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Re: Lots 297 through 309, inclusive; and
Outlots B, C, D and E
Whispering Ridge
c/o M.J.A., L.L.C.
11205 S. 150th Street, Suite 100
Omaha, NE 68138

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DECLARATION 17

M.J.A., L.L.C., a Nebraska limited liability company, hereby establishes the following easements, covenants and restrictions.

PRELIMINARY STATEMENT

M.J.A., L.L.C., a Nebraska limited liability company ("Declarant"), is the record owner of Lots 297 through 309, inclusive; and Outlots B, C, D and E, Whispering Ridge, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

The Declarant desires to establish certain covenants and restrictions, and provide easements for pedestrian and vehicular ingress, egress, passage and traffic as though such lots were developed and utilized as an integrated shopping center.

TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement, which by this reference is repeated and incorporated in this portion of this Declaration in its entirety, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby establishes the following easements, covenants and restrictions.

After recording, please return to:

John Q. Bachman
GAINES PANSING & HOGAN LLP
10050 Regency Circle, Suite 200
Omaha, NE 68114

Box 13
03501483

109588

1. Definitions. The terms in this Section 1 shall have the following meanings:

1.1 Building Area. The term "Building Area" means and includes that area of the Shopping Center upon which a building, buildings, or other structures may be constructed or erected. Canopies may encroach from a Building Area over the Common Areas provided such canopies do not unreasonably interfere with the use of the Common Areas.

1.2 Common Areas. The term "Common Areas" shall mean and include all parts of the Shopping Center which are devoted primarily for parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads, loading areas (excluding loading docks) and other similar areas or exterior areas not used as a "Building Area".

1.3 Declarant. The term "Declarant" shall mean M.J.A., L.L.C., a Nebraska limited liability company, or any individual, partnership, joint venture, firm, corporation, limited liability company, association or other business entity designated in writing by M.J.A., L.L.C.

1.4 Owner. The term "Owner" shall mean any individual, partnership, joint venture, firm, corporation, limited liability company, trust, unincorporated association, governmental agency or other business entity now or hereafter holding of record an ownership interest in fee in a portion or all of a Parcel or an Outlot.

1.5 Parcel. The term "Parcel" shall mean or refer to any of the following platted lots: Lots 297 through 309, inclusive, Whispering Ridge, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska and, as the context may require, shall be deemed to include or refer to any of the following platted outlots, Outlots B, C, D and E, inclusive, in said Whispering Ridge subdivision (separately an "Outlot" or collectively the "Outlots"). The term "Parcels" shall mean all of the platted lots identified in this Subsection 1.5 and any administrative subdivision(s), replat(s) or lot combination(s) of such Parcels or Outlots. From time to time reference to one or more Parcels or Outlots will be made in this Declaration by its or their platted lot number(s).

1.6 Permittees. The term "Permittees" shall mean (i) the respective Owners of each Parcel comprising the Shopping Center and their respective successors, assigns, heirs, and personal representatives; (ii) such Owners' agents, customers, invitees, licensees, employees, servants, and contractors; (iii) such Owners' leasees, subleasees, tenants and subtenants and their respective customers, invitees, employees, servants, licensees, concessionaires, contractors, and agents, and (iv) such Owners' land contract purchasers, mortgagees and beneficiaries under deeds of trust.

1.7 Shopping Center. The term "Shopping Center" shall mean all of the Parcels as a group; however, specifically excluding Lot 296, Whispering Ridge, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

2. Grant of Easements. The Declarant hereby grants to the Permittees the following easements:

2.1 Pedestrian Easements. Nonexclusive easements for the purpose of pedestrian traffic between each Parcel and: (i) each other Parcel; (ii) the public streets now or hereafter abutting or located on any portion of the Shopping Center; and (iii) the public walkways now and hereafter abutting or located on any portion of the Shopping Center; limited, however, to those portions of each Parcel which are improved by the Owner thereof from time to time for pedestrian walkways and made available for general use, as such portions may be altered, relocated or eliminated from time to time by each such Owner.

2.2 Vehicular and Access Easements. Nonexclusive easements for the purpose of vehicular traffic and access between each Parcel and (i) each other Parcel; and (ii) the public streets now and hereafter abutting or located on any portion of the Shopping Center; limited, however, to (a) those portions of Outlot E depicted on Exhibit A annexed to this Declaration as drives, entrances and exits and service areas, and (b) such other portions which are improved by the Owner thereof from time to time for vehicular accessways and made available for general use, as such portions may be altered, relocated or eliminated from time to time by each such Owner.

