

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

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|                            |   |                                    |
|----------------------------|---|------------------------------------|
| Centaur Development Corp., | ) | Case No: _____                     |
|                            | ) |                                    |
| Plaintiff,                 | ) | <b>COMPLAINT AND MOTION FOR</b>    |
|                            | ) | <b>TEMPORARY RESTRAINING ORDER</b> |
| vs.                        | ) | <b>AND PRELIMINARY/TEMPORARY</b>   |
|                            | ) | <b>INJUNCTION AND/OR</b>           |
| Peitzmeier Ida LLC,        | ) | <b>PERMANENT INJUNCTION</b>        |
|                            | ) |                                    |
| Defendant.                 | ) |                                    |

COMES NOW Plaintiff, Centaur Development Corporation, a Nebraska corporation, pursuant to Neb. Rev. Stat. § 25-21,149 *et seq.*, and Neb. Rev. Stat. § 25-1062 *et seq.*, states and alleges as follows:

PARTIES

1. Plaintiff Centaur Development Corporation (“Plaintiff”), is a corporation with its principal place of business in Omaha, Douglas County, Nebraska.
2. Defendant Peitzmeier Ida LLC (“Defendant”), is a limited liability company with its principal place of business in Omaha, Douglas County, Nebraska.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Neb. Rev. Stat. § 24-302.
4. Venue is proper in this Court under Neb. Rev. Stat. § 25-403.01(2) because Douglas County, Nebraska is the county where the cause of action arose.

FACTS

5. Gerald H. Smith (“Smith”) is the President of Centaur Development Corporation (“Centaur Development”) and sole member of Thomas Creek Business Park LLC (“Thomas Creek”)(Centaur Development and Thomas Creek collectively “Centaur”).

6. Centaur is engaged in the purchasing, transporting, storing, and repairing of equipment, motors, machinery, and the like ("Equipment"). Said business contracts with, and receives and sends, semi-trailer trucks up to eighty feet long on a weekly basis, which load and unload equipment as purchased and repaired by Plaintiff.
7. On or before August 2002, Thomas Creek Business Park LLC was the record title holder of Thomas Creek Business Park, a cluster subdivision in Douglas County, located generally north of 94th and Ida Street in Douglas County and designated to be Centaur's principle place of business.
8. On or around August 12, 2002, Centaur filed the Thomas Creek Business Park Final Plat ("Original Plat"), which consisted of Lots 1, 2, 3, 4, and 5, along with Outlot A and Outlot B, as designated, in part, for easement and access purposes. See Exhibit A, a true and correct copy thereof, attached hereto and incorporated herein.
9. On or around August 22, 2002, Thomas Creek LLC caused to be properly recorded a Declaration of Restrictions and Grant of Easements ("Declaration") to establish certain rights and restrictions in developing the Original Plat as an integrated industrial development. See Exhibit B, a true and correct copy thereof, attached hereto and incorporated herein.
10. In the Declaration, Thomas Creek LLC retained, along with any future owner of any lot within the Plat, an easement for ingress and egress, as expressly set forth below:

"3. Easements.

3.1 Ingress, Egress and Parking. The Declarant, as grantor, hereby grants for the benefit of the other Owners (if any), its respective successors, assigns, tenants, employees, agents, customers and invitees and the customers, employees and invitees of such tenants, and for the benefit of each Lot belonging to the other Owners as grantees, **the right, in common with each other, of non-exclusive ingress and egress by vehicular and pedestrian traffic and the right of vehicular parking upon, over and across Outlot B, a portion of Outlot A which provides access to [Lot 5 referenced herein as Centaur Shop]** and the portion of the Common Area within the Lots, if any, including, without limitation, the access corridors providing access to Ida Street or Outlot B, as shown on the Plat or other recorded document, except for those areas devoted to loading docks, trash enclosures and other service facilities permitted by Section

2.2 above and devoted to any other purpose as shown on the Plat. These reciprocal rights of ingress and egress shall apply to the Common Area for Lots 1 through 5 and each Lot, as such shall be increased pursuant to Section 2.2 above. **The Owner of each Lot shall take all reasonable steps necessary to prevent any person from parking upon, or otherwise blocking, temporarily or otherwise, any Common Area.** (“Easement”)(emphasis added).

11. Thereafter, on or around 2012, Original Lot 1 and Outlot A were sold to a third party, Ida Street LLC, a Nebraska limited liability company.

12. In 2017, Original Lot 1 and Outlot A were subsequently sold to Defendant.

13. Within the Thomas Creek Business Park subdivision, Plaintiff and/or Thomas Creek retain five contiguous lots of the Original Plat, as follows:

a. 9570 Ida St., legally described as follows:

Lot One (1), Thomas Creek Business Park Replat Two, an Addition to the City of Omaha, in Douglas County, Nebraska (“Centaur Shop”);

b. 6925 N 94 Plaza, legally described as follows:

Thomas Creek Business Park Lot 3, an Addition to the City of Omaha, in Douglas County, Nebraska. (“Centaur Office”).

c. 930 North 94 Plaza, legally described as follows:

i. Lot One (1), Thomas Creek Business Park Replat One, an Addition to the City of Omaha, in Douglas County, Nebraska

And

ii. 6920 North 94 Plaza, legally described as follows:

Lot Two (2), Thomas Creek Business Park Replat One, an Addition to the City of Omaha, in Douglas County, Nebraska

(Both Lot 1 and Lot 2 collectively referred to herein as “Centaur Lots”).

d. North 94th Plaza and legally described as follows:

Outlot B, Thomas Creek Business Park, an Addition to the City of Omaha in Douglas County, Nebraska (“Outlot B”).

14. Defendant owns the remaining two Thomas Creek Business Park lots:

a. commonly known as 9598 Ida St. and legally described as follows:

Outlot A, Thomas Creek Business Park Replat One, an Addition to the City of Omaha, in Douglas County, Nebraska (“Outlot A”).

- b. commonly known as 6950 North 94 Plaza, and legally described as follows:

Lot One (1), Thomas Creek Business Park, an Additional to the City of Omaha in Douglas County, Nebraska (“Lot 1”)

(collectively “Outlot A” and “Lot 1” hereinafter “Peitzmeier’s Property”).

15. Over the years, some of the lots have been subject to replat.
16. Notwithstanding the transfer of ownership of any lot within the Thomas Creek Business Park subdivision or replat, from 2002 through the present, Plaintiff has used and relied upon the Easement for the benefit of Plaintiff’s business because traveling over same is necessary for semi-trailer access to the Centaur Shop.
17. Since recording the Declaration in 2002, through the present, to reach the Centaur Shop, semi-trailer trucks have traversed over the Easement, from Outlot B over Outlot A and around the north side of Original Lot 1, to reach the Centaur Shop.
18. Four to six semi-trailer trucks traverse the Easement weekly to deliver and pick up equipment, and same constitutes the primary source of revenue for the Centaur business.
19. On or around April 27, 2018, Defendant unilaterally changed the electronic code on the fence on Plaintiff’s Outlot B as well as a secondary fence on Outlot A, thereby denying Plaintiff semi-truck access to the Easement, Outlot A, and the Centaur Shop, the same of which is essential for Plaintiff’s business, notwithstanding Plaintiff’s express use as granted in the Easement and historic use.
20. Defendant has refused to provide Plaintiff the electronic code to Plaintiff’s fence.
21. Since April, because Defendant unilaterally changed the electronic lock code on Plaintiff’s fence, Plaintiff has been prevented from accessing the Easement on numerous occasions, and subsequently, prevented from readily loading and unloading semi-trucks with Equipment, which is essential for Plaintiff’s business.

