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DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

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DECLARATION OF RESTRICTIONS

AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (**"Declaration"**) is entered into on June 17, 2000, between Benson Park Plaza, L.L.C., a Nebraska limited liability company (**"First Party"**), and Albertson's, Inc., a Delaware corporation (**"Albertson's"**).

1. PRELIMINARY

1.1 Purpose. The parties plan to develop the Shopping Center (as defined in Section 1.2[cc]) as an integrated retail sales complex for the mutual benefit of all real property in the Shopping Center. Therefore, the parties hereby establish the Restrictions (as defined in Section 1.2[z]).

1.2 Definitions. The following terms shall have the definitions ascribed to them below.

(a) "Albertson's": Albertson's, Inc., a Delaware corporation, together with any corporation succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof. Albertson's current address is 250 Parkcenter Boulevard, P.O. Box 20, Boise, Idaho 83726.

(b) "Benson": Benson Park Plaza, L.L.C., a Nebraska limited liability company. The parties agree that "Benson" is being separately defined (and distinguished from "First Party") herein, because certain rights are granted to Benson personally and do not run with the land or to successors and assigns who become Owners of Parcels now owned by Benson.

(c) "Building Area": All of those areas on each Parcel shown as Building Area on **Exhibit "A"** attached hereto and made a part hereof, together with those portions of the Building Envelopes which are from time to time covered by a building or other commercial structure including, without limitation, Fuel Facilities, as defined in Section 1.2(m).

(d) "Building Envelopes": All those areas on Parcel 1, 2, 3, 4, 5, and 6 located within the "Building Envelope Lines" as shown on Exhibit "A."

(e) "Claim(s)": Any liability(-ies), claim(s), damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), lien(s), claim(s) of lien, judgment(s), proceeding(s) and cause(s) of action of any kind whatsoever.

(f) "Common Area": All of those areas on each Parcel which are not Building Area together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for buildings. Canopies which extend over the

Common Area, together with any columns or posts supporting the same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

(g) "Common Area Maintenance Agreement": That certain Common Area Maintenance Agreement between the parties hereto which encumbers the Shopping Center and is recorded concurrently herewith.

(h) "Consenting Owners": The Owner of Parcel 2; and Benson, for so long as Benson owns a Parcel in the Shopping Center, or until the seventh (7^{th}) anniversary of the date of this Declaration, whichever is later (the later such date being referred to herein as the **"Consenting Owner Transition Date"**). On the Consenting Owner Transition Date, Benson shall cease to be a Consenting Owner, and the Consenting Owners shall thereupon be deemed the Owners of Parcels 1 and 2. The rights and obligations of Benson under this definition shall not run with the land to subsequent Owners of Parcels who take title by conveyance from Benson. Subject to the foregoing provisions for transfer of the Consenting Owner rights and obligations from Benson to the Owner of Parcel 1 on the Consenting Owner Transition Date, the parties agree that if a Consenting Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof so long as it is the Prime Lessee of said Parcel.

(i) "Convenience Store": A self-contained area or building primarily devoted to the sale of any or all of the following items: food, beverages, grocery items, Petroleum, tobacco and/or car washes, as they may be operated from time to time. By way of example only, stores such as "7-Eleven" and "Circle K" are considered to be "Convenience Stores" under the foregoing definition.

(j) "Development Agreement": That certain Development Agreement between the parties hereto which encumbers the Shopping Center and is recorded concurrently herewith.

(k) "Environmental Laws": The Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act and any other similar federal, state or local law, rule or regulation respecting Hazardous Materials, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.

(l) "First Party": Benson Park Plaza, L.L.C., a Nebraska limited liability company, together with any person succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof. First Party's current address is c/o the Seldin Company, Montclair Professional Center, 13057 West Center Road, Omaha, NE 68144-3790, Attention: Randy Lenhoff.

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(m) "Floor Area": The total number of square feet in a building, whether or not actually occupied, (including basement, subterranean, balcony and mezzanine space) measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

(n) "Fuel Facilities": Fuel islands, fuel island canopies and the area thereunder, fuel pumps, fuel storage tanks, piping, tank filling ports, compressed air islands, trash receptacles, air hoses, water hoses, vacuums, signs, safety equipment, access ports, Pneumatic Systems, and other structures or equipment associated with selling and dispensing of Petroleum on Parcel 5. Fuel Facilities shall not be deemed Common Area or Service Facilities.

(o) "General Common Area Improvements": The traffic directional arrow signs and other signs permitted under Article 4, paving, bumper guards and curbs, landscape planters and other landscaped areas, parking lot lighting, perimeter walls and fences, utility pads and equipment, sidewalks, and walkways.

(p) "Ground Floor Area": The total number of square feet on the ground floor of a building, whether or not actually occupied, (excluding basement, subterranean, balcony and mezzanine space) measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

(q) "Hazardous Materials": Underground storage tanks, petroleum and petroleum products, asbestos, PCB's, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.

(r) "Lienholder": Any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on any Parcel. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to its Parcel(s) by foreclosure, trustee's sale or otherwise.

(s) "National Chain Store": A person that operates a retail store, business office, or commercial operation allowed under this Declaration, in the Shopping Center, which operation shall have a standard prototypical building and shall operate under the same trade name as is used by said company in at least five (5) other separate stores or offices within Nebraska or at least fifty (50) stores or offices nationally.

(t) "Owner": The record holder of fee simple title to a Parcel (including its heirs, personal representatives, successors and assigns).

(u) "Parcel": Parcel 1, 2, 3, 4, 5, or 6, or Outlot 1, each as shown on **Exhibit "A"** and more particularly described in **Schedule I** attached hereto and made a part

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hereof. The Parcels are located at the southeast corner of the intersection of 72nd Street and Ames Avenue in the City of Omaha, County of Douglas, State of Nebraska.

(v) "person": Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(w) "Petroleum": Gasoline, motor fuel, and/or other non-packaged petroleum products.

(x) "Pneumatic Systems": Pneumatic tubes and associated data conduit lines, pressurized air tube devices, and similar facilities supporting, relating to, or associated with a pneumatic or other pressurized air tube connection.

(y) "Prime Lessee": An Owner of a Parcel who sells said Parcel (whether or not such sale includes buildings and/or Common Area improvements located thereon) to an unaffiliated third party and thereafter enters into a lease (including a ground lease or building lease) for said Parcel with such third party or its lessee or sublessee. Prime Lessee includes the successors and assigns of the Prime Lessee but does not include the sublessees, licensees or concessionaires of the Prime Lessee.

(z) "Restrictions": The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(aa) "Self-Parked": On Parcels 3, 5, and 6, "Self-Parked" shall mean: (*i*) Having a minimum of five (5) parking stalls per 1,000 square feet of Floor Area used as retail space (not including restaurant or Office Use [defined in Section 5.3 of this Declaration]), and ten (10) parking stalls per 1,000 square feet of Floor Area used as restaurant or Office Use, and (*ii*) meeting all applicable laws, rules or regulations (without a variance) governing or relating to parking accommodations.

On Parcels 1 and 4, "Self-Parked" shall mean: (*i*) Having a minimum of five (5) parking stalls per 1,000 square feet of Floor Area used as retail space (not including restaurant or Office Use) and six (6) parking stalls per 1,000 square feet of Floor Area used as restaurant or Office Use, and (*ii*) meeting all applicable laws, rules or regulations (without a variance) governing or relating to parking accommodations.

(bb) "Service Facilities": Loading docks, trash compactors and enclosures, bottle storage areas, exterior coolers, electrical and refrigeration facilities and other similar service facilities.

(cc) "Shopping Center": Parcels 1, 2, 3, 4, 5, and 6, and Outlot 1, collectively.

1.3 Parties. First Party is the Owner of Parcels 1, 3, 5, and 6; and Albertson's is the Owner of Parcel 2, Parcel 4, and Outlot 1.

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2. BUILDING AND COMMON AREA DEVELOPMENT

2.1 Building Location. All buildings and other structures (except those permitted in the Common Area pursuant to Section 2.2 below) shall be placed or constructed upon the Parcels only in the Building Areas; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting the same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Area. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. Buildings may be located (or relocated) anywhere within a Building Envelope provided the total Ground Floor Area of all buildings constructed within a Building Envelope does not exceed the square footage assigned to such Building Envelope as shown on **Exhibit "A."** Parcels 1, 3, 4, 5, and 6 shall be Self-Parked.

Notwithstanding anything in this Declaration to the contrary, Fuel Facilities on Parcel 4, whether or not attached to a building, shall not be deemed to be part of the Common Area. For purposes of Building Area or floor area calculations or limitations including, but not limited to, Building Area maximums, parking ratios and/or pro rata shares of costs arising under the Development Agreement and Common Area Maintenance Agreement, the area covered by such Fuel Facilities shall not be included in the Building Area or floor area of such Parcel.

It is understood that the loading dock for the building on Parcel 2 shall be constructed running parallel to the northeast wall of the building on Parcel 2, substantially as shown on **Exhibit "A,"** unless otherwise reasonably approved by the Owner of Parcel 1.

Prior to the construction of any building or Common Area improvements within a Building Envelope, the Owner of the applicable Parcel shall obtain the Consenting Owners' prior written approval to the site plan for that portion of the Common Area located within the Building Envelope in accordance with the procedures set forth in Section 2.5. All Building Areas on which buildings are not under construction on the date the Owner of Parcel 2 first opens its building for business shall be covered by a one inch asphalt dust cap, sod, or other aesthetically-pleasing ground cover approved by the Consenting Owners, and shall be kept weed-free, mowed, and clean at the Owner's sole expense until such time as buildings are constructed thereon. Notwithstanding anything herein to the contrary, the obligations of this Section 2.1, as they may pertain to Outlot 1, shall be fulfilled by the Maintenance Director pursuant to the Common Area Maintenance Agreement as a Common Area expense allocated amongst the Owners of Parcels 1 through 6 pursuant to the Common Area Maintenance Agreement.

