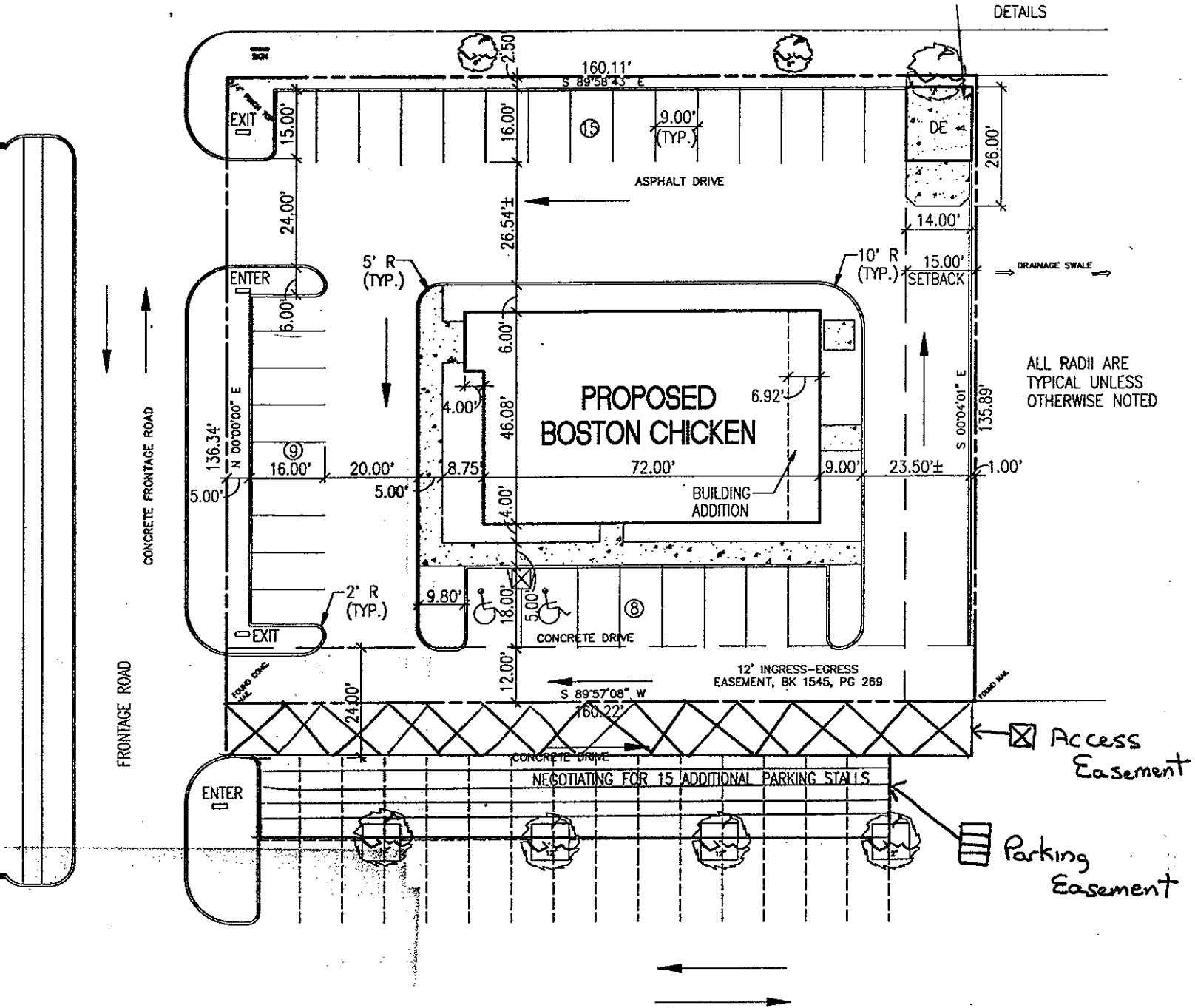
A parcel of land situate in the Southwest Quarter of the Northeast Quarter of Section 10, Township 15 North, Range 12 East of the 6th P.M., in Douglas County, Nebraska, described as follows:

Commencing at the center of said Section 10, Township 15 North, Range 12 East; thence North (assumed bearing) along the West line of the Northeast Quarter for 508.63 feet; thence East, perpendicular to the West line of the Northeast Quarter, for 30.00 feet to the TRUE POINT OF BEGINNING; thence East, perpendicular to the West line of the Northeast Quarter, for 160.22 feet (160.00 feet Record); thence South, parallel with and 240.00 feet East of the West line of the Northeast Quarter for 30.00 feet; thence West, perpendicular to the West line of the Northeast Quarter, for 160.22 feet; thence North, parallel with and 30.00 feet East of the West line of the Northeast Quarter for 30.00 feet to the TRUE POINT OF BEGINNING.

Said described parcel contains an area of 4,807 square feet, more or less.

Exhibit "C"

DETAILS



ALL RADII ARE TYPICAL UNLESS OTHERWISE NOTED

Access Easement

Parking Easement

NEGOTIATING FOR 15 ADDITIONAL PARKING STALLS