22. Plaintiff's business is contingent upon the semi-trucks having access to the Centaur Shop, same of which cannot be accomplished without traversing the Easement.
23. Plaintiff has made numerous attempts to reach an agreement with Defendant regarding the Easement and Defendant refuses to provide access.

COUNT ONE  
DECLARATORY JUDGMENT

24. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 23 as though fully set forth herein.
25. Pursuant to the Declaration, an Easement was created to access Original Lot 5, also described herein as Centaur Shop, and the Declaration provides that each Restriction runs with the land.
26. Restriction is defined to include any easement contained within the Declaration.
27. The Easement expressly states that each Lot Owner shall have non-exclusive ingress and egress rights by vehicular and pedestrian traffic and the right of vehicular parking upon, over, and across Outlot B, a portion of Outlot A which provides access to [Lot 5, referenced herein as Centaur Shop].
28. Defendant is in direct violation of the Declaration as Defendant has caused Plaintiff's fence and gate to be locked, refuses to provide access to the Centaur Shop, is storing material on Outlot A to hinder the right of passage, and has prevented Plaintiff from accessing Plaintiff's property via the Easement.
29. Plaintiff requests, pursuant to Neb. Rev. Stat. § 25-21,149, et seq. and the Declaration, this Court declare that the Declaration provides for an Easement for ingress and egress to access Original Lot 5, referenced herein as Centaur Shop, as historically and continually used by Plaintiff; Defendant is violating the Declaration by limiting Plaintiff's access to the Easement; Defendant is violating the Declaration by storing articles on Outlot A that inhibit the other lot owner's passage across the Easement; Defendant is violating the Declaration locking fences

on Outlot A to restrict access; and for such other and further equitable relief as the Court may provide.

COUNT TWO  
PERMANENT INJUNCTION

30. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 29 as though fully set forth herein.
31. Pursuant to the Declaration, the Court has authority to enter an injunction against an owner of a lot within the Plat for any violation or threatened violation of the Declaration.
32. Pursuant to the Declaration, Plaintiff, as an owner of a lot within the Plat, has the right to take reasonable steps necessary to prevent a different owner from blocking any Common Area.
33. Defendant is in direct violation of the Declaration as Defendant is preventing access to the Easement, as expressly granted, has locked fences on Outlot A contrary to the Declaration, and is storing material on Outlot A, contrary to the Declaration.
34. Plaintiff has and continues to suffer irreparable harm, damage, and injury due to Defendant's unlawful blocking, obstructing, and hindering of Plaintiff's access to the Easement.
35. If there is a violation or threatened violation of the Declaration, an owner of real property within the Plat "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 and all remedies available under statute, law, and equity."
36. Plaintiff has no adequate remedy at law.
37. Plaintiff requests that the Court, pursuant to the authority granted in the Declaration, enter an Order permanently enjoining the Defendant from blocking, obstructing, or hindering, in any way, Plaintiff's access to the Easement; requiring the Defendant to leave open any and all gates on Outlot A; and require the Defendant to remove any property that is stored on Outlot A and that inhibits Plaintiff's access to the Easement.

COUNT THREE  
IMPLIED EASEMENT

38. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 37 as though fully set forth herein.
39. Since 2002 through the present, semi-trailer trucks as contracted by Centaur have traversed the Easement in the exact same manner to reach the Centaur Shop in furtherance of Plaintiff's business.
40. As a lessee of at least 5 years prior to purchasing Original Lot 1, Defendant had actual notice of Plaintiff's continuous and historic use over Outlot A to the Centaur Shop.
41. Plaintiff's business requires and is dependent upon ingress and egress of semi-trailer trucks by way of the Easement, as the Easement provides the semi-trailer trucks the sole method of access to Centaur Shop because of the substantial space necessary for navigation due to semi-trailer trucks' length and elongated turning radius.
42. For purposes of Plaintiff's business operation, Centaur Shop is effectively landlocked with no means of semi-trailer access from Ida Street as the Centaur Lots and the Centaur Shop do not have the necessary space available to allow for proper semi-trailer truck maneuvers in furtherance of Plaintiff's business.
43. Without semi-trailer truck access to the Easement and Centaur Shop, Plaintiff's business will come to a halt.
44. Plaintiff requests that the Court enter an Order establishing that a permanent easement exists by implication for the benefit of Centaur Shop to allow Plaintiff continued and historic ingress and egress to and from Ida Street in furtherance of its business.

COUNT FOUR  
REQUEST FOR TEMPORARY INJUNCTION

45. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 45 as though fully set forth herein.

46. Defendant refuses to grant Plaintiff access to Outlot A, as Plaintiff is entitled and as Plaintiff has historically had, and all as expressly granted pursuant to the Easement.
47. Unless the Defendant is immediately restrained and enjoined from precluding access to Outlot A and locking gates and fences thereon, Plaintiff will be irreparably harmed as Plaintiff has been precluded from Plaintiff's business.
48. Plaintiff has no adequate remedy at law.
49. Pursuant to Neb. Rev. Stat. §§ 25-1063 and 25-1064, the Court has authority to enter a temporary injunction to restrain the commission or continuance of some act which would cause great or irreparable injury.
50. Pursuant to Neb. Rev. Stat. § 25-1064(3), Plaintiff requests that a Temporary Restraining Order be entered immediately because Defendant's conduct demonstrates that immediate and irreparable injury will result to Plaintiff before Defendant can be served or heard in opposition. See Affidavit of Gerald H. Smith, filed contemporaneously herein.

WHEREFORE, Plaintiff respectfully prays that this Court:

1. Enter an Order Plaintiff pursuant to Neb. Rev. Stat. § 25-21,149, *et seq.* and the Declaration, declaring that the Declaration provides for an Easement for ingress and egress to access the Centaur Shop as historically and continually used by Plaintiff; Defendant is violating the Declaration by storing articles on Outlot A that inhibit Plaintiff's right to the Easement; that Defendant is violating the Declaration by restricting and locking gates and fences on Outlot A, including Plaintiff's gate, to completely restrict Plaintiff's access to the Easement; Defendant is enjoined from blocking Plaintiff's access to the Easement in any way, from continued storage of equipment and other articles on Outlot A; and for such other and further equitable relief that the Court may provide;
2. Enter an Order, pursuant to the Declaration, permanently enjoining the Defendant from blocking, obstructing, or hindering, in any way, Plaintiff's access to the Easement; precluding



- Defendant from locking or closing any gate or fence on Outlot A; and require the Defendant to remove any property stored on Outlot A, which inhibits Plaintiff's access to the Easement.
3. In the alternative, enter an Order establishing that a permanent easement exists by implication for the benefit of Centaur Shop to allow Plaintiff continued and historic ingress and egress to and from Outlot B, over Outlot A, in furtherance of its business;
  4. Enter an Order pursuant to Neb. Rev. Stat. § 25-1062 et seq. for a Temporary Restraining Order;
  5. Grant Plaintiff costs and attorney fees as permitted herein; and
  6. For such other and further equitable relief as the Court deems just and proper.

Dated this 15<sup>th</sup> day of June, 2018.

