

18

1411

FILED  
BOOK 1998 PAGE 2365

98 APR 22 PM 3:01

70.50

*Carol Simmons*  
REGISTER OF DEEDS  
DODGE COUNTY, NE

AGREEMENT CONCERNING:  
THE IMPOSITION OF CERTAIN EASEMENTS, COVENANTS AND CONDITIONS

THIS AGREEMENT, made and entered into this 17<sup>th</sup> day of April, 1998, between SIMMONDS PROPERTIES, a Nebraska general partnership, with an address of 11404 West Dodge Road, Suite 650, Omaha, NE 68154 ("Simmonds") and GOLDEN CORRAL CORPORATION, a North Carolina corporation, with an address of 5151 Glenwood Avenue, Suite 300, Raleigh, NC 27612 ("Golden Corral").

PRELIMINARY STATEMENT

A. Simmonds is the owner in fee simple of a certain 3.0164 acre tract of land located on 23rd Avenue in Fremont, Dodge County, Nebraska; this tract of land is referred to as the "Entire Premises" and is described on Exhibit "A" attached hereto.

B. Simmonds and Golden Corral entered into a Real Estate Purchase Agreement on or about November 20, 1997 whereby Golden Corral agreed to purchase from Simmonds a portion of the Entire Premises (such portion is herein called the "Golden Corral Parcel"). The remainder of the Entire Premises (such remainder being that part thereof remaining after Golden Corral's purchase of the Golden Corral Parcel) is herein called the "Simmonds Parcel". The Simmonds Parcel and the Golden Corral Parcel are more particularly described respectively in Exhibits "B" and "C" attached hereto.

C. As a result that the parties desire to provide for certain joint uses of their Parcels, the parties are entering into this Agreement for the purposes of:

1. The reciprocal granting by Simmonds and Golden Corral of perpetual, non-exclusive easements across each Parcel for the purpose of providing access over certain portions of each Parcel; and
2. The granting by Golden Corral to Simmonds of a perpetual, non-exclusive easement for the use of the existing storm sewer drainage facilities located on the Golden Corral Parcel.

C:\WORD\AGREEMNT\FREMONT.ACC  
April 15, 1998

Return to: Spence Title Services  
1905 Harney St # 210  
Omaha, NE 68102

The term "Owner" as used herein shall mean any owner of fee simple title of the Simmonds Parcel or the Golden Corral Parcel or any portion thereof. The term "Occupant" as used herein shall mean any Owner or any other Person entitled to the use or occupancy of the Simmonds Parcel or the Golden Corral Parcel or any portion thereof pursuant to a lease, deed or other instrument or arrangement whereunder such Person has acquired rights with respect to such use or occupancy. The term "Permittees" as used herein shall mean all Occupants and their respective officers, directors, employees, agents, contractors, subcontractors, customers, visitors, invitees, vendors, suppliers, licensees, franchisees, subtenants and concessionaires. The term "Person" as used herein shall mean individuals, partnerships, firms, associations, corporations, limited liability companies or any other form of business entity. The term "Parcel" shall mean those lands owned in fee by Simmonds and Golden Corral.

The terms "Simmonds" or "Golden Corral" shall be deemed to refer to such parties and their respective successors and assigns. The "Ingress and Egress Easement Drive" and "Storm Sewer Easement" (as hereinafter described) are collectively referred to as the "Easement Areas".

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Simmonds and Golden Corral do hereby covenant and agree as follows:

## THE AGREEMENT

### ARTICLE I EASEMENTS

Section 1.01. Grant of Easements. Simmonds and Golden Corral hereby grant to each other the easements, rights and privileges hereinafter set forth in Sections 1.02 and 1.03 of this Agreement, in, upon, through, across, over and under each Owner's Parcel.

The easements granted hereby are perpetual, non-exclusive and appurtenant and shall be for the benefit of the respective Owners of the Simmonds Parcel and the Golden Corral Parcel or any portion thereof and any other property which Simmonds or Golden Corral may acquire and which is contiguous to the Simmonds or Golden Corral Parcels, and each such Owner may without notice to, or the consent of, the other Owner grant or assign the use of, and the benefits and burdens of, any of the easements herein granted to its respective successors and assigns and to the Occupants and Permittees of such Owner's Parcel but the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Section 1.02. Access Easements.