Notwithstanding the foregoing, at its sole cost and expense, the Declarant shall install, and shall not eliminate or materially alter the location of, the concrete or asphalt interior drive within Outlot E and cross hatched on Exhibit A annexed to this Declaration. Provided, however, nothing herein shall preclude the Declarant from enlarging or changing the contour or slope of any or all of such drives, or from installing directional curbing or traffic directional devices, signs or signals therein, or from installing speed bumps therein, or from installing green or planted areas or landscaped islands therein, or from otherwise modifying such drives to accommodate increased or reduced traffic, or to enhance traffic flow, or to enhance or ensure pedestrian or vehicular safety. Unless required by the City of Omaha or applicable governmental agency, Declarant covenants and warrants it shall not (i) construct improvements restricting east bound turns onto the roadway in Outlot E from 171st Street; and (ii) shall not install the drive on Outlot E in such a manner that impedes or prevents full vehicular access (right in, right out, left in, left out turns) to the easternmost access point approved for Lot 297 by Declarant.

At its sole cost and expense, the Declarant may install and construct green or planted areas, landscaped islands, directional curbing, traffic signs or devices, and improvements designed or intended to enhance traffic flow and vehicular and pedestrian safety.

2.3 Utility Easements. The Owners of the Parcels and Outlots shall cooperate in the granting of appropriate and proper underground easements for the installation, repair and replacement of and connection to storm sewers, sanitary sewers, electrical, water, gas, and telephone lines and related systems necessary for the orderly development and operation of the Shopping Center (collectively "Sewers and Utilities"), subject to the terms of this Section 2.3. No such lines, systems, sewers, or utilities serving one or more Parcels shall be installed

within any portion of any Parcel whose Owner has designated such portion as a Building Area or expansion area, it being the intent hereof that such easements, if any, shall be situated under Common Areas. All costs and damages associated with the installation, repair and replacement of the Sewers and Utilities, except for the initial installations in Outlot E, will be borne by the benefited Owner of such Parcel.

The Owner of any burdened Parcel affected by any of such Sewers and Utilities easements will have the right, at any time, and from time to time, to relocate any such easements and the Sewers and Utilities located therein then located on the burdened Parcel on the conditions that: (i) such right of relocation will be exercisable only after thirty (30) days' prior written notice of the intention to relocate has been given to all benefited Owners using the easements and the Sewers and Utilities located therein to be relocated; (ii) such relocation, without the prior consent of the Owner of the benefited Parcels, will not interrupt during its normal business hours any sewer or utility service to the improvements then located on the benefited Parcels; (iii) such relocation will not materially reduce or impair the usefulness or function of the easements and the Sewers and Utilities located therein to be relocated; and (iv) all costs of such relocation will be borne by the Owner relocating the easements and the Sewers and Utilities located therein.

2.4 Fire and Emergency Access. Nonexclusive easements for the purposes of fire protection and emergency access between each Parcel and each other Parcel and for the purposes of pedestrian and vehicular access, ingress and egress over, across, on and through the Common Areas of each Parcel.

2.5 Self-Help Easements. Nonexclusive rights of entry and easements in favor of the Declarant over, across, and under each Parcel for all purposes reasonably necessary to enable the Declarant to perform any of the provisions of this Declaration which a defaulting Owner has failed to perform, such easements to be exercised as provided in Section 16.2 of this Declaration.

2.6 Unimpeded Access. Without the prior written consent of Declarant, no barricades, fences or other dividers will be constructed between the Parcels and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic throughout the Shopping Center in the areas designated for such purpose by the Owner of each Parcel except for curbing reasonably designed and installed to assist traffic control; provided that each Owner will have the right to erect barriers, once each year for a period not exceeding twenty-four (24) hours, to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein.

2.7 Use of Easements. Subject to the reasonable rules and regulations adopted for the use of each Parcel by the Owner thereof, the use of all easements created by this Declaration will, in each instance, be nonexclusive and for the use and benefit of the Permittees. Each Owner specifically reserves the right, at any time and from time to time, to promulgate such rules and regulations applicable to the Owner's Parcel as might be reasonably imposed, but in all cases consistently applied and uniformly enforced to promote the health,

safety, welfare and security of such Parcel, the improvements located thereon and the Owner and its tenants and subtenants and their respective customers. Each Owner may, at any time and from time to time, remove, exclude and restrain any person from the use, occupancy or enjoyment of any easement hereby created or the area covered thereby for failure to observe the reasonable rules and regulations established as permitted herein. If the unauthorized use is being made of any easement area by any of the Permittees, such unauthorized use may be restrained or terminated by appropriate proceedings after written notice to the defaulting Owner and failure to abate such unauthorized use within fourteen (14) days after receipt of such notice.

Nothing in this Declaration shall be interpreted to permit nor shall the Owner of any Parcel impose any charge or cost for the use of any of the Common Areas.