Centaur Development Corporation,

By:   
Aimee L. Lowe, #23710  
Vandenack Weaver LLC  
17007 Marcy Street, Suite 3  
Omaha, NE 68118-3122  
Telephone: (402) 964-2680  
Facsimile: (402) 504-1935  
alowe@vwattys.com  
ajansen@vwattys.com  
Attorney for Plaintiff





BK 1457 PG 135-150



MISC 2002 19780

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

2002 AUG 22 PM 4: 01

RECEIVED

**DECLARATION OF RESTRICTIONS  
AND GRANT OF EASEMENTS**

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the 22<sup>nd</sup> day of August, 2002, by THOMAS CREEK BUSINESS PARK, LLC, a Nebraska limited liability company (the "Declarant").

Declarant is the record owner of Lots 1 through 5, inclusive, and Outlots A and B, inclusive, THOMAS CREEK BUSINESS PARK, a cluster subdivision recorded in Douglas County, Nebraska (collectively the "Property" and individually sometimes as a "Lot"). The Property is to be developed pursuant to a general plan of improvement to form an integrated and unified general industrial development (the "Project").

Declarant desires that the Property be subject to the easements, covenants and conditions hereinafter set forth in order to establish a permanent non-exclusive and reciprocal right, privilege and easement for each of the owners and occupants of the Property to come upon and travel across those parts of the Property shown on Exhibits "B", "C", "D" and "E" attached hereto for the purposes of pedestrian and vehicular ingress, egress and access from public roads and right-of-ways which adjoin the Project and for the purpose of parking and storm sewers. Such easements and each of the other covenants, restrictions and agreements shall be on the terms as set forth herein.

Declarant, for itself and for its respective successors and assigns, does hereby declare, grant and covenant as follows:

1. Preliminary.

1.1 Definitions. As used in this Agreement, the following words shall have the definitions hereinafter set forth.

(a) "Association": Thomas Creek Business Park Owners Association, Inc., a Nebraska not-for-profit corporation.

After recording, please return to:  
John Q. Bachman  
GAINES, PANSING & HOGAN  
10050 Regency Circle, Suite 200  
Omaha, Nebraska 68114

13425

*Misc F*  
FEE 82.00 FB 67-38339  
*16/4* BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP *BW*  
DEL \_\_\_\_\_ SCAN *RS* FV \_\_\_\_\_

EXHIBIT  
**B**

(b) "Building Area" of each Lot: That area on each lot on which improvements and buildings have been constructed. Lots A and B contain no Building Area and are entirely Common Area.

(c) "Common Area": The terms "Common Area" shall mean and refer to those portions of Thomas Creek Business Park owned by the Association in fee or against which an easement has been imposed under this Declaration or another instrument in favor of the Association, and any other areas with respect to which the Association has assumed in writing, at its election, administrative or maintenance responsibilities, or as otherwise provided in any Subdivision Agreement entered into or to be entered into by and between the Declarant and the City, which may be amended from time to time. The initial Common Area is depicted on the Plat attached hereto as Exhibit "A" and specifically Outlots A and B, Thomas Creek Business Park.

(d) "Lienholder": Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Lot.

(e) "Declarant": Thomas Creek Business Park, LLC, a Nebraska limited liability company, or any person, firm, corporation, partnership or entity designated in writing by the Declarant.

(f) "Lot": Individually, Lots 1 through 5, inclusive, and Outlots A and B, inclusive, Thomas Creek Business Park, a cluster subdivision in Douglas County, Nebraska attached hereto as Exhibit "A" (the "Plat").

(g) "Owner": A person who is then the owner of a Lot.

(h) "Property": Collectively Lots 1 through 5, inclusive, and Outlots A and B, Thomas Creek Business Park, as shown on the Site Plan.

(i) "Restrictions": The easements, covenants, restrictions, liens, charges, obligations and benefits contained in this Declaration.

1.2 Declarant. Declarant, Thomas Creek Business Park, LLC, a Nebraska limited liability company is the Owner of all of the Property. The Property is located generally north of 94th and Ida Street, in the City of Omaha, County of Douglas, State of Nebraska, and more particularly shown on Exhibit "A" attached hereto.

1.3 Purpose. Declarant plans to develop the Property as an integrated general industrial development for the mutual benefit of all of the Property and,

therefore, the Declarant, as Owner of all of the Lots comprising the Property, hereby establishes Restrictions to:

(a) have the Property developed as a general industrial development;

(b) establish a general plan and scheme for development and to create and establish certain easements, restrictions, rights and obligations pursuant to such plan and scheme with regard to the Property;

(c) assure all:

(i) Owners, their respective heirs, personal representatives, successors and assigns;

(ii) Current and future tenants, subtenants and/or occupants of any part of the Property; and

(iii) Future holders of any mortgage, deed of trust or other security against all or any part of the Property,

that the Property will be subject to the provisions of this Declaration.

## 2. Building and Common Area Development.

2.1 Building Location. All buildings and other structures (except those permitted in Section 2.2 below) are currently located or shall be placed or constructed upon the Lots only in the Building Areas, provided, however, canopies and roof overhangs (including columns or pillars supporting them), normal foundations and doors for ingress and egress may project from the Building Area a distance not greater than ten feet (10'). All the foregoing must comply with all applicable laws, rules, ordinances and regulations of all governmental authorities having jurisdiction.

2.2 Common Area. The Common Area may be used for vehicular driving, parking, pedestrian traffic, directional signs, sidewalks, walkways and landscaping authorized by the Declarant and for no other purposes, unless otherwise specifically provided in this Declaration. No buildings or structures shall be placed or constructed in the Common Area, except pylon and directional signs, as provided in Section 4, paving, bumper guards or curbs, landscape planters, lighting standards, and, to the extent that they do not impede access to the rear or sides of buildings, loading docks, trash enclosures, and other service facilities. The Common Area may be increased

with respect to all Lots of the Property. Nothing herein shall preclude reconstruction or additional construction upon Common Area. The Common Area shall be improved, kept and maintained as provided for in that certain Common Area Maintenance Agreement among the parties covering the Property. Following the construction of any portion of the Common Area improvements, the sizes and arrangements of the Common Area improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be changed without the written consent of the Declarant.

### 2.3 Type and Design of Building.

(a) Each building (which term shall include a structure of any kind) in the Property, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevation (including signs) and color will be architecturally and aesthetically compatible and harmonious with the buildings constructed in the Property. No building or other improvement may be constructed, nor the exterior of any existing building changed in any way without the prior written approval of the Declarant, as to the exterior design, materials, grade elevations, color and roof elevation of the building to be constructed or modified. No exterior antennas or satellite communication devices may be installed or permitted to remain on any Lot without the prior written approval of the Declarant. Any outdoor storage for Lots 1 through 4 must be enclosed and covered. Automobile collision repair and painting and automobile repair and service facilities are strictly prohibited. Before construction or modification of any building or other improvement is commenced, sufficient information shall be sent to the Declarant to enable it to make a reasonable determination. The Declarant may not arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is in conformity with the intent of this paragraph. The Declarant may approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and if Declarant disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproving. If the Declarant rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such Declarant shall be deemed to have approved 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 will then be deemed to have been 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.

(b) No building shall be constructed or built in such a manner as to adversely affect the structural integrity of any other building on the Property.

(c) All buildings shall be single story (with mezzanine permitted if approved in writing by the Declarant) and shall not exceed thirty feet (30') in height as measured from the finished first floor elevation, as approved by the Declarant.

