

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

THIS MASTER DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "Agreement") is made as of the 26 day of September 2018 (the "Effective Date"), by AVG-CFM 204Q, LLC, a Delaware limited liability company ("Developer").

WITNESSETH:

RECITALS

WHEREAS, Developer is the owner in fee simple of that certain real property located in Douglas County, Nebraska, legally described as:

See Exhibit A attached hereto (collectively, the "Development");  
and

WHEREAS, Developer desires that the Lots comprising the Development (as such Lots may be created, consolidated and/or otherwise reconfigured as provided in this Agreement) be developed in conjunction with each other pursuant to a general plan of improvement and further desires that the Development be subject to the easements, covenants, conditions and restrictions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing promises and for the purpose of establishing certain covenants, restrictions and a uniform plan for ingress, egress, common areas, utilities and drainage, Developer hereby declares that the Lots shall be held and/or sold and conveyed subject to the covenants, restrictions and easements stated herein.

1. **Definitions.**

1.1. "Additional Property" shall mean all or any portion of certain property adjacent to the Development that Developer may acquire from time to time. If all or a portion of such Additional Property is acquired by Developer or in the event the Additional Property is bound by this Agreement through a condemnation proceeding, then Developer may, at Developer's election, following such acquisition or upon finalization of such condemnation proceeding, record this Agreement against the appropriate Additional Property and upon such recordation, the terms of this Agreement and the easements, covenants, conditions and restrictions set forth in this Agreement shall be binding upon and inure to the benefit of such Additional Property, without the need for the consent of, signature of, or the joinder by, any party other than Developer, and such Additional Property shall thereafter be included within and be made a part of the Development.

1.2. "Apartment Lots" shall mean Lots 1, 99, and 101, as shown on Exhibit B.

1.3. "Applicable Laws and Requirements" shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Government Authorities, and all requirements of any insurers.

1.4. "Approved by Developer" or "Approval by Developer," "Approved" or "Approval" means the prior written approval of Developer, which approval may be given or withheld in Developer's sole and absolute discretion, without notice to or the joinder or approval of any other Party.

1.5. "Architectural Features" shall mean towers, projections and entry features on Buildings, and such other features as may be deemed such by the Project Architect.

1.6. "Association" means the Coventry Business Owners Association, a Nebraska nonprofit corporation.

1.7. "Building" shall mean any building, improvement or other structure constructed on a Lot within the Development including but not limited to the main facility, any outside facility including patios and dining areas and all retaining walls constructed on a Lot.

1.8. [Reserved.]

1.9. "CAM Expenses" shall include all expenses relating to maintaining the Common Area improvements (including, without limitation, landscaping, hardscaping, irrigation and equipment, such as lighting poles, and fixtures located within the Common Areas) of the Common Areas and certain other costs as more particularly described below, in accordance with prudent industry standards, including, without limitation, insurance premiums; real estate taxes (including all Outlot real estate taxes); all costs and expenses of maintaining, repaving, replacing lighting, roads, sidewalks, perimeter driveways and entrance areas of the Common Areas and other improvements located on the Common Areas; all costs and expenses of removing debris from the Common Areas; all costs and expenses of all service and maintenance contracts for the Common Areas, including, without limitation, general cleaning, surface water, pest control, electronic instruction, fire control and telephone alert systems; costs of collection and disposal of all Common Area trash and garbage; all costs and expenses for machinery and equipment used in the operation of the Common Areas; sprinklers and other fire protection systems, irrigation systems, and electrical, gas, water, telephone and other utility systems serving the Common Areas; maintenance, repair and replacement of off-site improvements (including off-site detention areas and drainageways, traffic signals, Development signs, landscaping, streetscape, and lighting systems) and real estate taxes attributable thereto; all costs and expenses of traffic regulation, directional signs and traffic consultants; permits; all costs and expenses of planting, maintaining and replacing landscaping and shrubbery for the Common Areas; all costs and expenses of maintaining any non-public utility system serving the Common Areas; all reasonable charges for interest on and depreciation of equipment installed in, or improvements or alterations made to, the

Common Areas which are for the purpose of reducing energy costs, maintenance costs or other CAM Expenses, or which are required under any governmental laws, regulations, or ordinances (including any accessibility statute) which were not required as of the date hereof, so as to amortize the cost of such equipment, improvements or alterations over the reasonable life of the same on a straight line basis; the costs of uniforms, supplies and materials used in connection with the operation and maintenance of the Common Areas; the cost of providing employment and so-called fringe benefits for employees involved in the operation and maintenance of the Common Areas; amounts paid to contractors or subcontractors for work or services performed in connection with the maintaining of the Common Areas; the costs (including rental) of maintaining a management office in the Development; and such other costs or expenses as may be ordinarily incurred in the maintaining of Common Areas and not specifically set forth herein, including an administrative/management fee equal to 15% of the foregoing costs and expenses. In no event shall CAM Expenses include any expenses or charges relating to the initial construction of the Common Areas or any expenses or charges which will be or are separately assessed to an Owner or Lots by the Sanitary Improvement District in which the Development is located or by any other third party.

1.10. "City" means the City of Omaha, Nebraska.

1.11. "Common Areas." For purposes of this Agreement, the phrase "Common Area" or "Common Areas" means the areas depicted on Exhibit B which consist of the following: the Outlots and all portions of the Lots which contain main access roads, traffic islands (including islands in adjacent public streets), Common Landscape Areas, buffer areas along 204<sup>th</sup> Street, Q Street, and Harrison Street, sidewalks adjacent to the main access roads, as well as any drainage facilities and lighting facilities servicing any one or more of the aforesaid areas, which shall specifically include the Detention Facilities (as defined herein) servicing all or any of the Lots, and any access driveways, corridors, driveways, exterior boundary walls and fences, water, sanitary and storm sewer, gas, electric, telephone and other utility lines and systems, conduits and facilities to the extent such utility lines and/or systems serve more than one specific Lot, and any of the foregoing which serve the access way, serviceways, courts, ramps, lighting, sidewalks, and the facilities pertinent to each and all of the foregoing, all of which shall serve the Lots. Notwithstanding the foregoing, any area outside the Common Areas depicted on Exhibit B or the actual loading dock(s) and trash area(s) and drive-through area(s) on any Lot which serve a particular Owner or Permittee shall not be considered Common Area. Developer acknowledges that there are no Common Areas on the Apartment Lots.

1.12. "Common Landscape Areas" shall mean any landscaped areas within the Common Areas of the Lots and within the portions of the Perimeter Lots, if any, between the Perimeter Lot's outside curb and the exterior public roads as may from time to time be designated by Developer.

1.13. "Detention Facilities" shall mean any storm drainage and detention/retention facility(ies) benefiting the Development, or any portion thereof, located within the Development, or if necessary off the Development as may exist or be

created from time to time, including the facilities located on Outlots D, E, and F. Additionally, Developer may also permit the owners of the Adjoining Property or other properties to use the Detention Facilities.

1.14. "Developer" shall mean AVG-CFM 204Q, LLC or, if Developer has no further ownership interest in any portion of the Development, then such person or entity as Developer may designate in writing as its successor, including the Association, by written notice to all Parties, shall be deemed to be the Developer. If Developer has no further ownership interest in any portion of the Development and has not designated a successor by written notice to all Parties or assigned its interest in writing to a successor Developer or to the Association within one year after Developer no longer has any further interest, a successor Developer under this Agreement may be designated in writing by the then owners of fee simple title to not less than seventy-five percent (75%) of the square footage of all of the Lots after sixty (60) days' notice to Developer, during which period Developer may designate a successor Developer. The foregoing shall be in addition to, and shall not be deemed to limit or restrict, any other rights or remedies specifically granted to any Owner or Owners herein.

1.15. "Development Agreements" shall mean (a) that certain Development Agreement dated as of August 30, 2018, by and between the City and Developer with respect to Coventry North, Lots 79-82, 86, 91, 96 (which Lot 96 is excluded from this Agreement), Lots 1-13) and Lot 1 Coventry Replat 6, and (b) that certain Development Agreement dated as of August 30, 2018 by and between the City and Developer with respect to Lots 99-120.

1.16. "Floor Area" for the purpose of determining the permissible number of square feet of Building improvements which may be constructed on a Lot and parking ratio requirements shall be equal to the actual number of square feet of area on the first floor of any Building or structure on such Lot intended for the exclusive use of the occupants thereof and lying within the exterior faces of the exterior walls thereof (except party walls, as to which the center line, not the exterior faces, shall be used), whether or not such space is occupied. In no event shall exterior trash enclosures be included in the calculation of Floor Area.

1.17. "Hazardous Material" shall mean and include, but shall not be limited to (i) any "hazardous substance," "pollutant" or "contaminant" (as defined in Sections 101(14), (33) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601(14), (33) or the regulations designated pursuant to Section 102 of CERCLA, 42 U.S.C. Section 9602 and found at 40 C.F.R. Part 302), including any element, compound, mixture, solution, or substance which is or may be designated pursuant to Section 102 of CERCLA; (ii) all substances which are or may be designated pursuant to Section 311(b) (2) (A) of the Federal water Pollution Control Act ("FWPCA") 33 U.S.C. Sections 1251, 1321 (b) (2) (A), as amended; (iii) any hazardous waste having the characteristics which are identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, 6921, as amended ("RCRA") or having such characteristics which shall subsequently be considered under RCRA to constitute hazardous waste or any

substance which may be unduly damaging or hazardous to person or property; (iv) any substance containing petroleum, as that term is defined in Section 9001(8) of RCRA, 42 U.S.C. Section 991(8) or 40 C.F.R. Part 280 including without limitation waste oil; (v) any toxic pollutant which is or may be listed under Section 307 (a) of the FWPCA, 33 U.S.C. Section 1317(a); (vi) any hazardous air pollutant which is or may be listed under Section 112 of the Clean Air Act, 42 U.S.C. Sections 7401, 7412, as amended; (vii) any imminently hazardous chemical substance or mixture with respect to which action has been or may be taken pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. Sections 2601, 2606, as amended or replaced; (viii) any asbestos, asbestos containing material or urea formaldehyde or material which contains it; and (ix) all toxic materials, pollutants, contaminants and hazardous substances and wastes regulated now or in the future by any federal or applicable state or local environmental law, administrative action or regulation of any kind.

1.18. "Lot Area" shall mean the total acreage of a Lot, as set forth on Exhibit B.

1.19. "Lot(s)" shall mean Lots 1 through 13, 79 through 82, 86, 91, 99 through 120, Lot 1 Replat 6, or any of them, as shown on Exhibit B hereto (as such Lots may be created, consolidated and/or otherwise reconfigured as provided in this Agreement) and, following acquisition and/or inclusion thereof in the Development, any additional lots acquired by Developer. This Agreement will become effective as to such additional lots when and if Developer acquires the subject lot and files this Agreement of record on such lot. For the avoidance of doubt, "Lots" includes Perimeter Lots and Apartment Lots but not Outlots, unless expressly otherwise provided herein.

1.20. "Mortgage" shall mean either: (i) any duly recorded pledge of 100% of the ownership interest in Developer or in any Owner of a Lot with priority over all other such pledges, or (ii) any duly recorded mortgage or deed of trust encumbering all or a portion of a Lot in the Development.

1.21. "Mortgagee" shall mean either: (i) the beneficiary of any deed of trust or mortgagee of any Mortgage that is unaffiliated with the borrowing party or Developer or the Owner(s) of the applicable Lot(s) and whose lien encumbers all or a portion of a Lot, or (ii) the pledgee of 100% of the ownership interest in any Owner or Developer with priority over all other such pledges.

1.22. "Outlots" shall mean the parcels owned by Developer or the Association which consist of undeveloped drainage areas, Detention Facilities, Common Landscape Areas, and other Common Areas, as depicted on Exhibit B.

1.23. "Owner" shall mean the owner from time to time of fee simple title to any Lot(s).

1.24. "Party" and "Parties" as used in this Agreement shall initially mean Developer until such time as Developer has transferred fee simple title in and to any Lot or portion of any Lot, and thereafter Parties shall mean the Owner(s) from time to time of fee title to any Lot(s).

1.25. "Perimeter Lot Owner" shall mean the Owner from time to time of fee simple title to a Perimeter Lot(s).

1.26. "Perimeter Lots" shall mean Lots 3 through 11, 79, and 109 through 117, as shown on Exhibit B hereto as such Lots, their Lot lines and dimension of such lots may be reconfigured, moved, changed, reduced or increased (including the addition, combination, or subtraction of a Lot).

1.27. "Permittee(s)" shall mean the Parties, all persons from time to time entitled to the use and occupancy of any Building(s) (or portion thereof) on any Lot(s) pursuant to any lease, deed or other arrangement whereby such person has acquired a right to the use and occupancy of any Building (or portion thereof), and their respective officers, directors, employees, agents, tenants, customers, visitors, and invitees. Any licensee, subtenant, concessionaire, and contractor shall not be a Permittee unless Approved by Developer.

1.28. "Project Architect" shall mean such architect duly licensed to practice in the State of Nebraska as may from time to time be designated by Developer.

1.29. "Roof Extensions" shall mean parapet walls, mechanical equipment, penthouses and screens to hide mechanical equipment and such other extensions of the roof as may be deemed such by the Project Architect.

1.30. "Sign Easement Area" shall mean (a) the areas on Outlots A and H, which may be used for development identification or multi-tenant signage, as designated by Developer and shown on Exhibit B, and (b) any area designated by Developer for multi-tenant electronic signage serving the Development.

1.31. "Site Plan" shall mean the site plan of the Development attached hereto as Exhibit B and incorporated herein by reference, as the same may be amended or modified from time to time by the Developer; provided that Developer may not amend or modify any portion of a Lot owned by any Party that is not the Developer without the prior written approval of such Party.

1.32. "State" shall mean Nebraska.

1.33. "Subdivision Agreement" means and refers to that certain Subdivision Agreement by and among the Parties and Sanitary and Improvement District No. 524 of Douglas County, Nebraska and the City of Omaha, a municipal corporation in the State of Nebraska pertaining to the Development. The Development sits within the boundaries of Sanitary and Improvement District No. 524

In addition to the definitions set forth above, there are other defined terms set forth elsewhere in this Agreement. All of the Recitals set forth above are hereby incorporated into this Agreement as though fully re-written here at length.

2. [Reserved.]

3. **Grant of Easements.** Subject to the terms of this Agreement, Developer hereby grants and conveys the following non-exclusive easements appurtenant, in, to, over, and across the Common Areas on the Lots for the benefit and use of all Parties (unless expressly stated otherwise) and the customers, contractors, invitees, licensees, tenants, subtenants, and employees of all businesses and occupants of the Buildings on the Lots:

3.1. **Access Easements.** A non-exclusive easement in, to, over and across the Common Areas, including any driveways, perimeter roads and access ways for the vehicles of each Party and their respective Permittees (including service vehicles but excluding construction vehicles, except as expressly Approved by Developer) and pedestrian ingress and egress of Parties and their respective Permittees, and access and the right of access over established circulation elements between the public streets and perimeter roads and access ways and any Lot for each Party and their respective Permittees for the doing of such other things as are authorized or required to be done on said Common Area pursuant to the terms of this Agreement, in such respective portions of such Common Area as are from time to time set aside, maintained and authorized for such use pursuant to the terms of this Agreement.

3.2. **Roof Overhang and Abutment Easement.** With the Approval of Developer, a non-exclusive easement in, to, under, over and across any improvements or land immediately adjacent to any Lot, granting the right and privilege to (a) construct, reconstruct, maintain, operate and replace a roof overhang belonging, over and through a portion of the adjacent Lot and (b) for the Owner of the adjacent Lot to construct improvements which abut or touch improvements constructed on adjacent Lot. Subject to the terms of this Agreement, this easement shall not unreasonably (i) interfere with the adjacent Party's use or operation of its Lot, (ii) restrict or limit the operation or use of any Building or other improvement now constructed on the adjacent Party's Lot nor (iii) limit or restrict the type of Building or other improvements that may be constructed on the adjacent Lot under said roof overhang or otherwise. This Section 3.2 shall not apply to the Apartment Lots.

