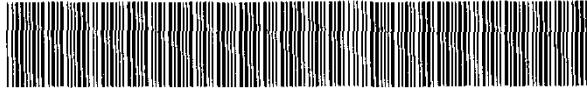


MISC 2005109724



SEP 02 2005 14:27 P 18

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
9/2/2005 14:27:29.46



2005109724

THIS PAGE INCLUDED FOR INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT

Misc
18
11

FEE	<u>95⁵⁰</u>	FB	<u>DC-06110</u>
BKP	<u>PJ</u>	C/O	<u>7</u>
DEL	<u>PJ</u>	SCAN	<u>FV</u>

Temp. 12.4.01

Ta- 47447

16

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

This Declaration of Restrictions and Grant of Easements ("Declaration") is made and entered into as of the 31st day of August, 2005 by 192 CENTER STREET, LLC, a Nebraska limited liability company, hereinafter referred to as the "Declarant".

WHEREAS, Declarant is the owner of certain real property located in Omaha, Douglas County, Nebraska which is more particularly described as follows ("Property"):

Lots 1-11 inclusive, in CENTER RIDGE, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, Declarant intends that the Property be constructed and developed as a mixed use development ("Development") in accordance with the terms of this Declaration.

NOW, THEREFORE, Declarant for themselves, their successors and assigns do hereby establish restrictions and easements contained herein:

1. **Development**. No building or structure shall be constructed or maintained on the Property unless such building or structure shall conform to the following covenants and requirements:

- a. Any rooftop equipment located on the top of any building shall be screened;
- b. No rooftop sign shall be erected or maintained with respect to any such building;
- c. In developing and using the Property, the owner ("Owner") of any Lot upon which parking areas are located shall continuously provide and maintain a parking ratio on said Lot equal to not less than the greater of: (i) 4.5 spaces per 1,000 square feet of gross building area (or if a restaurant, 10 spaces per 1,000 square feet), no more than 25% of which may be for use by compact automobiles; or (ii) that number of parking spaces required by law.
- d. At all times the Owner of any Lot shall cause said Lot and any improvements thereon to be maintained in a first class manner, consistent with the remainder of the Development.
- e. Except for a bar located within a restaurant whose primary purpose is the sale of food, all buildings, structures or improvements on the Property shall be used for retail, commercial, office and/or restaurant purposes only and provided further no building, structure or improvement on the Property may be used for:

- (1) Any production, manufacturing, industrial, or storage use of any kind or nature, except for storage of products incidental to the retail sale;
 - (2) Undesirable entertainment or recreational facilities. As used herein, "undesirable entertainment or recreational facility" includes, a skating rink, amusement park, carnival, massage parlor, discotheque, dance hall, teen club, night club, bar or tavern or other social encounter club, flea market, head shop, pornographic or "adult" store, billiard parlor or bowling alley;
 - (3) Assembling, manufacturing, industrial, processing, rendering, distilling, refining, smelting, agriculture, or moving operation;
 - (4) Any new or used automobile sales facility provided however, a motorcycle dealership shall be permitted;
 - (5) Any "second hand" store, pawn shop, Army, Navy or government "surplus" store;
 - (6) Any sporting event or other sports facility (which shall not be deemed to include a retail sporting goods store or fitness center), meeting hall, auditorium or any other place for public meetings; and
 - (7) No portion of the Property shall be used for: (i) any noxious or illegal purpose, or one which presents a nuisance or danger to the health, safety or welfare of the public; (ii) any dumping, incineration or disposal or garbage.
- f. There shall be no unsightly or unscreened garbage or trash receptacle or accumulations of garbage or trash.
- g. Each Owner of a Lot shall maintain or cause its tenant, licensee or other occupant thereof ("Tenant") to maintain commercial general liability insurance, property damage and all-risk hazard insurance on such Owner's property, buildings, appurtenances and other improvements located thereon. Such insurance shall (i) be carried with a financially responsible insurance company or companies licensed to do business in the State of Nebraska; (ii) have liability limits of at least \$2,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder; and (iv) not be subject to change, cancellation or termination without at least thirty (30) days' prior written notice to Declarant, as to each policy maintained by an Owner and without thirty (30) days prior written notice to Owner as to any policy maintained by its Tenant, provided however, Owner covenants and agrees to promptly forward all such notices it receives under policies maintained by its Tenant to Declarant. Each Owner shall defend, indemnify

and hold the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own tract, except if caused by the act or negligence of any other Owner, its agents or employees.