Simmonds and Golden Corral hereby grant to each other, for the benefit of each Owner, Occupant or any Permittee and their successors and assigns, a perpetual, non-exclusive easement over certain portions of the Simmonds and Golden Corral Parcels on which the approximately thirty foot (30') wide and two hundred eighty-six foot (286') long drive (hereinafter referred to as the "Ingress and Egress Easement Drive") runs along the common boundary line of the Parcels from 23rd Avenue for the purpose of pedestrian and vehicular access, ingress and egress; said Ingress and Egress Easement Drive is shown and described on Exhibits D-1 and D-2.

Section 1.03. Storm Sewer Easement.

Golden Corral hereby grants to Simmonds a perpetual, non-exclusive easement over that portion of the Golden Corral Parcel on which the approximately fifteen foot (15') wide and two hundred thirty-seven feet (237.00') long storm sewer facilities (hereinafter referred to as the "Storm Sewer Easement") presently runs. Simmonds shall have the benefit of the Storm Sewer Easement as a sewer or drain used for the benefit of the Simmonds Parcel. Golden Corral shall not take any action which would impede the usage of the Storm Sewer Easement by Simmonds. The Storm Sewer Easement is shown and described on Exhibit E.

ARTICLE II  
MAINTENANCE AND REPAIR; TAXES AND ASSESSMENTS;  
GENERAL PROVISIONS

Section 2.01 Maintenance and Repair.

The Owners of the Simmonds Parcel and the Golden Corral Parcel or any portion thereof, shall maintain and repair any improvements located on their respective Parcels (including without limitation the Easement Areas), at their sole cost and expense, so as to keep such areas at all times in a safe, sightly, good and functional condition to standards of first-class commercial developments.

If any Owner fails to keep and maintain in good condition and repair any portion of the Easement Areas for which it is responsible under this Agreement, then the other Owner may give written notice of that failure to the defaulting Owner. If such defaulting Owner fails to remedy its failure within thirty (30) days after such written notice is given, then the Owner giving the notice shall have the right, but not the obligation, to cause such Easement Areas to be kept and/or restored and maintained to a state of good condition and repair, and in such event, the defaulting Owner covenants, agrees and promises to reimburse the Owner doing the work within thirty (30) days after written demand, for any and all costs and expenses incurred by the Owner doing such work.

Section 2.02 Taxes and Assessments.

Each Owner shall be responsible for the taxes and assessments levied against each Owner's respective Parcel.

Section 2.03 General Provisions.

Each Owner hereby releases the other Owner (and the Occupants of such other Owner's Parcel) from any and all liability or responsibility to the other, or to anyone claiming by, through or under them by way of subrogation or otherwise for any loss or damage to property or persons caused by fire or other casualty even if such fire or other casualty shall have been caused by the fault or negligence of the other Owner (or the Occupants of such Owner's Parcel) or of anyone for whom such Owner may be responsible.

ARTICLE III  
RESTRICTION ON USE OF PARCELS

Section 3.01 Restriction on Use of Golden Corral Parcel. For a period of twenty (20) years from the date of this Agreement, Golden Corral, for itself, its successors and assigns, hereby agrees that the Golden Corral Parcel shall not be sold, leased, used or occupied for use as a restaurant that primarily serves hamburgers or related fast food (including but not limited to McDonald's, Wendy's, Hardee's and Arby's) or for any drive-thru hamburger sales or other similar type restaurants.

Section 3.02 Restriction on Use of Simmonds Parcel. For a period of twenty (20) years from the date of this Agreement, Simmonds, for itself, its successors and assigns, hereby agrees that the Simmonds Parcel shall not be sold, leased, used or occupied for use as a restaurant that operates a family restaurant, cafeteria or buffet type restaurant (including but not limited to Ryan's, Old Country Buffet, Bonanza, Ponderosa, Sirloin Stockade and Luby's) or other similar type restaurant.