2.8 Maintenance of Easement Areas. Except to the extent that such areas might be operated and maintained by public authorities or utilities and except as otherwise specifically provided in this Declaration, the Owner of each burdened Parcel, including the Outlots, will operate, repair, maintain and replace all of the areas of the burdened Parcel, including the Outlots, which are subject to the pedestrian and vehicular easements created in this Declaration in sound structural and operating condition at the sole expense of the Owner of the burdened Parcel, including the Outlots, and the Declarant will operate, repair, maintain and replace the easements and Improvements in Outlot E in sound structural and operative condition with expenditures from the Annual Maintenance Fee assessments under Section 2.9 of this Declaration. Additionally, the Owner of each Parcel, including the Outlots, at its own expense, shall repair, maintain and replace the Common Areas and all improvements within or upon any Building Area (the "Improvements") from time to time located on such Parcel or Outlot. Such repairs, replacements and maintenance on each Parcel, including the Outlots, by the Owner thereof shall include, but shall not be limited to:

(a) maintenance, repair and replacement of the surface and subsurface of any parking areas and vehicular accessways so as to maintain level, smooth and evenly covered parking areas and vehicular accessways with the type of materials originally installed or used thereon or such substitutes as will in all material respects be equal to or better than such materials in quality, appearance, use and durability;

(b) maintenance, repair and replacement of any sidewalks or pedestrian walkways so as to maintain a smooth and even surface for safe pedestrian traffic;

(c) maintenance, repair and replacement of all buildings and other Improvements. Nothing in this paragraph shall be construed to obligate the Owner of any Parcel to restore any building or Improvement destroyed by fire or other casualty; however, if such building or Improvement is not repaired or replaced, then it shall be razed within a reasonable time, all debris removed, and all unpaved or unlandscaped areas seeded;

(d) maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, weeding, watering, mowing and trimming thereof, and the making of such replacements of shrubs, trees and other landscaping as is necessary to maintain the same in first class condition;

(e) removal from the Common Areas and vehicular accessways of papers, debris, ice, snow, refuse, filth and any hazards to persons using such areas, and washing or thoroughly sweeping paved areas as required to keep such areas in a clean and orderly condition;

(f) maintenance of such appropriate parking area entrance, exit and directional signs, markers and lights as may be reasonably required from time to time;

(g) such painting, repainting, striping and restriping as may be required to maintain the parking areas and equipment installed thereon and the vehicular accessways in good condition, appearance and repair;

(h) maintenance and replacement of all lighting equipment, facilities and identification signs; and

(i) paying real property taxes and assessments as provided in Section 6 of this Declaration and maintaining and paying public liability premiums as provided in Section 8.1 of this Declaration.

The standard of care applicable to repairs and maintenance required under this Declaration shall be that of a first-class shopping center.

The Owner of each burdened Parcel, including Declarant as the owner of Outlot E, will operate, repair, maintain and replace all Sewers and Utilities located within the boundaries of such burdened Parcel and serving such Owner's building or Improvements in sound structural and operating condition (except to the extent that such operation and maintenance is performed by public authorities or utilities) and any expenses occasioned thereby will be borne by the Owners of the benefited Parcel or Parcels which are serviced by such utility facilities in the ratio which the gross leasable area of the Improvements located on each benefited Parcel bears to the total gross leasable area of the Improvements located on all benefited Parcels; provided, however, that each Owner will pay the costs associated with the construction, operation, maintenance and replacement of utilities and the consumption of utility services which relate solely to the Improvements located on an individual Parcel, and no other Owner will have any liability with respect thereto.

2.9 Annual Maintenance Fee. Each of the Owners of Lots 297 through 304, inclusive, as their share of the cost of maintaining the concrete or asphalt drive and Sewers and Utilities in Outlot E as to which easements have been granted in this Declaration, except as to the extent such maintenance may be performed by public authorities or utilities, shall pay each year, beginning January 1st of the calendar year after the drive in Outlot E is fully installed to connect Bedford Avenue to 171st Street, and on each anniversary thereof, to the Declarant, the sum of One Thousand Dollars (\$1,000.00) adjusted annually thereafter by the increase, if any, in the Consumer Price Index (U.S. average; all-items index; All Urban Consumers; 1982-84=100; published by the U.S. Department of Labor) (herein "CPI-U"); the adjusted annual amount shall be determined by multiplying One Thousand Dollars (\$1,000.00) by a fraction, the numerator of which is the CPI-U for the calendar month immediately preceding the next payment date in question and the denominator of which is the CPI-U for the calendar year in the month in which the first payment was made. In the event the CPI-U is discontinued or not available, an equivalent index or measure shall be substituted. Such annual amounts, if unpaid beyond thirty (30) days of the due date, shall accrue interest at the rate of sixteen percent (16%) per annum from such due date to the date paid and shall constitute a lien against the Parcel in respect of which such annual amount has not been paid from the date of filing notice in the public records on the Parcel. In the event Outlot E is dedicated as a public street, said Annual Maintenance Fee shall terminate and all unused reserved funds held by the Declarant for such purpose shall be refunded to the Owners in the same proportions as the unused amounts were originally paid by the respective Owners.