If any building or improvement on a Lot is damaged or destroyed at any time and such damage or destruction is attributable to fire or any other cause whatsoever, the Owner shall promptly commence or cause the Tenant to promptly commence reconstruction of its building or improvements so damaged or destroyed and diligently prosecute such reconstruction to completion in accordance with the plans that were approved at the time of initial construction as provided in Section 1.h hereof. Notwithstanding the above, the Owner's obligations to reconstruct shall not exceed available insurance proceeds and shall require the agreement of Owner's lender, if any, to permit the reconstruction and continued financing of the improvements on the Lot. Notwithstanding the above, the Declarant shall retain the right, at any time, to waive the obligation to reconstruct as to a particular Lot. Such waiver to be effective must be signed by the Declarant (or its assignee) and recorded in the records of Douglas County, Nebraska.

The insurance described above may be carried by either the Owner or by any tenant of a Lot under: (i) an individual policy; (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner or Tenant; (iii) a plan of self-insurance, provided that the Owner or Tenant so self-insuring (or the Owner's or Tenant's parent entity, if it provides, on behalf of the Owner or Tenant, as appropriate, the insurance coverage required hereunder) has and maintains One Hundred Million and no/100 Dollars (\$100,000,000) or more of net worth (calculated in accordance with generally accepted accounting principles consistently applied) as evidenced by a certificate of the chief financial officer of such entity; or (iv) a combination of any of the foregoing insurance programs. Each Owner agrees to furnish to the Declarant, upon request a certificate(s) of insurance evidencing that the insurance required to be maintained by such Owner (or Tenant) is in full force and effect and any Owner (or Tenant) electing to self insure shall so advise the Declarant in writing and shall provide with such notice a certificate regarding net worth as required by subsection (iii).

- h. No improvements (the "Improvements") shall be constructed on the Property until the plans for the exterior of same (including site layout and exterior appearance) have been approved in writing by Declarant whether or not it is then an Owner, provided, however, that the Declarant must record notice of any assignment of its plan approval rights, which notice must include such assignee's notice address. The construction, design, elevation, utilities, grading, drainage and landscape standards applicable to all Improvements on

the Property are set forth on Exhibit "D" ("Standards"). Each Owner shall deliver to Declarant and the City copies of the proposed site plan for its Lot ("Site Plan"), showing the Improvements, including plans for landscaping, irrigation, storm water drainage, site lighting and utilities and exterior design and exterior facade of the Improvements ("Exterior Plans") to be constructed on the Property for approval, which approval shall not be unreasonably withheld, delayed or charged for, so long as such Improvements are consistent with the Standards. Declarant's failure to approve or disapprove Owner's plans within thirty (30) days after receipt thereof shall be deemed an approval of the same. Non-material modifications not affecting the exterior appearance of the Improvements made to the Exterior Plans for the Improvements shall not require Declarant's approval. No approval by the Declarant shall be required in connection with any change in signage otherwise permitted hereunder. No changes in the use, location or configuration of that part of the Improvements consisting of the driveways, access points, access ways and parking areas as shown on the Site Plan shall be made without the written approval of the Owner(s) of the affected Lot(s) and the Declarant.

