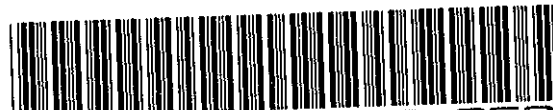




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GEORGE J. BUSLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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

PRELIMINARY STATEMENT

Southwestern Plaza Associates, L.L.C., a Nebraska limited liability company ("Declarant"), is the record owner of certain real property legally described on Exhibit A attached to this Declaration which property will be platted into Lots 1 through 23 Southwestern Plaza (Lots 14 through 19, inclusive, to be replatted at a later date), a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, (a copy of which plat is shown on Exhibit B attached to this Declaration) and desires to establish certain easements, covenants and restrictions.

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.

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

"*Building Area*" means and includes any area of a Lot upon which a building, buildings or other structures are constructed or erected. Canopies may encroach from a Building Area over the Common Areas, provided such canopies do not interfere with the use of the Common Areas.

"*Common Areas*" shall mean and include all parts of a Lot which are from time to time 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"; provided, however, Common areas shall not include the portions of Parcel A, defined below, used for the storage and display of automobiles in connection with the sale, rental, repair or other related automotive uses as permitted in Parcel A.

"*Owner*" shall mean any individual, partnership, joint venture, corporation, 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 Lot in the Development.

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"*Parcel A*" shall mean or refer to any of the following platted lots: Lots 1, 2, 20, 21, 22 and 23 of Southwestern Plaza, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

"*Business Park*" shall mean or refer to any of the following platted lots: Lots 12 through 19 inclusive (Lots 14 through 19, inclusive, of which shall be replatted into Lots 1 through 9, Southwestern Plaza Replat I at a later date).

"*Commercial Park*" shall mean or refer to any of the following platted lots: (Lots 3 through 13, inclusive, Southwestern Plaza, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska [it is acknowledged and understood that Lots 12 and 13 Southwestern Plaza are subject to either the Business Park or the Commercial Park covenants based upon the actual use of such lot(s)]).

"*Development*" shall mean Lots 1-23, Southwestern Plaza, or as it may be replatted from time to time, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

"*Lot(s)*" shall mean any of Lots 1-23, Southwestern Plaza.

"*Permittees*" shall mean (i) the respective Owners of a Lot and their respective successors, assigns, heirs and personal representatives, (ii) such Owners' agents, customers, invitees, licensees, employees, servants and contractors, (iii) such Owners' tenants and subtenants and their respective customers, invitees, employees, servants, licensees, contractors and agents, and (iv) such Owners' land contract purchasers, mortgagees and beneficiaries under deeds of trust.

Section 2. *Grant of Non-Exclusive Easements.* The Declarant hereby grants to the Permittees the following easements:

(a) *Fire and Emergency Access.* Nonexclusive easements for the purpose of fire protection and emergency access over each Lot in the Development and for pedestrian and vehicular access, ingress and egress over, across, on and through the Common Areas of each Lot in the Development.

(b) *Self Help Easements.* Nonexclusive rights of entry and easements in favor of the Declarant over, across and under each Lot in the Development 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 17(b) of this Declaration.

(c) *Use of Easements.* Subject to the reasonable rules and regulations adopted for the use of each Lot in the Development 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 Lot as might be reasonably imposed but in all cases consistently applied and uniformly enforced to promote the health, safety, welfare and security of such Lot, the improvements located thereon and the Owner's tenants and subtenants and their 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 14 days after receipt of such notice.

(d) *Maintenance of Easement Areas and Common 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 Lot will operate, maintain and replace all of the areas of the Lot which are subject to the easements created in this Declaration in sound structural and operating condition at the sole expense of the owner of the Lot.

Additionally, the Owner of any lot in the Development, 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 Lot. Such repairs, replacements and maintenance shall include, but shall not be limited to:

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

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

(iii) 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;

(iv) removal from the Common Areas 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;

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

(vi) such painting and repainting as may be required to maintain the parking areas and equipment installed thereon in good condition and repair; and

(vii) maintenance and replacement of all lighting equipment, facilities and identification signs.