3.3. **Access Easements for Signs.** A non-exclusive easement, as may be temporarily or permanently permitted by Developer from time to time, in, to, under, over and across the Sign Easement Area for space on a monument, pylon or other a multi-tenant electronic signage serving the Development, which sign structure shall be installed and maintained by Developer at Developer's discretion. In the event any Party, or its respective Permittee(s), is entitled to maintain a sign panel or panel on such sign structure, the foregoing easement grant shall include reasonable access over, across and upon the Sign Easement Area to permit such Party to install, replace, maintain and operate its sign panels on such sign structure after thirty (30) days' notice and Approval of Developer. Similarly, Developer shall retain an easement over, across and upon the Sign Easement Area, in order for Developer to install, replace, maintain and operate such pylon, monument, or other sign. Developer shall have the right to change or relocate such sign structures within any Lots located in the Sign Easement Area, provided that change or relocation does not materially interfere with the visibility or use of affected Lots. Other than as depicted on the Site Plan, no other Lot may have a pylon, monument, or other sign unless Approved by Developer, except for any elevated or monument sign

existing as of the Effective Date, provided that any replacement of such sign must meet the criteria set forth in this Section.

3.4. Utility Easements. A non-exclusive easement in, to, over, and across the Common Areas for the benefit of and appurtenant to each Lot for the purposes of installation, maintenance, repair, relocation and replacement of sewers, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires, and other utilities beneath the ground surface serving other Lots at a location or locations Approved by Developer, and, with respect to the Lots, at a location or locations reasonably approved by the then-Owner of such Lot in writing. Similarly, Developer shall retain an easement over, across and upon any of the Lots in order for Developer to install, maintain, repair, relocate and replace any utilities located thereon; provided, however, Developer shall not exercise any of the foregoing easement rights without 48 hours' prior written notice to any affected Owner or, in the case of an emergency, such notice as may be practicable under the circumstances.. Each Owner, in the performance of the foregoing, covenants and agrees that: (i) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (ii) the areas and facilities disturbed by such installation, operation, repair, maintenance and/or replacement shall be promptly replaced or restored to the condition in which they were prior to the performance of such work; (iii) affected Parties shall be notified in writing by the Party for whose benefit such work is performed or such use is made not less than thirty (30) days prior to commencement of such work and (iv) affected Parties shall be consulted reasonably in advance. The person requesting such installation shall confirm (and provide reasonable evidence to the Owner of the affected Lots) that there shall be no decrease in capacity to existing users of such line. Any proposed installation, maintenance or location changes shall require prior written approval by any affected Parties and Developer. Any Owner desiring to install, maintain or change the location of any utilities which serve or affect another Lot shall deliver the plans and schedule for such work to the affected Parties and to Developer; and, upon receipt of such plans and schedule, the affected Parties and Developer shall each have twenty (20) days to review and approve such plans and schedule in writing, which approval shall not be unreasonably withheld, conditioned or delayed. If either an affected Party and/or Developer does not approve such plans and schedule, such affected Party and/or Developer, as applicable, shall notify such Owner in writing of the specific parts of such plans and schedule of which such affected Party and/or Developer, as applicable, does not approve. If either an affected Party and/or Developer does not respond within twenty (20) days of receipt of such plans and schedule, such Owner shall have the right to send an additional request to the Party which failed to respond which states that: "failure to respond to this second request within five (5) days after receipt of same shall constitute deemed approval." If the Party which failed to respond does not respond to such second request within five (5) days after receipt thereof, then the Party which failed to respond shall be deemed to have approved such plans and schedule. In addition, each Party shall be obligated to perform such other acts, and to execute, acknowledge, and/or deliver such reasonable instruments, documents and other materials as Developer may request in order to document any such easement in a commercially reasonable manner. The utility easements granted herein shall continue and survive the expiration or earlier termination of this Agreement; provided, however, that at any time after the expiration or termination



of this Agreement, the Parties shall reasonably cooperate with and respond to requests to relocate, terminate, release, amend or amend and restate such utility easement.

3.5. Drainage. A non-exclusive easement in, to, over, and through the drainage patterns and systems as are established from time to time within the Common Areas, for reasonable surface drainage purposes. Similarly, Developer shall retain an easement over, across and upon any of the Lots in order for Developer to install, replace, repair, relocate and replace any drainage facilities located thereon for which Developer may be responsible. Developer may construct access to a storm detention/retention basin, as well as to any Detention Facilities, as may be created from time to time, to and through the point of entry onto the City right-of-way or to any subsequent location. Developer shall have the right to designate and change the location or nature of any Detention Facilities, so long as Developer provides access to and drainage facilities as shall be approved by the applicable governmental agencies. Developer hereby declares, creates and establishes a perpetual, non-exclusive right-of-way and easement to dispose of storm water to and through the Lots to the point of entry onto the City right-of-way or to any subsequent location. Developer may, in its sole discretion, (i) permit the owners of adjoining property or adjacent property to use or benefit from the drainage easements in this Section or (ii) grant additional rights and easements to use or benefit from such drainage and detention easements or to use or benefit from the Detention Facilities in the Development; provided, however, Developer shall be responsible for determining that the additional beneficiaries of such easements or other rights will not exceed the intended capacity of such systems. Developer shall initially construct and install Detention Facilities sufficient to cause the surface water runoff (including storm water) from the Development to flow and be discharged to such Detention Facilities, where it will be treated and released such that the overall rate of flow from such Detention Facilities will be controlled and managed to a level consistent with City requirements in effect as of the time the Detention Facilities were constructed and installed. The Detention Facilities shall be designed to a capacity sufficient to handle any increased surface water runoff/storm water flow caused by future construction and uses within the Development as such uses are contemplated on Exhibit B hereto and as such uses may be modified to provide for future development, as may be Approved by Developer, not reflected on Exhibit B. Developer shall not be responsible for constructing or installing changes to the Detention Facilities made necessary because of a change in City or other governmental requirements not in effect when the Detention Facilities were initially constructed and installed.

3.6. Term of Easements. The easements set forth herein shall constitute easements appurtenant to the Lots (and each of them), and not easements in gross, and shall continue in favor of the respective Lots in accordance with the terms of this Agreement.

3.7. Developer's Rights as to Common Area. Developer hereby reserves the right to eject or cause to be ejected from the Common Areas any persons not authorized, empowered or privileged to use the Common Areas pursuant to this Agreement. Provided there is no other means reasonably available to prevent the acquisition of prescriptive rights by any person(s) or entity, Developer reserves the right to temporarily

close off access to the Common Areas (or portions thereof) for one 24-hour day to prevent the acquisition of prescriptive rights by any person(s) or entity; provided, however, that prior to closing off access to any portion of the Common Areas, as herein provided, Developer shall give written notice of its intention to do so, and shall coordinate such closing to minimize any unreasonable interference with the use or the operation of the Lots.

3.8. Prohibition Against Granting Easements. Unless Approved by Developer, no Party, other than Developer, shall grant an easement or easements of the type set forth in this Agreement for the benefit of any Lot, or that would burden or adversely affect any other Lot or any Outlot, without the written consent of the Owner of such Lot or Outlot; provided, however, that the foregoing shall not prohibit: (i) the granting or dedicating of easements Approved by Developer by a Party on its Lot to governmental authorities or to public utility companies for provision of utility lines or the creation of public right-of-ways to service all or a portion the Development, (ii) any existing easements, and (iii) any easements granted to the adjoining property or the Lots, by Developer in its sole discretion. If a utility line or public right-of-way is dedicated and accepted for maintenance by a governmental authority or public utility, then the operation and maintenance of such utility line shall thereafter be the responsibility of the party accepting the dedication unless otherwise specified by the governmental authority or public utility in the dedication.

3.9. No Merger. Notwithstanding a Party's ownership of more than one Lot, the easements granted hereunder shall burden and benefit each Lot individually, without merger as a result of such common ownership, and upon conveyance of a Lot so that such Lot ceases to be under common ownership, neither the Party conveying said Lot nor the Party acquiring said Lot shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date this Agreement is recorded in the office of the recorder of the county in which the Development is located.

#### 4. Buildings.

4.1. Design and Plans Approval. No Building or other improvements shall be constructed, erected, expanded, or altered on any Lot until the plans and specifications for such Building or improvements (including without limitation site layout, exterior Building materials and colors, landscaping and parking layouts, signage plans, drainage plans, grading or other plans as requested by Developer) are prepared in accordance with the Design Criteria and have been Approved by Developer. Except as detailed in this Agreement or as otherwise Approved by Developer, the Buildings and other improvements shall be designed so that the exterior elevation of all sides of each Building shall be architecturally and aesthetically compatible with the architectural theme of the other Buildings within the Development (as Approved by Developer), including without limitation, all materials, massing features, wall articulation, glass openings and colors. The design and construction on all Lots shall be first-class quality and in accordance with the plans Approved by Developer and in complete and full compliance with any and all governmental requirements and all City zoning and other ordinances, and all restrictive

covenants of record encumbering the respective Lot. Unless Approved by Developer, no Building (i) shall have a metal exterior or roof or (ii) shall encroach from one Lot onto another Lot. In order to produce an architecturally compatible and unified development contemplated by this Agreement, each Owner agrees to consult with the Project Architect and Developer for a reasonable period of time concerning the exterior design, color treatment and exterior materials to be used in the construction, alteration and reconstruction of all Buildings and structures on its respective Lot(s), and to consider the development of the other Lots with respect thereto prior to selecting the specific materials and colors for its exterior improvements. Each Party agrees to cause its respective architect to work in good faith with the Project Architect and Developer so that the Buildings and other improvements to be erected and constructed on such Party's Lot(s) will have an overall cohesive and related architectural continuity and will be in harmony with each other. Written Approval of the plans and specifications by Developer shall be conclusive as to each Party's compliance with this Section. The Parties, in the performance of their construction, shall not (i) cause any unnecessary or unreasonable increase in the cost of construction of the other Lots, (ii) unreasonably interfere with any other construction being performed on the other Lots; or (iii) unreasonably impair the use, occupancy or enjoyment of the Lots or any part thereof as permitted or contemplated by this Agreement.

4.2. [Reserved.]

4.3. Development of the Lots. In addition to any other restrictions herein provided and the Rules and Regulations, the Lots shall be developed only under the following guidelines:

4.3.1. Required Minimum Parking. Unless otherwise Approved by Developer, the required minimum parking ratio for the Lots shall not be less than the lesser of 4 parking spaces for each one thousand (1,000) square feet of Floor Area or that required by the City. Developer may, at its option but without any obligation to do so, construct structured parking within the Common Areas. All parking spaces shall be of a size and nature in compliance with all governmental requirements. The Owner of a Perimeter Lot shall provide sufficient parking on such Perimeter Lot in the aggregate to self-park and meet applicable governmental requirements or to meet the requirements of Developer.

4.3.2. Screening. Any rooftop equipment shall be screened from public view from adjacent public streets and highways and in a manner Approved by Developer and in compliance with the Design Criteria. Any trash facility shall be screened from public view from adjacent public streets and highways on all four sides in a manner Approved by Developer and in compliance with the Design Criteria.

4.3.3. Signs. All signs shall be in compliance with the Design Criteria, unless otherwise agreed to by Developer, and any and all governmental requirements and zoning and other ordinances and shall be submitted to be Approved by Developer. Notwithstanding the foregoing, no exterior

identification signs attached to any Building in the Development shall be (i) flashing, moving or audible signs, or (ii) signs employing exposed neon tubes, exposed ballast boxes or exposed transformers. Further notwithstanding, temporary signs promoting the businesses, including without limitation, a multi-family project on any Apartment Lot, shall be permitted from time to time throughout the calendar year.

4.4. General. Subject to the restrictions set forth in this Agreement, any activity within the Common Area other than its intended purpose which is to provide for ingress, egress, drainage, utilities, or signage and parking for the customers, invitees, and employees of those businesses conducted within the Development and for the servicing and supplying of such businesses, shall be permitted only so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Area in accordance with this Agreement shall not be charged any fee for such use. The Parties agree that unless otherwise Approved by Developer, the Common Area shall be maintained as such and shall not be fenced or otherwise obstructed and shall be kept open at all times for the free use thereof as intended. Notwithstanding anything herein to the contrary, Developer shall be permitted to temporarily close any private access roads within the Development or Common Areas, or to cause or permit the City to temporarily close any public access roads servicing the Development, for public events, from time to time, in Developer's reasonable discretion and provided reasonably equivalent alternate traffic solutions are implemented during such temporary closures.

4.5. Unimpeded Access Between Lots; Obstructions. The Parties covenant that at all times free access between each Lot and the adjacent contiguous Lots or public rights of way, and the use of the entire Common Area will, in each instance, be non-exclusive, and for the use and benefit of all Parties and their respective Permittees, subject to the limitations contained herein. Except as specifically depicted on the Site Plan or as may be Approved by Developer, no fence, division, partition, rail, or obstruction of any type or kind shall ever be placed, kept, permitted, or maintained between the Lots or between any subsequent division thereof or in or upon or along any of the common property lines of the Lots or the common property line of the Development, or of any portion thereof, except within public roads servicing the Development, and except as may be required at any time and from time to time in connection with the control, construction, maintenance, and repair of the Common Area. This Section 4.5 shall not apply to the Apartment Lots.

4.6. General. The Lots and Outlots shall be kept neat, orderly, planted in grass and trimmed or covered in a suitable dust cap until improved and construction. Following completion of the improvements on any Lot, the parties shall maintain the Lots and improvements thereon in good condition and repair and in a neat and orderly appearance, consistent with the requirements set forth in Section 2 of Exhibit D hereto.

## 5. Maintenance of the Development.

5.1. Maintenance. All maintenance of the Common Areas shall initially be provided (or caused to be provided) by Developer in accordance with this Agreement.

Developer shall manage such maintenance and the expenses thereof in a commercially reasonable manner and shall expend only such funds as are reasonably necessary for the maintenance of the Common Areas in the manner required under this Agreement. The Developer reserves the right to assign the maintenance obligations to the Association at any time. The Developer or the Association, as applicable, shall have the right to contract with a building management agency to complete the maintenance obligations. As to all Common Areas, the Developer or its assignee shall complete the following maintenance (collectively, the "Maintenance Obligations"):

5.1.1. Maintain the Common Areas including but not limited to the costs of maintenance, removal of debris, and landscaping, and any other costs incurred in Developer's reasonable judgment, to maintain such Common Areas in a condition reasonably required to insure necessary aesthetics in Developer's reasonable discretion. Developer shall maintain the Common Areas at all times in good repair and condition, and in a manner and quality consistent with the Rules and Regulations set forth in Section 1 of Exhibit D and consistent with comparable first-class developments in the Omaha, Nebraska metropolitan area. Developer's maintenance of the Detention Facilities shall include mowing and trimming any grass and landscaping, repairing and replacing any pumps and other mechanical equipment used to operate the Detention Facilities, cleaning and repairing inlets, and controlling sediment and erosion to and from or otherwise affecting the Detention Facilities to a level consistent with City requirements and to minimize any damage to other property within the Development from storm water. Any maintenance, repair or other work in the Common Areas and Detention Facilities shall be performed in accordance with all requirements of applicable laws, rules, codes and regulations, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment. Developer shall not bury, abandon or otherwise dispose of any Hazardous Material or non-hazardous substances or wastes in the Detention Facilities. Developer shall cause all repairs and maintenance (including all work in connection therewith such as general clean-up and proper surface and/or subsurface restoration) to be completed promptly, in a good and workmanlike manner, and in a manner so as to minimize interference with any Lot or with the normal use occurring on each Lot. Any work requiring a closure of any of the Detention Facilities or any driveways, perimeter roads or access ways within the Common Areas shall require Developer to provide the Owners and residents of the Apartment Lots reasonable written notice prior to any such closure (not less than 24 hours except in the case of an emergency) and reasonable alternative access during such repairs or maintenance activities. Upon completion of any work, the Developer shall remove all debris and during the course of the work shall keep the affected areas in a reasonably neat and clean condition. Developer shall cause its contractors, employees or agents who maintain and repair the Common Areas, including, without limitation, the Detention Facilities, to comply with the requirements of this Section;

5.1.2. If Developer considers reasonably necessary any repairs, maintenance, renewals or replacements required by the provisions of this Section

to be made or provided by the Owners, Developer may request in writing that the Owner make such repairs or perform such maintenance or provide such renewal or replacements, and, upon Owner's failure or refusal to do so within ten (10) days from the date of such written request (plus such additional reasonable time as is necessary if the Owner is exercising due diligence), Developer shall have the right (but shall not be obligated), either itself or through a third-party contractor, to make such repair, perform such maintenance or provide such renewal or replacement (Owner hereby waiving any damage caused thereby including, without limitation, any damage caused by any such third-party contractor engaged by Developer to perform such work); thereupon, Owner shall, at Developer's election on demand pay (or reimburse Developer for) the reasonable cost thereby incurred by Developer; and in addition, if not paid within twenty (20) days of such demand, Owner shall pay Developer, upon demand, interest at the annual rate of fifteen percent (15%) and an administrative fee of 10 cents (\$.10) per each dollar expended by Developer.