- i. Following completion of the infrastructure work, no Owner may make any changes in the use, location or configuration of the driveways, access points, access ways and drives or parking areas of the Common Area of any Lot (including, without limitation, striping, curbing, landscaping, directional signage, access, ingress or egress, or erecting any buildings, structures or improvements), other than as shown in the Site Plan, without the prior written consent of the Declarant, the City of Omaha and the Sanitary and Improvement District formed for the Development.
- j. Without the prior written consent of Declarant, no portion of the Development outside of Lot One (1) shall be used for a convenience store, car wash or a gasoline distributor, except as may be provided in ordinary course of business of a motorcycle dealership. The prior written consent of the Declarant to the modification of the restriction set forth in this Section 1.j. shall be evidenced by an amendment to this Declaration executed solely by the Declarant (and without the requirement for approval by the Owner of any other Lot) and which amendment is filed of record in the office of the Register of Deeds of Douglas County, Nebraska.
- k. Without the prior written consent of Declarant, no portion of the Development outside of Lots Eight (8), Nine (9) and Ten (10) may be used for a home improvement center, hardware store or other retail store for the sale of lumber, hardware items, plumbing supplies, electrical supplies, paint, wallpaper, carpeting, floor coverings, cabinets, siding, ceiling fans, gardening supplies, nursery products, major appliances, furniture (including home entertainment centers) and pool supplies, Christmas trees and other related items customarily carried by a home improvement center

or hardware store or for any outdoor Garden Center or greenhouse selling live plants, trees, shrubbery or other vegetation, except for the "Incidental Sales" (as hereinafter defined). In addition, except for Incidental Sales, no portion of the Shopping Center outside of Lots Eight (8), Nine (9) and Ten (10) shall be used for the sale, display, lease or distribution of items or materials related to:

- (1) hard and soft flooring (including tile, wood flooring, rugs and carpeting);
- (2) interior design services;
- (3) kitchen or bathrooms or components thereof (including tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware);
- (4) indoor and outdoor lighting; window treatments (including draperies, curtains and blinds);
- (5) wallpaper and wall coverings;
- (6) kitchen appliances (including countertop small appliances);
- (7) cookware; and
- (8) closet organizing systems.

"Incidental Sales" shall be measured across the Development (excluding Lots Eight (8), Nine (9) and Ten (10)) and shall mean that the aggregate space devoted to all uses which violate the exclusives is ten percent (10%) of the aggregate ground floor area on the Development (excluding Lots Eight (8), Nine (9) and Ten (10)). Further, no single retailer may devote more than 1,500 square feet of ground floor area in the aggregate to uses which would otherwise violate the exclusives contained in this subsection (k).

The prior written consent of the Declarant to the modification of the restriction set forth in this Section 1.k. shall be evidenced by an amendment to this Declaration executed solely by the Declarant (and without the requirement for approval by the Owner of any other Lot) and which amendment is filed of record in the office of the Register of Deeds of Douglas County, Nebraska.

2. Easements.

- a. **Utility, Drainage, and Service Easements.** Declarant grants and subjects the Property to and grants for the benefit of each Lot, perpetual, nonexclusive easements for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of underground lines or systems for utilities serving any or all of the other Lots, including but not limited to, sanitary sewers, storm drains, cable TV, water (fire and domestic), gas, electrical, telephone, fiber optics and communication lines, together with the right of ingress and egress for installation, maintenance and repair thereof necessary for the orderly development and operation of the Property in accordance with the Standards. The Owner of each Lot shall be required to fully cooperate with the other Lot Owners in connection with the installation, maintenance, repair, removal, etc. of the utility line. Declarant reserves the right to grant one or more easements over any portion of the Property it deems necessary for the proper installation of utilities, so long as such easements do not materially or adversely affect an Owner's current or anticipated use of its Lot. No easement shall be deemed granted under any building actually constructed.

All construction, alteration, and repair work to any utility described in this Section 2.a. shall be accomplished in an expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction. The Owner undertaking such work shall take all reasonably necessary measures to minimize any disruption or inconvenience caused by such work and, except in the case of an emergency, shall give the affected Owners and Tenants written notice a minimum of seventy-two (72) hours prior to commencing such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and, upon completion of such work, shall promptly restore the affected portion of the Lot upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner undertaking such work shall promptly pay all costs and expenses associated therewith and shall defend, indemnify and hold the other Owners harmless from all liens, claims of lien, injuries, damages, losses, or claims, including reasonable attorney's fees actually incurred at trial and appellate levels, attributable to the performance or non-performance of such work.