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

(e) *Maintenance of Sewers and Utilities.* The Owner of each lot will operate, maintain and replace all sewers and utilities located within the boundaries of such Lot in sound structural and operating condition (except to the extent that such operation and maintenance is performed by public authorities or utilities) and will pay all costs associated with the consumption of utility services which relate to the improvements located on an individual Lot and no other Owner will have any liability with respect thereto.

(f) *Impositions Prohibited.* Nothing in this Declaration shall be interpreted to permit, nor shall the Owner of any Lot impose, any charge or cost for the use of any of the Common Areas.

Section 3. *Permitted Uses.*

A. COMMERCIAL PARK PERMITTED USES:

Buildings constructed in the Commercial Park shall be used for commercial purposes of the type normally found in a retail shopping center or office park including, without limitation, financial institutions, service shops, restaurants and retail stores. Without the prior written consent of the Declarant, no part of the Commercial Park shall be used for any of the following purposes: (a) bingo or other game room, pool hall, teen club, theater or gambling or live entertainment enterprise of any kind, (b) warehouse operation or manufacturing or assembling operation, (c) storage (except incidental to the primary commercial use), (d) central laundry facility, (e) facility in which fire sales, bankruptcy sales (unless pursuant to court order), or auction sales are conducted, (f) bowling alley, (g) skating rink, (h) mortuary, (i) establishment selling or exhibiting pornographic materials, (j) flea market, (k) health spa, (l) physical therapy facility, (m) massage parlor, (n) tanning parlor, (o) bar or tavern, and (p) ballroom, dance hall or discotheque.

B. BUSINESS PARK PERMITTED USES:

Buildings constructed in the Business park shall be for limited industrial and related uses of the type generally described in the Limited Industrial category of the Omaha Zoning Code, provided without the prior written consent of the Declarant, no part of the Business park shall be used for any of the purposes described in Section 3A (a) through (q) above.

C. PARCEL "A" PERMITTED USES:

Parcel "A" shall be used exclusively for automotive sales, rental, repair services and other related automotive uses or such other uses permitted in the Southwestern Plaza Mixed-Use Development Agreement entered into inter alia by the City of Omaha and the Declarant.

Section 4. *Buildings and Site Improvements of Commercial Park Lots and Parcel "A".*

Except as otherwise specifically provided herein, or as otherwise expressly permitted by the Declarant or its designee:

(a) *Design and Construction.* The Building Area shall be designed so that the exterior elevations of buildings constructed on any Lot in the Commercial Park and Parcel "A" shall be architecturally and aesthetically compatible with the buildings to be constructed on the other Lots as determined by the Declarant in its sole discretion. The design and construction of any building or expansion thereof constructed on any Lot shall be of high quality. No building constructed within any Lot shall have a metal exterior (except that such restriction shall not apply to the existing buildings on Lots 1 and 2 for so long as such buildings shall remain in existence). Declarant acknowledges that if the Parcel "A" buildings are designed by architects for a nationally known brand of automobile such design shall be deemed acceptable to Declarant.

(b) Any rooftop equipment or building components shall be screened from public view from all directions in a manner satisfactory to the Declarant in its sole discretion.

(i) No rooftop sign shall be erected on any building constructed within the Lots.

(ii) Only one freestanding identification sign may be erected on any Lot and may advertise only the name and logo of the business conducted thereon; such identification sign shall not exceed 10 feet in height, and contain no more than the number of square feet pursuant to the sign code of the City of Omaha. Such sign shall be of a design and erected in a location approved by the Declarant in its sole discretion. In no event, shall any approved sign materially block to any material extent the visibility of other buildings constructed on any other Lot.