ARTICLE IV  
WAIVER, ETC.

Section 4.01. Non-Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, (I) no remedy provided in this Agreement shall

be exclusive but each shall be cumulative with all other remedies provided in this Agreement and (ii) all remedies at law or in equity shall be available.

Section 4.02. Non-Terminable Agreement. No breach of the provisions of this Agreement shall entitle any Owner or party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value covering any part of the Simmonds Parcel or the Golden Corral Parcel and any improvements thereon.

#### ARTICLE V TERM

Section 5.01. This Agreement and the easements, rights, obligations and liabilities created hereby shall be perpetual, and shall constitute covenants running with the lands constituting the Simmonds Parcel and the Golden Corral Parcel.

#### ARTICLE VI EFFECT OF INSTRUMENT

Section 6.01. Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Simmonds Parcel or the Golden Corral Parcel shall at all times be subject and subordinate to this Agreement.

Section 6.02. Binding Effect. Every agreement, covenant, promise, undertaking, condition, easement, right, privilege and restriction made, granted or assumed hereunder shall constitute an equitable servitude on the portion of the Simmonds Parcel or the Golden Corral Parcel burdened thereby and shall constitute an equitable servitude on the subject property appurtenant to and for the benefit of the other portions of the Simmonds Parcel or the Golden Corral Parcel. Any transferee of any portion of the Simmonds Parcel or the Golden Corral Parcel shall automatically be deemed, by acceptance of the title thereto, to have assumed all obligations of this Agreement relating thereto to the extent of its interest therein and to have agreed with the then Owners of all other portions of the Simmonds Parcel or the Golden Corral Parcel, to execute any and all instruments and to do any and all things reasonably required to carry out the intentions of this Agreement and the transferor shall upon the completion of such transfer be relieved of all further liability under this Agreement except liability with respect to matters that may have arisen during its period of ownership of the portion of property so conveyed that remain unsatisfied.

Section 6.03. Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Simmonds Parcel or the Golden Corral Parcel to the general public or for any public use or purpose whatsoever, it being the intention of the parties

hereto and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

ARTICLE VII  
NOTICES

Section 7.01. Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the third business day following the date of mailing if it is mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to the following:

If to Simmonds:        11404 West Dodge Road, Suite 650  
                                 Omaha, NE 68154

If to Golden Corral: 5151 Glenwood Avenue, Suite 300  
                                 Raleigh, NC 27612  
                                 ATTN: Real Estate/Legal Department

The addresses of the Owners may be changed from time to time by written notice given in accordance with the provisions hereof.

ARTICLE VIII  
MISCELLANEOUS

Section 8.01.

(a) If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State of Nebraska.

© The Article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

(d) Where the sense of this Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term.

(e) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereof.

(f) This Agreement contains the full and final understanding of the parties hereto and may be amended, modified, or terminated only by an amendment in writing, executed and acknowledged by Simmonds and Golden Corral or their respective successors or assigns; this Agreement shall not otherwise be amended, modified or terminated.

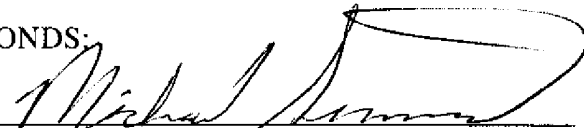
(g) Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other.

(h) The "Preliminary Statement" of this Agreement is incorporated into the body of "The Agreement," as if set out word for word therein. Exhibits A, B, C, D-1, D-2 and E are hereby incorporated by reference.

(I) The rights, privileges, easements and appurtenances set forth herein shall not be terminated by the merger of the ownership of any dominant tenement and servient tenement created hereunder.

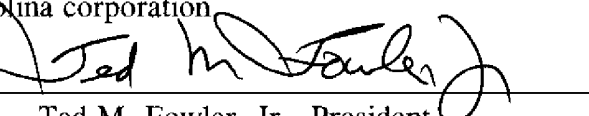
IN TESTIMONY WHEREOF, the parties have caused this Agreement to be executed under seal with authority duly obtained, the day and year hereafter indicated.