2.2 Common Area.

(a) Use. The Common Area is hereby reserved for the sole and exclusive use of all Owners of the Shopping Center, their tenants, subtenants and licensees, and the contractors, employees, agents, licensees and invitees of such Owners, tenants, subtenants and licensees. The

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Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking) and pedestrian traffic and for no other purpose unless otherwise specifically provided in this Declaration.

(b) Initial Development. The Common Area shall initially be developed in accordance with Exhibit "A."

(c) Changes and Additions. After the initial development of the Common Area, no buildings or structures not approved in writing by the Consenting Owners shall be placed in the Common Area except: (*i*) Service Facilities; and (*ii*) public pay telephones provided their location has been approved in writing by the Consenting Owners; provided, however, that the Owner or occupant of Parcel 2 shall have the right to locate public pay telephones on the exterior of the building located on Parcel 2 without the Consenting Owners' approval. The sizes and arrangements of Common Area improvements including, without limitation, General Common Area Improvements, service drives, parking areas and striping, recycle centers, cart corrals and all buildings and structures approved pursuant to this subparagraph (c) may not be changed without the Consenting Owners' prior written approval; provided, however, that nothing in this Section 2.2 shall be interpreted to require the Consenting Owners' approval to (*x*) the expansion of any building within the Building Envelope on Parcel 2 (except as to changes to the exterior elevation of the building, which require the prior written approval of the Consenting Owners under Section 2.3[a]), or (*y*) the construction, alteration or relocation of any Service Facilities to the extent that they are located, and do not impede access, to the rear or sides of buildings. All requests for approval under this subparagraph (c) shall be processed in accordance with Section 2.5.

(d) Undeveloped Building Area. All portions of a Building Area which are not (following initial development of a building thereon) from time to time used for buildings or other commercial structures shall be developed by the Owner thereof, at said Owner's sole cost and expense (except as to Outlot 1, the development of which shall be an expense shared by the Owners of Parcels 1 through 6 as set forth in the Development Agreement and the Common Area Maintenance Agreement), in accordance with a site plan approved by the Consenting Owners and maintained as improved Common Area until buildings are constructed thereon. Prior to construction of a building on a Parcel, the provisions of Section 2.1 regarding allowed ground cover shall apply to undeveloped Building Area.

2.3 Type and Design of Buildings.

(a) Architectural Compatibility. No more than one (1) building shall be permitted on each of Parcels 1, 3, 5, and 6. Each building and other structure in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be

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architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. Each building in the Shopping Center shall initially be constructed so the exterior of such building conforms to the Building Design Drawings approved pursuant to Section 2.3 of the Development Agreement, provided, however that Fuel Facilities and building(s) on Parcel 4 shall not be required to conform to Building Design Drawings if they conform to Albertson's standard or prototypical elevation plans (including signs and color) as the same may be modified from time to time. Subject to the foregoing provisions regarding Fuel Facilities and the building(s) on Parcel 4, no building for which Building Design Drawings have not been approved may be constructed, nor the exterior of any existing building changed in any way (including, without limitation, signs and color), without the Consenting Owners' prior written approval (which shall be obtained in accordance with the procedures set forth in Section 2.5) as to the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified. No Consenting Owner may withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. Albertson's standard signs and logos (including, without limitation, signs identifying any tenant, subtenant, licensee, or concessionaire located and operating on Parcel 2 as they may exist from time to time and the opening, closing, modification or relocation of any door, however, shall not require approval.

(b) Attachments. No Owner shall have the right to make any attachment whatsoever to another Owner's building (such other Owner being referred to in this subparagraph only as **"Other Owner"**) without such Other Owner's prior written approval, which may be withheld in such Other Owner's sole and absolute discretion. If the Other Owner approves the requested attachment, the Owner making the attachment shall, prior to making such attachment, obtain the Other Owner's prior written approval (which may be withheld in its sole and absolute discretion) of the drawings and specifications detailing the attachment. Any such attachment shall be at the sole cost and expense of the Owner making the attachment and shall be in strict conformance with the approved drawings and specifications detailing the same.

(c) Fire Protection. Any building which is located within three (3) feet of another building shall be equipped with automatic sprinkler systems which meet all the applicable standards of the National Fire Protection Association. The purpose of this subparagraph (c) is to allow such buildings to be considered as one (1) building for building code purposes.

(d) Structural Integrity. No building or other structure in the Shopping Center shall be built in such a manner as to adversely affect the structural integrity of any other building or structure in the Shopping Center.

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(e) **Height.** All buildings and other structures in the Shopping Center shall be single story with mezzanine permitted. No building or other structure located on Parcel 2 shall exceed thirty-five (35) feet in height, including mechanical fixtures and equipment and screening for the same (together, "**Equipment**"). No building or other structure located on Parcel 1, 4, 5, or 6 shall exceed twenty-two (22) feet in height, including Equipment. As a qualification to the foregoing height Restrictions, the following guideline shall apply: The building height Restrictions imposed under this Subsection 2.3(e), above, shall be construed to apply to the general roofline of each respective building. An architectural element or feature on a building (such as an arch, cupola, dormer, steeple, or the like) which otherwise meets the design approval requirements of this Declaration may extend above the general roofline of a building on any of Parcels 1, 2, 3, 4, and 6, by up to three (3) feet in height (which extra 3 feet shall be in addition to the height Restrictions set forth above), with a total aggregate width of such elements or features along any single roofline of no more than twenty percent (20%) of the length of the roofline on any front, side, or back elevation. No mezzanine or basement shall be used for the sale or display of merchandise or for the offer or provision of retail services to the public.

(f) **Exterior Maintenance.** Each Owner shall maintain the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the customer parking areas.

2.4 Construction Requirements.

(a) **Standards.** All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (*i*) access to or from the Shopping Center (or any part thereof), (*ii*) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. Staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by the Consenting Owners. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore or cause to

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be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) **Liens.** The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Owner or Prime Lessee of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the Shopping Center from any and all Claims arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

(c) **Encroachments.** The Owners acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Area improvements located in the Shopping Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Shopping Center.

2.5 Approval Procedures. Before any action requiring the Consenting Owners' approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a reasonable decision as to the proposal. No Consenting Owner shall have the right to unreasonably withhold its approval to the proposal unless otherwise specified in this Declaration. Each Consenting Owner must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If a Consenting Owner rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such Consenting Owner shall be deemed to have approved the same provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been

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given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

3. EASEMENTS

3.1 Ingress, Egress and Parking. Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Facilities or driveup or drive through customer service facilities. The reciprocal rights of ingress and egress set forth in this Section 3.1 shall apply to the Common Area for each Parcel as such area shall be increased pursuant to Section 2.2 above.

3.2 Utility Lines and Facilities.

(a) Easements. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, communication lines, electrical conduits or systems, gas mains and other public or private utilities or underground systems facilitating communication and/or coordination of business operations between two or more Parcels. The easement granted hereunder shall include a right by the Owners of Parcels 2 and 4 to install improvements between Parcels 2 and 4 for the installation, operation, maintenance, and repair of Pneumatic Systems. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.

(b) Construction Requirements. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including, without limitation, temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings, signs or Common Area improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and

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replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same.

(c) **Relocation.** At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation (*i*) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the utility line or facility, (*ii*) shall not unreasonably interfere with or diminish utility service to the Parcel(s) served by the utility line or facility, (*iii*) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (*iv*) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (*v*) shall provide for the original and relocated area to be restored to their original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners of all Parcels served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

3.3 Signs. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, an easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 of this Declaration and all utility lines and facilities appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such facilities are located within thirty (30) days after the date of completion of construction of same.

3.4 Building Encroachments. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, an easement for any portion of any building or other structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s); provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. The easements granted in this Section 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

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3.5 Permanent Access Drive. Each Owner hereto, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on the grantor's Parcel(s) shown on **Exhibit "A"** as **"Permanent Access Drive"** and more particularly described in **Schedule II** attached hereto and made a part hereof. The Owners acknowledge that the Permanent Access Drive easement granted hereunder is intended to survive the expiration or termination of this Declaration. Upon the request of any Owner, the Owners of the Shopping Center agree to enter into a separate easement document, in recordable form, evidencing the continuation of said easement after this Declaration expires or terminates. Such document shall provide that the Owners of the Parcels shall have continued access for vehicular and pedestrian traffic (but not for parking) over the Permanent Access Drive area(s). Effective on the expiration or termination of this Declaration (as set forth in Section 9.3), said easement shall be subject to the following additional requirements: (*i*) Such access shall not unreasonably disrupt business operation son the servient Parcel(s); (*ii*) the manner and level of use of access shall not be materially increased from that which is in effect at the time of expiration or termination of this Declaration; and (*iii*) all owners of property within the area previously comprising the Shopping Center shall share in the maintenance cost thereof, in the proportion that the land area within their respective parcel(s) bear(s) to the total land area previously comprising the Shopping Center. The reasonable cost of drafting and recording such easement shall be shared by the parties in the proportion which the land area in their respective Parcel(s) bears to the total land area previously comprising the Shopping Center. Notwithstanding anything herein to the contrary, no grantee shall be entitled (during the term of this Declaration or following its expiration or termination) to use the drive aisle directly in front of the Building Area on Parcel 2 (i.e., the drive aisle immediately northwest of the Parcel 2 Building Area, toward the intersection of 72nd and Ames from the Albertson's Building Area) for access by service vehicles or delivery trucks to any other Parcel.

3.6 Self Help. Each Owner, as grantor (such Owner being referred to in this subparagraph only as **"Grantor Owner"**), hereby grants to the other Owners for the benefit of each Parcel belonging to the other Owners as grantees (such other Owners being referred to in this subparagraph only as **"Grantee Owners"**), an easement to enter the Grantor Owner's Parcel for the following purposes:

(a) To perform such work on the Grantor Owner's Parcel as is necessary to cure any default by the Grantor Owner under the Development Agreement, Declaration or

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CAMA, provided and to the extent the Grantee Owner has the express right to cure said default under the Development Agreement, Declaration or CAMA; and

(b) To perform any obligations or exercise any other rights the Grantee Owner has under the Declaration, Development Agreement or CAMA.