Notwithstanding the foregoing, there may be erected entrance-exit and directional signs to facilitate the free flow of traffic, which signage shall be of a monument type, not to exceed 10 feet in height (except Parcel "A" may, subject to City of Omaha approval, and in addition to any other signs have one monument sign not to exceed 25 feet in height.) All other signs which are attached to the building shall not exceed the sign budget for each Lot as provided in Exhibit D to the Southwestern Plaza Mixed Use Development Agreement a copy of which is attached hereto. Further, the Declarant shall approve all signs in its sole discretion.

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

(d) 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 constructed from time to time on any Lot. All trees shall be of an ornamental, low-growing type.

(e) Until such time as a Lot is developed and improved by its Owner, such Owner shall keep the same planted with grass, mowed and in a clean and sightly condition.

(i) No outdoor satellite and receiving dishes or antenna of any type shall be installed on the roof of any building or within or on any portion of either Lot, without prior consent of Declarant.

(ii) All areas of any Lot which house refuse dumpsters or garbage containers shall be completely surrounded with decorative fencing approved by Declarant and designed to preclude public view.

(f) Lots in the Commercial Park and Parcel A may not be subdivided, in any manner, into smaller lots without the prior written consent of the Declarant which may be withheld in its sole discretion.

(g) Without the prior written consent of the Declarant, no barricades, fences or other dividers will be constructed at or near the property lines of a Lot and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic within a Lot in the areas designated for such purpose by the Owner of such Lot 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 24 hours, to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein.

Section 5. *Buildings and Site Improvements of Business Park Lots.*

(a) All building walls that face streets shall be approved masonry construction such as brick, stone, painted concrete block, architectural concrete or architectural plaster to specifications of the Declarant. All loading and unloading operation shall be off-street, in no case shall loading or unloading be permitted in the parking or lawn areas or in a location which will interfere with ingress or egress thereto. No loading areas shall be constructed facing any street or highway without prior written approval of the Declarant.

(b) No article of merchandise or other material shall be kept, stored or displayed outside the confines of a walled building unless it be so screened by fences, walls or plantings that can not be seen from any public street, other than the storage and display of automobiles on Parcel A.

Section 6. *Limitations of Use for All Lots in Southwestern Plaza.*

(a) *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 any other lot within the Development unless parking easements are expressly granted in this Declaration.

(b) *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 any other lot within the Development unless parking easements are expressly granted in this Declaration.

(c) *General.* Without the prior consent of the Development which may be withheld in its sole discretion, the Common Areas of a Lot shall not be used for any purpose other than the primary purpose of such Common Areas which is to provide for parking for the customers, invitees and employees of the business conducted within the Building Areas of such Lot and for the servicing and supplying of such business.

Section 7. *Architectural and Landscape Control For All Lots.*

Regulation of Design. The Declarant shall establish reasonable rules, regulations, restrictions, architectural standards and design guidelines with respect to the exterior (but not the interior) of all Improvements on the Lots, which the Declarant may from time to time, in its sole discretion, amend, repeal or augment including, without limitation, requirements for construction and installation of Common Surface Improvements by Lot Owners in conjunction with the construction of a Building on a Lot, the regulation of all landscaping (including, without limitation, absolute prohibition of certain types of landscaping, trees and plants) and regulation of all construction, reconstruction, exterior

additions, changes or alterations to or maintenance of any Building or Improvement, including, without limitation, the exterior nature, kind, shape, height, material, color, surface texture and location thereof.

Construction Restrictions. No excavation, fill, grading or other alteration of the topography or drainage of any Lot shall be commenced and no Building or Improvement of whatever type other than improvements or alterations to the interior of a Building shall be constructed, erected or maintained upon the Property, nor shall there be any addition or change to the exterior appearance of any Building or Improvement, including, without limitation, the color (other than repainting with the same color of paint as previously existed) of exterior walls, entryways, overhangs, parapets, atriums and fences, except in compliance with plans and specifications therefor, which have been submitted to and approved by the Declarant.