SIMMONDS:


By:   
Michael H. Simmonds, General Partner

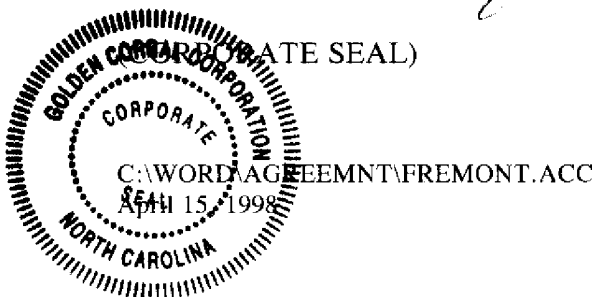
GOLDEN CORRAL:

GOLDEN CORRAL CORPORATION, a North Carolina corporation

By:   
Ted M. Fowler, Jr., President

ATTEST:

  
Assistant Secretary



STATE OF NEBRASKA  
COUNTY OF Douglas

Before me personally appeared MICHAEL H. SIMMONDS, General Partner of SIMMONDS PROPERTIES, a Nebraska general partnership, to me well known to be the individual and officer described in and who executed the foregoing instrument, and who acknowledged the execution thereof to be his own free act and deed as such officer thereunto duly authorized.

WITNESS my hand and official seal, this the 16 day of April, 1998.

*Paula K. Glissman*  
Notary Public in and for the County and State Aforesaid.

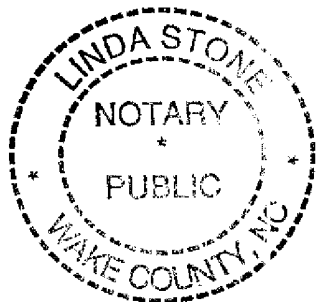
My Commission Expires



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Before me personally appeared TED M. FOWLER, JR. and ANDREW W. LILLISTON, JR., President and Assistant Secretary respectively of GOLDEN CORRAL CORPORATION, to me well known to be the individuals and officers described in and who executed the foregoing instrument and who acknowledged the execution thereof to be his own free act and deed as such officer thereunto duly authorized; and the said conveyance is the act and deed of said corporation.

WITNESS my hand and official seal, this the 15<sup>th</sup> day of April, 1998.



*Linda Stone*  
Notary Public in and for the County and State Aforesaid.

My Commission Expires: February 6, 1999



EXHIBIT A  
ENTIRE PREMISES

Lot 1, Block 1, HOWARD WILLIAMS FIFTH ADDITION, an Addition to the City of Fremont, as surveyed, plotted and recorded in Dodge County, Nebraska, except that part taken by the State of Nebraska Department of Roads described as follows: Beginning at the Northeast corner of said Lot 1; Thence North  $87^{\circ}40'52''$  West (assumed bearings) for 149.53 feet along the North line of said Lot 1; Thence along a curve to the right (having a radius of 90.00 feet and a long chord bearing South  $56^{\circ}08'00''$  East for 49.82 feet) for an arc length of 50.48 feet; Thence along a curve to the left (having a radius of 91.00 feet and a long chord bearing South  $64^{\circ}54'23''$  East for 76.56 feet) for an arc length of 79.02 feet; Thence along a curve to the right (having a radius of 40.01 feet and a long chord bearing South  $51^{\circ}46'20''$  East for 49.28 feet) for an arc length of 53.09 feet to the East line of said Lot 1; Thence North  $00^{\circ}00'00''$  East for 84.70 feet along said East line to the point of beginning.

The remainder of said Lot 1 contains 131,395 square feet.