- b. **Water Flow, Storm Sewer, Sanitary Sewer and Water System.**
- (i) **Flow of Water.** Declarant hereby reserves, grants, conveys, establishes and declares for the benefit of Lots Eight (8), Nine (9) and Ten (10) only, a permanent, non-exclusive easement on, over,

upon, across, under and through any portion of each such Lot on which a building is not located for the benefit of the other Lots, as reasonably necessary for surface water run-off and for the construction, installation, use, maintenance and repair of any underground drainage system to receive surface water from the benefited Lot and conduct such water over each such Lot as necessary to a discharge area so long as such easements do not materially or adversely affect an Owner's current or anticipated use of its Lot. The Declarant hereby reserves, grants and conveys, establishes and declares for the benefit of each such Lot, a temporary easement over, across and under those portions of a Lot not containing a building structure, reasonably required to maintain said drainage line, including reasonable areas for the staging of construction materials and equipment.

- (ii) **Storm Water System.** Declarant will construct or cause to be constructed the public storm water system ("Public Drainage System"). Each Owner shall thereafter, at its sole cost and expense, construct or cause to be constructed on its Lot and shall thereafter maintain, at its sole cost and expense, the improvements located on its Lot necessary to transport the storm water runoff from its Lot to the Public Draining System serving the Development. Once any portion of said storm sewer system has been dedicated to and the responsibility for the maintenance thereof accepted by the appropriate government authority, then the maintenance responsibility set forth herein with respect to such portion shall automatically terminate.
- (iii) **Sanitary Sewer.** Declarant will construct and the Owners shall thereafter maintain each at its sole cost and expense, that portion of the sanitary sewer system located on its Lot. Once any portion of said sanitary sewer line has been dedicated to and the responsibility for the maintenance thereof accepted by the appropriate government authority, then the maintenance responsibility set forth herein with respect to such portion shall automatically terminate.
- (iv) **Water System.** Declarant will construct or cause to be constructed the public water system ("Public Water System"). Each Owner shall thereafter, at its sole cost and expense, construct or cause to be constructed on its Lot and shall thereafter maintain, at its sole cost and expense, the improvements located on its Lot necessary to provide water service to its Lot from the Public Water System. Once any portion of said water system has been dedicated to and the responsibility for the maintenance thereof accepted by the appropriate government authority, then the maintenance responsibility set forth herein with respect to such portion shall

automatically terminate.

c. **Access.**

- (i) The Owners of Lots Eight (8), Nine (9) and Ten (10), with respect to its Lot, hereby grants to each other, as Grantee, for the benefit of each other and their respective tenants, employees, agents, customers and invitees of such Owner or tenants, a non-exclusive easement appurtenant to its Lot for purposes of ingress and egress by vehicular and pedestrian traffic upon, over, across and through all portions of its Lot on which a building is not located and shall be further restricted to those portions of the Lot used for such purposes at any point in time.
- (ii) The Owners of Lots One (1), Two (2), Three (3) and Four (4) with respect to its Lot, hereby:
 - (a) grants to each other, as grantee, for the benefit of each other and their respective tenants, employees, agents, customers and invitees of such Owner or tenants, a non-exclusive easement appurtenant to its Lot for purposes of ingress and egress by vehicular and pedestrian traffic upon, over, across and through all portions of its Lot on which a building is not located; and
 - (b) agrees to provide at least one (1) access point along its common boundary line with any of said Lots to permit cross access among said Lots.
- (iii) The Owners of all Lots within the Development agree to cooperate in granting shared access to Street No. 1.

3. **Signage.**

- a. **General.** Each Owner shall have the right to maintain such signs on the interior of buildings located on its Lot as it desires, as long as such signs are not visible from the exterior. As permitted by applicable governmental regulations, each Owner shall have the right to erect, maintain and replace one (1) sign on each exterior face of their building ("Building Signage") located on its Lot; provided, such Building Signage shall be approved in advance by the Declarant (which consent shall not be unreasonably withheld) and shall be constructed so as to lie flat against such exterior fascia facing outward and shall not protrude more than two (2) feet from the surface thereof, and provided further, in no event shall Building Signage be located on the roofs (excluding canopies so long as no sign is erected on a

canopy which sign will extend above the height of the building roof including the height of any mock mansard roof) of any buildings on the Property.