3. Use of the Building Areas. Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in an integrated, community-oriented retail shopping center and mixed use commercial center, including, without limitation, service shops, offices (including, but not limited to, real estate, insurance agencies, travel agencies, bank financial services, savings and loan or credit union, eye care, chiropractic, medical and dental), office building, restaurants, and retail stores. Without the prior written consent of the Declarant, no part of the Shopping Center shall be used for a bowling alley, skating rink, health spa or studio, gym, theater, cafeteria, bingo parlor, flea market, massage parlor, billiard or pool parlor, night club, or any operation whose primary business is the sale of alcohol, beer and wine for off-site or on-site consumption (this does not exclude a deli, café or restaurant with the incidental (not to exceed thirty-five percent (35%) of the gross sales of such business) sale of alcohol for on-site or off-site consumption).

4. Building and Site Improvements. Except as otherwise specifically provided herein, or as otherwise expressly permitted by the Declarant, Lots 297 through 309 shall be developed under the following standards:

4.1 Design and Construction. The Building Areas shall be designed so that the exterior elevations of buildings constructed on any such Lot shall be architecturally and aesthetically compatible as determined by the Declarant in its sole discretion. The design and construction of any building or expansion thereof constructed on any of such Parcels shall be of high quality. No building constructed within any of such Parcels shall have a metal exterior.

- (a) All exterior wall surfaces of buildings shall be brick as determined by Declarant in its sole discretion, unless otherwise approved by Declarant in its sole discretion;
- (b) Any sloped roof areas of buildings shall be covered with shingles, or as otherwise approved by Declarant in its sole discretion; and
- (c) Parking lot lighting (poles and fixtures) shall be compatible, in design and color, with parking lot lighting equipment to be determined by Declarant in its sole discretion. Fixture lamps shall be metal halide, or as otherwise approved by Declarant in its sole discretion.

4.2 No more than one building shall be constructed on Lots 297 through 304, respectively, unless more than one building on any respective Parcel is approved in writing by the Declarant. Each building shall not exceed twenty-three feet (23') in height, as measured from finished grade, unless otherwise determined by Declarant in its sole discretion. No detached facilities, buildings or structures (except approved signage and refuse dumpster enclosures) of any kind shall be constructed on any of such Parcels, unless a detached facility on any such Parcel is approved in writing by the Declarant.

4.3 Any rooftop equipment or building components constructed on Lots 297 through 304, shall be screened from public view from all directions in a manner satisfactory to the Declarant in its sole discretion.

- (a) No rooftop sign shall be erected on any building constructed within such Parcels.
- (b) Only one (1) freestanding identification sign may be erected on any of such Parcels and unless otherwise approved by the Declarant, may advertise only the name and logo of the business conducted thereon; unless a pole sign is otherwise approved by the Declarant, such identification sign shall be a Monument Sign, as defined by the City of Omaha Zoning Ordinance, and the overall height shall not exceed sixteen feet (16') (measured from the ground to the highest point of the sign structure). Such sign shall be of a design and erected in a location approved by the Declarant in its sole discretion.
- (c) Signs which contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited.
- (d) The Owner of the Parcel on which the sign is installed shall be and remain responsible to ensure that the sign is maintained in good condition and repair.
- (e) Each such sign shall meet all applicable laws, rules, ordinances and regulations.

4.4 No building or other improvements shall be constructed, erected, expanded or altered on any of such Parcels until the plans and specifications for same (including site layout, elevations, exterior building materials, colors, landscaping, signage, and parking layout) have been approved in writing by Declarant.

4.5 Landscaping shall not materially obstruct in the sole judgment of the Declarant (either through original planting or through untrimmed growth) the view of the buildings or Shopping Center identification signs constructed on any Parcel.

4.6 Until such time as a Parcel is developed and improved by its Owner, and subsequent to such development, such Owner shall keep the same planted with grass, mowed and in a clean and slightly condition. In the event any Parcel abuts West Maple Road, 168th Street, 171st Street, or Bedford Avenue, the portion of such right-of-way which adjoins such Parcel shall be seeded, fertilized and mowed by such abutting Parcel Owner and maintained in the same condition as the grass areas within such Parcel. The Owner of each right-of-way abutting Parcel shall construct and maintain a sidewalk, as required by the City of Omaha, in that portion of such right-of-way which adjoins such Parcel.

4.7 The Owners of Lots 297 through 304, inclusive, shall continuously provide and maintain a parking ratio equal to one of the following: (i) ten (10) spaces for every one thousand (1,000) square feet of building space utilized for any restaurant use; (ii) six (6) spaces per one thousand (1,000) square feet of building space utilized for any use other than a restaurant; and (iii) for any use other than restaurant use, basement space shall be calculated at two (2) spaces per one thousand (1,000) square feet of building space located below grade.