**EXHIBIT B  
SIMMONDS PARCEL**

Lot 1, Block 1, HOWARD WILLIAMS FIFTH ADDITION, an addition to the City of Fremont, Dodge County, Nebraska, except the 237.00 feet thereof and except that part taken by the State of Nebraska, Department of Roads

EXHIBIT "C"  
GOLDEN CORRAL PARCEL

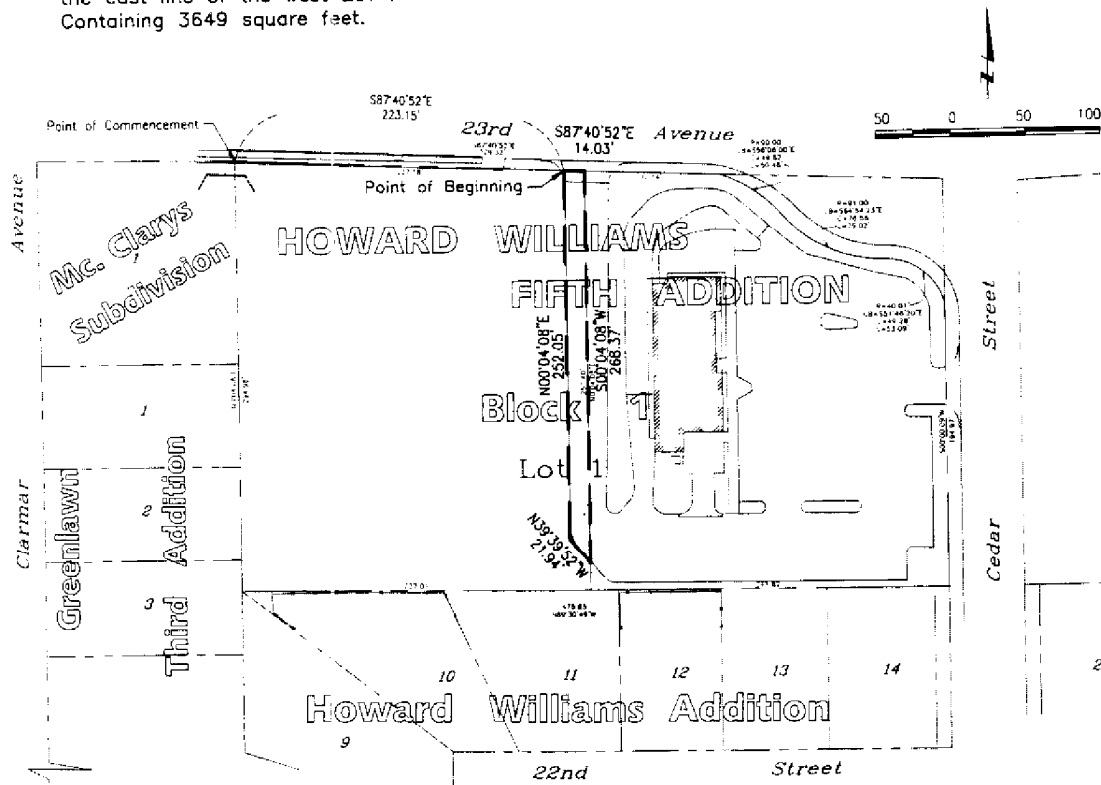
The West 237.00 feet of Lot 1, Block 1, HOWARD WILLIAMS FIFTH ADDITION, an Addition to the City of Fremont, Dodge County, Nebraska and containing approximately 69,016 square feet more or less

EXHIBIT D-1

**LEGAL DESCRIPTION**

An easement for ingress and egress purposes over part of the west 237.00 feet of Lot 1, Block 1, HOWARD WILLIAMS ADDITION, an addition to the City of Fremont, Dodge County, Nebraska, described as follows:

Commencing at the northwest corner of said Lot 1; Thence South 87°40'52" East (assumed bearings) for 223.15 feet along the north line of said Lot 1 to the Point of Beginning; Thence South 87°40'52" East for 14.03 feet to the northeast corner of the west 237.00 feet of said Lot 1; Thence South 00°04'08" West for 268.37 feet along the east line of the west 237.00 feet of said Lot 1; Thence North 39°39'52" West for 21.94 feet; Thence North 00°04'08" East for 252.05 feet parallel with and 14.00 feet west of the east line of the west 237.00 feet of Lot 1 to the Point of Beginning. Containing 3649 square feet.