- b. **Center Pylon Signage.** Only two (2) center pylon sign ("Pylon Signs") shall be permitted, one on Lot One (1) and one on Lot Eleven (11) at the locations depicted on the Site Plan.. The Pylon Signs would name the Major Tenant. For purposes hereof the term "Major Tenant" shall mean a business located Lots Eight (8), Nine (9) or Ten (10) on having a building square footage of at least 60,000 square feet. The cost of installation and maintenance shall be borne solely by the Major Tenant. The size, location and design of each Pylon Sign shall be subject to the approval of Declarant and applicable governmental authorities.
- c. **Monument Sign.** Each Owner (excepting only the Major Tenant), shall have the right, at its sole cost and expense, to install and maintain a monument sign located on its Lot ("Monument Signage"). The Monument Sign shall be located on the street side (Gold St, 192 Avenue and Pinehurst Avenue) of the particular Lot and shall not be in excess of six (6) feet in height. The Monument Signage must be approved in advance by the Declarant or its assigns with respect to location, design, material and letter style. The maximum area for each Monument Signage shall be limited to one square foot of sign area for each linear foot of adjoining city street frontage up to a maximum area of thirty-six (36) square feet per sign face with a total of seventy-two (72) square feet for all faces.

4. **Lighting.** After completion of the construction of improvements on any Lot, the Owner or occupant of any other Lot thereof shall keep its Lot fully illuminated each day it is open for business (as such hours or days of operation may change from time to time) from dusk to at least thirty (30) minutes after the last business operation on its Lot has closed, and keep any interior building security lights on from dusk until dawn.

5. **Maintenance.**

- a. **Standards.** Following completion of the construction of the improvements on any Lot, the Owners shall maintain, repair and replace any portion of the said Lot in good condition and repair. The maintenance is to include, without limitation the following:
 - (i) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability;
 - (ii) Removing all papers, ice and snow, mud and sand, debris, filth and

refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

- (iii) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
 - (iv) Operating, keeping in repair and replacing, where necessary, such lighting facilities described in Section 4 as shall be reasonably required;
 - (v) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;
 - (vi) Operating, keeping in repair and replacing, where necessary, the Building Signage described in Section 3.a. above, the Pylon Signage described in Section 3.b, the Monument Signage described in Section 3.c and any other signage permitted by the City or this Declaration; and
 - (vii) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary. All Lots shall contain an underground sprinkler system for proper watering.
 - (viii) Common utilities, lines and systems.
- b. **Utilities.** Each Owner of a Lot shall repair and maintain in good condition all utility facilities, lines, and systems located on its Lot that serve only its Lot unless the same are dedicated to and accepted by a public or quasi-public utility or authority and a Lot Owner's failure to maintain and repair or cause to be maintained and repaired such facilities shall give the other Owners who are affected thereby the right (unless such utility facilities are dedicated to and/or otherwise being maintained by a public or quasi-public utility or authority), after giving reasonable prior written notice to the Owner who fails to make repairs (or in the case of an emergency, without any prior notice), to make such repairs and charge the Owner upon whose Lot the repairs are made.
- c. **Building Improvements.** After completion of construction, each Owner shall maintain and keep the building improvements on its Lot in good working condition and state of repair (subject to normal wear and tear), in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover (subject to the right of an Owner to contest laws, so long as such contest does not materially impair the easement rights or any other rights granted to any other Owners herein), and

in compliance with the provisions of this Declaration. Each Owner shall store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Owner upon whose Lot such building improvements are located shall promptly remove the debris resulting from such event and provide a sightly barrier and shall commence to and diligently complete repair or restore the building improvements so damaged, or commence to and diligently complete erection of other building improvements in such location, provided all provisions of this Declaration are complied with. Notwithstanding the above, the Owner's obligation to reconstruct shall not exceed available insurance proceeds and shall require the agreement of Owner's lender, if any, to permit the reconstruction and continued financing of the Improvements on the Lot.

6. **Designation of Tenant.** Any Owner of a portion of the Property ("Designating Owner") may (with the consent of the "Designated Tenant") hereafter described), by notice to the other Owners, designate a Tenant (hereafter, the "Designated Tenant") of a Lot as the party responsible for performing the obligations of such Owner under this Declaration. Thereafter, such Designated Tenant shall have the benefit of, and the right to enforce, all of the rights of the Designating Owner under this Agreement, and shall perform all of the obligations of, and be subject to the restrictions upon, the Designating Owner under this Declaration.