4.8 No radio, television, satellite reception dish or any other device for the reception or transmission of television, radio, microwave or any other form of electromagnetic radiation shall be placed or maintained upon any Building Area or Common Areas of Lots 297 through 304, inclusive, without the express prior written consent of the Declarant.

4.9 All areas of any of such Parcels which house refuse dumpsters or garbage containers shall be completely surrounded on three (3) sides with brick walls with a fourth side consisting of a door or gate, approved by the Declarant and designed to preclude public view. Brick used to construct such walls shall be the same brick as required for the buildings.

4.10 Lots 297 through 304 may not be subdivided in any manner into smaller lots without the prior written consent of the Declarant.

4.11 Lot 297 (the "Benefited Lot") shall be used solely for a financial institution that accepts deposits and/or operates a drive-thru access. Any change in use for Lot 297 must be approved by Declarant and by the then present owner of said Lot 297. Lots 296, 298, 299, and 307 (the "Burdened Lots") shall not be used for a financial institution that accepts deposits and/or operates a drive-thru access so long as the use of Lot 297 is restricted as hereinabove set forth. Beginning upon the completion and occupation of improvements upon Lot 297 or upon December 31, 2005, whichever shall first occur, failure to continuously operate a

financial institution on Lot 297 for six (6) consecutive months (excluding repairs or remodeling due to casualty damage) shall cause this restriction on the Burdened Lots to be automatically terminated, with written notice from Declarant.

5. Limitations on Use.

5.1 Customers. Each of the Owners shall use reasonable efforts to ensure that its customers and invitees and those of its tenants and subtenants shall not be permitted to park on the Common Areas of the other Owners unless parking easements are expressly granted in this Declaration.

5.2 Employees. Each of the Owners shall use reasonable efforts to ensure that its employees and those of its tenants and subtenants shall not park on the Common Areas of the other Owners unless parking easements are expressly granted in this Declaration.

5.3 General. Without the prior written consent of Declarant, which may be withheld in its sole discretion, the Common Areas of any Parcel shall not be used for any purpose other than the primary purpose of such Common Areas which is to provide for parking for customers, invitees and employees of the business conducted within the Building Areas of such Parcels and for the servicing and supplying of such business.

6. Taxes and Assessments. The Owners of the Parcels, including the Outlots, shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied and assessed against their respective Parcels, including the Outlots.

7. Indemnification. The Owner of each Parcel shall hereby indemnify and save the Owners of the other Parcels harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death or property damage and occurring on or from its own Parcel, except if caused by the act or negligence of the Owner to be indemnified.

8. Insurance.

8.1 Liability Insurance. The Owners of the Parcels, including the Outlots, (until such time as a Parcel is sold to another party who shall thereby assume this obligation) shall procure and maintain in full force and effect throughout the term of this Declaration, general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, Owner's insurance to afford protection to the limit of not less than Two Million Dollars (\$2,000,000.00) for injury or death of a single person, and to the limit of not less than Two Million Dollars (\$2,000,000.00) for any one occurrence, and to the limit of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage. Each Owner shall provide the Owners of the remaining Parcels with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by

additional premises endorsement on any master policy of insurance which may cover other property in addition to the property covered by this Declaration. Such insurance as to the Parcels shall provide that the same may not be cancelled without fourteen (14) days prior written notice to the Declarant, and such insurance as to Outlot E shall provide that the same may not be cancelled without fourteen (14) days prior written notice to the Owners of Lots 297 through 304.

8.2 Fire Insurance. At all times during the term of this Declaration, the Owner or its tenants or subtenants shall keep the improvements on its Parcel insured against loss or damage by fire and other perils and events as may be insured against under the all-risks form in effect from time to time in Nebraska, with such insurance to be for the full replacement value of the insured improvements.

In the event of a fire or other casualty, the building or other improvements shall be repaired and restored as soon as practicable or shall be razed and all debris and other improvements (excluding undamaged landscaping) removed and the Parcel so affected shall be planted with grass seed and properly maintained.

8.3 Release. Each Owner of a Parcel hereby releases all of the Owners of the remaining Parcels from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty, whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released, or by any agent, associate or employee of the party being released; this release is effective only to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry or, if for any reason the releasing party is not carrying such insurance, then to the extent such damage or loss would be covered if the releasing party were carrying such insurance.

9. Eminent Domain.

9.1 Owner's Right to Award. Nothing herein shall be construed to give an Owner of any Parcel any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting another Owner's Parcel or granting the public or any government any rights in such Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas, 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 Shopping Center.

9.2 Tenant's Claim. Nothing in this Section 9 shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and such Owner for all or a portion of any such award or payment.

9.3 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 Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer and without contribution from any other Owner.