4. OPERATION OF COMMON AREA

4.1 Parking. There shall be no charge for parking in the Common Area without the prior written approval of the Consenting Owners or unless otherwise required by law.

4.2 Employee Parking. Notwithstanding anything to the contrary in this Declaration, areas to be used for motor vehicle parking by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time with the prior written approval of the Consenting Owners. In the event employee parking areas are designated as provided herein, then employees of any Owner or occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees of any Parcel other than Parcel 2 park within 200 feet of the front of any building located on Parcel 2 (except that an Owner may allow its own employees to park on such Owner's Parcel, even if such parking is within the 200 feet Restriction set forth above). The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Shopping Center.

4.3 Signs.

(a) Center Sign.

(*i*) Subject to governmental approval, a free-standing sign shall be erected at the location designated **"Center Sign"** on Exhibit "A." Such sign may, at the option of the Owner or occupant of Parcel 2, display the **"major designation"** of the Owner or occupant of Parcel 2 and/or the designation of a Parcel 2 Tenant. The designation for a Parcel 2 Tenant may, at the option of the Owner or occupant of Parcel 2, be included on a separate sign can, or be included as part of the designation on the sign can otherwise permitted to the Owner or occupant of Parcel 2. The Owner or occupant of Parcel 2 shall have the top designation on the Center Sign.

(*ii*) Provided the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2 and any Parcel 2 Tenant is not adversely affected thereby (such adverse affect on Parcel 2 or its Owner or tenant being referred to herein as an **"Adverse Affect"**), there shall be allowed a second "major designation" on the Center Sign for a business located either in the Shopping Center or on Lot 1 of Benson Park Plaza Replat 1 (being a replatting of Lot 7 through 14, Benson Park Plaza), Douglas County, Nebraska (the **"Replat"**). Such designation is referred to herein

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as the **"Second Slot."** The Second Slot shall be immediately below the Albertson's designation on the Center Sign.

(*iii*) Provided there is no Adverse Effect, there shall also be allowed space for either a third "major designation" or, alternatively, space for up to four (4) "junior designations" (each junior designation being one-fourth the size of a "major designation") for businesses within the Shopping Center or on Lot 7 of the Replat. Such designation is referred to herein as the **"Third Slot."** The Third Slot shall hold the third "major designation" or all four "junior designations."

(*iv*) Any business within the Shopping Center, in order to display its "major designation" in the Second Slot or the Third Slot, must occupy at least 5,000 square feet of Floor Area.

(*v*) Any business within Lot 1 of the Replat, in order to display its "major designation" in the Second Slot, must (A) occupy at least 75,000 square feet of ground floor area on said Lot 1, and (B) comply with Subsection 4(a)(*viii*) below.

(*vi*) Any business within Lot 7 of the Replat, in order to display its "major designation" in the Third Slot, must (A) occupy at least 75,000 square feet of ground floor area, and (B) comply with Subsection 4(a)(*viii*) below. Any business within Lot 7 of the Replat, in order to display its "junior designation" in the Third Slot, must (A) occupy at least 25,000 square feet of ground floor area, and (B) comply with Subsection 4(a)(*viii*) below.

(*vii*) The size of each designation on the Center Sign shall be subject to approval from the Consenting Owners. The Consenting Owners shall be entitled to determine whose designations are on the sign in accordance with the requirements of this Section 4.3; provided that First Party shall have the right, until the Consenting Owner Transition Date, to determine those businesses that may place a "major designation" or a "junior designation" in the Second Slot or the Third Slot subject to the terms and conditions of Subsection 4(a)(*viii*).

(*viii*) Notwithstanding anything herein to the contrary, the rights granted under this Section 4.3 relating to the Second Slot and the Third Slot are granted to First Party; no person other than First Party shall be deemed a beneficiary to this Section 4.3; and no person other than First Party shall have a right to directly enforce this Section 4.3 or any other part of this Declaration. Furthermore, First Party shall have the right to place a designation on the Center Sign for an owner or occupant of Lot 1 or Lot 7 of the Replat (**"Lot Owner"**), only if such Lot Owner actually opens and operates a business on Lot 1 or Lot 7 of the Replat, which business (A) is not a supermarket (as defined in Article 5 hereof); (B) is a National Chain Store; and (C) is not an operation which is customarily

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viewed as a pharmacy, or which sells ethical pharmaceutical products, or which requires the services of registered or licensed pharmacist.

The cost of constructing, installing, maintaining, repairing and replacing the Center Sign structure (excluding electrical hookup to the Common Area meter) shall be paid by the Owners of all Parcels entitled to display designations thereon in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon; provided that, for purposes of the previous sentence, the Owner of Parcel 1 shall be deemed to have the rights and obligations relating to designation(s) on the Center Sign for the Lot Owners. Notwithstanding the foregoing, the Owner of Parcel 1 may be released from the obligations relating to designations on the Center Sign for operations or businesses on Lot 1 or Lot 7 of the Replat, if each Lot Owner provides to Albertson's a written agreement under which the Lot Owners agree to pay a proportion of the cost of the design, construction, maintenance, repair, and replacement of the Center Sign, and to indemnify the Owners against Claims (as defined herein) relating to, or resulting from, the Lot Owners' exercise of the right to place a designation on the Center Sign, except to the extent directly caused by the indemnified party. Such written agreement shall confer upon the Lot Owners, as the Owners of Lots 1 and 7 of the Replat, the right to place a designation on the Center Sign for a business satisfying the requirements of subparagraphs 4.3(a) (*viii*) above; shall encumber Lots 1 and 7; shall be prior in title to any Mortgage thereon; shall run with the land against Lots 1 and 7 for the benefit of the Shopping Center; and shall be in form and substance reasonably approved by the Owner of Parcel 2 (taking into consideration the requirements of this Declaration); provided that such written agreement shall stand on its own terms and shall not confer on the Lot Owners, or either of them, any right to enforce this Declaration.

(b) **Design and Maintenance of, and Position on, Center Sign.** Each person displaying a designation on the Center Sign shall supply and maintain its own sign fascia and can. The design of the Center Sign structure and the size, design and location of sign fascia thereon shall be subject to the Consenting Owners' prior written approval (which shall be obtained in accordance with the procedures set forth in Section 2.5). Notwithstanding the foregoing, Albertson's and a National Chain Store may use such standard fascia as they from time to time use generally in carrying on their businesses. The Owner or occupant of Parcel 2 shall have the top designation on the Center Sign. The Owner of Parcel 1 shall have the right to substitute a Shopping Center designation for either of its business designations, subject to the terms of this Section 4.3.

(c) **Albertson's Sign.** In addition to the foregoing Center Sign, the Owner of Parcel 2 shall have the right, subject to governmental approval, to erect a freestanding sign at the location designated "**Albertson's Sign**" on Exhibit "A." Such sign may, at the option of the

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Owner or occupant of Parcel 2, display the designation of the Owner or occupant of Parcel 2 and/or the designation of a Parcel 2 tenant. The designation for the Parcel 2 tenant may, at the option of the Owner or occupant of Parcel 2, be included on a separate sign can, or be included as part of the designation on the sign can otherwise permitted to the Owner or occupant of Parcel 2. The cost of constructing, installing, maintaining, repairing and replacing the Albertson's Sign structure (excluding electrical hookup to the Common Area meter) shall be paid by the Owner of Parcel 2. The design of the Albertson's Sign structure and sign fascia used shall be subject to the approval of the Owner of Parcel 2 and applicable governmental approvals.

(d) Monument Signs. In addition to the foregoing Center Signs, and subject to governmental approval, the Owners of Parcels 1, 3, 4, 5, and 6 may each erect a monument sign or pole sign at the location(s) on their respective Parcels designated as "Monument Sign" on **Exhibit "A."** Such pad monument signs shall be subject to the following Restrictions:

(*i*) No pad monument sign on Parcel 1, 3, 5, or 6 shall exceed ten (10) feet in height and ten (10) feet in width. No pad monument sign on Parcel 4 shall exceed twenty (20) feet in height and ten (10) feet in width;

(*ii*) Each pad monument sign shall display designation(s) only for a business operated on the Parcel on which such pad monument sign is located. The pad monument sign on Parcel 4 may also display pricing for Petroleum sold on said Parcel;

(*iii*) The design of each monument sign shall be subject to prior approval by the Consenting Owners; provided that Albertson's and a National Chain Store may each display their standard prototype signs and logos if they comply with the Sign Criteria and Drawings and are aesthetically compatible and harmonious with the architectural theme of the Shopping Center; and

(*iv*) Each pad monument sign shall be kept clean, in good repair, and well-maintained by the Owner of the Parcel on which it is located.

(e) No Other Signs. There shall be no other signs, except directional signs and signs on buildings, in the Shopping Center. All exterior building signs on Parcels 1, 3, 5, and 6 shall be restricted to identification of the businesses or services located or provided therein. No exterior building sign shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface. No exterior building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

4.4 Protection of Common Areas. Each Owner and Prime Lessee shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Area from using the Common Area for ingress, egress, parking, or any other purpose. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Shopping Center except along

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the common boundary line of any Parcel with any other Parcel; provided, however, that any impairment of access to or from the Shopping Center, or any part thereof, shall require the Consenting Owners' prior written approval, which may be withheld in such Consenting Owner's sole and absolute discretion.