5.2. Lien. In the event an Owner does not pay Developer all or any portion of such Owner's Assessment (as defined in Section 5.3) pursuant to Section 5.3 below, such unpaid portion of such Owner's Assessment shall constitute a lien against the defaulting Owner's Lot. Each Owner hereby agrees that the total amount of any unpaid Assessment may be assessed as a lien against such Owner's Lot, irrespective of the items for which payment is sought pursuant to such lien. Such lien shall attach and take effect notwithstanding a failure to record a claim of lien in the public records.

5.3. Assessments for CAM Expenses. Developer, or the assignee of Developer, may levy reasonable assessments against the Owners, their successors and assigns, computed as detailed in Section 5.3.1 below, for their respective share of CAM Expenses. Each Owner shall pay to Developer its proportionate share of CAM Expenses.

5.3.1. Computation of Assessment. Each Owner's assessment (hereinafter, the "Assessment") shall be computed by multiplying the CAM Expense by the following: As to the Lots (other than the Outlots): a fraction, the numerator of which is the Lot Area of the respective Lot and the denominator of which is the total acreage of all of the Lots (other than the Outlots) in the Development.

5.3.2. Budget and Payment of CAM Expenses. Prior to the beginning of each calendar year, Developer shall provide each Owner with an itemized budget in reasonable detail for CAM Expenses for the upcoming calendar year, including the estimated Assessment due from each Owner; provided, however, Developer will use commercially reasonable efforts to provide such itemized budget no later than 90 days prior to the beginning of each year (i.e., by October 1). Commencing January 1 of each calendar year, the Assessment due from each Owner shall be paid in monthly installments on the first day of each calendar month in advance based on the estimate set forth in the budget. Developer shall have the right, exercisable by 60 days' written notice from Developer to an Owner at any time, to require such Owner to pay to Developer as such Owner's

proportionate share of CAM Expenses a different sum of money than estimated based upon actual CAM Expenses incurred (such notice to be accompanied by an itemized statement in reasonable detail setting forth the reason for the change and itemized amounts). In the event Developer shall have given notice to an Owner of the changed amount then, commencing on the date designated by Developer and continuing for the balance of the period during the Term of this Agreement, as hereinafter defined, indicated by Developer, such Owner shall pay Developer monthly on the first day of each month, in advance, one-twelfth (1/12) of the amount so estimated by Developer. Within ninety (90) days after the end of each calendar year, Developer shall furnish each Owner with an itemized statement in reasonable detail summarizing the actual CAM Expenses for the preceding calendar year, including any and all documentation supporting each amount charged for each item on such statement, and setting forth the method by which each Owner's proportionate share was determined as herein provided. If the aggregate of the Owner's monthly proportionate share paid by an Owner during any year exceeds the amount which is actually due by an Owner as provided herein, the difference shall be credited against the next succeeding monthly proportionate share payments to be made by such Owner under this Section. In the event the amount paid by an Owner shall be less than its proportionate share, then such Owner shall pay the remaining balance within thirty (30) days after such notice is furnished.

5.3.3. Audit of CAM Expenses. Any Owner shall have the right to audit Developer's records, at such Owner's expense, to determine the validity of the CAM Expenses, including, without limitation, upon receiving a notice of a change in the estimated amount. Any Owner, at its sole cost and expense through any duly authorized representative designated by such Owner, shall have the right, exercisable no more than twice each calendar year, to examine and/or audit the books and records evidencing CAM Expenses and Assessment for the most recently completed calendar year, at Developer's office where such records are kept. If such inspection or audit reveals that an error was made in the CAM Expenses previously charged to such Owner, then Developer shall refund to such Owner any overpayment of any such costs, or such Owner shall pay to Developer any underpayment of any such costs, as the case may be, within thirty (30) days after notification thereof. Developer and such auditing Owner shall use good faith efforts to cooperate in such negotiations and to promptly resolve any discrepancies between Developer and such Owner in the accounting for CAM Expenses and Assessment. Notwithstanding anything to the contrary in this section, in the event the audit reveals that Developer has overcalculated or overstated the auditing Owner's Assessment for any year by ten percent (10%) or more, and such Owner has paid all of the amount overcalculated or overstated, then Developer will pay all of such Owner's reasonable costs and expenses of the audit, not to exceed \$2,000.00.

6. [Reserved.]

7. **Owner's Association.**

7.1. **The Association.** The Association will be created by Developer to administer, insure, operate, manage, control, maintain, repair, rebuild and restore all of the Common Areas for the mutual benefit of all Owners, so that the Common Areas stay clean, safe, in good repair and operating order, and consistent with the overall quality of the Development. The Association shall have the authority to provide services affecting portions of the Common Areas consistent with the overall character and use of the Development, provided that such services are for the mutual benefit of all of the Owners and are not provided by the Developer or any individual Owner, or to grant licenses or concessions for the provision of such services, and to charge reasonable fees for such services, licenses or concessions. Any amounts received by the Association from fees, licenses, concessions and other sources shall be held and used by the Association for the benefit of the Owners pursuant to such rules, resolutions or regulations as the Association may adopt.

7.2. **By the Developer.** At the time Developer assigns its rights and duties to the Association, and so long as the Association assumes full responsibility, liability and obligation therefor, Developer shall have no continuing liability or obligation (a) for any repair, maintenance, operating, insuring, replacement or restoration of any of the Common Areas or (b) to levy assessments for CAM Expenses, all of which shall be the continuing obligation and liability of the Association in accordance with the provisions of this Agreement.

7.3. **Membership and Voting.** Each Owner shall be a "Member" of the Association. Membership shall be appurtenant to ownership of any Lot, and may not be separated from ownership of each Lot. Each Member, whether one or more persons and entities, shall have a number of votes equal to the ratio such Owner's Lot represents in relation to the land area of the Development, which is initially described on Exhibit C attached hereto and incorporated herein by this reference, on each matter properly coming before the Members of the Association. Ownership of an Outlot does not count toward membership in the Association or factor in to the land area of the Development for purposes of determining voting rights.

7.4. **Purposes and Responsibilities.** The Association shall have all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include, but shall not be limited to, the following:

7.4.1. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Areas, and the enforcement of the rules and regulations relating to the Common Areas and the Development;

7.4.2. The landscaping, mowing, watering, repair and replacement of the Common Areas;



7.4.3. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Agreement;

7.4.4. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment and purchase of insurance, if necessary, covering any Common Areas against property damage and casualty, and purchase of liability insurance coverages for the Association, the directors or officers of the Association, if any, and the Association Members;

7.4.5. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Agreement, as the same may be amended from time to time;

7.4.6. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association;

7.4.7. The deposit, investment and reinvestment of Association funds in interest-bearing bank accounts (if possible), money market funds or accounts, certificates of deposit or similar investments in which principal is not diminished;

7.4.8. The employment of professionals and consultants to advise and assist the officers and directors of the Association in the performance of their duties and responsibilities for the Association;

7.4.9. The review and approval of building design and signage;

7.4.10. General administration and management of the Association, execution of such documents, and doing and performance of such acts as may be necessary or appropriate to accomplish such administration, management, or purposes of the Association.

7.5. Liens. The CAM Expenses for each Lot shall be the obligation of each Owner of the applicable Lot at the time when the CAM Expenses first become due and payable. The CAM Expenses, together with interest at the Default Rate set in Section 15.2, costs and reasonable attorneys' fees, if not paid within thirty (30) days from receipt of invoice, shall also be a charge and continuing lien upon the Lot against which the CAM Expenses are charged. The obligation for delinquent CAM Expenses shall not pass as a personal liability to the successor in title to the Owner at the time the CAM Expenses become delinquent unless such CAM Expenses are expressly assumed by the successors, but all successors shall take title subject to the lien for such CAM Expenses, and shall be bound to inquire of the Association as to the amount of any unpaid CAM Expenses.

7.6. Effect of Nonpayment of Assessments; Remedies of the Association. Any installment of CAM Expenses which is not paid when due (within thirty (30) days of receipt of invoice from the Association) shall be delinquent. After providing the applicable Owner a written notice and an additional thirty (30) days in which to cure the

delinquency, the Association may bring an action at law against any Owner obligated to pay the same, or foreclose the lien against the Lot(s), and pursue any other legal or equitable remedy. The Association shall be entitled to recover as part of the action, and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Areas or abandonment of its Lot. The Mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such Mortgagee all of its rights with respect to such lien and right of foreclosure and such Mortgagee may thereupon be subrogated to any rights of the Association.

7.7. Subordination of the Lien to Mortgagee. The lien of CAM Expenses provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for an improvements or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the CAM Expenses lien.

8. **Insurance; Mutual Release and Waiver of Subrogation.**

8.1. Insurance. Unless otherwise Approved by Developer, each Party, at its respective sole cost and expense, shall at a minimum obtain and keep in force throughout the term of this Agreement, the following insurance with an insurance company authorized to do business in the State and which has a general policy rating of A or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a similar rating from a similar or successor service) (hereafter, an "Approved Insurance Company");

8.1.1. "Special Form Causes of Loss" Property Insurance. Property insurance using ISO forms CP0010 and CP1030 (or their equivalent) and including equipment breakdown covering all of each respective Party's plate glass, real and personal property, trade fixtures, and improvements located in, on or about a Party's Lot(s) (*i.e.*, including, without limitation, all furniture, fixtures, equipment, merchandise and any other personal property located in the property) which were made and/or paid for by each respective Party, in an amount equal to the full replacement cost thereof.

8.1.2. Business Interruption Insurance. Business interruption insurance using ISO form CP0030 (or its equivalent) and including equipment breakdown, with a deductible or waiting period of no greater than 72 hours, in an amount that shall reimburse each respective Party for direct or indirect loss of earnings attributable to all perils insured against in the previous Subsection or attributable to the prevention of access to a Party's Lot(s) and/or Building(s) by civil authority; and sufficient to reimburse each respective Party for loss of income in the event of a casualty to, or temporary taking of, the Development, any Lot, and/or Building.

8.1.3. Commercial General Liability Insurance. Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, including “dram shop” or host liquor liability (if alcoholic beverages are sold or served in, from or about a Party’s Lot(s)), written on an occurrence basis using ISO Form CG0001 or its equivalent with no amendments to the definition of an insured contract, in limits of not less than \$1,000,000.00 inclusive per occurrence and \$1,000,000.00 annual aggregate.

8.1.4. Umbrella Liability Insurance. Umbrella liability insurance over the primary general liability policies in limits of not less than \$5,000,000.00 inclusive per occurrence and \$5,000,000.00 annual aggregate, including dram shop or host liquor liability (if alcoholic beverages are sold or served in, from or about a Party’s Lot(s)).

8.1.5. Policies of Insurance – Parties. The Parties shall have the right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by such blanket insurance shall affect the insurance coverages required hereby and further provided that such Party delivers to the other Party(ies) a certificate or certificates specifically stating that such coverages apply to the other Party(ies) and the Development (or such Party’s Lot(s), as applicable). All policies of insurance or certificates thereof shall name the Developer, the Association, and, upon written request of any other Party, such other Party, its/their property manager(s), if applicable, and its/their Mortgagees, as additional insureds, as their respective interests may appear. All self-insured retentions and deductibles maintained by any Party shall be subject to Developer’s reasonable Approval. Any and all deductibles or coinsurance in the above described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at each Party’s own risk. Each Party shall deliver to the other Party(ies) certificates evidencing the required insurance by the beginning of the term under this Agreement or within 15 days of such Party acquiring interest in a Lot, and, with respect to renewals of such policies, not later than fifteen (15) days prior to the end of the expiring term. All policies of insurance carried by each Party shall be primary and non-contributing in the event of any loss or damage with any insurance required to be maintained by the other Party(ies) under this Agreement. All policies and certificates shall require the insurer to notify the other Party(ies) and any Mortgagee of the other Party(ies), in writing, not less than fifteen (15) days before any lapse, non-renewal or cancellation, including cancellation for nonpayment of premium, or other termination thereof and shall include a clause or endorsement denying the insurer any rights or subrogation against the other Party. Each Party reserves the right to request or receive for review certified copies of any and all insurance policies to which this Agreement is applicable. The required coverage and/or limits referred to herein shall in no way affect or limit each Party’s liability with respect to its duties and obligations under this Agreement.

8.2. Mutual Release and Waiver of Subrogation. Anything in this Agreement to the contrary notwithstanding, each Party hereby releases the other Party(ies) from any liability, right of recovery, claim, action or cause of action the other Party(ies) may have on account of loss, cost, damage or expense which arises from any peril (a) that is or would be covered by any policy of property insurance required to be carried by the releasing Party under this Agreement (regardless of whether such insurance is actually being carried), or (b) that is covered by any other property insurance actually being carried by the releasing Party at the time of such accident or occurrence, regardless of the negligence of the Party(ies) being released or its agents, contractors, officers or employees, and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, including that of the insurance carriers of the other Party. For purposes of the foregoing release and waiver of subrogation, the insurance policies identified in clauses (a) and (b) above shall be deemed to provide coverage without any deductible, self-insurance or similar amount. Each Party shall give their respective insurance carriers written notice of the terms of the above mutual waivers and the Parties' respective insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of said policies by reason of such waivers.

8.3. Construction-Related Insurance. Unless otherwise Approved by Developer, prior to constructing any Building(s) or other improvements on its Lot(s), each Party shall comply with the following terms:

8.3.1. Architect/Engineer. Each Party shall cause all architects and engineers engaged by such Party (each, a "Professional") to obtain and keep in force, with an insurance company authorized to do business in the State and which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), a policy of professional liability insurance covering all liability arising out of any negligent acts or errors and omissions committed by such Professional with limits of not less than \$1,000,000.00 per claim and annual aggregate, with a retroactive date prior to the contract date. Each Professional shall maintain such policy for a minimum of 2 years after completion of work or shall obtain a 2 year extended reporting period if the policy is canceled or non-renewed.

8.3.2. Contractor. On or before entry onto any Party's Lot(s), such Party shall cause its contractor (each, a "Contractor") to obtain and to keep in force, with an Approved Insurance Company until construction of the Building and related improvements are completed, the following insurance:

8.3.2.1 Commercial General Liability Insurance. Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO Form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, in limits of not less than \$1,000,000.00 inclusive, per occurrence, and \$1,000,000.00

annual aggregate per project, or such higher limits as Developer may require from time to time during the Term of this Agreement. Completed Operations to remain in force for at least 2 years following project completion. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Developer, Developer's property manager, and all Mortgagees;

8.3.2.2 Commercial Automobile Liability Insurance. Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this Agreement covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident), or such higher limits as Developer may require from time to time during the Term of this Agreement. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Developer, Developer's property manager, and all Mortgagees;

8.3.2.3 Employer's Liability Insurance and Workers' Compensation. Employer's Liability insurance, with minimum limits of not less than \$500,000 bodily injury each accident, \$500,000.00 bodily injury by disease policy limit and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation, in form and amount as required by applicable state law. To the extent permitted by applicable law, such policy shall include a waiver of any right of subrogation of the insurers thereunder against the Developer, Developer's property manager, and all Mortgagees;

8.3.2.4 Umbrella Liability Insurance. Umbrella liability insurance over the primary general liability, automobile liability and employer's liability insurance policies in limits of not less than \$5,000,000.00 inclusive per occurrence, and \$5,000,000.00 annual aggregate, per project, or such higher limits as Developer may require from time to time during the Term of this Agreement. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Developer, Developer's property manager, and all Mortgagees;

8.3.2.5 Builder's Risk Insurance. Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non-reporting) form for full replacement cost covering all work incorporated in the Development and all materials and equipment in or about the Lot and/or Building, off site and in transit. This insurance shall include: (i) interests of the Party, Developer, Developer's property manager, all Mortgagees, such Party's Contractor, subcontractors and sub-subcontractors; and (ii) to the extent permitted by applicable law, a mutual release and waiver of subrogation for all parties; and

8.3.2.6 Insurance Changes. Developer may require, from time to time, changes or endorsements to each Party's Contractor insurance required herein.