Design Review. The Declarant may charge reasonable fees in connection with its review of plans and specifications including, but not limited to, the fees charged by architects and engineers employed by the Declarant to review such plans and specifications, and, with respect to any Building or other Improvement or any alteration of an existing Building or other Improvement on a Lot, may require reasonable evidence of financial ability (such as a construction loan commitment or completion bond) to complete the Building, other Improvement or alteration in compliance with all requirements provided for in this Declaration. The Declarant may delegate its responsibility to review plans and specifications to one or more of its members or consultants retained by the Declarant. The Declarant shall approve or disapprove all plans and specifications submitted to it within 30 days of the receipt thereof. In the event the Declarant fails to approve or disapprove any plans and specifications submitted to it within such 30-day period, such plans and specifications shall be deemed to have been disapproved.

Standards of Review. The Declarant shall have the right, in its sole discretion, to refuse to approve any plans and specifications which are not suitable or desirable for aesthetic or other reasons; provided, however, Declarant shall not unreasonably withhold approval of the plans and specifications for all buildings on Parcel A. In reviewing all plans and specifications, the Declarant shall take into consideration the suitability of the proposed Building or Improvement, including any proposed Common Surface Improvements, in light of Declarant's development plans for the Lots as an exclusive integrated development, the harmony of external design and location in relation to surrounding structures and topography and the effect of the Improvements as planned on the outlook from other Lots and the adjacent public streets. No changes or deviations in or from such grading plans and plans and specifications once approved shall be made without the prior written approval of the Declarant.

Reconstruction. The reconstruction by the Owner of any Common Surface Improvements after damage thereto or destruction thereof which is accomplished in

substantial compliance with "as-built" plans for such Common Surface Improvements shall not require review and approval of plans and specifications by the Declarant. The Declarant shall not withhold its approval of any plans and specifications for the reconstruction of a Building by its Owner after damage thereto or destruction thereof if such plans and specifications call for the reconstruction of such Building in the same form as it existed prior to such damage or destruction; otherwise, the standard of review shall be as set forth above.

Section 8. *Taxes and Assessments of Both Commercial and Business Park Lots.* The Owners of the Lots 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 Lots.

Section 9. *Indemnification.* Each Owner of a Lot shall indemnify and save the Owner of the other Lot and the Owner of any Lot within the subdivision harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage occurring on or from its own Lot, except if caused by the act or negligence of the Owner to be indemnified.

Section 10. *Insurance.*

(a) ***Liability Insurance.*** The Owners of the Lots (until such time as a Lot 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 \$1,000,000 for injury or death of a single person, and to the limit of not less than \$1,000,000 for any one occurrence, and to the limit of not less than \$100,000 for property damage. Each Owner shall provide the Declarant 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 shall provide that the same may not be cancelled without 10 days prior written notice to the Declarant.

(b) ***Fire Insurance.*** At all times during the term of this Declaration, the Owner or its tenants or subtenants shall keep the improvements on its Lot 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 and 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 Lot so affected shall be planted with grass seed and properly maintained.

(c) *Release.* Each Owner of a Lot hereby releases the Declarant and the Owners of the other Lots within the development 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.

Section 11. *Eminent Domain.*

(a) *Owner's Right to Award.* Nothing herein shall be construed to give an Owner of any Lot in Development 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 Lot or granting the public or any government any rights in such Lot. 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.

(b) *Tenant's Claim.* Nothing in this Section 11 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.

(c) *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 and without contribution from any other Owner.

Section 12. *Rights and Obligations of Lenders.* If, by virtue of any right or obligation set forth herein, a lien shall be placed upon any Lot in Development, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Lot. Except as set forth in the preceding sentence, however, any holder of a first lien on any Lot, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

Section 13. *Release from Liability.* Any person acquiring fee or leasehold title to a Lot shall be bound by this Declaration only as to the Lot or portion of the Lot 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 Lot 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 13, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon such Lot or Lots, running with the land.