A Tenant may not be designated as a Designated Tenant pursuant to this Section 6 hereof unless such Tenant is leasing all of a Lot and the improvements located thereon from the Designating Owner.

7. **Taxes and Assessments.** Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Lot, including, without limitation, the buildings and improvements located thereon and any personal property owned or leased by such Owner on the Property, provided that if the taxes or assessments or any part thereof may be paid in installments, the Owner may pay each such installment as and when the same becomes due and payable. Nothing contained in this subsection shall prevent any Owner from contesting at its own cost and expense any such taxes and assessments with respect to its Lot in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. The easements granted in this Declaration shall survive the imposition of any tax lien on the individual Lots.

8. **Construction.**

a. **General Requirements.**

- (i) All construction activities performed by an Owner on its Lot shall be performed in compliance with this Declaration and all laws, rules,

regulations, orders, ordinances and permits of or issued by the city, county, state, and federal governments, or any department or agency thereof, affecting improvements constructed within the Property, subject to Owner's or Tenant's right to contest laws, rules, regulations, orders and ordinances which do not materially interfere with the rights of any other Owner or Tenant.

- (ii) No construction or other activities of an Owner shall:
 - (A) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Property by any other Owner or its permittees; or
 - (B) cause any other Owner to be in violation of any law, rule, regulation, order or ordinance applicable to its Lot of the city, county, state, federal government, or any department or agency thereof.
 - (C) Each Owner shall defend, indemnify and hold harmless the other Owners and Tenants from all claims, actions, demands, causes of action, losses and proceedings and costs incurred in connection therewith (include reasonable attorneys' fees actually incurred and costs of suit at trial and appellate levels) resulting from any accident, act, omission, cost, expense, injury or loss or damage whatsoever occurring to any individual or entity or to the property of any individual or entity arising out of or resulting from the performance of any construction activities performed or authorized by such indemnifying Owner or by, through or under such Owner.

9. **Temporary Construction and Maintenance Easement.** The Owners acknowledge that during the construction of the improvements on any Lot or the subsequent maintenance or repair thereof, access, parking and automobile and pedestrian circulation may be temporarily impeded, interrupted or blocked because of said construction, maintenance or repair activities. The Owner of such Lot under construction, maintenance or repair agrees to minimize the disruption to the extent consistent with safety, sound construction procedures and applicable governmental requirements and in furtherance thereof, to (i) proceed diligently to prosecute all construction, maintenance or repair to completion, (ii) following initial construction of improvements on said Lot to keep open at all times access to and from said Lot to public right of way, and (iii) keep all construction materials and equipment within their particular Lot. No building, barricade or permanent structure may be placed, erected or constructed on any easement, or on any street or gutter of any Lot except loading and delivery docks and covered areas attached to such docks, trash enclosures, directional signs, bumper guards or curbs, shopping cart corrals, paving, landscaping and landscape planters, lighting standards, driveways, sidewalks, walkways, parking stalls, roof overhangs, and columns or pillars supporting roof overhangs, and any other improvements as may be required under applicable laws, rules, ordinances and regulations of any

governmental body having jurisdiction over the Lot. In connection with any construction, reconstruction, repair or maintenance on a Lot, an Owner or any Tenant shall have the right to create a temporary staging and/or storage area on its Lot.

All construction, alteration and repair work described in this Section 10 shall be accomplished in an expeditious manner (subject to matters of force majeure), in compliance with all laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction and otherwise as provided elsewhere herein. Nothing herein shall prevent any Owner or Tenant from contesting in good faith the application of any laws, rules or regulations to its Lot, provided (a) such contest is conducted in accordance with applicable law, (b) such proceedings are actively and diligently pursued to their conclusion, (c) such contest does not materially impair the easement rights or any other rights of any other Owner or Tenant granted herein, and (d) such contest does not result in the placement of any lien on the title to such Owner's Lot. Each Owner shall, in effecting construction, alteration or repair work upon its Lot, use reasonable efforts to avoid unreasonably interfering with the conduct of activities on any other Lot. All construction, alteration and repair work shall be accomplished in such manner as to minimize any damage or adverse effect to any other Lot which might be caused by such work.