8.4. Policies of Insurance – Contractors. Each Party's Contractor shall have the right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereunder and further provided that such Party's Contractor delivers to Developer a certificate specifically stating that such coverages apply to Developer, Developer's property manager, if any, the Association, and all Mortgagees, the Lot, the Building, and the Development. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name the Party (*i.e.*, fee Owner of such Lot), Developer, Developer's property manager, if any, the Association, and all Mortgagees, as additional insureds, as their respective interests may appear, including products and completed operations. All self-insured retentions and deductible amounts must be Approved by Developer. Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at each Party's Contractor's sole risk. Each Party's Contractor shall deliver to Developer certificates evidencing the required insurance prior to Contractor's entry on the Development, Lot, or Building, and with respect to renewals of such policies, not later than fifteen (15) days prior to the end of the expiring term. All policies of insurance carried by each Party's Contractor shall be primary and non-contributing in the event of any loss or damage with any insurance required to be maintained by any other Party's Contractor under the terms of this Agreement. All policies and certificates shall notify each Party named as an additional insured, Developer and any Mortgagee, in writing, not less than fifteen (15) days before any lapse, non-renewal or cancellation, including cancellation for nonpayment of premium, or other termination thereof and shall include a clause or endorsement denying the insurer any rights or subrogation against such Party and Developer, Developer's property manager, and all Mortgagees. Developer reserves the right to request and receive for review certified copies of any and all insurance policies to which this Agreement is applicable. The required coverage and or limits referred to and set forth herein shall in no way affect or limit the each Party's Contractor's liability with respect to its performance.

8.5. Increases in Minimum Coverages. Unless otherwise Approved by Developer, during the Term of this Agreement each Party shall be required to increase the minimum insurance coverages carried by such Party by the greater of: (i) as required under this Agreement; (ii) as required by any Mortgagee upon notice of any Mortgagee; or (iii) by CPI over a five-year period provided the resulting coverage is similar to coverage required in other first-class shopping centers in the Omaha, Nebraska metropolitan area. In a year that the insurance coverages are increased pursuant to this Section, the increase in CPI shall be calculated by dividing the CPI published in the month most closely preceding the anniversary of the Effective Date in that year by the CPI published for the same month ten years prior. For purposes of this Lease "CPI" shall mean the Consumer Price Index for All Urban Consumers for the Midwest Region, published by the Bureau of Labor Statistics of the U.S. Department of Labor Statistics of

the U.S. Department of Labor. If the Bureau of Labor Statistics revises such Index, the Bureau of Labor Statistics will be the sole judge of the comparability of successive indexes.

9. **Taxes.** Real estate taxes and general and special assessments (collectively, "**Real Property Taxes**") levied and assessed against any Lot shall be separately assessed by the taxing authority and paid directly to the taxing authority by the Owner of such Lot except as otherwise expressly provided herein. Each Party, during its period of ownership, shall pay or cause to be paid on or before the date such Real Property Taxes become delinquent or incur any penalty, all such Real Property Taxes levied and assessed on its Lot and any improvements thereon. Such Real Property Taxes may be paid in installments where installments are permitted by the taxing authorities. In addition to Real Property Taxes, each Party shall cause to be paid before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon the business operations on its Lot(s) as well as upon the merchandise, inventory, furniture, fixtures, equipment and other personal property of such businesses. In the event any such items of property of any Party other than Developer are assessed with property of Developer, such assessment shall be equitably divided between Developer and such other Party by Developer, after consultation with such other Party. Notwithstanding the foregoing, all Real Property Taxes applicable to any Outlot shall be included in CAM Expenses.

10. **Damage or Destruction.** In the event of damage or destruction of any improvements erected or placed on any Lot, whether by fire or other casualty or a non-covered event, each Owner agrees to take such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any such damage or destruction and to promptly remove all debris resulting from such damage or destruction and take such action as is necessary to return its property and Lot to a visually acceptable, neat, safe condition. If an Owner fails to remove all such debris or take such action as is necessary to place the property in a safe condition within seventy-two (72) hours following such damage or destruction, or if such debris cannot be removed or property returned to a safe condition within such 72-hour period, to commence such removal or commence such other action as necessary to return the property to a safe condition within such 72-hour period and diligently pursue same until completion, Developer shall have the right (but no obligation) to do so, whereupon such Owner shall be liable to pay Developer upon demand, the reasonable cost and expense incurred by Developer, including interest at the Default Rate set forth in Section 15.2 and a reasonable management fee not to exceed fifteen percent (15%). Although no transfer of ownership shall be deemed to have occurred as a result of such Owner's election not to restore its improvement(s), said area shall be treated as Common Area and shall be maintained and insured by Developer as such with such costs of maintenance and insurance being recoverable from such applicable Owner (and not other Owners) and, if not paid within twenty (20) days of such demand, such applicable Owner shall pay Developer annual interest at the Default Rate and an administration fee of fifteen cents (\$.15) per each dollar expended by Developer until such time as said Owner may elect to rebuild thereon. In connection with Developer's maintenance of such unrestored area, Developer and Developer's employees, agents and contractors are hereby granted a license by such Owner to enter onto such unrestored area in connection with the maintenance thereof in accordance with this Agreement.

11. **Indemnification.**

11.1. **Construction.** Each Owner ("Indemnitor") covenants and agrees to indemnify, defend, and hold harmless Developer and the other Parties ("Indemnitees") from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from Indemnitor's construction activities or construction operations on a Lot. For purposes of this Section 11, "Owner" includes the owner of an Outlot. Any Owner who is asked to "defend" Developer or another Party shall have the right to select defense counsel and such selected counsel shall be subject to Approval of Developer or such Indemnitees, such Approval not to be unreasonably withheld, conditioned or delayed. In the event Indemnitee desires to select its own counsel, it shall be at the Indemnitee's sole expense and such defense shall be tendered immediately and in a manner that does not prejudice the rights of the Indemnitor. Any indemnity under the provisions of this Section shall not apply to any claims brought separately against the indemnified Party for a separate act or omission. Each Owner (each, a "Constructing Owner") shall pay all reasonable costs and expenses incurred by any other Party due to damage to the other Lot arising from or related to such Constructing Owner's construction operations at such Constructing Owner's Lot. Except for any Staging Area (as defined in Exhibit D) Approved by Developer, no Constructing Owner shall materially obstruct the free flow of pedestrian or vehicular traffic upon and across any other Lot during any period of construction at such Lot or at any time thereafter. During such period of construction, such Constructing Owner shall cause the driveways and roads (except for those within any Staging Area Approved by Developer) to be maintained free of all materials and supplies arising out of or resulting from such Constructing Owner's construction and otherwise in a neat and orderly condition undisturbed from such Constructing Owner's construction operations. Any vehicle or equipment used in such construction or any materials used in such construction shall be parked or stored only on an area within such Constructing Owner's Lot. Each Constructing Owner shall defend, indemnify and hold harmless each other Party and its tenants and occupants from and against any and all loss, cost, damage, liability, claim or expense (including, without limitation, reasonable attorneys' fees and costs) arising from or relating to such Constructing Owner's construction operations. All construction operations at such Constructing Owner's Lot shall be performed in a lien-free and good and workmanlike manner, in accordance with all laws, rules, regulations and requirements and any rules and regulations promulgated by Developer with regard to such Party's construction. Each Constructing Owner and its tenants and their respective contractors and subcontractors shall be solely responsible for the transportation, safekeeping and storage of materials and equipment used in connection with such Constructing Owner's construction operations, and for the removal of waste and debris resulting therefrom. In the event any Constructing Owner's construction operations damage the condition of any portion of the Development, such Constructing Owner shall restore the Development, or part thereof, to its condition existing prior to commencement of such Constructing Owner's construction operations, including, without limitation, any filling and compacting of all excavations, repaving of paved areas and replacement of landscaping. No such construction operations shall result in a labor dispute or encourage labor disharmony.



11.2. Liens. No Constructing Owner shall permit or suffer any mechanic's liens claims to be filed or otherwise asserted against any other Lot in connection with such Constructing Owner's construction operations, and shall promptly discharge the same in case of the filing of any claims for liens or proceedings for the enforcement thereof, or in the event such Constructing Owner in good faith desires to contest the validity or amount of any mechanic's lien, such Constructing Owner shall have the right to contest the validity or amount of any such mechanic's lien, provided that such Constructing Owner either (a) bonds over any such mechanic's lien, or (b) deposits with the Owner of the Lot affected by such mechanic's lien cash or a letter of credit or other security reasonably acceptable to such affected Party in an amount equal to one hundred fifty percent (150%) of the amount of said lien to insure payment and prevent any sale or forfeiture of any part of the affected Lot by reason of nonpayment; and such Constructing Owner promptly notifies such affected Party, in writing, of such contest. Any such contest shall be prosecuted with due diligence and such Constructing Owner shall promptly after the final determination thereof pay the amount of any such lien, together with all interest and other costs payable in connection therewith. Any such letter of credit deposited hereunder shall be issued by a national bank reasonably acceptable to such affected Party.

11.3. Liability.

11.3.1. Indemnity. Each Party (including Developer) hereby agrees to indemnify, defend and hold harmless Developer and all other Parties from and against all claims and all costs, expenses, damages and liabilities (including reasonable attorneys' fees) incurred in connection with such claims, including any action or proceedings brought thereof, arising from or as a result of: (i) the death of or any accident, injury, loss or damage whatsoever caused to any natural person or to the property of any person as may occur on or off such Lot by reason of an occurrence or condition on such Lot or the improvements which may be constructed thereon; or (ii) a negligent act or omission of such Party, its agents, servants, employees or contractors; excepting however, in each case referred to in (i) and (ii) above, to the extent any claims, death, accidents, injuries, loss or damages arises or results from the negligent act or omission of the Party, whichever is seeking indemnification, or their agents, servants, employees or contractors. Any Party who is asked to "defend" Developer or another Party shall have the right to select defense counsel and such selected counsel shall be subject to approval of Developer or such Indemnitees, such approval not to be unreasonably withheld, conditioned or delayed. In the event the indemnified Party desires to select its own counsel it shall be at the Indemnitee's sole expense and such defense shall be tendered immediately and in a manner that does not prejudice the rights of the Indemnitor. Any indemnity under the provisions of this Section shall not apply to any claims brought separately against the indemnified Party for a separate act or omission.

11.3.2. Waiver of Subrogation. Each Party hereby waives (the "Waiving Party") any rights the Waiving Party may have against the Developer or other Parties (including but not limited to a direct action for damages) on account of any loss or damage suffered by the Waiving Party (whether or not such loss or

damage is caused by the fault, negligence or other tortious conduct, acts or omissions of the Developer or other Parties or their respective officers, directors, employees, agents, contractors or invitees), to their respective property, respective Lots and the improvements thereon, its contents or to any other portion of the same arising from any risk covered by or which could be covered by the forms and type of property insurance required to be carried by the Parties, respectively, under this Agreement. The Parties hereto each waive any right of subrogation that such Parties or the respective insurers may have against the other or their respective officers, directors, employees, agents, contractors or invitees and all rights of their respective insurance companies based upon an assignment from its insured. If necessary to prevent the invalidation of such insurance coverage by reason of said waivers, each Party agrees to give each such insurance company written notification of the terms of the mutual waivers contained in this Section and to have said insurance policies properly endorsed. The foregoing waiver shall be effective whether or not the Parties maintain the required insurance or given written notice of the waivers contained herein to their insurance companies.

12. **Prohibited Uses.** All Lots in the Development shall be used only for uses that are consistent with this Agreement and are retail shopping center purposes (including restaurants) or such other purposes as may be agreed in separate agreements with Developer. Developer acknowledges and agrees that the Apartment Lots shall be permitted to be used for multi-family purposes, in addition to other permitted uses. Other uses as are typically found in similar shopping centers in the Omaha, Nebraska metropolitan area including but not limited to Offices as hereinafter defined, may be Approved by Developer. For the purposes of this Section, the term "Offices" shall mean businesses providing services commonly found in similar shopping centers in the Omaha, Nebraska metropolitan area including, by way of example only, and not by way of limitation, the following: financial services, real estate brokerage, insurance agency, bank, travel agency, medical, dental or legal services or general office use or such other Office use Approved by Developer. Notwithstanding the foregoing sentence, the Owners shall not use a Lot or a portion thereof, or permit the use of such Lot or portion thereof, for any of the uses detailed in Exhibit E (Prohibited Uses) without the Approval of Developer. In addition Developer shall have the right to add additional Prohibited Uses from time to time to Exhibit E upon thirty (30) days' prior written notice to each Owner, provided such additional prohibited use shall not otherwise prohibit a then use by an Owner (a "Newly Prohibited Use"), and upon distribution to the Owners such Newly Prohibited Use shall be effective. Such Owner hereby agrees that Developer may file such Newly Prohibited Use on the property of such Owner. Notwithstanding the foregoing, if an Owner desires to permit certain of the Prohibited Uses such Owner must obtain the prior Approval of the Developer. Approval by Developer of any Prohibited Use shall be deemed to be a license terminable at the will of and at any time by Developer for any reason or no reason. In the event of a change or temporary cessation for any reason of a Prohibited Use Approved by Developer for a Lot (or a Newly Prohibited Use as to an existing use later prohibited), the license shall be deemed to have terminated and Developer Approval shall be required for such Lot(s) to resume such Prohibited Use or Newly Prohibited Use.

13. **Future Subdivision or Addition.** Notwithstanding anything to the contrary contained in this Agreement, no Party other than Developer shall have the right, unless Approved

by Developer, to further subdivide any Lot, or to add additional land to a Lot or to the Development, which Approval shall not be unreasonably withheld, conditioned or delayed. Until such time as an individual Lot is conveyed to a successor Party, Developer, in its sole discretion without joinder of any other Party, reserves the right to: (i) adjust the size of a Lot to make it larger or smaller, (ii) redefine the location of a Lot and the perimeter lot lines of said Lot or split any Lot, (iii) change the configuration of parking, traffic islands and landscaping within said Lots any number of times, (iv) add or remove land from adjacent Lots to or from said Lots, and (v) make such other changes as shall accommodate the potential users of such Lot as it may then be configured, and/or the Development; provided, however, Developer shall not remove land from a Lot without complying with any exclusive use covenants in favor of then existing tenants of the Development. Developer shall have the right to replat any portion or all of the Development without the approval or joinder of any Party. In the event of the addition or removal of land from the Development as provided in this Section, Developer shall have the right to amend this Agreement to reflect such change, without approval or joinder of any other party. Notwithstanding the foregoing, if all or any portion of the Additional Property is acquired, then Developer may, at Developer's election, following such acquisition, record this Agreement against the appropriate Additional Property and upon such recordation, the terms of this Agreement and the easements, covenants, conditions and restrictions set forth in this Agreement shall be binding upon and inure to the benefit of such Additional Property, without the need for the consent of, signature of, or the joinder by, any party other than Developer, and such Additional Property shall thereafter be included within and be made a part of the Development.