**lamp, ryneerson & associates, inc.**  
 engineers      surveyors      planners

14710 west dodge road, suite 100  
 omaha, nebraska 68154-2029

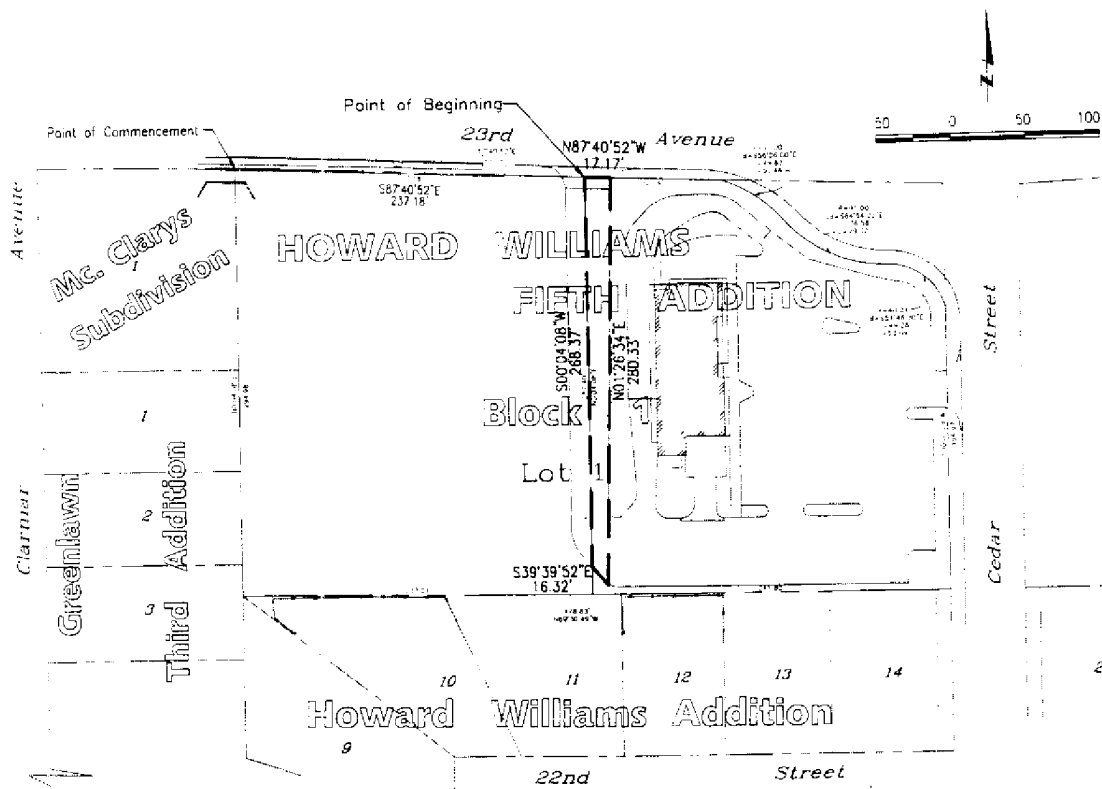
ph 402-496-2498  
 fax 402-496-2730

EXHIBIT D-2

**LEGAL DESCRIPTION**

An easement for ingress and egress purposes over part of Lot 1, Block 1, HOWARD WILLIAMS ADDITION, an addition to the City of Fremont, Dodge County, Nebraska, described as follows:

Commencing at the northwest corner said Lot 1; Thence South 87°40'52" East (assumed bearings) for 237.18 feet to the northwest corner of said Lot 1 and the Point of Beginning; Thence South 00°04'08" West for 268.37 feet along the east line of the west 237.00 feet of said Lot 1; Thence South 39°39'52" East for 16.32 feet; Thence North 01°26'34" East for 280.33 feet to the north line of said Lot 1; Thence North 87°40'52" West for 17.17 feet to the Point of Beginning. Containing 3607 square feet.