#### 2.4 Maintenance of Buildings and Improvements.

(a) The Owner of each Lot shall maintain, or cause to be maintained, in a safe, clean and tenantable condition and in good order and repair, all landscaped areas, all buildings and improvements located on the Lot, and the Common Areas of such Lot, if any, free and clear of any litter. In the event any building or other structure in the Property is damaged or destroyed by any casualty, the Owner of the Lot upon which the same is located shall not be obligated to restore the same, but if such building or structure is not restored within a reasonable time after such casualty, which shall, in no event, be greater than nine (9) months, the Owner shall raze the same, and then forthwith grade, pave and stripe the area which it occupies so that the Property shall be left in a safe and slightly condition. Thereafter, any subsequent construction of a building or other improvement on such location shall be in conformity with the relevant provisions of this Declaration. The restoration of any building or structure which is substantially completed within the nine (9) month period following damage or destruction shall not require the prior written approval of the Owner or Declarant if the exterior design, materials, grade elevations, color and roof elevation of the completed building or structure are not changed from that of the building or structure prior to the occurrence of the casualty necessitating the restoration.

### 3. Easements.

3.1 Ingress, Egress and Parking. The Declarant, as grantor, hereby grants for the benefit of the other Owners (if any), its respective successors, assigns, tenants, employees, agents, customers and invitees and the customers, employees and invitees of such tenants, and for the benefit of each Lot belonging to the other Owners as grantees, the right, in common with each other, of non-exclusive ingress and egress by vehicular and pedestrian traffic and the right of vehicular parking upon, over and across

Outlot B, a portion of Outlot A which provides access to Lot 5 and the portion of the Common Area within the Lots, if any, including, without limitation, the access corridors providing access to Ida Street or Outlot B, as shown on the Plat or other recorded document, except for those areas devoted to loading docks, trash enclosures and other service facilities permitted by Section 2.2 above and devoted to any other purpose as shown on the Plat. These reciprocal rights of ingress and egress shall apply to the Common Area for Lots 1 through 5 and each Lot, as such area shall be increased pursuant to Section 2.2 above. The Owner of each Lot shall take all reasonable steps necessary to prevent any person from parking upon, or otherwise blocking, temporarily or otherwise, any Common Area.

3.2 Utility Lines. The Declarant, as grantor, hereby grants to the other Owners (if any), for the benefit of the other Owners and their Lots, non-exclusive easements under, through and across the Common Area of each Lot for water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones or electrical conduits or systems, gas mains, other public utilities and service easements. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of such easements, except for electric transformers. In the event it is necessary for the Owner of a Lot to cause the installation of a storm drain, utility line or sewer across a Lot after the initial paving and improving thereof, the other Owners shall not unreasonably withhold the granting of an additional easement or easements. The construction and use of such easement facilities shall be accomplished so as not to unreasonably interfere with the normal operation of any business in the Project. The grantee shall bear all costs related to the use of the easement and shall repair to the original specifications any damage to the Lot resulting from such use. At any time and from time to time the Owner of a Lot shall have the right to relocate on its Lot 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 (a) 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 Lot served by the utility line or facility; (b) shall not unreasonably interfere with or diminish utility service to the Lots served by the lines or facility; (c) shall not reduce or unreasonably impair the usefulness or function of the line or facilities; (d) shall be performed without cost or expense to the Owner or occupant of any Lot served by the line or facility; and (e) the original and relocated area shall be restored to the original specifications.

3.3 Signs. The Declarant, as grantor, hereby grants to the other Owners (if any) for the benefit of the other Owners, easements, under, through and across the Common Area for the purpose of installing and maintaining the free-standing monument signs hereinafter referred to in Section 4.3 of this Declaration.

3.4 Surface Water Drainage. Each Owner grants to the Owners of all other Lots in the Property, their successors and assigns, perpetual easements over portions of



the Property owned by such Owner for the drainage of surface waters pursuant to the drainage plan established for the Project.

4. Operation of Common Area.

4.1 Parking. There shall be no charge for parking in the Common Area without the prior written consent of the Declarant, unless otherwise required by law.

4.2 Employee Parking. Employees shall not be entitled to park on the Common Area. Anything in this Declaration to the contrary notwithstanding, areas to be used for motor vehicle parking by employees of occupants of the Property may be designated within the Property from time to time by the Owners of the Lots with the prior written consent of Declarant. In the event employee parking areas are designated as provided herein, then employees of any Owner, lessee, or other occupant of any part of the Property shall use only those portions of the Lots designated for such motor vehicle parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or commercial establishment in the Property.

4.3 Signs. Free-standing monument signs must receive the written approval of the Declarant which may be withheld for any reason.

4.4 Protection of Common Areas. Each owner shall have the right to take steps as it deems necessary to prevent those persons not authorized by Section 3.1 to use the Common Areas from using the Common Areas for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walks or barricades along the perimeter boundary lines of any portion of the Property, except along the common boundary of any Lot with any other Lot.

4.5 The Association. Declarant may cause the incorporation of the Thomas Creek Business Park Property Owners Association, Inc., a Nebraska not-for-profit corporation (the "Association") for the purpose of operating and maintaining the Common Areas located within the Property. Declarant may amend this Declaration to include any and all provisions for the Association as Declarant deems necessary. Further, at such time Declarant causes the incorporation of the Association, Declarant shall also convey Outlots A and B to the Association, as Common Area for the Property.

5. Eminent Domain. In the event that any part of the Property shall be taken by eminent domain or any other similar authority of law, the entire award for value of the land and improvements so taken shall belong to the Owner of the Lot on which the land and improvements are located, subject to the rights of any tenant on the land and improvements so taken, and no other owner or tenant in the Property shall claim any portion of such award by virtue of any interest created by this Declaration; provided, however, that any such other

owner may file a collateral claim with the condemning authority over and above the value of the land and improvements so taken to the extent of any damage suffered by such other owner resulting from the severance of the area so taken. The Owner of the Lot so condemned shall promptly repair and restore the remaining portion of the Property owned by him as nearly as practicable to the condition existing immediately prior to such condemnation; but this provision shall not relieve any tenant from any obligation it may have to repair and restore as provided by its lease.

6. Mortgages Subordinate to Declaration. Any mortgage or deed of trust affecting any portion of the Property shall, at all times, be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage or deed of trust shall acquire title to the foreclosed premises subject to all of the terms of this Declaration. However, no foreclosure or enforcement of any lien arising in favor of any party hereto as a result of a breach of this Declaration shall affect the continued validity and effectiveness of any mortgage or deed of trust affecting any Lot.

7. 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 and 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. General Provisions.

8.1 Covenants Run with the Land. Each Restriction on each Lot shall be a burden on that Lot, shall be appurtenant to, and for the benefit of, the other Lots and each part thereof, and shall run with the land.

8.2 Successors and Assigns. This Declaration, and the Restrictions created thereby, shall inure to the benefit of, and be binding upon, the Declarant and its successors and assigns; provided, however, that if any Owner sells any portion or all of its interest in any Lot, such Owner shall thereupon be personally released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title.

8.3 Duration. Except as otherwise provided herein, the term of this Declaration shall be for eighty-nine (89) years from the date hereof.

8.4 Injunctive Relief. In the event of any violation or threatened violation by any Owner, lessee or occupant of any portion of the Project of any of the terms, covenants and conditions of this Declaration, any and all of the Owners of the property included within the Property 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 and all remedies available under statute, law and equity.