10. Rights and Obligations of Lenders. If, by virtue of any right or obligation set forth herein, a lien shall be placed upon any Parcel, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Parcel. Except as set forth in the preceding sentence, however, any holder of a first lien on any Parcel, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

11. Release from Liability. Any person acquiring fee or leasehold title to any Parcel shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired by such person. In addition, such person shall be bound by this Declaration only during the period for which such person is the fee or leasehold owner of such Parcel or portion thereof and shall be responsible for all obligations and liabilities which accrue during such period. Although persons may be released under this Section 11, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitude upon such Parcel or Parcels, running with the land.

12. Breach. In the event of the breach or threatened breach of this Declaration, either (a) any or all of the Owners of Parcels adversely affected by such breach or threatened breach, or (b) the Declarant shall be entitled to institute proceedings for full and adequate relief from the consequences of such breach or threatened breach. The unsuccessful party in any action shall indemnify the prevailing party from all reasonable attorney's fees and other reasonable costs and expenses incurred by the prevailing party in connection with such proceedings.

No breach or threatened breach of this Declaration will entitle any Owner of any of the Parcels to cancel, rescind or otherwise terminate this Declaration.

13. Legal Effect. Each of the easements and rights created by this Declaration are appurtenant to the Parcel to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purpose of each such easement and right, the benefited Parcel will constitute the dominant estate and the burdened Parcel or Outlot E, as the case may be, will constitute the servient estate. Each easement or covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of the Owner of each other Parcel now or hereafter constituting a part of the Shopping Center; (b) creates mutual equitable servitudes on each Parcel and on Outlot E in favor of each other Parcel; (c) constitutes a covenant running with the land; (d) binds every Owner and Declarant now having or hereafter acquiring an interest in any Parcel or in Outlot E; and (e) will inure to the benefit of each Owner and the Declarant and each Owner's and the Declarant's successors, assigns, heirs, mortgagees and beneficiaries under deeds of trust.

Upon the conveyance of all or any part of a Parcel or an Outlot, the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration and will be deemed to have assumed and agreed to perform each of the obligations of the conveying Owner or Declarant under this Declaration with respect to the Parcel or Outlot or portion thereof, conveyed to such grantee. Upon recordation of such conveyance with the Register of Deeds of Douglas County, Nebraska, the conveying Owner or Declarant will be released from any obligation under this Declaration arising thereafter with respect to the portion of the Parcel or Outlot so conveyed, but will remain responsible for any and all liability which has accrued prior to such recordation.

14. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Parcel or Outlot to the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited, in accordance with the terms hereof, to the private use of the Permittees of each Parcel to whom easements have been granted in this Declaration. Except as otherwise specifically provided herein, this Declaration is intended to benefit the Owners and the Declarant and their respective successors, assigns, heirs, mortgagees and beneficiaries under deeds of trust, and is not intended to constitute any person or entity which are not Permittees of Parcels to whom easements or other rights have been granted in this Declaration a third party beneficiary hereunder or to give any such person or entity any rights hereunder.

15. Duration; Amendment; Termination. Unless otherwise modified, terminated or extended as permitted in this Section 15 or in this Declaration, the easements, rights, obligations, covenants and restrictions contained in this Declaration shall continue for a period of sixty-five (65) years ("Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, ninety percent (90%) of the Parcel Owners execute a written instrument of termination, in which event, the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect. Except as otherwise specifically provided in this Declaration, this Declaration and any provision herein contained may be terminated, extended, modified or amended as to the Shopping Center or any Parcel, only with the express written consent of the Declarant. No amendment, modification, extension or termination of this Declaration will be effective against any mortgagee or beneficiary under a deed of trust subsequent to such mortgagee's or beneficiary's acquiring title to a portion or all of a Parcel by foreclosure or deed in lieu of foreclosure, unless such mortgagee or beneficiary has so consented in writing. No tenant, subtenant, licensee or other person having a possessory interest in a Parcel is required to join in the execution of or consent to any action of the Owners taken pursuant to this Declaration.

16. Default; Remedies. Subject to the provisions of Section 12 of this Declaration, the provisions of this Declaration will be enforced as follows:

16.1 Injunctive Relief. In the event of any violation or threatened violation by any Owner or by Declarant of any of the provisions of this Declaration, in addition to the right to collect damages, each Owner or the Declarant, as the case may be, will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days written notice of the violation will be given to the Owner or the Declarant, as the case may be, claimed to have committed such violation during which period such Owner or the Declarant, as the case may be, shall have the right to cure such default; in the event such default cannot be cured during such period and such Owner or the Declarant, as the case may be, is diligently pursuing such cure, such Owner or the Declarant, as the case may be, shall not be considered in default.