Section 14. *Breach.* In the event of the breach or threatened breach of this Declaration, either (a) any or all of the Owners of any Lot in the Development 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 attorneys' 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 Lots to cancel, rescind or otherwise terminate this Declaration.

Section 15. *Legal Effect.* Each of the easements and rights created by this Declaration are appurtenant to the Lot to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Lot. For the purpose of each such easement and right, the benefited Lots will constitute the dominant estate and the burdened Lots will constitute the servient estate. Each easement or covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of Lot and the Declarant; (b) creates mutual equitable servitudes on each Lot in favor of all Lots in Development; (c) constitutes a covenant running with the land; (d) binds every Owner now having or hereafter acquiring an interest in any Lot; and (e) will inure to the benefit of (i) each Owner and each Owner's successors, assigns, mortgagees and beneficiaries under deeds of trust and (ii) the Declarant and its successors, assigns and designees.

Upon the conveyance of all or any part of a Lot, 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 under this Declaration with respect to the Lot or portion thereof conveyed to such grantee. Upon recordation of such conveyance with the Register of Deeds of Douglas County, Nebraska, the conveying Owner will be released from any obligation under this Declaration arising thereafter with respect to the portion of the Lot so conveyed but will remain responsible for any and all liability which has accrued prior to such recordation.

Section 16. *No Dedication.* Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Lot 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 Lot to whom easements have been granted in this Declaration. Except as otherwise specifically provided herein, this Declaration is intended to benefit the Owners and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust, and is not intended to constitute any person or entity which are not Permittees of Lots 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.

Section 17. *Duration; Amendment; Termination.* Unless otherwise modified, terminated or extended as permitted in this Section 17 or in this Declaration, the easements, rights, obligations, covenants and restrictions contained in this Declaration shall continue for thirty (30) years and shall continue thereafter automatically unless terminated or modified by the owners of the majority of the area of the Lots.

Except as otherwise specifically provided in this Declaration, this Declaration and any provision herein contained may be terminated, extended, modified or amended as to any Lot in the Development, 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 Lot 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 only a possessory interest in a Lot is required to join in the execution of or consent to any action of the Owners taken pursuant to this Declaration.

Section 18. *Default; Remedies.* Subject to the provisions of Section 17 of this Declaration, the provisions of this Declaration will be enforced as follows:

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

(b) *Self Help.* In the event any 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 Lot 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 the actions to be performed, has been given to the defaulting Owner not less than 30 days prior to the commencement of such action or without notice if such default is of an emergency

nature. During such 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 future 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 continuing nature, an itemized statement of the reasonable cost 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 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 Lot of the defaulting Owner until paid.

(c) *Force Majeur.* If performance of any action by any Owner is prevented or delayed by act of God, war, labor disputes 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.

(d) *Notice of Default.* An Owner will not be 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.

(e) *No Termination.* No breach of this Declaration will entitle any Owner 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 might have by reason of any breach of this Declaration.

Section 19. *Miscellaneous.*

(a) *Approvals.* Except for the consent or approval required of the Declarant or its designees pursuant to Sections 3, 4, 5, 6 and 7 of this Declaration, which consents and approvals may be withheld in its sole discretion, unless otherwise provided therein, when approval by any Owner is required hereunder, such approval will not be unreasonably withheld or delayed. Unless provision is made for a specific period of time, the period of time in which approval will be granted will be 30 days, and if an Owner neither approves nor disapproves at 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, the Owner shall set forth in writing the specific reasons for such disapproval.

(b) *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 and the Declarant at the addresses on file with the office of the Douglas County Assessor for delivery of ad valorem tax statements relating to their respective Lots. All such notices which are mailed shall be deemed delivered on the third day after postmark unless delivered sooner.

(c) *Waiver of Default.* No waiver of any default by any Owner or Declarant will be implied from the failure by any other Owner 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 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 Declarant will not impair such Owner's or Declarant's standing to exercise any other right or remedy.

(d) *No Partnership.* Nothing contained in this Declaration and no action by the Owner of any Lot will be deemed or construed by any Owner 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 Lots.