8.5 Modification Provision. The provisions of this Declaration may be abrogated, modified, rescinded or amended, in whole or in part, only with the consent of the Owners of all Lots and of each and every mortgagee and beneficiary under any recorded first mortgage or deed of trust covering any Lot, by declaration in writing, executed and acknowledged by all of said Owners, beneficiaries and mortgagees, duly recorded in the office of the Register of Deeds of Douglas County, Nebraska; but this Declaration may not otherwise be abrogated, modified, rescinded or amended, in whole or in part. Notwithstanding the foregoing, the Declarant or any person, firm, corporation, partnership or entity designated in writing by the Declarant may amend this Declaration in any manner it shall determine in its full and absolute discretion.

8.6 Waiver. No delay or omission of any party in the exercise of any right accruing upon any default of any other party shall impair any such right or be construed as a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any party of a breach or a default of any of the terms and conditions of this Declaration by any other party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Declaration. Except as otherwise specifically provided in this Declaration, no remedy provided in this Declaration shall be exclusive, but each shall be cumulative with all other remedies provided in this Declaration and at law or in equity.

8.7 Method of Approval. Whenever the approval or consent of any Owner is required, such approval or consent shall be exercised only in the following manner. Each Lot (excluding Outlots A and B) shall have only one (1) vote. The record Owners of each Lot shall agree among themselves and designate in writing to the record Owners of each of the other Lots a single person or entity who is entitled to cast the single vote of that Lot; that Lot shall not be entitled to vote. In the event a Lot is not entitled to vote, its consent or approval shall not be necessary.

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

8.9. Breach Shall Not Permit Termination. It is expressly agreed that no breach of the Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitations 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.

8.10 Non-merger. Ownership by one person or party of all or part of the Property shall not result in a cancellation or partial cancellation of this Declaration, through merger or otherwise. This Declaration shall remain in full force and effect notwithstanding any change of ownership of the Property or any Lot contained therein.

8.11 Construction. This Declaration shall be construed in accordance with the laws of the State of Nebraska.

8.12 Headings. Headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration and shall not be considered in any instruction or interpretation of this Declaration, or any part thereof. Nothing in this Declaration shall be construed to make Owners partners or joint venturers or render any of said parties liable for the debts or obligations of another Owner.

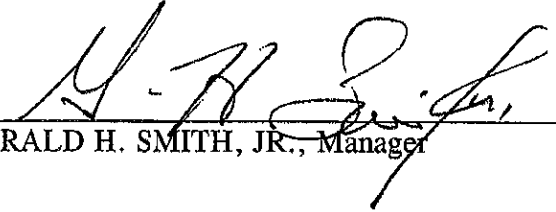
8.13 Notices. All notices, approvals, consents or requests given or to be given pursuant to this Declaration ("Notices") shall be given or made in writing and must be given by United States certified or registered mail, postage prepaid. So long as the following Declarant has an interest in any portion of the Property, the following address shall be used for it:

Thomas Creek Business Park, LLC  
c/o Gerald H. Smith, Jr.  
8988 "J" Street  
Omaha, NE 68127

which address may be changed by Declarant by written notice. In the event that a party other than a Declarant becomes an Owner, Notice to such Owner shall be sent to such Owner at the address recorded for the giving of Notice to such Owner in the Office of the Register of Deeds of Douglas County, Nebraska and indexed against such Owner's Lot.

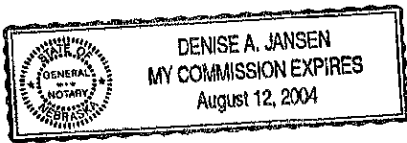
EXECUTED as of the day and year first above written.

THOMAS CREEK BUSINESS PARK, LLC,  
a Nebraska limited liability company

By   
GERALD H. SMITH, JR., Manager

STATE OF NEBRASKA    )  
                                  ) ss.:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of August, 2002, by GERALD H. SMITH, JR., Manager of THOMAS CREEK BUSINESS PARK, LLC, a Nebraska limited liability company, on behalf of the company.



  
Notary Public

# THOMAS CREEK BUSINESS PARK

LOTS 1 THRU 5, INCLUSIVE, AND OUTLOTS A AND B, A CLUSTER SUBDIVISION

BRING A PLATING OF PART OF THE SW 1/4 OF SECTION 27, TOWNSHIP 27N, RANGE 10E, COUNTY OF OMAHA, NEBRASKA.

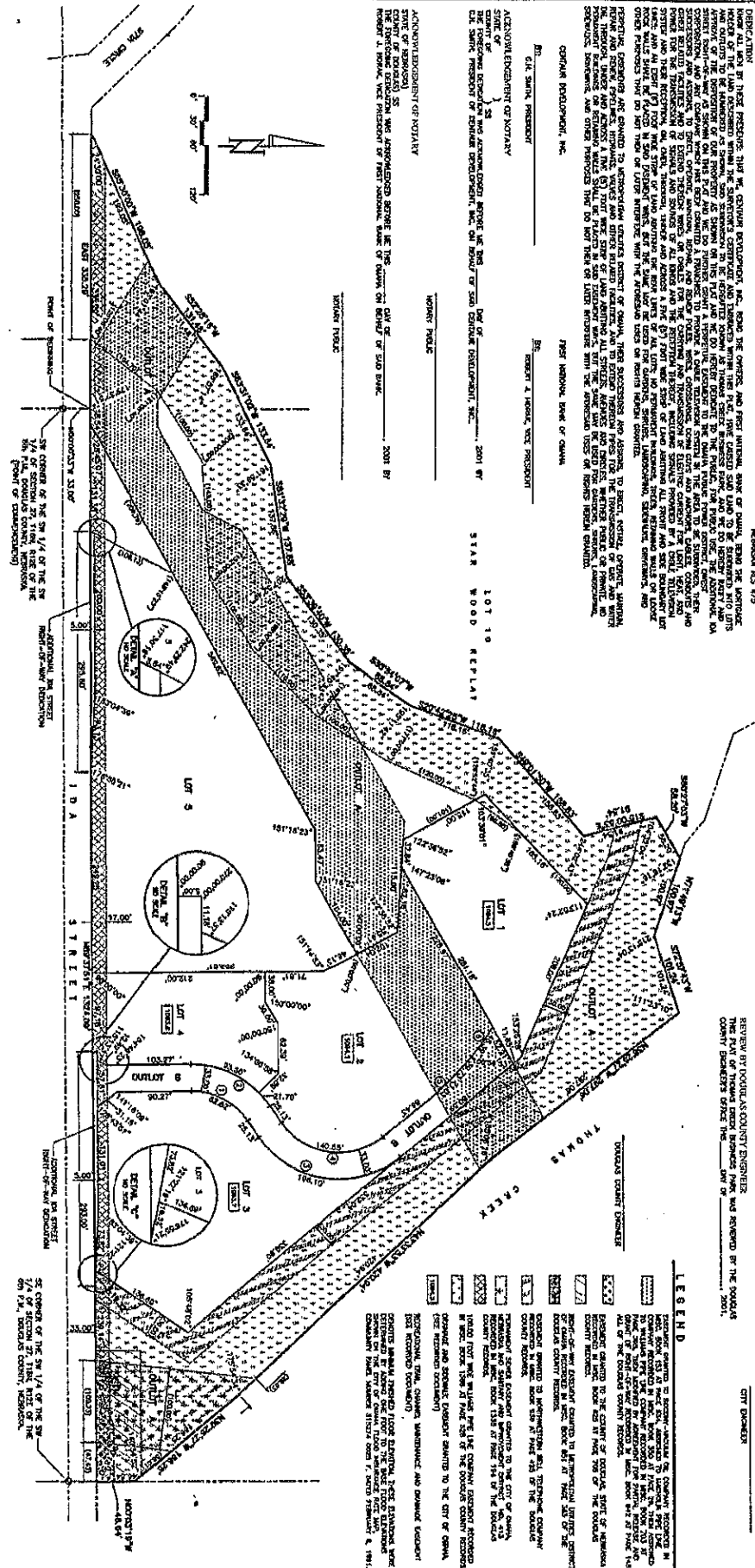
**SUBDIVISION CERTIFICATE**  
 I HEREBY CERTIFY THAT I AM A LICENSED SURVEYOR OF THE JURISDICTION DESCRIBED HEREON AND THE PRESENTED JURORS HAVE BEEN FOUND TO BE QUALIFIED TO BE SWORN AS JURORS IN THE COURT OF RECORDS OF THE COUNTY OF OMAHA, NEBRASKA. THE PRESENTED JURORS HAVE BEEN FOUND TO BE QUALIFIED TO BE SWORN AS JURORS IN THE COURT OF RECORDS OF THE COUNTY OF OMAHA, NEBRASKA. THE PRESENTED JURORS HAVE BEEN FOUND TO BE QUALIFIED TO BE SWORN AS JURORS IN THE COURT OF RECORDS OF THE COUNTY OF OMAHA, NEBRASKA.