4.5 Outside Sales. No portion of the Common Area, except sidewalks, shall be used for the sale or display of merchandise; provided, however, that the seasonal sale of merchandise by the Owner or occupant of Parcel 2 shall be permitted from the area shown on **Exhibit "A"** as **"Outside Sales Area,"** and also from the parking lot located on Parcel 2, in the area shown as **"Seasonal Sales"** on **Exhibit "A."** The sales in the parking lot on Parcel 2 shall be subject to the following Restrictions: (*i*) the Common Area used for such parking lot seasonal sales shall be promptly restored to its condition immediately prior to said sale at the sole cost and expense of the Owner or occupant of Parcel 2; (*ii*) the area being used for sales in the Common Area shall be kept reasonably neat and clean by the Owner of Parcel 2 during the continuation of the seasonal sales, to the extent that extra cleaning and sweeping is necessitated as a result of the sales (over and above what is routinely performed pursuant to the Common Area Maintenance Agreement); and (*iii*) sales shall not unreasonably interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof.

4.6 Prohibited Activities. Picketing and distribution of pamphlets, handbills or similar materials within the Shopping Center shall be prohibited.

5. USE RESTRICTIONS

5.1 Food, Pharmacy and Fuel Restrictions. No part of Parcel 1, 3, 5, or 6 shall be used as a supermarket, which shall be defined as any store or department containing more than 3,000 square feet of Floor Area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption; as a bakery or delicatessen; as a cigarette or smoke shop or any other store the primary business of which is to sell tobacco products and/or accessories; for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; for the sale of alcoholic beverages for off-premises consumption; or for the sale or offer for sale of any pharmaceutical products requiring the services of a registered pharmacist. No part of the Shopping Center except Parcel 2 and Parcel 4 may be used for a Convenience Store, or for the sale of Petroleum.

5.2 General Restrictions.

(a) Retail Use Restrictions. No part of Parcels 1, 3, 4, 5, or 6 shall be used for any purpose other than for retail sales, retail services or restaurants. Without limiting the foregoing, no part of Parcels 1, 3, 4, 5, or 6 shall be used for an automotive maintenance or repair facility (which shall however not prohibit a carwash in connection with Fuel Facilities on

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Parcel 4, provided that adequate drive-through space is allowed to accommodate stacking of cars waiting to be washed); for a second hand or surplus store; or for any entertainment or recreational facility or training or educational facility. For the purpose of this Declaration, the phrase **"entertainment or recreational facility"** shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, dance hall, billiard or pool hall, massage parlor, game parlor or video arcade (which shall be defined as any store containing more than four [4] electronic games). The phrase **"training or educational facility"** shall include, without limitation, a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to customers.

(b) Special Use Restrictions. No part of the Shopping Center shall be used as a bar, tavern, cocktail lounge, adult book or adult video store, hotel, motel, warehouse, animal kennel, mobile home park or trailer court; for the renting, leasing or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer; or for industrial purposes; or for any bankruptcy sales or going out of business sales. No part of the Shopping Center except Parcel 4 shall be used as a car wash. Notwithstanding the foregoing Restriction against a bar, alcoholic beverages may be served as an incidental part of a restaurant operation otherwise allowed under this Declaration, provided that in no event shall the sale of alcoholic beverages from any restaurant on Parcel 1, 3, or 5 exceed twenty-five per cent (25%) of the gross sales from such restaurant during any calendar month. The Consenting Owners, or any of them, shall have the right upon two (2) days' notice to the owner or operator of any restaurant, to enter such restaurant for the purpose of reviewing and auditing the books and records thereof to determine compliance with this Section 5.2(b).

5.3 Location Restrictions. No part of Parcel 6 shall be used as a restaurant; as a bank, savings and loan association or credit union ("**Bank**"); or as any of the following (collectively, "**Office Use[s]**"): a medical (including, without limitation, eye care or chiropractic), dental, professional or business office. No restaurant or Office Use on Parcel 1 shall exceed 4,000 square feet of floor area. The total Floor Area of all restaurants, Banks, and Office Uses located on Parcels 1, 3, and 5 shall not exceed 8,000 square feet.

5.4 Compliance Responsibility. Each Owner or operator who proposes to open (or who authorizes the opening of) a restaurant, Office Use, or other operation which is subject to a Restriction under this Article 5, shall be responsible to ensure compliance of such business or operation with this Article 5.

5.5 Driveup and Drive Through Facilities. No vehicular driveup or drive through customer service facilities shall be located in the Shopping Center unless the Consenting Owners have first given their written approval, which shall not be unreasonably withheld, to the location,

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parking and drive lanes of such facility. The parties hereby approve the vehicular driveup and drive through customer service facilities shown on Exhibit "A."

5.6 Mall Restrictions. There shall be no open or enclosed malls in the Shopping Center unless the Consenting Owners have first given their written approval, which shall not be unreasonably withheld, to the location of the entrance to such mall.

5.7 Hazardous Materials. No Owner or occupant shall use or permit the use, handling, generation, storage, release, disposal or transportation of Hazardous Materials on, about or under its Parcel except in the ordinary course of its business and in compliance with all Environmental Laws.

6. CASUALTY AND CONDEMNATION

6.1 Casualty. If all or any portion of any building in the Shopping Center is damaged or destroyed by fire or other casualty, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Shopping Center or any portion thereof, shall be covered by a one inch asphalt dust cap, sod, or other aesthetically-pleasing ground cover approved by the Consenting Owners, and shall be kept weed free, mowed, and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

6.2 Condemnation.

(a) Building Restoration. If all or any portion of any building in the Shopping Center is taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof (**"Condemnation"**), the Owner of such building shall have the same obligations with respect to restoration or removal of the building and Building Area as are set forth in Section 6.1.

(b) Allocation of Award. If all or any portion of any Parcel in the Shopping Center is taken or damaged as a result of a Condemnation (**"Condemned Parcel"**), the Owner of the Condemned Parcel shall be entitled to the entire award or purchase price paid for the Condemned Parcel; provided, however, that nothing contained herein shall affect any other person's right to seek severance damages for its Parcel, provided the award of such severance damages does not reduce or diminish the amount which would otherwise be paid to the Owner of the Condemned Parcel. The Owner of the Condemned Parcel shall restore or cause to be restored the remaining portion of the Condemned Parcel as near as practicable to the condition immediately prior to such Condemnation to the extent, but only to the extent, of any condemnation proceeds allocated by the court or condemning party, as the case may be, to such

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restoration and actually received by the Owner of the Condemned Parcel. Any restoration of the Condemned Parcel which involves a change in the configuration of the Common Area or the sizes and arrangements thereof from that shown on Exhibit "A" shall require the Consenting Owners' prior written approval. Notwithstanding the above, this Section 6.2 is not intended to and shall not alter the allocation of any award between the Owner of a Condemned Parcel and any tenant of such Condemned Parcel pursuant to the terms of any lease or other agreement between the parties.

7. INDEMNIFICATION

7.1 Indemnification. Each Owner of Parcel 1, 2, 3, 4, 5, or 6 (but not Outlot 1) shall indemnify, defend and hold harmless the other Owners and occupants of the Shopping Center from any and all Claims whatsoever for injury to or death of any person or damage to or destruction of any property resulting from the willful or negligent act or omission of the indemnifying Owner.

8. GENERAL PROVISIONS

8.1 Covenants Run With the Land. Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land. Notwithstanding the foregoing, the Restrictions in Section 5.1 shall be appurtenant to and for the benefit of only Parcel 2 and each part thereof and may be waived in writing only by the Owner and Prime Lessee of Parcel 2 without the joinder of any other person.

8.2 Successors and Assigns.

(a) Persons Bound. Subject to the provisions hereof regarding rights which are personal to Benson (including the definition of "Consenting Owners" in Section 1.1), this Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any Owner sells or transfers all or any portion of its interest in any Parcel, such Owner shall, upon delivery of the Transfer Notice (as defined in subparagraph [b] below), be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner [or Lienholder] who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of

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title (subject to the provisions for transfer of the Consenting Owner's rights and obligations under Section 1.1).

(b) Transfer Notice. An Owner selling or transferring all or any portion of its interest in any Parcel shall give prior written notice thereof to all other Owners in the Shopping Center (**"Transfer Notice"**), which Transfer Notice shall include at least the following information: (*i*) the name, current address and current phone number of the transferor, (*ii*) the name, current address and current phone number of the transferee, and (*iii*) a copy of the legal description of the portion of the Parcel or interest sold or transferred.

8.3 Duration. Except as hereinafter provided, the term of this Declaration shall be 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, the Owner of Parcel 2 delivers to the other Owners in the Shopping Center written notice of termination, in which event, the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect.

8.4 Injunctive Relief. In the event of any violation or threatened violation by any person of any of the Restrictions, any or all of the Owners and Prime Lessees of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

8.5 Modification and Termination. This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners and Prime Lessees of the Parcels containing ninety percent (90%) of the total square footage of Building Area in the Shopping Center, and then only by written instrument duly executed and acknowledged by all of the required Owners and Prime Lessees and recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of this Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

8.6 Method of Approval. Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Parcel shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Parcel shall agree among themselves and designate in writing to the Owners and Prime Lessees of each of the other Parcels a single person who is entitled to cast the vote for that Parcel. If the Owners of any such Parcel cannot agree who shall be entitled to cast the single vote of that

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Parcel, or if the Owners fail to designate the single person who is entitled to cast the vote for that Parcel within thirty (30) days after receipt of request for same from any other Owner or Prime Lessee, then that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary and the total square footage of Building Area located on said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 8.5. Except as otherwise set forth in Section 8.5, in the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Declaration to the contrary notwithstanding.