(e) *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.

(f) *Governing Law.* This Declaration will be construed in accordance with the laws of the State of Nebraska.

(g) *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.

(h) *Time.* Except as otherwise provided in this Declaration, time is of the essence.

(i) *Estoppel Certificates.* The Owner of any Lot in the Development shall, from time to time, upon not less than 20 days written notice from any other Owner or

the Declarant, execute and deliver to such other Owner 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 is in default under the Declaration and if so, specifying such default.

(j) *Notice of Default to Mortgagee.* Any Owner or the Declarant serving 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 Lot 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.

(k) *Merger.* This Declaration and the easements and rights created herein shall not be subject to the doctrine of Merger.

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

Dated this 6th day of March, 1996.

DECLARANT:

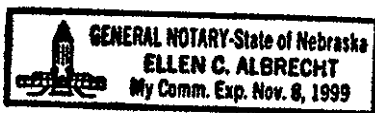
SOUTHWESTERN PLAZA ASSOCIATES,
L.L.C., a Nebraska Limited Liability
Company


By: Avery Shushy, Manager
Manager

ACKNOWLEDGEMENTS

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 6th day of March, 1996, by Jerry M. Slusky, Manager of Southwestern Plaza Associates, L.L.C., a Nebraska Limited Liability Company.




Notary Public

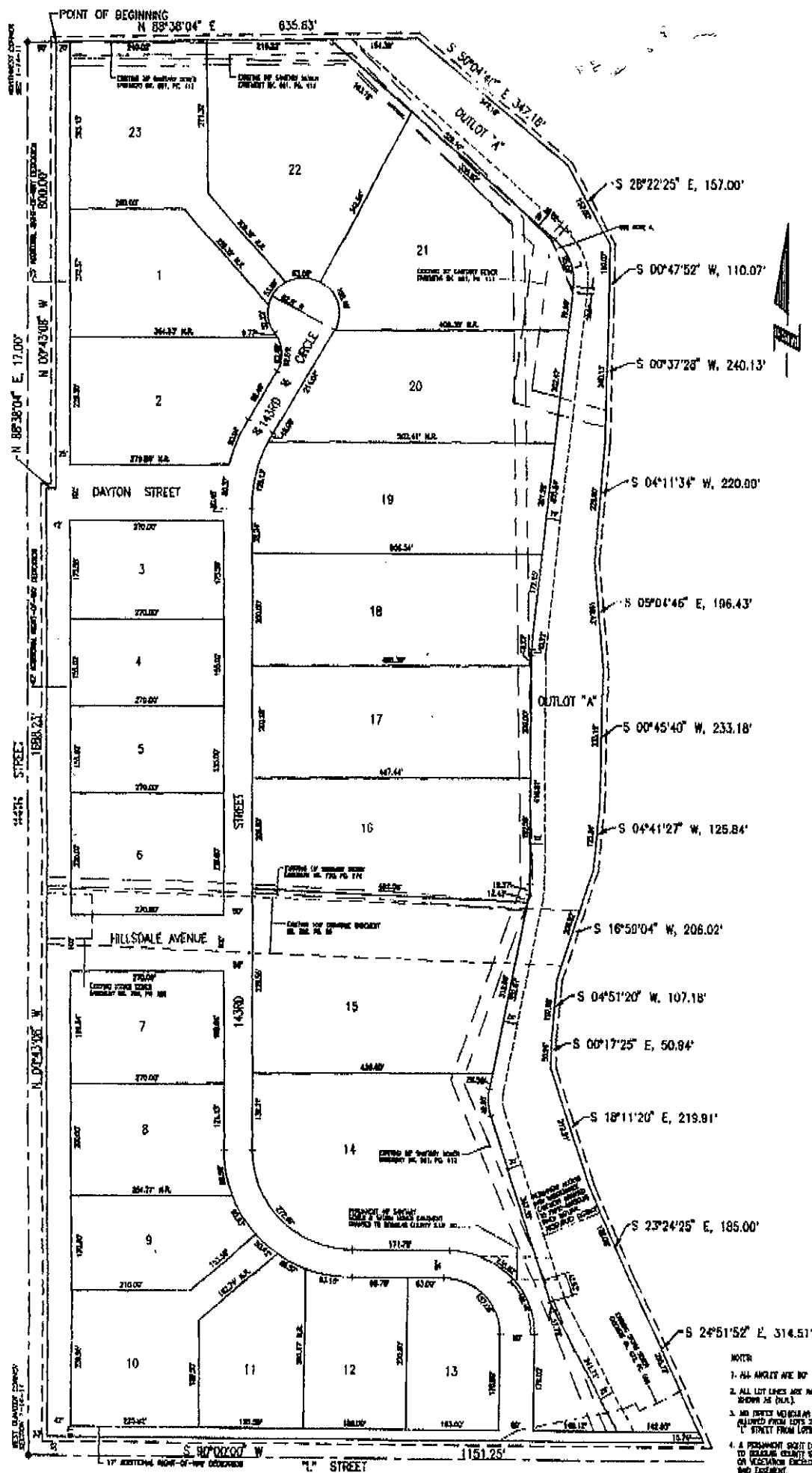
NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