BRUCE A. JONES  
 SURVEYOR GENERAL

| LOT   | AREA       | PERCENTAGE | LENGTH    | WIDTH     |
|-------|------------|------------|-----------|-----------|
| 1     | 56,241.57  | 45.03%     | 66.42'    | 1,185.00' |
| 2     | 58,415.57  | 46.83%     | 115.82'   | 1,185.00' |
| 3     | 61,562.57  | 49.63%     | 165.22'   | 1,185.00' |
| 4     | 64,709.57  | 52.43%     | 214.62'   | 1,185.00' |
| 5     | 67,856.57  | 55.23%     | 264.02'   | 1,185.00' |
| TOTAL | 308,785.65 | 247.15%    | 1,185.00' | 1,185.00' |

**NOTES**  
 1. THESE ARE THE PERCENTAGES REFERRED TO IN THE SUBDIVISION CERTIFICATE.  
 2. THERE SHALL BE NO OTHER VARIATIONS IN THE PERCENTAGES REFERRED TO IN THE SUBDIVISION CERTIFICATE.



COUNTY TREASURER'S CERTIFICATE  
 I HEREBY CERTIFY THAT I AM A LICENSED SURVEYOR OF THE JURISDICTION DESCRIBED HEREON AND THE PRESENTED JURORS HAVE BEEN FOUND TO BE QUALIFIED TO BE SWORN AS JURORS IN THE COURT OF RECORDS OF THE COUNTY OF OMAHA, NEBRASKA.

APPROVAL OF OMAHA CITY PLANNING BOARD  
 I HEREBY APPROVE THE PLAT OF THOMAS CREEK BUSINESS PARK AS APPROVED BY THE OMAHA CITY PLANNING BOARD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

APPROVAL OF OMAHA CITY COUNCIL  
 THE PLAT OF THOMAS CREEK BUSINESS PARK WAS APPROVED AND ACCEPTED BY THE CITY COUNCIL OF OMAHA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

APPROVAL OF CITY ENGINEER  
 I HEREBY APPROVE THE PLAT OF THOMAS CREEK BUSINESS PARK ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

REVIEW BY OMAHA COUNTY ENGINEER  
 THE PLAT OF THOMAS CREEK BUSINESS PARK WAS REVIEWED BY THE OMAHA COUNTY ENGINEER ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

**LEGEND**  
 1. LOT 1  
 2. LOT 2  
 3. LOT 3  
 4. LOT 4  
 5. LOT 5  
 A. OUTLOT A  
 B. OUTLOT B  
 THOMAS CREEK  
 STARWOOD ROAD  
 WOOD ROAD  
 POINT OF BEGINNING  
 POINT OF TERMINATION  
 POINT OF COMMENCEMENT  
 POINT OF DISCONTINUANCE

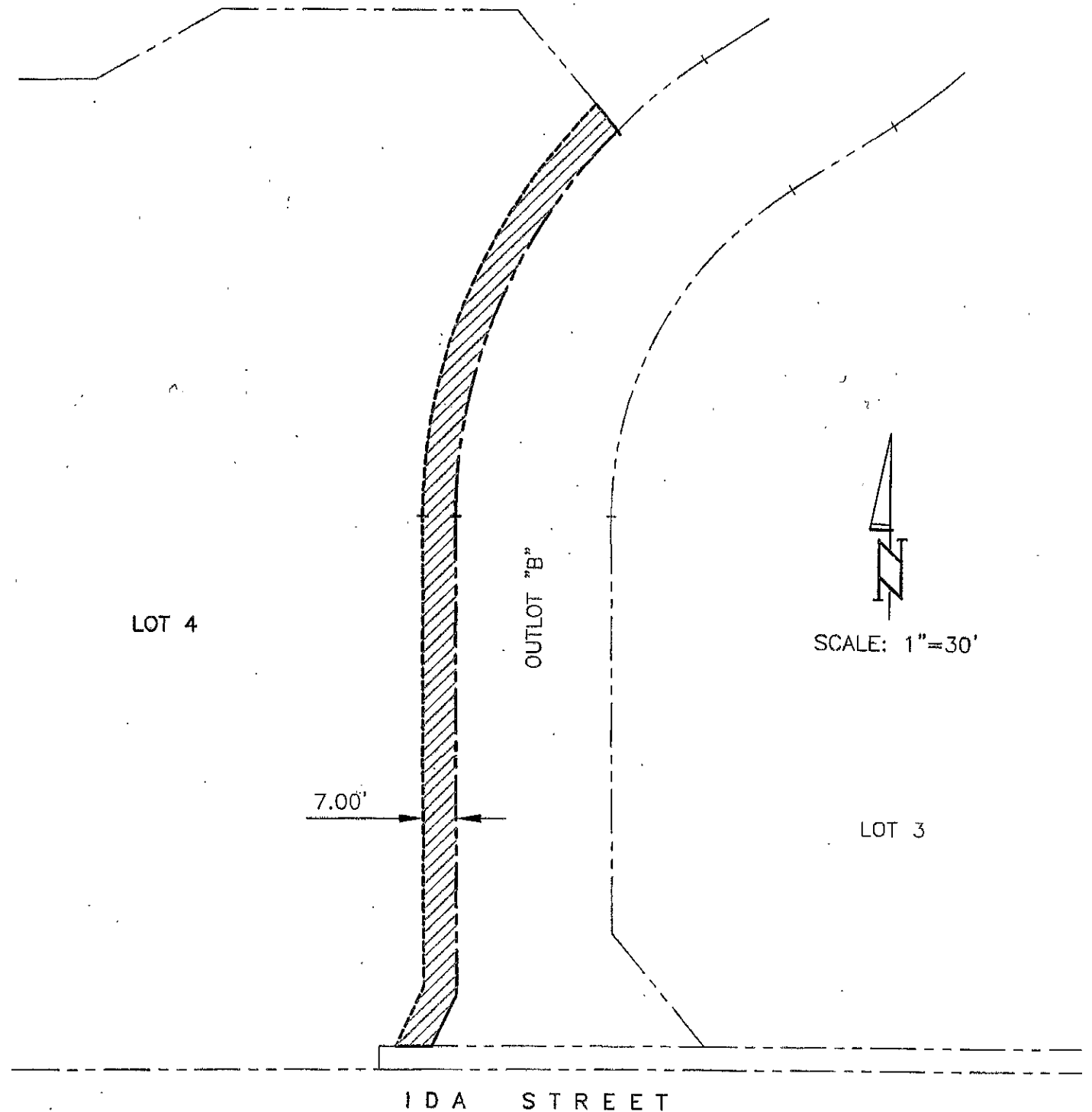
1097-102  
 THOMPSON, DREESSEN & BORNER, INC.  
 Consulting Engineers & Land Surveyors  
 1097-102  
 5155 S. 24th Street  
 Omaha, NE 68106  
 (402) 835-8800