8.7 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

8.8 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

8.9 Default. A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from any Owner or Prime Lessee specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

8.10 Notices.

(a) Delivery. All notices given pursuant to this Declaration shall be in writing and shall be given by personal service, United States mail, United States express mail, or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below

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(or, if a Transfer Notice has been given, to the person designated in the Transfer Notice). If a notice must be given to a person other than one designated below or in a Transfer Notice, such notice shall be sent to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. All notices to First Party or Albertson's shall be sent to the appropriate party at the address set forth below:

First Party:	Benson Park Plaza, L.L.C. c/o Seldin Company Montclair Professional Center 13057 West Center Rd. Omaha, NE 68144-3790 Attention: Randy Lenhoff
Albertson's:	Albertson's, Inc. 250 Parkcenter Boulevard P.O. Box 20 Boise, ID 83726 Attention: Legal Department

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) Receipt. For the purpose of this Declaration, the term **"receipt"** shall mean the earlier of any of the following: (*i*) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (*ii*) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (*iii*) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

8.11 Waiver. The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

8.12 Attorney's Fees. In the event either party initiates or defends any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on

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commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

8.13 Sale & Sale-leaseback Purchaser. Notwithstanding anything to the contrary contained in this Declaration (other than the provisions relating to the Consenting Owner Transition Date under the "Consenting Owners" definition in Section 1.2), it is expressly agreed that in the event an Owner sells its Parcel (whether or not such sale includes buildings and/or Common Area improvements located thereon) to an unaffiliated third party and thereafter enters into a lease (including a ground lease or building lease) for such Parcel with such third party or its lessee or sublessee (hereinafter referred to collectively as the **"Prime Lessor"**), so long as said Owner is in possession of the property as a Prime Lessee the parties hereto shall look solely to said Prime Lessee (and said Prime Lessee shall be liable therefor) for the performance of any obligations either the Prime Lessee or the Prime Lessor shall have under this Declaration and the Prime Lessor shall be relieved of any obligation for the performance of or liability for the Restrictions set forth herein relating to either the Prime Lessee or its Parcel.

8.14 Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

8.15 Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

8.16 No Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

8.17 Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

8.18 Entire Agreement. This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

8.19 Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

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8.20 Joint and Several Obligations. In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

8.21 Recordation. This Declaration shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

8.22 Governing Law. This Declaration shall be governed by the laws of the State of Nebraska.

EXECUTED as of the date first set forth above.

ALBERTSON'S:

Albertson's, Inc.
a Delaware corporation

BY: _____
SLB C. Lee Mumford
Vice President, Real Estate Law

FIRST PARTY:

Benson Park Plaza, L.L.C., a Nebraska limited liability company

BY: Northwood Properties, Inc.,
a Nebraska corporation

By: _____
Theodore M. Seldin, President

List of Exhibits and Schedules:
Exhibit "A" - Site Plan
Schedule I - Description of the Shopping Center [must include separate legal description for each of Parcels 1 through 6 and Outlot 1 in the Shopping Center]
Schedule II - Description of Permanent Access Drive

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STATE OF IDAHO)
) ss.
County of Ada)

On this 13th day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **C. Lee Mumford,** to me known to be the Vice President, Real Estate Law, of **Albertson's, Inc.**, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:
10/15/05

Lee Edmunds
Notary Public in and for the
State of Idaho
Residing at Boise, Idaho

STATE OF NEBRASKA)
) ss.
County of Douglas)

On this 14th day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **Theodore M. Seldin,** to me known to be the President of **Northwood Properties, Inc.,** such corporation being the Manager of **Benson Park Plaza, L.L.C.,** the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said limited liability company.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:
February 7, 2003

GENERAL NOTARY-State of Nebraska
REVA L. GRIMM
My Comm. Exp. 2-7-03

Reva L. Grimm
Notary Public in and for the
State of Nebraska
Residing at Omaha, Nebraska

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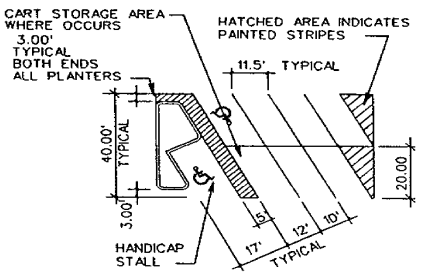
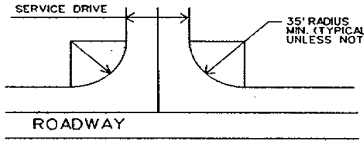
EXHIBIT "A"
TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

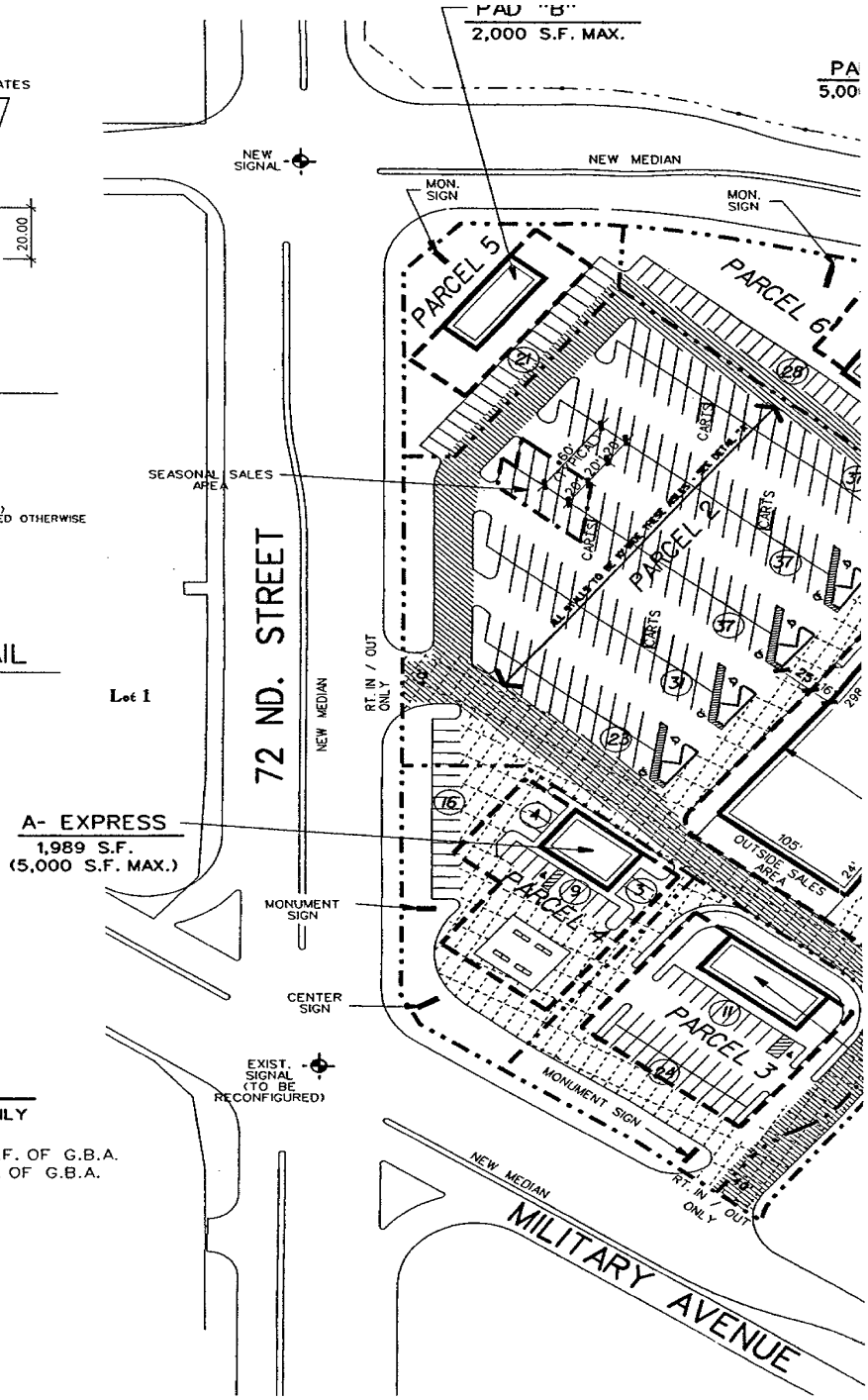
Site Plan of Shopping Center



A PARKING DETAIL
1"=50'-0"



B CURB CUT DETAIL
1"=100'-0"



GENERAL NOTES

NO TRUCK WELLS, NATURAL DOCK ONLY

PARKING REQUIREMENTS:

ALBERTSONS REQ'T : 1/200 S.F. OF G.B.A.
CITY REQUIREMENT: 1/250 S.F. OF G.B.A.

BUILDING SETBACK REQUIREMENTS:

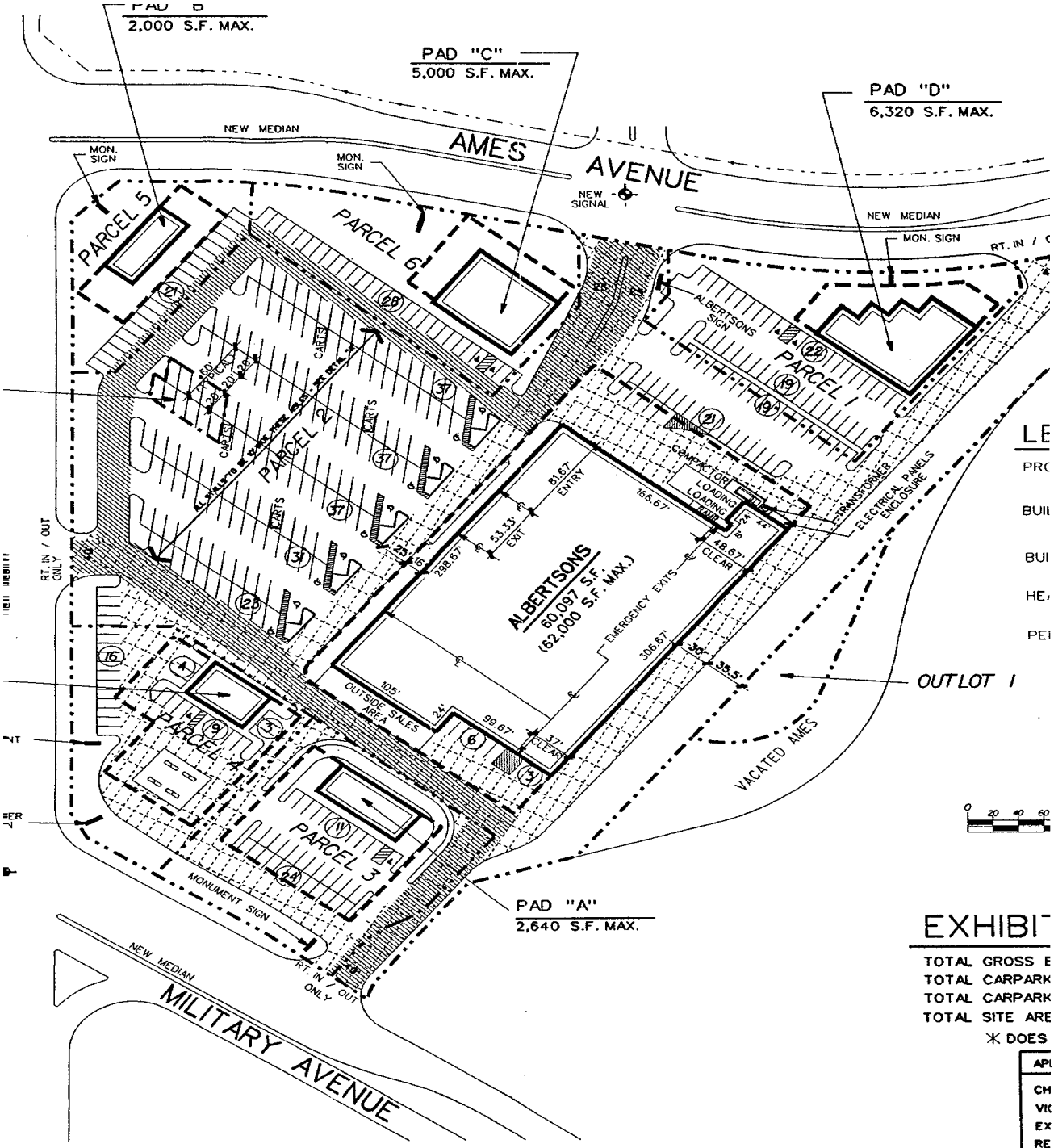
PER CITY REVIEW.

LANDSCAPE REQUIREMENTS:

PER CITY REVIEW.

ZONING REQUIREMENTS:

EXISTING - COMMERCIAL
REQUIRED - COMMERCIAL


PAD B
2,000 S.F. MAX.
PAD "C"
5,000 S.F. MAX.
PAD "D"
6,320 S.F. MAX.
NEW MEDIAN
AMES AVENUE
MON. SIGN
NEW SIGNAL
PARCEL 5
PARCEL 6
PARCEL 2
PARCEL 1
PARCEL 4
PARCEL 3
ALBERTSONS SIGN
CARTS
RT. IN / OUT ONLY
ALBERTSONS
60,097 S.F.
(62,000 S.F. MAX.)
81.67' ENTRY
53.33' EXIT
166.67'
298.67'
18.67' CLEAR
EMERGENCY EXITS
306.67'
105'
OUTSIDE SALES AREA
24'
98.67'
37' CLEAR
COMPACTOR
LOADING
TRANSFORMER
ELECTRICAL PANELS ENCLOSURE
OUTLOT I
VACATED AMES
PAD "A"
2,640 S.F. MAX.
MONUMENT SIGN
NEW MEDIAN
MILITARY AVENUE
RT. IN / OUT ONLY
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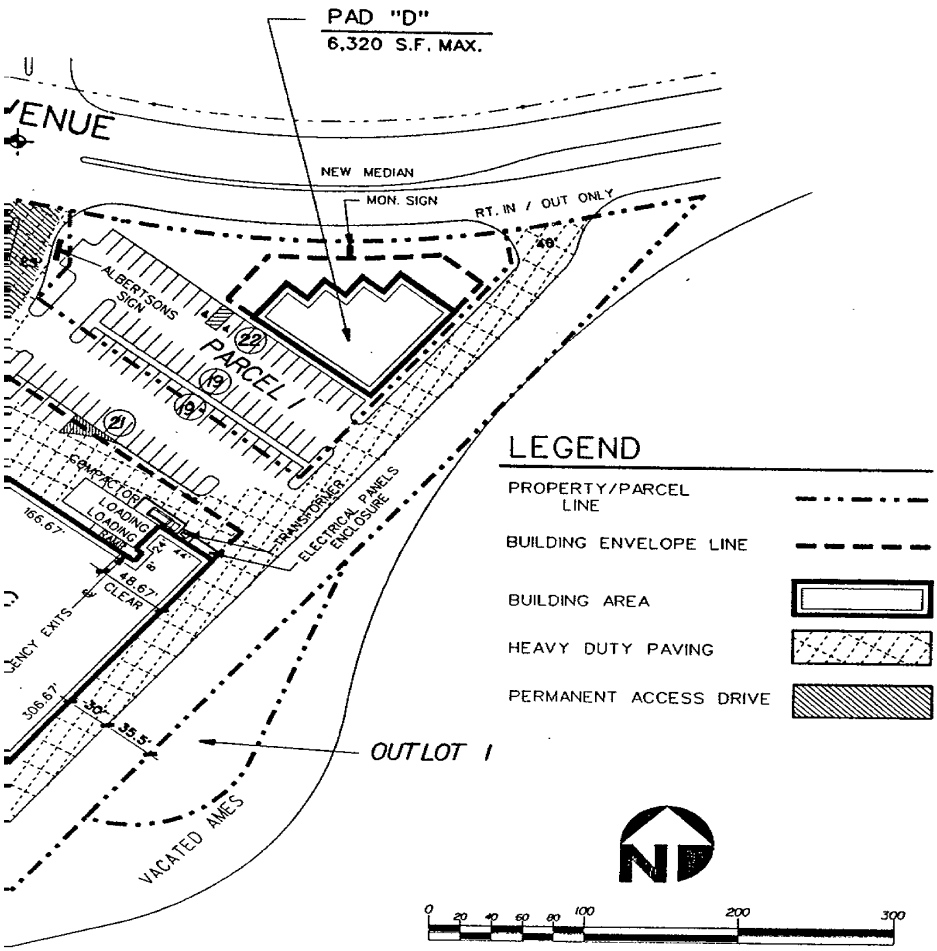
EXHIBI
TOTAL GROSS E
TOTAL CARPARK
TOTAL CARPARK
TOTAL SITE ARE
* DOES



R.K.B.
C.P.B.

R.K.B.
C.P.B.

RC

RC
RW

REVISIONS

3-27-'00 DJL	CHANGED TO EXHIBIT 'A'
4-5-2000 RW	ADD AL'BTS. BL'DG. ENVEL. REM. EX'PN. LN., ADD MAX. S.F., ADD OUTLOT 1, REV. SITE AREA.
4-24-'2000 RW	REV. AL'BTS. DOCK, PROTO S.F., G.B.A. AND PARKING.
5-9-2000 RW	ADD PARCEL 1,5 & 6 MONUMENT SIGNS.
6-9-2000 RW	REV. PERM. ACCESS DR., SHIFT. AL'BTS. FOREWARD 5' TO CLEAR EXIST. REAR EASEMENT.

EXHIBIT 'A' SITE PLAN

TOTAL GROSS BUILDING AREA	✳81,057 S.F.	
TOTAL CARPARKS REQUIRED	405 (1/200)	324 (1/250)
TOTAL CARPARKS PROVIDED	371 (-34)	(+47)
TOTAL SITE AREA	418,330 S.F. (9.60 AC.)	

✳ DOES NOT INCLUDE ALBERTSONS MAX. BUILDING AREA

APPROVED BY:	Z.O.C	DATE: 3-22-2000
CHAIRMAN	SIGNED	3-24-'00
VICE CHAIRMAN	SIGNED	3-24-'00
EXEC. V.P./ RETAIL OPS.	SIGNED	4-11-'00
REGIONAL PRES.	SIGNED	5-11-'00
SR. V.P./R.E.	SIGNED	3-23-'00
GROUP V.P./ARCH. & ENG.	SIGNED	3-23-'00

Albertsons
DESIGN & CONSTRUCTION
220 PARKCENTER BLVD.
BOISE, IDAHO 83726
(208)395-6200

PROJECT
N.W.C.
72 ND. STREET
&
AMES AVE.
OMAHA,
NEBRASKA

STORE NO.
22CY

DRAWN	CHECKED
RW	TFW

DATE 3-3-2000

SHEET TITLE
EXHIBIT 'A'
SITE PLAN

SHEET
1
OF 1
22cy.dgn

#22CY– 72nd & Ames
Omaha, NE
22CY-b-Dec13 06/13/00

SCHEDULE I
TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

Legal Descriptions of Parcels in Shopping Center

(comprised of Parcels 1, 2, 3, 4, 5, and 6, and Outlot 1).

As used herein, the word **"Plat"** shall refer to **Benson Park Plaza,** a subdivision, as surveyed, platted, and recorded in Douglas County, Nebraska.

PARCEL 1:	Lot 1 of the Plat.
PARCEL 2:	Lot 2 of the Plat.
PARCEL 3:	Lot 3 of the Plat.
PARCEL 4:	Lot 4 of the Plat.
PARCEL 5:	Lot 5 of the Plat.
PARCEL 6:	Lot 6 of the Plat.
OUTLOT 1:	Outlot 1 of the Plat.