16.2 Self-Help. In the event Owner fails to perform any of the provisions of this Declaration, the Declarant will have the right, without being obligated to do so, to enter upon the Parcel and improvements of such defaulting Owner and perform the obligations of the defaulting Owner hereunder; provided, however, that written notice of such intention, specifying the nature of the alleged default and actions to be performed, has been given to the defaulting Owner not less than thirty (30) days prior to the commencement of such action or without notice if such default is of an emergency nature. During such thirty (30) day period, the defaulting Owner will have the right to perform or commence performance of action appropriate to remedy such default, and provided such action is diligently carried to completion, the right of the Declarant to perform such obligation of the defaulting Owner will terminate without prejudice to correct further defaults. If the Declarant elects to perform the action to have been performed by a defaulting Owner, on completion of such action, or from time to time, if the action is of a continuing nature, an itemized statement of the reasonable costs thereof will be submitted to the defaulting Owner and the amount thereof will be immediately due and payable by the defaulting Owner, which amount will bear interest at the rate of sixteen percent (16%) per annum from the date such costs are incurred to the date reimbursement is made by the defaulting Owner; such amount, including interest, shall be a lien on the Parcel of the defaulting Owner until paid from the date of filing notice thereof in the public records on the Parcel.

16.3 Force Majeure. If performance of any action by any Owner is prevented or delayed by act of God, war, labor dispute or other cause beyond the reasonable control of such Owner, the time for the performance of such action will be extended for the period that such action is delayed or prevented by such cause.

16.4 Notice of Default. An Owner will not be in default under this Declaration unless the Owner has received written notice specifying the nature of such default and has failed to cure or commence appropriate action to cure such default within the times herein provided. The legal propriety of the assertion of such default shall be subject to judicial interpretation.

16.5 No Termination. No breach of this Declaration will entitle any Owner or Declarant to cancel, rescind or otherwise terminate this Declaration. The foregoing limitation will not affect, in any manner, any other right or remedy which any Owner or Declarant might have by reason of any breach of this Declaration.

17. Miscellaneous.

17.1 Approvals. Except for the consent or approval required of the Declarant pursuant to Sections 3, 4 and 5 of this Declaration, which consents and approvals may be withheld in its sole discretion, when approval by any Owner is required hereunder, such consents and approvals may not be unreasonably withheld. Unless provision is made for a specific period of time, the period of time in which approval will be granted will be thirty (30) days, and if an Owner neither approves nor disapproves a proposed action within that period, the Owner will be deemed to have given approval. If an Owner disapproves of any action proposed by another Owner hereunder, such disapproval shall set forth in writing the specific reasons for such disapproval.

17.2 Notices. All notices, statements, demands, approvals and other communications given pursuant to this Declaration will be in writing and will be delivered in person, by certified or registered mail, postage prepaid, or by recognized courier service to the Owners at the addresses on file with the office of the Douglas County Assessor for delivery of ad valorem tax statements relating to their respective Parcels. All such notices which are mailed shall be deemed delivered on the third day after postmark unless delivered sooner.

17.3 Waiver of Default. No waiver of any default by any Owner or by Declarant will be implied from the failure by any other Owner or by Declarant to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Declaration will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner or by Declarant will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Declaration are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner or Declarant might otherwise have by virtue of a default under this Declaration; and the exercise of any right or remedy by any Owner or by Declarant will not impair such Owner's or Declarant's standing to exercise any other right or remedy.

17.4 No Partnership. Nothing contained in this Declaration and no action by the Owner of any Parcel or by the Declarant will be deemed or construed by any Owner, by Declarant or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Owners of any of the Parcels or Declarant.

17.5 Severability. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

17.6 Governing Law. This Declaration will be construed in accordance with the laws of the State of Nebraska.

17.7 Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

17.8 Time. Except as otherwise provided by this Declaration, time is of the essence.

17.9 Estoppel Certificate. Upon written request made not more often than two (2) times each calendar year, the Owner of any Parcel or the Declarant shall, from time to time upon not less than twenty (20) days written notice from any other Owner or the Declarant, execute and deliver to such other Owner or to Declarant a certificate in recordable form stating that this Declaration is unmodified and in full force and effect, or if modified, indicating the modifications, and stating whether or not, to the best of its knowledge, any Owner or the Declarant is in default under the Declaration, and if so, specifying such default.

17.10 Notice of Default to Mortgagee. Any Owner served notice of default under this Declaration shall provide written notice of such default in the manner permitted in this Declaration to any holder of any mortgage or beneficiary under any deed of trust covering the Parcel of the Owner allegedly in default provided such holder or mortgagee shall have provided the Owner responsible for serving such notice of default a written notice informing it of the existence of such mortgage or deed of trust and the address to which notices of default are to be sent.

17.11 Merger. This Declaration and the easements and rights created herein shall not be subject to the doctrine of merger.

17.12 Binding Effect. The provisions of this Declaration will be binding on the Owners and the Declarant and their respective successors, assigns, heirs, personal representatives, mortgagees, and beneficiaries under deeds of trust to the extent herein provided.