THOMAS CREEK BUSINESS PARK  
 FINAL PLAT

DATE: JULY 2, 2001  
 DRAWN BY: RJR  
 CHECKED BY: DEN  
 REVISIONS:

LOT 2

**EXHIBIT "B"**



**LEGAL DESCRIPTION**

THE EASTERLY 7.00 FEET IN WIDTH OF LOT 4, THOMAS CREEK BUSINESS PARK, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA.

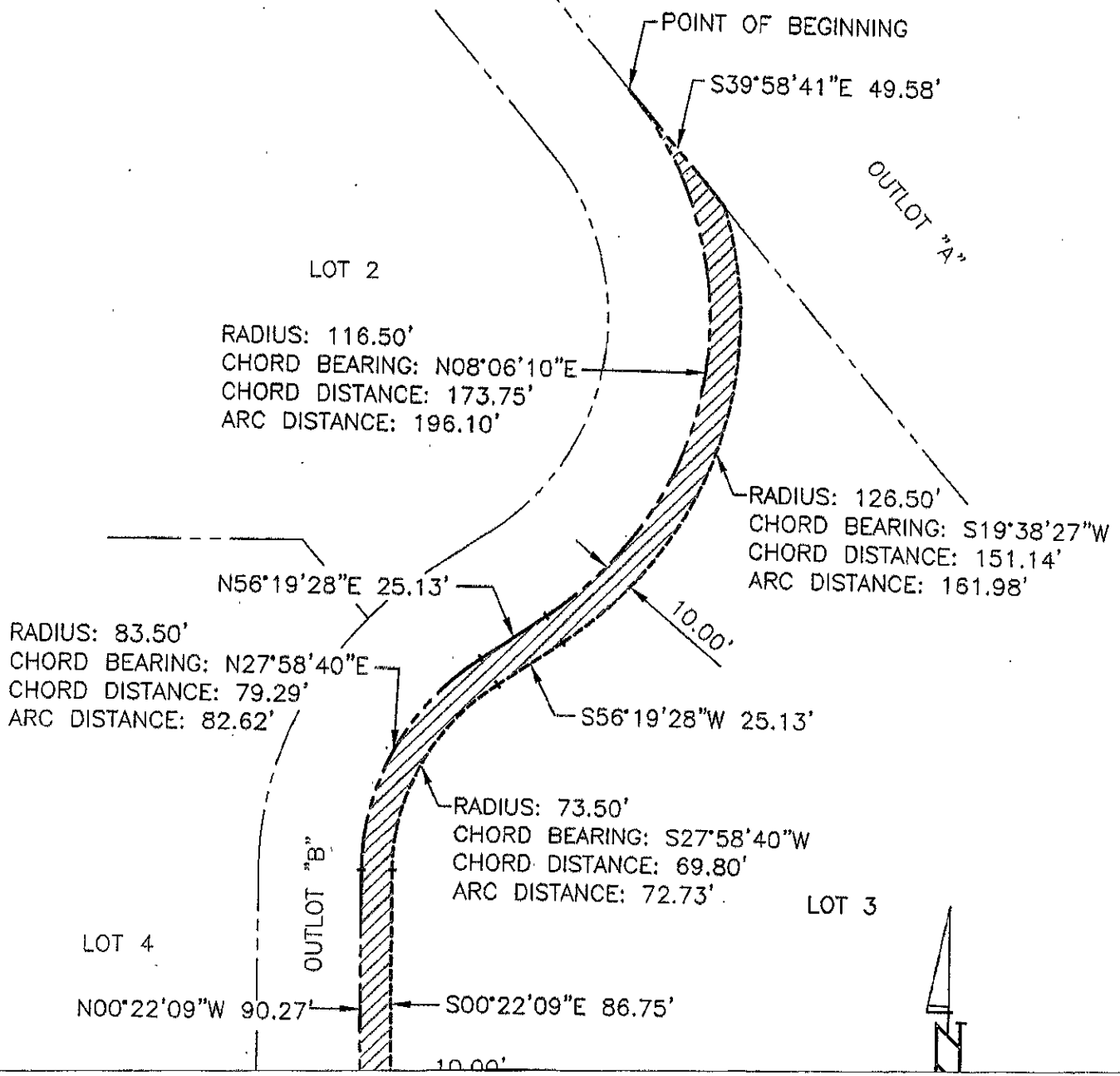
CURTIS A. FIELD

TD2 FILE NO.: 1097-102-F.DWG

DATE: DEC. 5, 2001

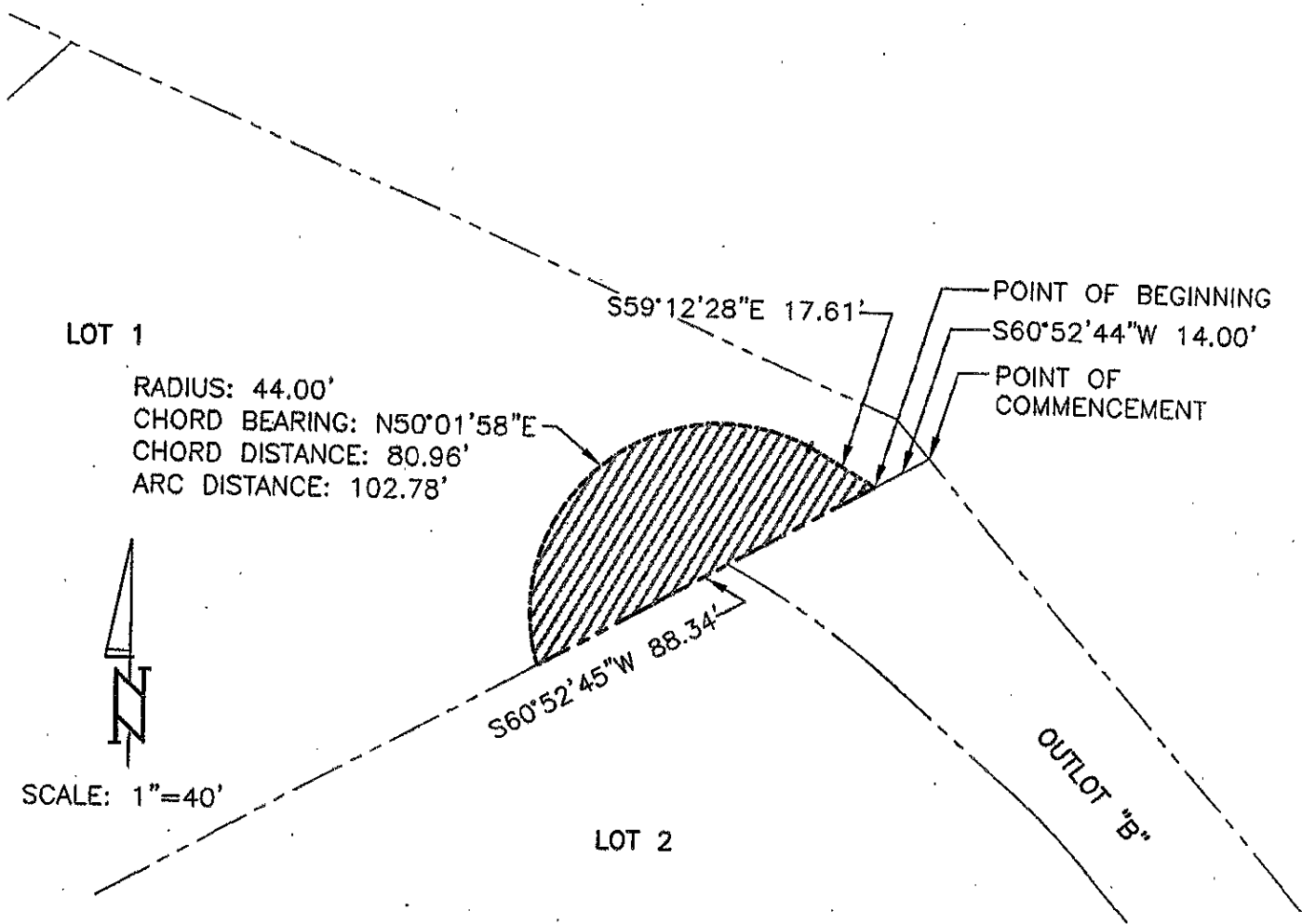
THOMPSON, DREESSEN & DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860

**EXHIBIT "C"**





# EXHIBIT "D"



## LEGAL DESCRIPTION

THAT PART OF LOT 1, THOMAS CREEK BUSINESS PARK, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:  
 COMMENCING AT THE SE CORNER OF SAID LOT 1;

THENCE S60°52'44"W (ASSUMED BEARING) 14.00 FEET ON THE SOUTHERLY LINE OF SAID LOT 1 TO THE POINT OF BEGINNING;