14. **Hazardous Material.** No Party shall keep, store, produce, permit to be kept, stored or produced, on or about such Party's Lot or any improvements thereon, for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful or which may be considered a Hazardous Material and/or is subject to regulation by any applicable federal, state or local law, regulation, statute or ordinance now or hereinafter enacted. In addition, the Parties agree not to release or discard any Hazardous Materials on said Party's Lot, or any other Lot within the Development. Notwithstanding the foregoing, Parties may store, handle and use the following chemicals, substances or materials if they are used, stored, handled and disposed of in material compliance with environmental laws then in effect: (i) chemicals, substances or materials routinely used in office areas; (ii) janitorial supplies, cleaning fluids or other chemicals, substances or materials reasonably necessary for the day-to-day operation or maintenance of the Party's business and property or the business of any lessee of an Party, and (iii) chemicals, substances or materials reasonably necessary for the construction or repair of improvements on Party's Lot. Each Party covenants that so long as it is the Owner of its respective Lot, at Party's sole cost and expense, it shall promptly comply with all present and future laws and ordinances and the orders, rules and regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards, and officers thereof, and the orders, rules and regulations of the Board of Fire Underwriters where the Lot is situated, or any other body now or hereafter constituted exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, and whether or not the same require structural repairs or alterations, which may be applicable to the Lot or any improvements thereon, or the use or manner of use of such Lot or improvements. Each Party shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance, presently or at any time in the future, in force with respect to the Lot, the improvements and equipment on the Lot or in the

improvements. In addition, each Party, at its cost and expense, shall comply with all laws, statutes, ordinances, rules and regulations of any governmental authority (“Agency”) having jurisdiction thereof concerning environmental matters, including, but not limited to, any discharge into the air, waterways, sewers, soil or ground water of any substance or “pollutant.” Upon prior reasonable notice and at times reasonably acceptable to such Party, Developer and its agents and representatives shall have reasonable access to the Development and any improvements thereon for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Lot(s) or any improvements thereon or made or produced thereon and if Developer or its agents shall in their inspection of the Lot(s), damage the property then they shall restore the property to its prior condition. Each Party, and all occupants of the Lot or any improvements thereon claiming under Party, shall provide to Developer copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to an Agency or otherwise required to be maintained by an Agency or as such are received from any Agency. Developer and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Lot(s) or in any improvements thereon, including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Lot(s) or in any improvement thereon by a Party or an occupant claiming under a Party or otherwise present on the Lot or any improvements thereon. If a Party breaches the obligations stated in this paragraph, or if the presence of Hazardous Material on the Lot or improvements thereon caused or permitted by a Party results in contamination of the Lot and/or improvements, or if contamination of the Lot or improvements by Hazardous Material otherwise occurs for which such Party is legally liable to Developer or any other Party for damage resulting therefrom, then such Party shall indemnify, defend and hold Developer and any other Party harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the period during which such Party is the Owner of such Lot as a result of such contamination. Any Party who is asked to “defend” Developer or another Party shall have the right to select defense counsel and such selected counsel shall be subject to approval of Developer or such Indemnitees, such approval not to be unreasonably withheld, conditioned or delayed. In the event the indemnified party desires to select its own counsel, it shall be at the indemnified party's sole expense and such defense shall be tendered immediately and in a manner that does not prejudice the rights of the Indemnitor. Any indemnity under the provisions of this Section shall not apply to any claims brought separately against the indemnified party for a separate act or omission. This indemnification of Developer and all other Parties by each Party includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the respective Lot. Without limiting the foregoing, if the presence of any Hazardous Material on the Lot caused or permitted by a Party results in any contamination of the Lot and/or improvements thereon, Party shall promptly take all actions at its sole expense as are required by applicable law to return the Lot and/or improvements to the condition existing prior to the introduction of any such Hazardous Material. If a Party does not promptly take such action to return the Lot and/or improvements to its/their prior condition as required, Developer shall have the right, but no obligation, to take such action as required by

law to return the Lot and/or improvements to their prior condition, immediately following notice to such Party by Developer of its intent to take such action, and such Party shall reimburse Developer for any costs incurred by Developer in connection therewith upon submission by Developer to said Party of such costs.

**15. Default and Remedies.**

15.1. Notice and Cure. A default shall occur under this Agreement if any Party (a "Defaulting Party") shall fail to: (a) pay any sum due under this Agreement, and any such failure shall remain uncured for a period of thirty (30) days, or (b) perform any of the terms, provisions, covenants or conditions to be performed or complied with by the Defaulting Party pursuant to this Agreement and any such failure (except as to emergencies or as to snow removal) shall remain uncured for a period of thirty (30) days after any other Party (the "Non-Defaulting Party") shall have served upon the Defaulting Party written notice of such failure; provided that no default shall occur if: (i) the default is of such character as reasonably to require more than thirty (30) days to cure and the Defaulting Party shall commence to cure such default within said thirty (30) day period and shall continuously and diligently cure such default after commencing such cure; or (ii) a separate notice and remedy provision is specifically provided elsewhere in this Agreement for such default and the Defaulting Party complies with and cures under said provision. Notwithstanding the foregoing, if (a) the failure of the Defaulting Party relates to a matter which is of an emergency nature involving immediate threat of damage or injury to persons or property, or (b) the Defaulting Party fails to cure within the time provided therefor, then (i) the Non-Defaulting Party, at its option, may perform any such term, provision, covenant, or condition, or make any such payment required to cure such default provided that the Non-Defaulting Party provides the Defaulting Party with notice of such failure within 24 hours after the Non-Defaulting Party discovers the same, (ii) the Defaulting Party shall promptly reimburse the Non-Defaulting Party for all such expenses and costs incurred and (iii) the Non-Defaulting Party shall not be liable or responsible for any loss or damage resulting to the Defaulting Party on account of such cure.

15.2. Default Interest. Interest shall accrue on sums owed by a Defaulting Party to a Non-Defaulting Party and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest (the "Default Rate") equal to the lesser of: (a) the floating rate which is equal to four percent (4%) per annum in excess of the annual rate of interest from time to time announced by the largest federally insured bank in Omaha, Nebraska (or such other bank as may reasonably be selected by Developer), as its corporate base rate or so called prime rate of interest, or (b) the then maximum lawful rate of interest in the State applicable to the capacity of the Defaulting Party and the nature of the debt. In the event a corporate base rate is not announced, and no maximum lawful rate applies, then the Default Rate shall equal eighteen percent (18%) per annum.

15.3. Non-exclusive Right of Entry and Non-exclusive Easements. Each Party hereto hereby grants to the other Parties a non-exclusive right of entry and non-exclusive easements for and during the Term of this Agreement, as herein after defined, in over and under their respective real property (excluding the right to enter any Buildings thereon)

for all purposes reasonably necessary, to enable the Non-Defaulting Party (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Agreement on the part of the Defaulting Party to be performed, provided, however, that the Non-Defaulting Party must be directly affected by the default to exercise such right of entry (e.g. a default in the maintenance of a parking lot may be performed only by a Non-Defaulting Party who has the right to use such parking lot).

15.4. No Termination Right. In no event shall the default of any Party under this Agreement entitle any other Party to terminate this Agreement or excuse such other Party's failure to perform the terms, provisions, covenants and conditions required to be performed by such Party hereunder. Each Party waives such Party's right to terminate this Agreement or to withhold such Party's performance of such Party's obligations under this Agreement as the result of the default of any other Party hereunder.

16. Eminent Domain.

16.1. Owner's Right To Award. Nothing herein shall be construed to give any Party any interest in any award or payment made to another Party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Party's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of eminent domain or transfer in lieu thereof any part of the Common Areas, including the Lots, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas. Nothing herein shall be deemed to prohibit any Mortgagee from participating in any eminent domain proceedings on behalf of Developer.

16.2. Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate from improvements taken from another Owner.

16.3. Tenant's Claim. Nothing in this paragraph shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment.

16.4. Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

17. Release from Liability. Any person or entity acquiring fee or leasehold title to the Lots, or any portion of the Lots, or any expansion of the Development, or any portion thereof, shall be bound by this Agreement only as to the Lot or portion of the Lot acquired by such person or entity. In addition, except to the extent expressly stated in this Agreement to the

contrary, such person or entity and Developer shall be responsible for obligations, liabilities, or responsibilities that accrue during said period of ownership. If any Mortgagee acquires title to any Lots, any portion of the Lots or 100% ownership interest in the Owner of such Lot, Mortgagee shall have no liability for any defaults of Developer or the Owner which occurred prior to such acquisition of title. Although persons may be released under this paragraph, the easements, covenants, and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Development and the Lots running with the land. Notwithstanding the foregoing, no such Party shall be so released until notice of such Transfer has been given in the manner set forth below, at which time the Transferring Party's personal liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its interest in the Development shall give notice to Developer of such Transfer and shall include therein at least the following information: (i) the name and address of the new Party; and (ii) a copy of the legal description of the portion of the Development so transferred. Until notice of such Transfer is given, the Transferring Party shall (for purposes of this Agreement only) be the Transferee's agent. For the purposes of this Section, "Transfer" means a conveyance by way of sale, gift, exchange, or any other conveyance to a different person. In the event Developer shall transfer all of its interest in the Development, Developer may give notice of such Transfer to all Parties and may include therein the name and address of the Party designated as "Developer."

Nothing in this Section 17 shall act to release any person from the obligations, liabilities, and responsibilities that accrued during their ownership of an interest in any Lot. Developer or the Association shall have the right to file a lien against any Lot for unpaid assessments or other fees, regardless of the date accrued and subject only to the applicable statute of limitations.

18. **Mortgage Protection.**

18.1. Neither the breach of any restriction or other provision of this Agreement, nor foreclosure of any lien placed on any portion of the Development (or deed-in-lieu thereof) under this Agreement, defeats, terminates or renders invalid the lien of any Mortgage made in good faith and for value. Any lien created by the terms of this Agreement or otherwise shall be junior and subordinate to the lien of any Mortgage recorded by a Mortgagee on any Lot of the Development securing indebtedness owed to such Mortgagee.

18.2. Notwithstanding any other provision in this Agreement for notices of default, the Mortgagee of Developer or any Owner in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Agreement; provided, however, that said Mortgagee shall have, prior to the time of the default, notified the Owner giving said notice of default of the Mortgagee's interest and mailing address. In the event that any notice is given of the default of an Owner and such defaulting Owner has failed to cure or commence to cure such default as provided in this Agreement then and in that event the Owner giving such notice of default covenants to give such Mortgagee (which has previously given the above stated notice to such Owner) under any Mortgage affecting the Lot of the defaulting Owner an additional notice given in the manner provided above, that the defaulting Owner has failed to cure such default and such Mortgagee shall have thirty (30) days after notice was provided to Mortgagee to cure any such default, or, if such default cannot be cured within thirty (30)

days, diligently to commence curing within such time and diligently pursue such cure to completion within a reasonable time thereafter.

18.3. Neither the breach of any covenants, conditions or restrictions herein contained, nor the enforcement of any lien provision herein (including any foreclosure under this Agreement), shall affect, impair, defeat, terminate or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot, but all liens and encumbrances of said covenants, conditions and restrictions arising from and after foreclosure (or deed-in-lieu thereof) of such Mortgage shall bind the foreclosing Mortgagee and any Owner whose title is derived therefrom.

18.4. A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale (or termination of a ground lease) under a Mortgage made in good faith and for value, shall not be obligated to cure any breach of the provisions of this Agreement which is noncurable or of a type that is impractical or infeasible to cure.

18.5. A Mortgagee may pay taxes or other charges which are in default and which may or have become a charge against any Common Area on which such Mortgagee holds a Mortgage and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage if coverage has not been renewed within ten (10) days prior to the lapse of a policy and such failure to pay shall result in a lapse in the insurance coverage set forth the relevant policy, for any Common Area, and a Mortgagee making such payment shall be owed immediate reimbursement therefor from the Owners, provided that said Mortgagee has given written notice to Owner at least five (5) business days prior to the making of such payment(s) and the Owner has failed to pay the same.

19. **Estoppel Certificate.** Each Party hereto hereby severally covenants that within twenty (20) days following written request of any other Party, it will issue to such other Party, or to any Mortgagee, or any other person specified by such requesting Party, an estoppel certificate stating: (i) whether the Party or signatory to whom the request has been directed knows of any default under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether to its knowledge this Agreement has been assigned, modified or amended in any way (or if it has, then stating the nature thereof); (iii) that to the Party's or signatory's knowledge this Agreement as of that date is in full force and effect and/or (iv) the amounts, if any, being paid by such Party pursuant to the terms of this Agreement and whether any such payments are current or any such future payments have been paid in advance. Such statements shall not subject the Party furnishing it to any liability, notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information.

20. **Rights of Successors.** The easements, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes running with the land. Upon any transfer or conveyance, the transferor shall file such transfer or conveyance of record and shall send a written notice to Developer containing the new Owner's notice address and information. A transferee or successor to the interest of Developer shall take subject to the Approval of Developer as to lease provisions or agreements amending, modifying or adjusting a particular



Party's or Permittee's obligations hereunder, subsequent written agreements or releases of obligations hereunder, individual written agreements with a Party by Developer, or other written agreements or written discretionary approvals or consents of Developer permitted by this Agreement. This Agreement shall bind and inure to the benefit of Developer and the other Parties, to include their respective representatives, lessees, successors, and assigns. The singular number includes the plural, and the masculine gender includes the feminine and neuter.

21. **Approval Rights.** Except as otherwise provided herein, with respect to any matter as to which a Party has been granted an approval right under this Agreement, other than an Approval of Developer, then in such event the approval shall not be unreasonably withheld, conditioned or delayed. The Parties intend by this Agreement to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured. Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this Agreement shall be given by the Party to whom directed within thirty (30) days after receipt thereof. Each disapproval shall be in writing and, subject to the foregoing, the reasons therefore shall be clearly stated. If a response is not given within the required time period, the requested Party, as the case may be, shall be deemed to have given its approval if the original notice stated in conspicuous, capitalized letters that failure to respond within the applicable time period will be deemed an approval.

22. **Non-Merger.** This Agreement shall not be subject to the doctrine of merger.

23. **Term/Modification.** This Agreement and each term, easement, covenant, restriction and undertaking of this Agreement shall be effective as of the date hereof and will remain in effect for a term (the "Initial Term") of seventy-five (75) years (the "Expiration Date"). Notwithstanding the foregoing, this Agreement shall be automatically extended for successive terms of ten (10) years each unless, on or before the expiration of the Initial Term or any subsequent term of ten (10) years, seventy-five percent (75%) of the then Parties and the holders of all notes secured by mortgages encumbering any of the Lots, or any part thereof, shall duly execute and file in the office of the Register of Deeds of the County in which the Development is located, a declaration wherein said owners and noteholders shall agree that said covenants, restrictions, rights and privileges shall be amended, modified or terminated in whole or in part. Except as otherwise provided herein, any amendment or modification to this Agreement must be Approved by (i) Developer, and (ii) the Owner(s) of any Lot(s) affected by such amendment or modification. Upon such approval, said covenants, restrictions, rights and privileges may be so amended, modified or terminated as the Parties may so agree. Any and all references herein to the "Term" shall mean the Initial Term and any properly exercised extension thereof.

24. **Rules and Regulations.** Developer may establish reasonable rules and regulations applicable to the Common Areas (the "Rules and Regulations"). Developer hereby initially adopts the Rules and Regulations in the form of Exhibit D attached hereto, and which may be revised, or waived from time to time by Developer at its sole discretion.

25. **Name of Development.** Developer shall have the right at any time to change the name of the Development.

26. **Developer Exculpation.** It is expressly understood and agreed that notwithstanding anything in this Agreement to the contrary, and notwithstanding any applicable law to the contrary, the liability of Developer hereunder (including any successor Developer hereunder) with respect to monetary damages arising hereunder and any recourse by any Party against Developer with respect to monetary damages arising hereunder shall be limited solely and exclusively to the interest of Developer in and to the Development and Developer's interest in and to the Lots, and neither Developer, nor any of its constituent partners, subpartners, members, managing members or agents, shall have any personal liability therefor, and each Party, on behalf of itself and all persons claiming by, through or under such Party, hereby expressly waives and releases Developer and such partners, subpartners, members, managing members or agents from any and all personal liability, except for claims caused by the gross negligence or willful act of Developer.

27. **Notices.** Any notice, request or other communication (each, a "Notice") required or permitted to be given hereunder shall be in writing and shall be delivered by hand or courier (such as United Parcel Service or Federal Express), sent by facsimile or e-mail (provided a copy of such notice is deposited by the next business day with a courier) or mailed by registered or certified mail, return receipt requested, postage prepaid and addressed to each Party at its address as set forth below. Any such Notice shall be considered given on the date of such hand or courier delivery, or confirmed facsimile (provided a copy of such notice is deposited the same day with a courier) or receipt if mailed. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the Notice. By giving at least five (5) days' prior written notice thereof, any Party may from time to time and at any time change its fax number, mailing or email address hereunder. Any notice of any Party may be given by such Party's counsel. The Parties' respective addresses for notice purposes are as follows. Telephone numbers are given for convenience of reference only. Notice by telephone shall not be effective. Email addresses are given, or otherwise may be used, for convenience only; it being agreed that no Notice shall be given by email unless the Party to whom such Notice is sent expressly acknowledges, in such Party's sole discretion, such Party's receipt of same by reply email sent not just to the sender of the Notice email but also to all others initially copied on such Notice email.