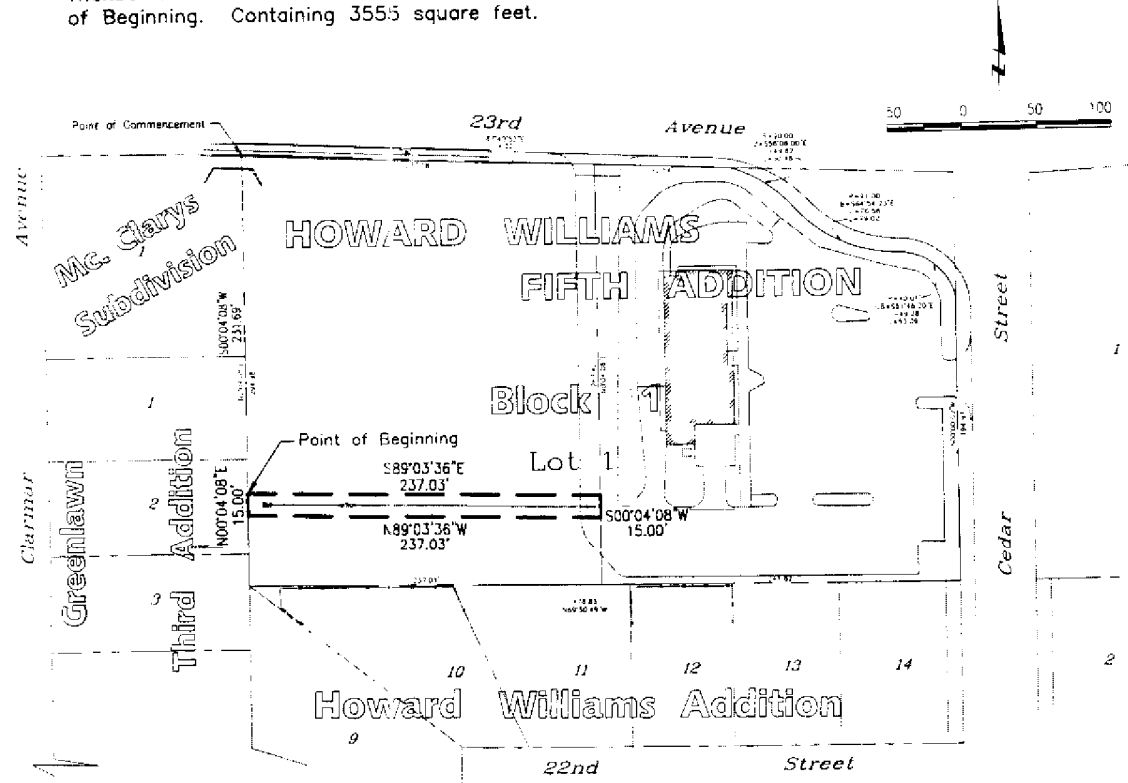
**lamp, rynearson & associates, inc.**  
 engineers      surveyors      planners  
 14710 west dodge road, suite 100  
 omaha, nebraska 68164-2029  
 ph 402-498-2498  
 fax 402-498-2730

EXHIBIT E

**LEGAL DESCRIPTION**

An easement for the construction and maintenance of a storm sewer over part of the west 237.00 feet of Lot 1, Block 1, HOWARD WILLIAMS ADDITION, an addition to the City of Fremont, Dodge County, Nebraska, described as follows:

Commencing at the northwest corner of said Lot 1; Thence South 00°04'08" West (assumed bearings) for 231.69 feet along the west line of said Lot 1 to the Point of Beginning; Thence South 89°03'36" East for 237.03 feet to the east line of the west 237.00 feet of said Lot 1; Thence South 00°04'08" West for 15.00 feet along said east line; Thence North 89°03'36" West for 237.03 feet to the west line of said Lot 1; Thence North 00°04'08" East for 15.00 feet along the west line of said Lot 1 to the Point of Beginning. Containing 3555 square feet.



Book 95-5 Page 35 Date February 13, 1998 Dwn. By JHVD Job Number 97065.01 021

**lamp, rynearson & associates, inc.**  
 engineers      surveyors      planners

14710 west dodge road, suite 100  
 omaha, nebraska 68164-2029

ph 402-498-2498  
 fax 402-498-2730