THENCE CONTINUING S60°52'45"W 88.34 FEET ON THE SOUTHERLY LINE OF SAID LOT 1;

THENCE NORTHEASTERLY ON A NON-TANGENT 44.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N50°01'58"E, CHORD DISTANCE 80.96 FEET, AN ARC DISTANCE OF 102.78 FEET;

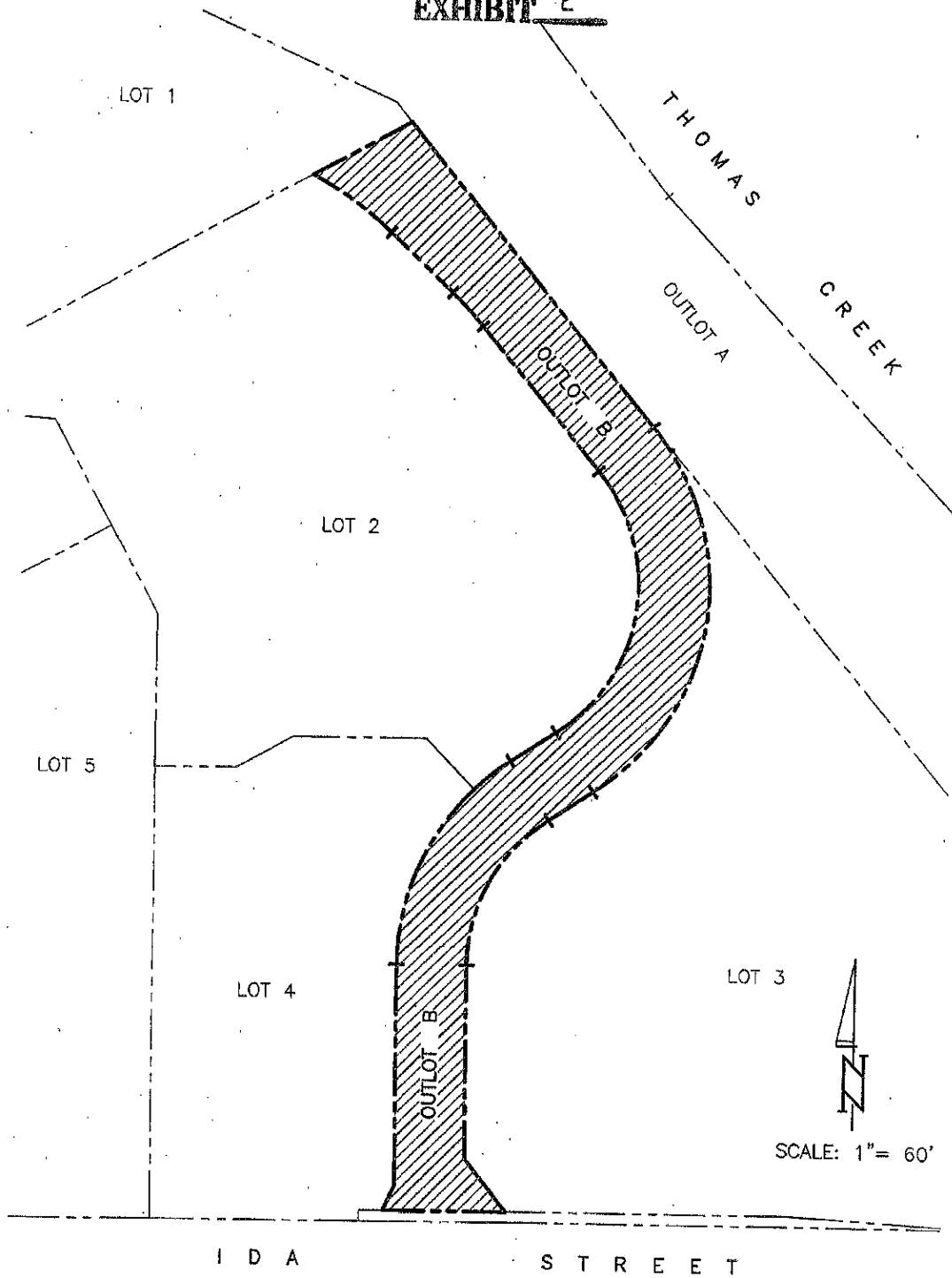
THENCE S59°12'28"E 17.61 FEET TO THE POINT OF BEGINNING.

CURTIS A. FIELD  
 THOMPSON, DREESSEN & DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860

TD2 FILE NO.: 1097-102-A.DWG

DATE: DEC. 5, 2001

**EXHIBIT "E"**



**LEGAL DESCRIPTION**

OUTLOT B, THOMAS CREEK BUSINESS PARK, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA.

CURTIS FIELD

TD2 FILE NO.: 1097-102-OLB

DATE: JAN. 9, 2002

THOMPSON, DREESSEN & DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860