Developer: AVG-CFM 204Q, LLC  
9140 W Dodge Road, Suite404  
Omaha, NE 68114  
Attn: John Mountjoy  
Fax: 402-932-2780  
Email: jmountjoy@cfmrealty.com

Such addresses may be changed from time to time by any Party hereto by serving notice as herein provided. Notwithstanding anything to the contrary herein, any Party may give another Party Notice of the exercise of any option herein granted or for the need for emergency repairs via electronic mail or facsimile with confirmation of receipt and deposit of the original notice in the U.S. Mail. The Parties hereto agree that if, at the time of the sending of any Notice required or permitted to be given hereunder, the interests of any Party hereto in its respective property shall be encumbered by a first Mortgage and the other Parties hereto has been notified in writing thereof and of the name and address of the Mortgagee a copy of said Notice shall also be sent to

such Mortgage by registered or certified mail at the address so given.

28. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

29. **Entire Agreement.** This Agreement, the Exhibits hereto and any Separate Agreement (as hereinafter defined) contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Developer may at any time make and amend from time to time agreements with any Party which shall may supplement, increase or reduce the obligations of any Party hereunder (a "Separate Agreement") except in the event that the amendment or waiver of any provision contained in this Agreement shall be subject to the consent of any other Party, then Developer may not amend such provision by Separate Agreement without the consent of such other Party provided the Parties agree that as to any matter in this Agreement requiring Approval of the Developer, Developer may freely enter into any such Separate Agreement. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and Exhibits hereto. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party. This Agreement once executed and delivered, shall not be modified or altered in any respect except with the Approval of Developer and by a writing executed and delivered in the same manner as required by this document. In the event that Developer desires to amend this Agreement and any Party refuses to execute such amendment and record the amendment against the property of the Party (a "Dissenting Party"), then Developer may proceed without the approval of the Dissenting Party and the amendment shall be filed and effective on the Lot(s) of those approving parties but not the Lot(s) of the Dissenting Party(ies).

The following exhibits are attached hereto and incorporated herein by reference:

<u>Exhibit A</u>	Legal Description of the Development
<u>Exhibit B</u>	Site Plan of the Development
<u>Exhibit C</u>	Lot Areas and Proportionate Share
<u>Exhibit D</u>	Rules & Regulations
<u>Exhibit E</u>	Prohibited Uses

30. **Governing Law.** These covenants and restrictions shall be governed by and construed by the laws of the State.

31. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable under applicable law, the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected thereby, and each provision of these covenants and restrictions shall be valid and enforceable to the fullest extent permitted by law.

32. **Counterparts.** This Agreement may be executed in counterparts, and when taken together shall represent one original document notwithstanding the fact that all Parties are not signatories to the same original document.

[Signature Page Follows]



**EXHIBIT A**

**LEGAL DESCRIPTION OF DEVELOPMENT**

Portions of the following property will be platted, or replatted, following the recording of this Agreement, such platting or replatting to be consistent with the Site Plan attached as Exhibit B to this Agreement.

**Coventry Lots 79 thru 82, 86, 91, and 96.**

**Coventry Lot 1 Replat 6.**

A REPLATTING OF A PART OF LOT 1 AND ALL OF LOT 2, COVENTRY RIDGE REPLAT ONE, AND A TRACT OF LAND LOCATED IN PART OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**(TRACT 1)**

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 12; THENCE ON THE NORTH LINE OF SAID SOUTHEAST QUARTER, ON AN ASSUMED BEARING OF S87°28'15" W, 111.01 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31; THENCE ON SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31 FOR THE FOLLOWING TWO (2) DESCRIBED COURSES; (1) S11°26'20"E, 39.83 FEET; (2) S07°06'49"W, 10.80 FEET TO A POINT INTERSECTING SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31 AND THE SOUTH RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY, SAID CORNER ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING ON SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31 FOR THE FOLLOWING THREE (3) DESCRIBED COURSES; (1) S07°06'49"W, 242.38 FEET; (2) S04°56'35"E, 550.52 FEET; (3) S00°56'55"E, 908.01 FEET; THENCE S87°31'31"W, 297.70 FEET;

THENCE N02°28'29"W, 281.74 FEET TO A POINT OF CURVATURE; THENCE ON A 175.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 183.57 FEET (LONG CHORD BEARS N32°31'29"W, 175.26 FEET); THENCE N62°34'29"W, 66.79 FEET TO A POINT OF CURVATURE; THENCE ON A 272.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 65.32 FEET (LONG CHORD BEARS N69°27'15"W, 65.16 FEET); THENCE N76°20'01"W, 104.22 FEET TO A POINT OF CURVATURE; THENCE ON A 23.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 30.61 FEET (LONG CHORD BEARS S65°32'45"W, 28.40 FEET); THENCE S27°25'31"W, 35.42 FEET; THENCE N62°34'32"W, 100.00 FEET; THENCE N13°26'02"E, 67.37 FEET; THENCE N62°35'11"W, 104.95 FEET TO A POINT OF CURVATURE; THENCE ON A 550.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 73.01 FEET (LONG CHORD BEARS N58°46'18"W, 72.96 FEET); THENCE N41°09'57"E, 100.70 FEET TO A POINT OF CURVATURE ON THE NORTH RIGHT-OF-WAY LINE OF SAID COVENTRY DRIVE;

THENCE ON SAID NORTH RIGHT-OF-WAY LINE OF COVENTRY DRIVE FOR THE FOLLOWING EIGHT (8) DESCRIBED COURSES; (1) ON A 450.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 59.04 FEET (LONG CHORD BEARS N52°35'01"W, 59.00 FEET); (2) N48°49'53"W, 128.86 FEET TO A POINT OF CURVATURE; (3) ON A 750.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 419.80 FEET (LONG CHORD BEARS N32°47'55"W, 414.34 FEET); (4) S73°14'11"W, 10.00 FEET TO A POINT OF CURVATURE; (5) ON A 760.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 435.22 FEET (LONG CHORD BEARS N00°21'29"W, 429.30 FEET); (6) N16°02'51"E, 39.83 FEET TO A POINT OF CURVATURE; (7) ON A 460.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 121.45 FEET (LONG CHORD BEARS N23°36'40"E, 121.10 FEET); (8) N31°10'29"E, 60.19 FEET TO THE WEST CORNER OF LOT 86, COVENTRY, A PLATTED AND RECORDED SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA; THENCE ON SAID SOUTHERLY LINE OF SAID LOT 86, COVENTRY FOR THE FOLLOWING TWO (2) DESCRIBED COURSES; (1) S58°49'31"E, 290.00 FEET; (2) N31°10'29"E, 260.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY; THENCE ON SAID SOUTH RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY FOR THE FOLLOWING FOUR (4) DESCRIBED COURSES; (1) S58°49'31"E, 243.35 FEET TO A POINT OF CURVATURE; (2) ON A 550.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 323.54 FEET (LONG CHORD BEARS S75°40'38"E, 318.89 FEET); (3) N87°28'15"E, 187.65 FEET TO THE POINT OF BEGINNING.

AND TOGETHER WITH

(TRACT 2)

A PART OF LOT 1 AND ALL OF LOT 2, COVENTRY RIDGE REPLAT ONE, A PLATTED AND RECORDED SUBDIVISION LOCATED IN DOUGLAS COUNTY, NEBRASKA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1, COVENTRY RIDGE REPLAT ONE; THENCE S41°09'57"W ON THE EAST LINE OF SAID LOT 1, COVENTRY RIDGE REPLAT ONE, 545.23 FEET; THENCE N02°28'29"W ON THE NORTHERLY EXTENSION OF THE EASTERLY LINE OF SAID LOT 1, 492.05 FEET; THENCE ON SAID EASTERLY LINE OF SAID LOT 1 FOR THE FOLLOWING FOUR (4) DESCRIBED COURSES; (1) N12°36'56"E, 84.93 FEET; (2) N02°28'29"W, 92.44 FEET; (3) N37°06'46"W, 154.97 FEET; (4) S82°53'12"W, 174.75 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SPENCE DRIVE; THENCE ON SAID EAST RIGHT-OF-WAY LINE OF SPENCE DRIVE FOR THE FOLLOWING THREE (3) DESCRIBED COURSES; (1) N41°09'57"E, 137.21 FEET TO A POINT OF CURVATURE; (2) ON A 270.35 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 163.78 FEET (LONG CHORD BEARS N58°31'15"E, 161.29 FEET); (3) S59°03'43"E, 12.21 FEET TO A POINT OF CURVATURE; THENCE ON SAID SOUTH RIGHT-OF-WAY LINE OF COVENTRY DRIVE FOR THE FOLLOWING FIVE (5) DESCRIBED COURSES; (1) ON A 840.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 21.58 FEET (LONG CHORD BEARS S16°01'40"E, 21.58 FEET); (2) S73°14'11"W, 10.00 FEET TO A POINT OF CURVATURE; (3) ON A 850.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH

OF 475.77 FEET (LONG CHORD BEARS S32°47'55"E, 469.59 FEET); (4) S48°50'02"E, 128.95 FEET TO A POINT OF CURVATURE; (5) ON A 550.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 58.89 FEET (LONG CHORD BEARS S51°54'05"E, 58.86 FEET) TO THE POINT OF BEGINNING.

SAID TRACTS 1 AND 2 CONTAIN A COMBINED CALCULATED AREA OF 1,669,309.73 SQUARE FEET OR 38.322 ACRES, MORE OR LESS.

**Coventry Lots 111 thru 120**

BEGINNING AT THE SOUTHEAST CORNER OF LOT 110, COVENTRY, A POINT ON THE WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31; THENCE ON SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31 FOR THE FOLLOWING TWO (2) DESCRIBED COURSES; (1) S00°56'55"E, 78.42 FEET; (2) S05°55'10"E, 764.25 FEET TO A POINT INTERSECTING SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31 AND THE NORTH RIGHT-OF-WAY LINE OF HARRISON STREET; THENCE ON SAID NORTH RIGHT-OF-WAY LINE OF HARRISON STREET S87°37'25"W, 1302.46 FEET TO A POINT INTERSECTING SAID NORTH RIGHT-OF-WAY LINE OF HARRISON STREET AND THE EAST RIGHT-OF-WAY LINE OF COVENTRY DRIVE; THENCE ON THE EAST RIGHT-OF-WAY LINE OF COVENTRY DRIVE FOR THE FOLLOWING THREE (3) DESCRIBED COURSES; (1) N47°25'32"W, 21.23 FEET; (2) N02°28'29"W, 214.47 FEET; (3) ON A 116.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 253.33 FEET (LONG CHORD BEARS N60°05'20"E, 205.91 FEET); THENCE S57°20'51"E, 2.80 FEET, THENCE N32°39'09"E, 63.00 FEET, THENCE N57°20'51"W, 8.98 FEET; THENCE ON A 143.50 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 210.50 FEET (LONG CHORD BEARS N15°19'28"W, 192.13 FEET); THENCE N27°25'31"E, 23.76 FEET; THENCE N62°34'29"W, 50.93 FEET; THENCE S26°14'40"W, 9.53 FEET; THENCE ON A 113.85 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 114.34 FEET (LONG CHORD BEARS S57°24'45"W, 109.60 FEET); THENCE S88°34'50"W, 9.53 FEET TO THE SOUTHEAST CORNER OF LOT 65, COVENTRY RIDGE; THENCE N02°28'29"W, 663.11 FEET TO THE SOUTHWEST CORNER OF LOT 99, COVENTRY; THENCE N87°31'31"E, 42.57 FEET; THENCE N27°25'31"E, 467.48 FEET TO A POINT ALONG THE SOUTH RIGHT-OF-WAY LINE OF COVENTRY DRIVE; THENCE S48°50'02"E, 77.33 FEET; THENCE ON A 550.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 131.90 FEET (LONG CHORD BEARS S55°42'15"E, 131.59 FEET); THENCE S62°35'11"E, 104.95 FEET; THENCE S59°19'07"E, 134.03 FEET; THENCE S76°20'01"E, 104.22 FEET; THENCE ON A 272.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 65.32 FEET (LONG CHORD BEARS S69°27'15"E, 65.16 FEET); THENCE S62°34'29"E, 66.79 FEET; THENCE ON A 175.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 183.57 FEET (LONG CHORD BEARS S32°31'29"E, 175.26 FEET); THENCE S02°28'29"E, 281.74 FEET; THENCE N87°31'31"E, 297.70 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A COMBINED CALCULATED AREA OF 1,557,400 SQUARE FEET OR 35.753 ACRES, MORE OR LESS.



**Coventry North Lot 1**

BEGINNING AT THE SOUTHEAST CORNER OF LOT 79, COVENTRY, A PLATTED AND RECORDED SUBDIVISION IN SAID NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 14 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA; THENCE ON AN ASSUMED BEARING OF N87°44'51" E, 234.77 FEET; THENCE S02°15'09"E, 70.00 FEET; THENCE S87°44'51"W, 75.00 FEET; THENCE S02°15'09"E, 1089.49 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF "V" STREET; THENCE ON SAID NORTH RIGHT-OF-WAY LINE OF "V" STREET FOR THE FOLLOWING THREE (3) DESCRIBED COURSES; (1) S87°44'51"W, 80.13 FEET TO A POINT OF CURVATURE; THENCE ON A 801.39 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 489.99 FEET (LONG CHORD BEARS S70°13'53"W, 482.39 FEET); (2) N85°45'54"W, 7.47 FEET TO A POINT THAT INTERSECTS SAID NORTH RIGHT-OF-WAY LINE OF "V" STREET AND A POINT OF CURVATURE ON THE EAST RIGHT-OF-WAY LINE OF 207TH STREET; THENCE NORTHERLY ON SAID EAST RIGHT-OF-WAY LINE OF 207TH STREET FOR THE FOLLOWING EIGHT (8) DESCRIBED COURSES; (1) ON A 335.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 50.73 FEET (LONG CHORD BEARS N48°49'57"W, 50.68 FEET) TO A POINT OF REVERSE CURVATURE; (2) ON A 465.55 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 431.12 FEET (LONG CHORD BEARS N26°38'29"W, 415.88 FEET) TO A POINT OF A CONTIGUOUS CURVATURE; (3) ON A 765.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 342.57 FEET (LONG CHORD BEARS N12°42'59"E, 339.71 FEET); (4) N25°32'42"E, 180.99 FEET TO A POINT OF CURVATURE; (5) ON A 200.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 54.94 FEET (LONG CHORD BEARS N33°24'55"E, 54.77 FEET) TO A POINT OF REVERSE CURVATURE; (6) ON A 200.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 54.94 FEET (LONG CHORD BEARS N33°24'55"E, 54.77 FEET); (7) N25°32'42"E, 154.76 FEET TO A POINT OF CURVATURE; (8) ON A 945.72 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 140.48 FEET (LONG CHORD BEARS N21°17'22"E, 140.36 FEET) TO A POINT THAT INTERSECTS SAID EAST RIGHT-OF-WAY LINE OF 207TH STREET AND THE SOUTH RIGHT-OF-WAY LINE OF "R" STREET; THENCE ON SAID SOUTH RIGHT-OF-WAY LINE OF "R" STREET FOR THE FOLLOWING THREE (3) DESCRIBED COURSES; (1) N60°51'34"E, 7.20 FEET TO A POINT OF CURVATURE; (2) ON A 602.97 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 177.34 FEET (LONG CHORD BEARS S83°49'36"E, 176.71 FEET); (3) N87°44'51"E, 50.87 FEET; THENCE N02°15'09"E, 70.00 FEET TO THE POINT OF BEGINNING.

SAID PLATTING CONTAINS A COMBINED CALCULATED AREA OF 747,447.37 SQUARE FEET OR 17.159 ACRES, MORE OR LESS.