Dated as of December 8, 2003.

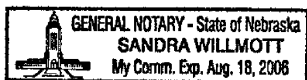
DECLARANT:

M.J.A., L.L.C., a Nebraska limited liability company

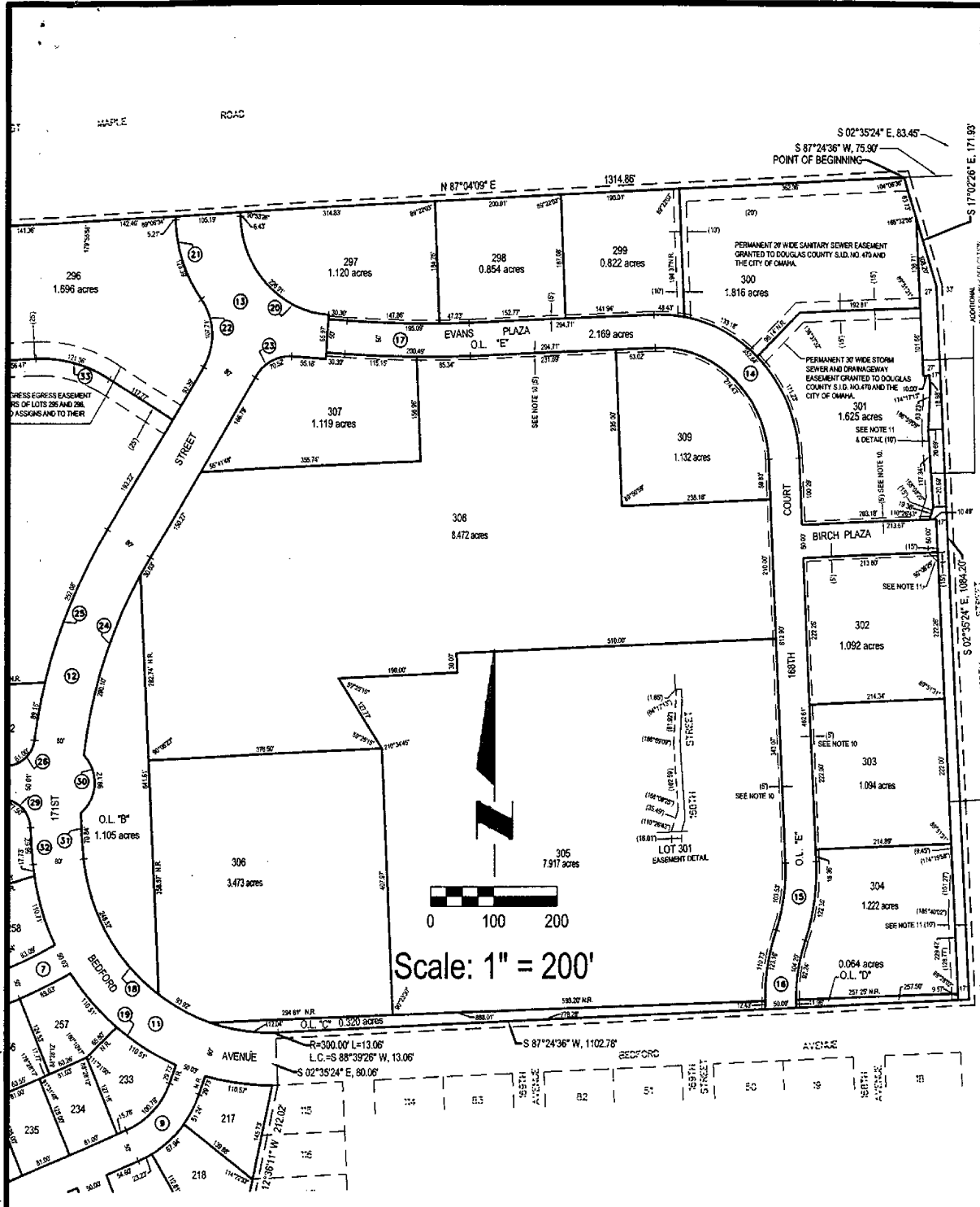
By: *Gerald L. Torczon*
Gerald L. Torczon, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 8th day of December, 2003, by GERALD L. TORCZON, the Manager on behalf of M.J.A., L.L.C., a Nebraska limited liability company.



Sandra Willmott
Notary Public



E&A CONSULTING GROUP, INC.
 ENGINEERS • PLANNERS • SURVEYORS
 12001 Q STREET OMAHA, NE 68137 PHONE: (402) 895-4700

Drawn by: EQ Chkd by: _____ Date: _____ Chkd by: _____ Date: _____

Job No: 2000125-01 Date: 12/04/2003 Book No: _____

EXHIBIT A