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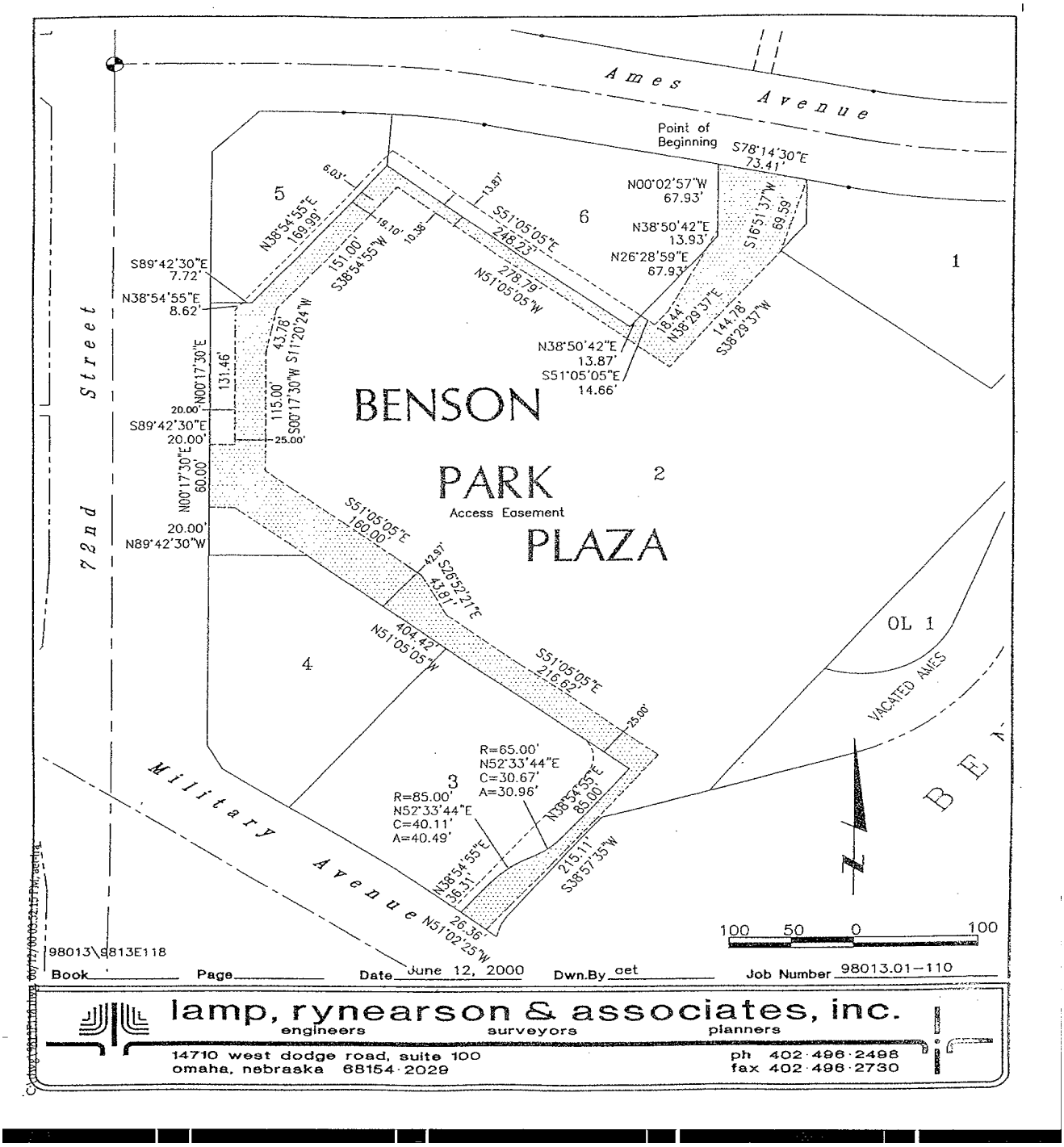
SCHEDULE II
TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

Legal Description of Permanent Access Drive, 72nd & Ames, Omaha, NE
(page 1 of 6)



SCHEDULE II
TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

Legal Description of Permanent Access Drive, 72nd & Ames, Omaha, NE
(page 2 of 6)

LEGAL DESCRIPTION

A permanent easement for ingress and egress over that part of Lot 2, BENSON PARK PLAZA, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:

Beginning at the northeast corner of Lot 6, BENSON PARK PLAZA;

Thence South 78°14'30" East (bearings referenced to the Final Plat of BENSON PARK PLAZA) for 73.41 feet along the north line of Lot 2 to the northwest corner of Lot 1, BENSON PARK PLAZA;

Thence South 16°51'37" West for 69.59 feet to the southwest corner of said Lot 1;
Thence South 38°29'37" West for 144.78 feet;
Thence North 51°05'05" West for 278.79 feet;
Thence South 38°54'55" West for 151.00 feet;
Thence South 11°20'24" West for 43.78 feet;
Thence South 00°17'30" West for 115.00 feet;
Thence South 51°05'05" East for 160.00 feet;
Thence South 26°52'21" East for 43.81 feet;
Thence South 51°05'05" East for 216.62 feet;
Thence South 38°57'35" West for 215.11 feet to the south line of said Lot 2;

Thence North 51°02'25" West for 26.36 feet to the south corner of Lot 3, BENSON PARK PLAZA;

Thence North 38°54'55" East for 36.31 feet along the southeast line of said Lot 3;

Thence along a curve to the right (having a radius of 85.00 feet and a long chord bearing North 52°33'44" East for 40.11 feet) for an arc length of 40.49 feet along the southeast line of said Lot 3;

Thence along a curve to the left (having a radius of 65.00 feet and a long chord bearing North 52°33'44" East for 30.67 feet) for an arc length of 30.96 feet along the southeast line of said Lot 3;

Thence North 38°54'55" East for 85.00 feet to the east corner of said Lot 3;

Thence North 51°05'05" West for 404.42 feet along the extended northeast line of Lots 3 and 4, BENSON PARK PLAZA;

Thence North 89°42'30" West for 20.00 feet to the west line of said Lot 2;
Thence North 00°17'30" East for 60.00 feet along said west line;
Thence South 89°42'30" East for 20.00 feet;

Thence North 00°17'30" East for 131.46 feet parallel with and 20.00 feet east of the west line of said Lot 2;

Thence North 38°54'55" East for 8.62 feet to the south line of Lot 5, BENSON PARK PLAZA;

Thence South 89°42'30" East for 7.72 feet to the southeast corner of said Lot 5;

Thence North 38°54'55" East for 169.99 feet to the southwest corner of said Lot 6, BENSON PARK PLAZA;

Thence South 51°05'05" East for 248.23 feet to the south corner of said Lot 6;
Thence North 38°50'42" East for 13.87 feet along the southeast line of said Lot 6;
Thence South 51°05'05" East for 14.66 feet;
Thence North 38°29'37" East for 18.44 feet;
Thence North 26°28'59" East for 67.93 feet to the east line of said Lot 6;
Thence North 38°50'42" East for 13.93 feet to the angle point in the east line of said Lot 6;
Thence North 00°02'57" West for 67.93 feet to the Point of Beginning.
Contains 0.88 acre.

May 25, 2000 9813E118.Dwg

LAMP, RYNEARSON & ASSOCIATES, INC.
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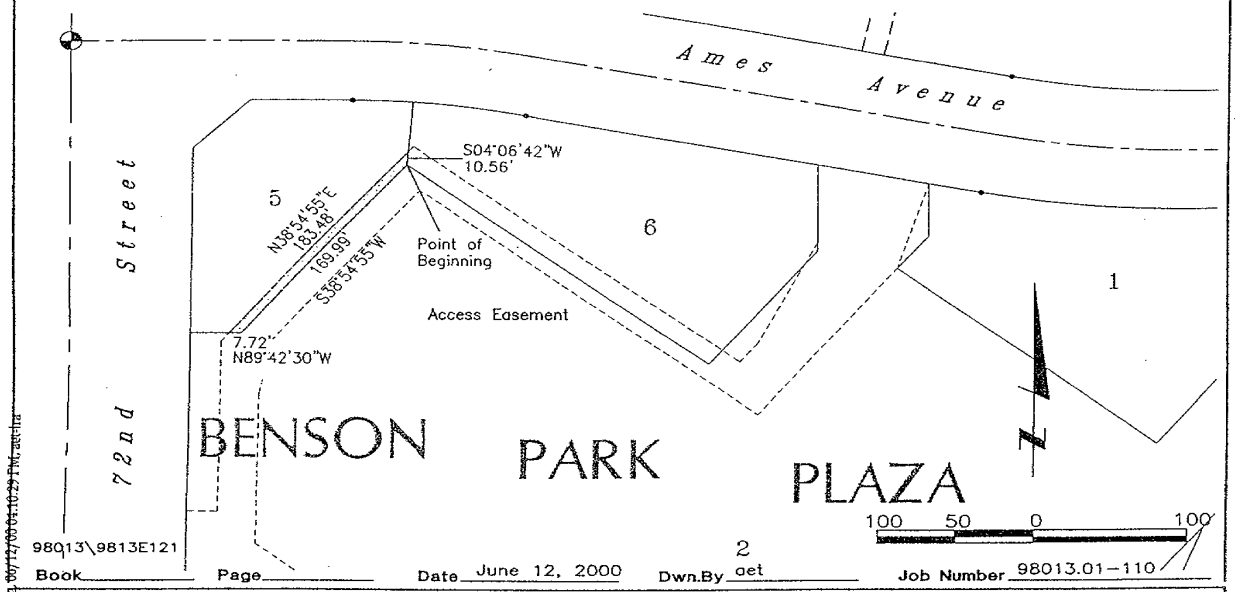
SCHEDULE II
TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

Legal Description of Permanent Access Drive, 72nd & Ames, Omaha, NE
(page 3 of 6)

LEGAL DESCRIPTION

A permanent easement for ingress and egress over that part of Lot 5, BENSON PARK PLAZA, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:
Beginning at the corner common to Lots 2, 5 and 6, BENSON PARK PLAZA;
Thence South 38°54'55" West (bearings referenced to the Final Plat of BENSON PARK PLAZA) for 169.99 feet along the east line of Lot 5 to the southeast corner thereof;
Thence North 89°42'30" West for 7.72 feet;
Thence North 38°54'55" East for 183.48 feet to the east line of Lot 5;
Thence South 04°06'42" West for 10.56 feet to the Point of Beginning.
Contains 1065 square feet.