**Coventry Lots 2 thru 13**

COMMENCING AT THE NORTHEAST CORNER OF LOT 79, COVENTRY, A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF Q STREET; THENCE ON SAID SOUTH RIGHT-OF-WAY LINE OF Q STREET FOR THE FOLLOWING FOUR (4)

DESCRIBED COURSES; (1) N87°44'51"E, 138.90 FEET; (2) S02°15'40"E, 16.53 FEET; (3) S85°58'44"E, 359.77 FEET; (4) N87°28'59"E, 552.62 FEET TO A POINT INTERSECTING SAID SOUTH RIGHT-OF-WAY LINE OF Q STREET AND THE WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31; THENCE ON SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31 FOR THE FOLLOWING FIVE (5) DESCRIBED COURSES; (1) S02°11'10"E, 780.54 FEET; (2) S04°29'01"W, 69.76 FEET; (3) S03°09'04"E, 108.98 FEET; (4) S03°25'32"E, 255.15 FEET; (5) S07°24'16"W, 23.05 FEET TO A POINT INTERSECTING SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET/HIGHWAY 31 AND THE NORTH RIGHT-OF-WAY LINE OF V STREET; THENCE ON SAID NORTH RIGHT-OF-WAY LINE OF V STREET FOR THE FOLLOWING FOUR (4) DESCRIBED COURSES; (1) S87°42'48"W, 53.77 FEET; (2) ON A 550.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 299.10 FEET (LONG CHORD BEARS S72°08'04"W, 295.42 FEET); (3) ON A 450.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 244.98 FEET (LONG CHORD BEARS S72°09'05"W, 241.97 FEET); (4) S87°44'51"W, 311.99 FEET; THENCE N02°15'09"W, 1089.49 FEET; THENCE S87°44'51"W, 159.77 FEET; THENCE N02°15'09"W, 345.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A COMBINED CALCULATED AREA OF 1,237,539 SQUARE FEET OR 28.410 ACRES, MORE OR LESS.








**EXHIBIT B**

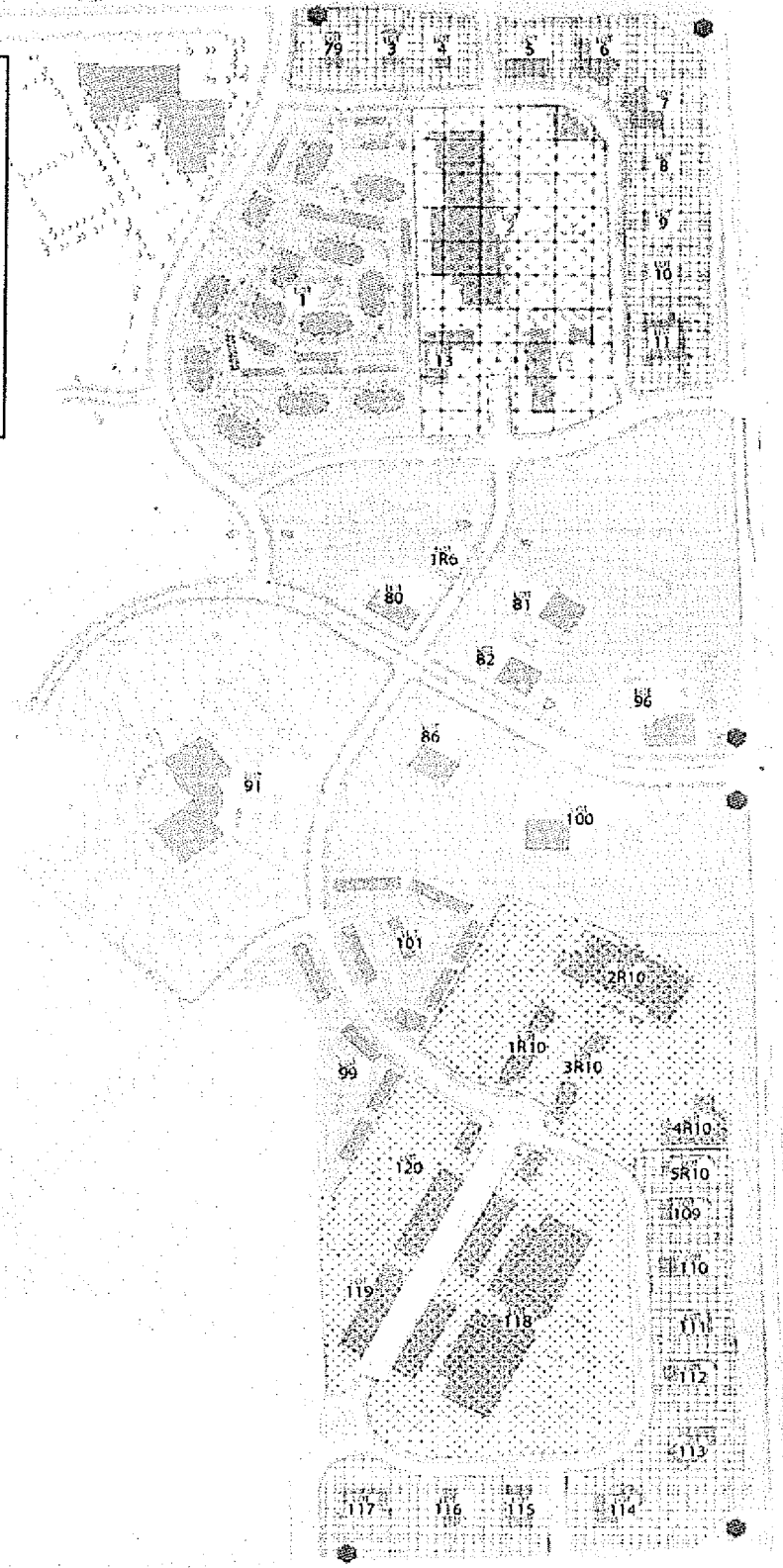
**SITE PLAN**

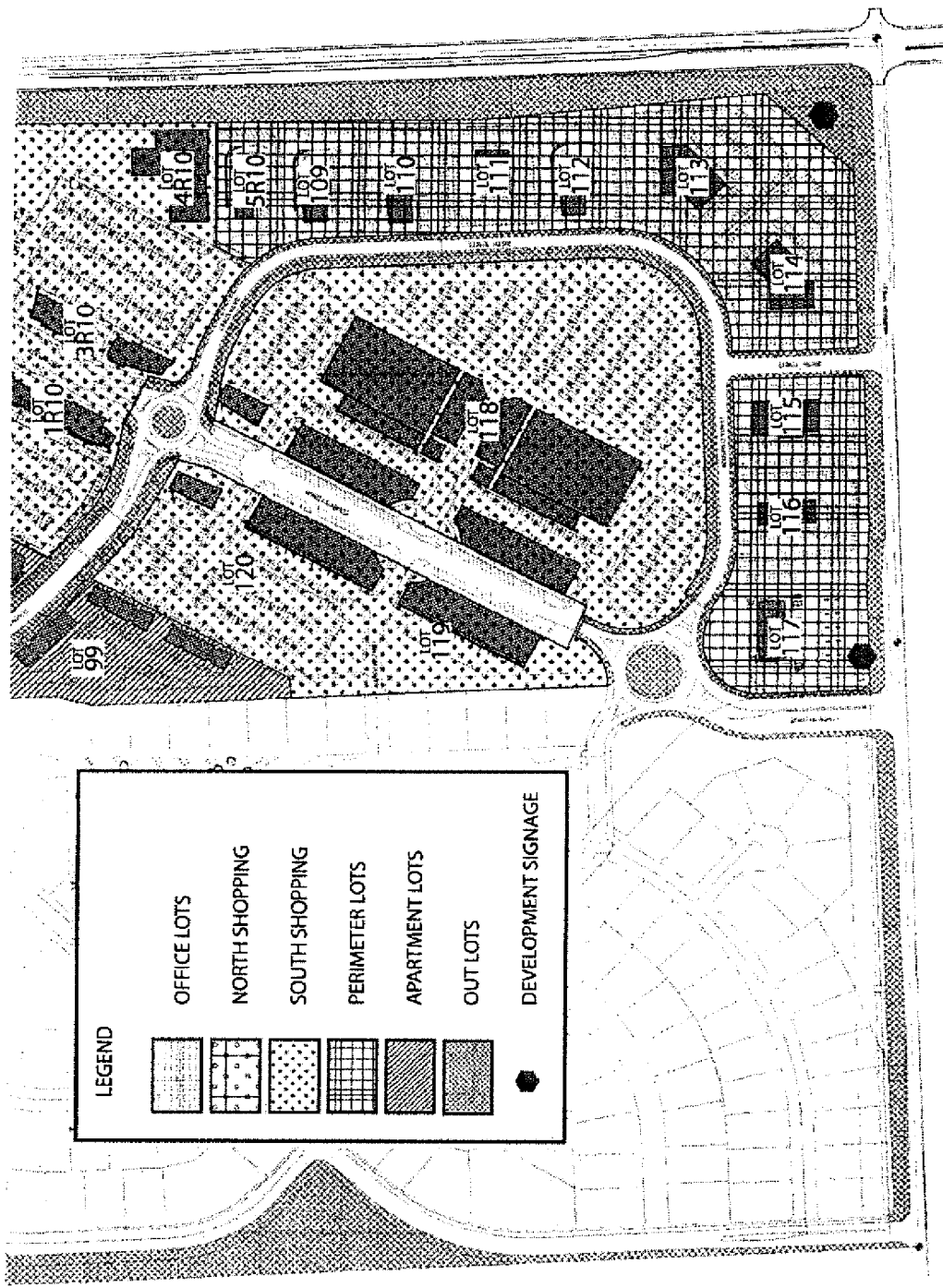
**[see following 4 pages for overall depiction of the Development and expanded views thereof]**

### Exhibit B

**LEGEND**

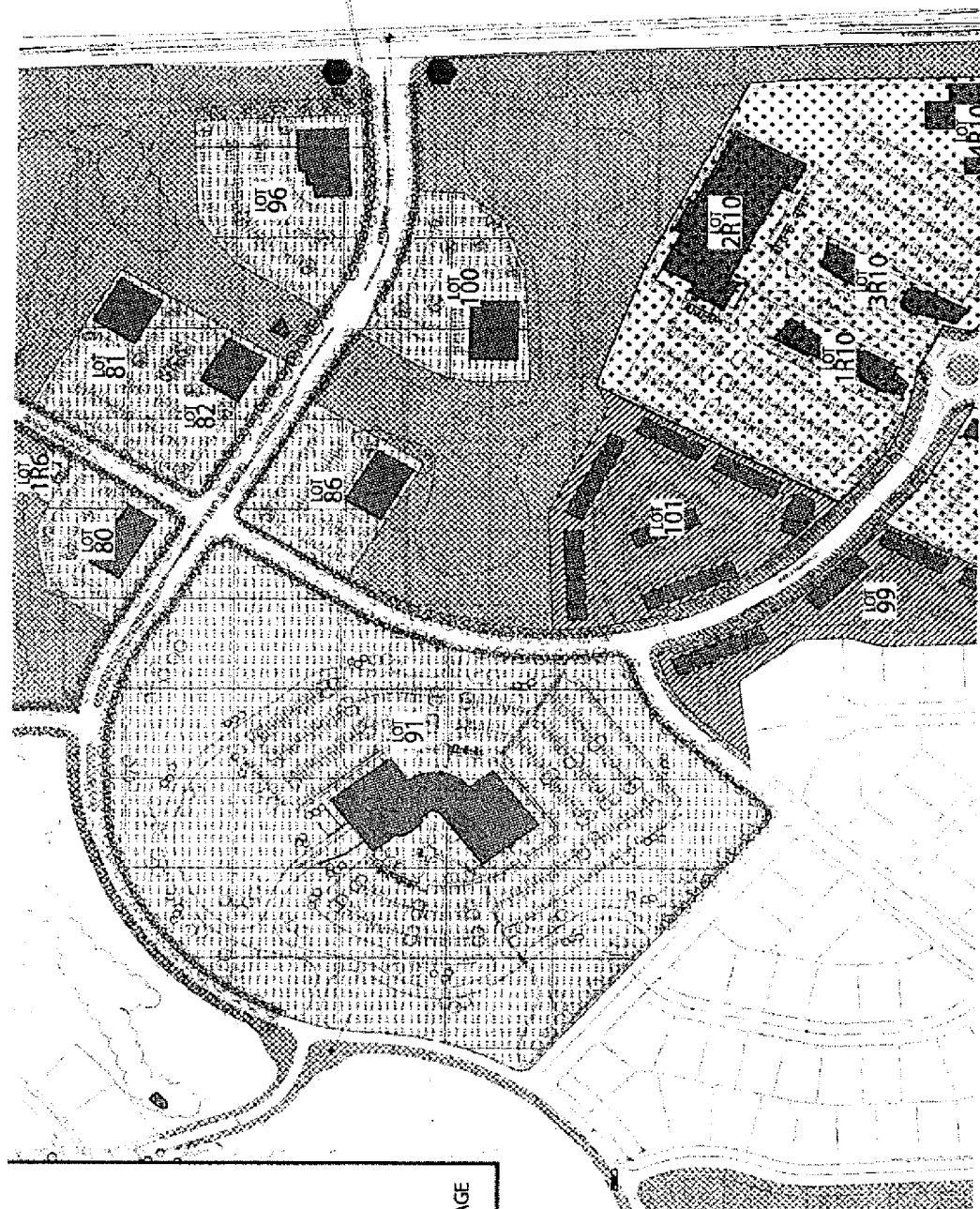
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	NORTH SHOPPING
	SOUTH SHOPPING
	PERIMETER LOTS
	APARTMENT LOTS
	OUT LOTS
	DEVELOPMENT SIGNAGE












**LEGEND**

	OFFICE LOTS
	NORTH SHOPPING
	SOUTH SHOPPING
	PERIMETER LOTS
	APARTMENT LOTS
	OUT LOTS
	DEVELOPMENT SIGNAGE



LEGEND	
	OFFICE LOTS
	NORTH SHOPPING
	SOUTH SHOPPING
	PERIMETER LOTS
	APARTMENT LOTS
	OUT LOTS
	DEVELOPMENT SIGNAGE



## Exhibit C

<u>Lot</u>	<u>Acres</u>	<u>% of CAM</u>	<u>Number of votes in Association</u>
1 Coventry North	16.782	13.42%	13.42
2	8.913	7.13%	7.13
3	1.127	0.90%	0.90
4	1.003	0.80%	0.80
5	0.946	0.76%	0.76
6	1.535	1.23%	1.23
7	1.786	1.43%	1.43
8	1.034	0.83%	0.83
9	1.086	0.87%	0.87
10	1.06	0.85%	0.85
11	1.692	1.35%	1.35
12	2.29	1.83%	1.83
13	1.915	1.53%	1.53
79	1.175	0.94%	0.94
80	1.731	1.38%	1.38
1R6	0.15	0.12%	0.12
81	1.561	1.25%	1.25
82	1.483	1.19%	1.19
86	1.731	1.38%	1.38
91	20.96	16.76%	16.76
99	3.12	2.49%	2.49
100	2.29	1.83%	1.83
101	4.09	3.27%	3.27
1R10	0.87	0.70%	0.70
2R10	8.09	6.47%	6.47
3R10	0.88	0.70%	0.70
4R10	1.8	1.44%	1.44
5R10	0.87	0.70%	0.70
109	1.06	0.85%	0.85
110	1.03	0.82%	0.82
111	1.02	0.82%	0.82
112	1.06	0.85%	0.85
113	2.34	1.87%	1.87
114	2.35	1.88%	1.88
115	1.22	0.98%	0.98
116	1.22	0.98%	0.98
117	2.02	1.61%	1.61
118	14.02	11.21%	11.21
119	1.74	1.39%	1.39
<u>120</u>	<u>4.04</u>	<u>3.23%</u>	<u>3.23</u>
	<b>125.09</b>	<b>1</b>	<b>100.00</b>



## EXHIBIT D

### RULES AND REGULATIONS

All Lots shall be governed by the following Rules and Regulations unless otherwise Approved by Developer, its successors or assigns. Developer shall not be responsible for the violation or nonperformance by any other Permittee of the Development with regard to these Rules and Regulations. Developer may change, waive, adjust, modify or enhance any Rule or Regulation with any user or Owner as Developer deems necessary in its sole discretion. Unless otherwise provided, all terms used in these Rules and Regulations shall have the same meaning as set forth in this Agreement. To the extent that the provisions of these Rules and Regulations are inconsistent with the provisions of this Agreement, the provisions of the Agreement shall control.