EXHIBIT "A"

A tract of land in the Northwest Quarter (NW1/4) of Section 1, Township 14 North, Range 11 East of the 6th P.M., in Douglas County, Nebraska, lying West of the centerline of the West Papillion Creek as described in Book 1127 at Page 561 of the Deed Records of Douglas County, Nebraska, EXCEPTING the North 800 feet of the East 311.0 feet of the West 344.0 feet thereof, and EXCEPTING County Road Right of Way, said tract of land more particularly described as follows: Beginning at a point on the North line of said Northwest Quarter (NW1/4), that is 344.0 feet East of the Northwest corner of said Section 1, thence N 88°38'04" E along the North line of said Northwest Quarter (NW1/4) for 341.63 feet to the centerline of the West Papillion Creek as described in a Deed recorded in Book 1127 at Page 562 of the Deed Records of Douglas County, Nebraska; thence along said West Papillion Creek centerline as described in said deed, for the next 14 courses: S 50°04'40" E for 347.18 feet; thence S 28°22'25" E for 157.03 feet; thence S 00°47'52" W for 110.07 feet; thence S 00°37'28" W for 240.13 feet; thence S 04°11'34" W for 220.00 feet; thence S 05°04'46" E for 196.43 feet; thence S 00°45'40" W for 233.18 feet; thence S 04°41'27" W for 125.84 feet; thence S 16°59'04" W for 206.02 feet; thence S 04°51'20" W 107.18 feet; thence S 00°17'23" E for 50.94 feet; thence S 18°11'20" E for 219.91 feet; thence S 23°24'25" E for 185.00 feet; thence S 24°51'52" E for 314.51 feet to a point on the North Right-of-Way line of "L" Street; thence West along the North Right-of-Way line of "L" Street for 1151.25 feet to the East Right-of-Way line of 144th Street; thence N 0°43'08" W along the East Right-of-Way line of 144th Street for 1688.27 feet; thence N 88°38'04" E for 311.00 feet; thence N 00°43'08" W for 800.00 feet to the Point of Beginning; EXCEPT the West 17 feet thereof; AND ALSO EXCEPT that part conveyed to Papillion Drainage District by Deed filed June 24, 1911 in Book 352 at Page 55 of the Deed Records of Douglas County, Nebraska.

NW 3 NW
SW

The East 294 feet of the West 344 feet of the North 800 feet of the Northwest Quarter (NW1/4) of Section 1, Township 14 North, Range 11 East of the 6th P.M., in Douglas County, Nebraska, :



FINAL PLAT EXHIBIT SOUTHWESTERN PLAZA

EXHIBIT "B"