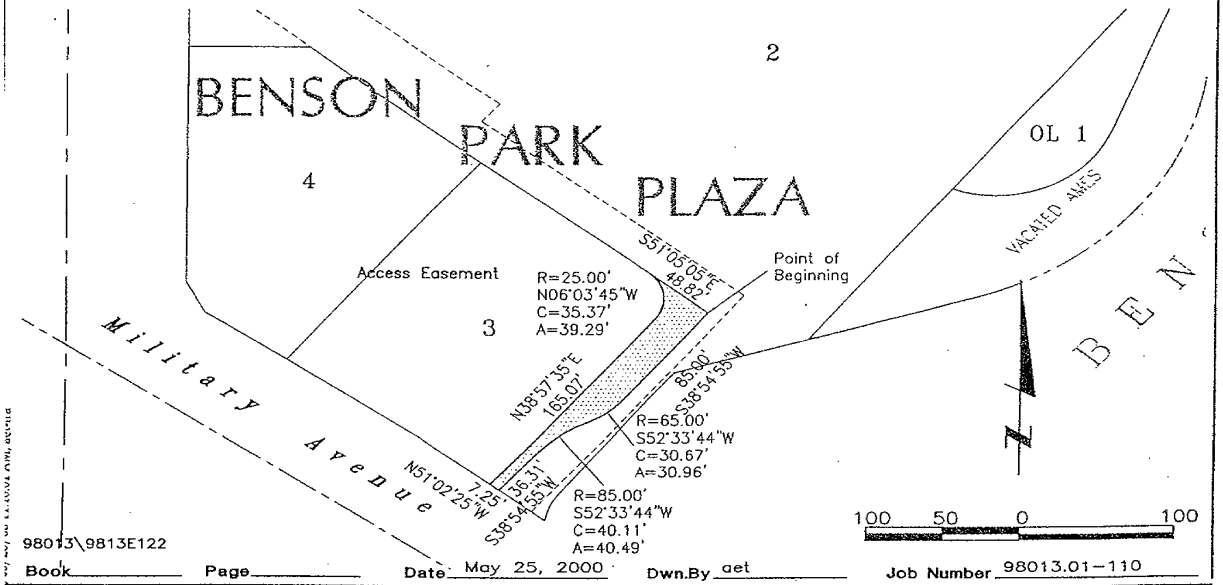
lamp, rynearson & associates, inc.
engineers surveyors planners
14710 west dodge road, suite 100
omaha, nebraska 68154-2029
ph 402-496-2498
fax 402-496-2730

SCHEDULE II
TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

Legal Description of Permanent Access Drive, 72nd & Ames, Omaha, NE
(page 4 of 6)

LEGAL DESCRIPTION

A permanent easement for ingress and egress over that part of Lot 3, BENSON PARK PLAZA, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:
Beginning at the east corner of Lot 3, BENSON PARK PLAZA;
Thence South 38°54'55" West (bearings referenced to the Final Plat of BENSON PARK PLAZA) for 85.00 feet along the southeast line of said Lot 3;
Thence along a curve to the right (having a radius of 65.00 feet and a long chord bearing South 52°33'44" West for 30.67 feet) for an arc length of 30.96 feet along said east line;
Thence along a curve to the left (having a radius of 85.00 feet and a long chord bearing South 52°33'44" West for 40.11 feet) for an arc length of 40.49 feet along said east line;
Thence South 38°54'55" West for 36.31 feet along the southeast line of Lot 3 to the south corner thereof;
Thence North 51°02'25" West for 7.25 feet along the southwest line of said Lot 3;
Thence North 38°57'35" East for 165.07 feet;
Thence along a curve to the left (having a radius of 25.00 feet and a long chord bearing North 06°03'45" West for 35.37 feet) for an arc length of 39.29 feet to the northeast line of said Lot 3;
Thence South 51°05'05" East for 48.82 feet to the Point of Beginning.
Contains 3465 square feet.



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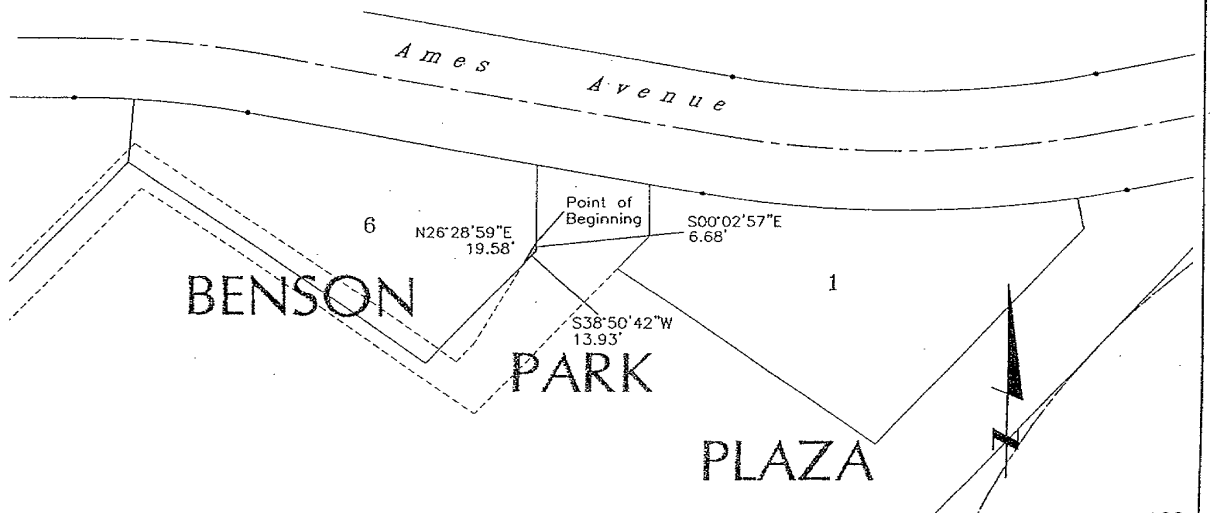
SCHEDULE II
TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

Legal Description of Permanent Access Drive, 72nd & Ames, Omaha, NE
(page 5 of 6)

LEGAL DESCRIPTION

A permanent easement for ingress and egress over that part of Lot 6, BENSON PARK PLAZA, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:
Beginning at the angle point in the east line of said Lot 6;
Thence South 38°50'42" West (bearings referenced to the Final Plat of BENSON PARK PLAZA) for 13.93 feet along the east line of Lot 6;
Thence North 26°28'59" East for 19.58 feet to the east line of said Lot 6;
Thence South 00°02'57" East for 6.68 feet to the Point of Beginning.
Contains 29 square feet.



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SCHEDULE II
TO
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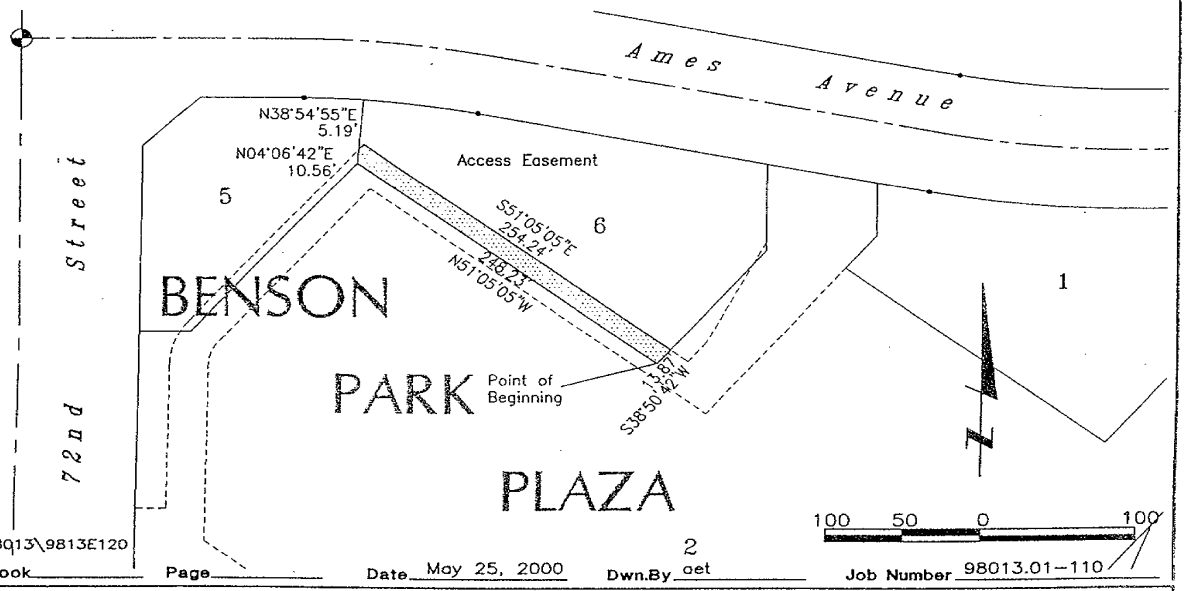
Legal Description of Permanent Access Drive, 72nd & Ames, Omaha, NE
(page 6 of 6)

LEGAL DESCRIPTION

A permanent easement for ingress and egress over that part of Lot 6, BENSON PARK PLAZA, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:
Beginning at the southeast corner of Lot 6, BENSON PARK PLAZA;
Thence North 51°05'05" West (bearings referenced to the Final Plat of BENSON PARK PLAZA) for 248.23 feet along the southwest line of said Lot 6 to the southwest corner thereof;
Thence North 04°06'42" East for 10.56 feet along the west line of said Lot 6;
Thence North 38°54'55" East for 5.19 feet;
Thence South 51°05'05" East for 254.24 feet to the east line of said Lot 6;
Thence South 38°50'42" West for 13.87 feet to the Point of Beginning.
Contains 3499 square feet.



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