1. **Common Areas.** The following Rules and Regulations shall be applicable to all Common Areas in the Development and with respect to the maintenance thereof by Developer pursuant to Section 5.1:

1.1. The surface of the parking area and sidewalks shall be maintained level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, appearance and durability.

1.2. All papers, debris, filth and refuse shall be removed from the Lots, and paved areas shall be washed or thoroughly swept as required. All parking lot sweeping shall be at intervals before the stores shall be opened for business to the public.

1.3. All trash and rubbish containers located in the Common Area for the use of Permittees shall be emptied on a sufficiently regular basis and shall be washed at intervals sufficient to maintain the same in a clean condition.

1.4. All landscaping shall be properly maintained, including watering, removal of dead plants, weeds and foreign matter and such replanting and replacement as the occasion may require.

1.5. All hard-surfaced markings shall be inspected at regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear, or other cause.

1.6. All storm drain catch basins shall be cleaned on a schedule sufficient to maintain all storm drain lines in a free-flowing condition and all mechanical equipment related to storm drain and sanitary sewer facilities shall be regularly inspected and kept in proper working order.

1.7. All asphalt paving shall be inspected at regular intervals and maintained in a first class condition without potholes or damaged areas.

1.8. All surface utility facilities servicing the Common Area, including, but not by way of limitation, hose bibs, standpipes, sprinklers and domestic water lines, shall be inspected at regular intervals and promptly repaired or replaced, as the occasion may require, upon the occurrence of any defect or malfunction.

1.9. All Common Area amenities, benches, and institutional, directional, traffic and other signs shall be inspected at regular intervals, maintained in a clean and attractive surface condition and promptly repaired or replaced upon the occurrence of any defects or irregularities thereto.

1.10. All lamps shall be inspected at regular intervals and all lamps shall be promptly replaced when no longer properly functioning.

1.11. The improvements on and to the Common Area shall be repaired or replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced.

1.12. The Common Area shall be illuminated in such areas as the Developer shall reasonably determine, at least during such hours from dusk to midnight, and as any of the stores shall be open for business to the public, and for a reasonable period thereafter, in order to permit safe ingress to and egress from the Lots by Permittees, and shall also be illuminated during such hours of darkness and in such manner as will afford reasonable security for the stores.

1.13. Each Party shall use their diligent efforts to arrange with local police authorities to (a) patrol the Common Area on the respective Lot owned by such Party, at regular intervals, and (b) supervise traffic direction at entrances and exits to the Lots during such hours and periods as traffic conditions would reasonably require such supervision. Notwithstanding the foregoing, Developer may, if Developer deems necessary, hire private security guards to increase the security in the Common Area and include the cost thereof as a CAM Expense in accordance with this Agreement.

1.14. The Parties shall use their diligent efforts to require their respective Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings and parking stall markings.

1.15. No one shall sell or display merchandise outside the exterior walls of Buildings within the Lots, including those within any recessed area.

2. **Buildings and Adjacent Areas.** The following Rules and Regulations shall be applicable to all Buildings and all areas adjacent thereto in the Development:

2.1. All Buildings, including entrances and returns, doors, fixtures, windows and plate glass shall be maintained by the party occupying such floor area in a safe, neat and clean condition.

2.2. All trash, refuse and waste materials shall be regularly removed from each Building within the Lots, and until removal shall be stored (a) in adequate containers, which containers shall be covered with lids and shall be located in areas designated by Developer so as not to be visible to the general public, and (b) so as not to constitute any health or fire hazard or nuisance to any party.

2.3. Neither sidewalks nor walkways shall be used to display, store or replace any merchandisc, equipment or devices, unless Approved by Developer.

2.4. No use shall be made of the Lots or any portion or portions thereof which would (a) violate any law, ordinance or regulation, (b) constitute a nuisance, (c) constitute an extra-hazardous use, or (d) violate, suspend or void any policy or policies of insurance on the stores located thereon.

2.5. The Parties shall use their diligent efforts to require all trucks servicing their respective stores to load and unload such trucks (a) prior to the hours the Lots are open for business to the general public, or (b) so as not to unreasonably interfere with the operation of the other stores within the Lots.

2.6. Each Party and all other occupants shall use their diligent efforts, promptly upon receiving notice thereof, to notify each Party and Developer or their respective designated representative, of any significant accident, loss, damage, destruction or any other situation which arises in or about their respective stores or the Common Area which could potentially result in a claim or other action against Developer or such Party.

2.7. No Party, nor any other occupant, shall display flashing lights or neon "open signs" within their premises that are visible from the Common Areas of the Development, unless Approved by Developer.

3. **Conduct of Persons.** The Parties do hereby establish the following rules and regulations for the use of roadways, walkways, the parking areas, and other common facilities provided for the use of Permittees:

3.1. No person shall use any roadway or walkway except as a means of egress from or ingress to any area within the Lots or adjacent public streets or such other uses as Approved by Developer or other use permitted hereunder and any affected Party. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways within the Development shall not be used at a speed in excess of fifteen (15) miles per hour, unless otherwise marked, and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. No walkway shall be used for other than pedestrian travel or such other uses as Approved by Developer.

3.2. Unless otherwise Approved by Developer, no person shall use the parking areas except for the parking of motor vehicles during the period of time such person or the occupants of such vehicles are guests, customers or business invitees of the establishments within the Lots. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of

business activity, limitations may be imposed as to the length of time for parking use. Such limitations may be made in specified areas.

3.3. No person shall use any utility area, truck court or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use such area is given.

3.4. Subject to Applicable Laws and Requirements, no person shall, in or on any part of the Common Area:

3.4.1. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever, except as Approved by Developer.

3.4.2. Exhibit any sign, placard, banner, notice or other written material provided, however, the foregoing shall not be deemed to prohibit the temporary placement of banners on the exterior of a tenant's or occupant's premises, which banners shall only be permitted with Developer's approval.

3.4.3. Distribute any circular, booklet, handbill, placard or other material.

3.4.4. Solicit membership in any organization, group or association or contribution for any purpose.

3.4.5. Parade, rally, patrol (excluding reasonable patrols by security services engaged by Developer or businesses located within the Lots), or engage in any conduct that might tend to materially interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, or harass, annoy, disparage any of the retail establishments within the Lots.

3.4.6. Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

3.4.7. Create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to the Parties or Permittees of the Lots.

3.4.8. Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Lots or the property of customers, business invitees or employees situated within the Lots.

3.5. The listing of specific items as being prohibited is not intended to be exclusive, but to indicate in general the manner in which the right to use the Common Area solely as a means of access and convenience within the Lots is limited and controlled by the Developer.

3.6. Any party shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Lots or any portion thereof, and prohibit, abate and recover damages arising from any

unauthorized act, whether or not such act is in express violation of the prohibitions listed above. In so acting such party is not the agent of the Developer, other Parties or of tenants of the Lots, unless expressly authorized or directed to do so by such party in writing.

4. **Staging Areas for Construction.**

4.1. The staging area ("Staging Area") for each Party shall be as reasonably located from time to time by Developer based on Developer's construction schedules and in accordance with reasonable rules and regulations which may be promulgated by Developer from time to time. Such Party shall move trailers, equipment, storage facilities including, but not limited to, containers or construction materials, or items as reasonably requested by Developer to accommodate all construction or to reasonably keep the appearance of the Development in an orderly fashion.

4.2. Each Staging Area user shall, during the course of its construction, routinely remove all trash and debris caused by such Staging Area user to the Staging Area and any portion of the Lots including, but not limited to, the Common Area and the adjacent streets and driveways. Each Staging Area user shall keep the Staging Area and any adjacent parking areas in a reasonably neat, clean and sightly condition. Each Staging Area user shall periodically sweep its Staging Area by use of a professional sweeping company.

4.3. Each Staging Area user shall use commercially reasonable efforts to cause its employees, or the employees of its contractors and subcontractors to park in areas reasonably designated by Developer, with respect to any staging on their respective Lot(s); provided that, such designated parking areas shall be located in a well-lighted area located within reasonable proximity to the Staging Area.

4.4. After work is completed for a particular installation with respect to the Party's store, the Staging Area user shall promptly, within forty-eight (48) hours, remove any excess materials no longer necessary for the construction of such store.

4.5. All containers and trailers shall be removed from the Staging Area or parking lot as soon as practicable, but in no event later than forty-eight hours (48) hours of emptying of same (provided that the container or trailer is not required for future use after notice and approval by Developer). The Staging Area user shall move any containers which can be safely moved or rearranged as directed by Developer and is reasonably required to minimize inconvenience in connection with the construction or development of the Lots and their respective Permittees so as to avoid obstructing visibility or access from any public rights of way.

4.6. In the event that a Staging Area user, or its contractors or subcontractors, damage any portions of the Lots, such Staging Area user must, upon written notice from Developer, repair such damage at such Staging Area user's expense. If such Staging Area user fails to make such repairs promptly, Developer may cause repairs to be effected and will submit an invoice to the Staging Area user for any such repairs.

4.7. Upon receipt of written notice from Developer, the Staging Area user will promptly repair any damage caused to any portion of the Lots by the Staging Area user's containers, trailers and operations and shall re-stripe the parking area as necessary in those areas of repair. If the Staging Area user fails to make such repairs promptly, Developer may cause the damaged area to be reasonably repaired and re-striped in the area of the repair and will submit the invoice to the Staging Area user for any such costs or expenses incurred by Developer relating to such repair and re-striping.

4.8. Any temporary signs must be Approved by Developer.

4.9. The Staging Area user shall, at its sole cost and expense, obtain and connect (and disconnect upon completion) all temporary utilities in a safe and sightly manner.

4.10. Promptly after completion of the portion of the construction requiring such Staging Area, the Staging Area user shall completely remove all items related in any way to the construction of its store from the Staging Area and shall return Staging Area to the condition as hereinbefore provided.

4.11. If a Staging Area user fails to reasonably complete any items above, or fails to remove its containers and other items as required, Developer may request that the Staging Area user make such repairs, or perform such above-stated items and, upon the Staging Area user's failure or refusal to do so within twenty-four (24) hours, Developer shall have the right (but shall not be obligated), either itself or through a third-party contractor, to perform all the foregoing items and thereupon the Staging Area user, within ten (10) days, shall reimburse Developer for any costs and expenses reasonably incurred by Developer in connection therewith.

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## EXHIBIT E

### PROHIBITED USES

The Premises shall not be used in whole or in part for any of the purposes set forth in this Exhibit D. Unless otherwise approved in writing by Developer, none of the following uses or operations shall be conducted by any Owner or any Permittee on or with respect to all or any part of a Lot:

1. A bowling alley except a Lucky Strike, Pinstripes, Dave and Busters or similar bowling alley that operates a full-service kitchen and is commonly found in a first class shopping center.
2. A skating rink, except a temporary skating rink which is promotional in nature.
3. A banquet facility except a facility not in excess of 3,000 square feet, excluding any clubhouse on any Apartment Lot.
4. An amusement gallery, poolroom, video or arcade except Chuck E. Cheese or a Dave & Busters or similar entertainment user that operates a full-service kitchen and is commonly found in first class shopping centers.
5. A bingo parlor or club.
6. A health club, spa, fitness center or gymnasium greater than 5,000 square feet, except a workout/exercise facility (such as those of a brand or type commonly found in first class shopping centers, such as a yoga studio or Pilates studio), excluding any fitness areas on any Apartment Lot.
7. A spa or massage studio except of a brand or type commonly found in first class shopping centers, such as a Massage Envy or Elements Massage.
8. A bar, or tavern except to the extent incidental to those that operate a full-service kitchen primarily for on-premises consumption.
9. A nightclub or discotheque.
10. A car wash.
11. An automobile, truck, trailer or recreational vehicle sales, leasing, display, or repair facility.
12. An auditorium except a comedy club or other similar entertainment facility that operates a full-service kitchen.
13. A carnival, a circus, fair except a fair or weekend fair for the purpose of promoting the Development.
14. An off-track betting club and any gambling facility or operation, including but not limited

to: off-track or sports betting parlor or clubs; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices.

15. A facility for the assembling, manufacturing, refining, distilling; or smelting or for drilling, dumping, mining, exploring or the producing of oil, gases or other minerals.
16. Any use which involves the raising, breeding, or keeping of any animals or poultry, veterinary hospital, or pet shop; provided, however, that this restriction shall not prohibit a regional or national pet shop/store retailer such as a Petco or a Petsmart.
17. Any mobile home park, camp ground, trailer court, junk yard or labor camp; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance, excess inventory storage during peak times, or delivery trucks or recreational vehicles of invitees of the Development.
18. Residential purposes, or living quarters, sleeping apartments or lodge rooms except on the Apartment Lots.
19. Any mortuary or funeral home.
20. Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to screened garbage compactors or dumpsters located near the rear of any building on the Development.
21. Any salvage or reclamation yards and the storage of inoperative vehicles.
22. Any gasoline station or convenient store.
23. Any flea market, antique sales, swap meet, auction house, pawn shops, surplus , stores, liquidation stores or thrift stores or used merchandise store; provided, however, the foregoing shall not restrict retailers that sell excess inventory such as Tuesday Morning, or a dollar store such as a Dollar Tree or a Fivebelow, and similar type stores.
24. Any fire sale, bankruptcy sale (unless pursuant to a court order or agreed upon subordination and non-disturbance agreement) or auction house operation, but this provision shall not restrict the absolute freedom of an owner of any portion of the Development to determine its own selling prices nor shall it preclude the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted.
25. Adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use or adult entertainment establishments; provided, however, that such restrictions shall not preclude the sale or rental of adult books, magazines or videos as an incidental part of the business of a general purpose bookstore normally found in a first class shopping center.
26. Any tattoo parlor or any establishment which sells marijuana, drug-related paraphernalia;



except that this provision shall not be deemed to preclude the operation of a drug store or pharmacy, or a department within a retail store offering for sale its usual or customary inventory of pharmaceutical materials.

27. Any abortion clinic or drug rehabilitation clinic.
28. Any central laundry, or dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to a drop-off and pickup facility or a central laundry or laundromat that complies with all environmental laws.
29. A title loan or payday loan business or a telemarketing or call center.
30. Training facility, meeting hall, or educational facility. As used herein, "training facility" or "educational facility" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction, tutoring center for K-12 grade students or any other operation catering primarily to students or trainees rather than to customers, except that one (1) such use shall be permitted not exceeding 3,500 square feet, such as an instructional art and/or craft studios, gourmet food or wine and/or spirits shops, such as those of a brand or type commonly found in first class shopping centers such as Color Me Mine or their successors and assigns provided, however, that this shall in no way be deemed to limit employee training by a permitted operators.
31. Office uses except professional offices which offer services to the general public and which are normally found in first class shopping centers such as dentists, accountants, lawyers, doctors, real estate and stock brokerage offices ("Professional Offices") and service oriented office uses which are normally found in first class shopping centers such as travel agencies, nail salons, insurance agencies, weight loss clinics and financial institutions ("Service-Oriented Uses") shall be permitted but no greater than 10% of the building area in aggregate and individually no greater than 3,500 square feet however, this prohibited use shall not be applicable to a hotel use, or to any leasing office on any Apartment Lot.
32. Any emission of any substance, gas, particulate matter, audio, radio or infrared electromagnetic wave frequency or other form of radiation that materially interferes with any other occupant of the Development.
33. Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of the Development (except that this provision shall not prohibit normal cooking odors which are associated with a restaurant operation, including, but not limited to, a BBQ restaurant, or dust resulting from the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store).
34. Any place of religious worship.
35. The storage, display or sale of explosives or fireworks and shooting galleries or target ranges.

36. Any public health, welfare center or unemployment office.
37. Any movie theater, except on Lot 2R10.
38. Any other use that is prohibited by the Development Agreements, as the same may be modified, supplemented or amended from time to time.