Any construction, installation, repair, use or maintenance performed on any Lot shall be performed in a good and workmanlike manner, in accordance with the Standards and in accordance with all applicable governmental requirements, rules, regulations, statutes and ordinances. Once commenced, such work shall be diligently pursued to completion and shall be completed within a reasonable time, subject to delays caused by matters beyond the reasonable control of the parties performing such work. Any repairs or maintenance shall be performed with materials equal in quality to the original. Upon completion of such work, the area affected by such work shall promptly be restored, as nearly as possible, to its condition prior to such work. Subject to the provisions of this Section 10, nothing contained herein shall prohibit the Owner of any Lot from granting the Owner of any other Lot a temporary construction easement so long as the duration of said temporary construction easement does not exceed eighteen (18) months.

10. **Nature of Declaration and Restrictions.** The foregoing easements, restrictions and agreements are imposed on the Property for the mutual benefit of Declarant, the Owners of the Lots and their respective successors and assigns. The agreements, easements, restrictions and covenants herein made shall be deemed covenants running with the land and shall be binding upon, and shall inure the benefit of the Declarant, the Property and any person who may from time to time own, lease or otherwise have an interest in the Lots. In the event any Lot is hereafter divided into two (2) or more Lots by separation of ownership, lease, or otherwise, then any resulting Lots shall enjoy and be subject to the benefits and burdens of the easements and all other terms and conditions of this Declaration. For purposes of the easements granted in this section, the Lot benefited by each easement constitutes the dominant estate and the Lot encumbered by each easement constitutes the servient estate. Each easement granted in this Article is appurtenant to and for the benefit of the Lot owned by the grantee of the easement and shall run with title to each Lot. No easement may be transferred, assigned or encumbered except as an appurtenance to the benefitted Lot. Upon an Owner's conveyance of its entire interest in a Lot, such Owner shall be relieved of all further obligations, duties and liabilities under this Declaration.

11. **Governing Law.** This Declaration is made in and shall be construed pursuant to the laws of the State of Nebraska.

12. **Term.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity. All other right, restrictions and obligations as they relate to the use of the Property hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof; provided, however, any obligations for maintenance or repairs or an obligation to indemnify another party hereunder shall survive for the applicable statute of limitation with respect to bringing a claim for payment thereof.

13. **Estoppel Certificate.** Upon reasonable request, each Owner shall promptly furnish to requesting party (including tenants) an estoppel certificate in a form reasonably acceptable to such requesting party to the effect that this Declaration is in full force and effect and that the Owner is not in default hereunder.

14. **Notices.** Every notice, approval, consent, or other communication authorized or required by this Declaration shall not be effective unless same shall be in writing and delivered in person, by courier, by reputable overnight courier guaranteeing next day delivery, or sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the Declarant, c/o Carl J. Troia, Jr., at 641 S 93rd Street, Omaha, NE 68114 and to each Owner at the address given in writing to the Declarant at the time such Owner acquires title to a Lot, or such other address as Declarant or Owner may designate by record notice. Such notices or other communications shall be effective (i) in the case of personal delivery or courier delivery, on the date of delivery to the Declarant as evidenced by a written receipt signed on behalf of such party, (ii) if by overnight courier, one (1) day after the deposit thereof with all delivery charges prepaid, and (iii) in the case of registered or certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice of five (5) business days after the date of posting by the United States Post Office.

15. **Eminent Domain.**

- a. **Owner's Right to Award.** Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting any other Owner's Lot or giving the public or any government any rights in the Lots.
- b. **Tenant's Claim.** Nothing in this subsection shall prevent a Tenant from making a claim against an Owner pursuant to the provisions of any lease between Tenant and Owner for all or a portion of any such award or payment. Provided, however, the terms of any agreement between the Owner and any lessee shall govern the rights of those parties under condemnation.
- c. **Restoration of Building Area.** In the event any building or a portion thereof located in the Property is condemned, the remaining portion of the

building shall be demolished or restored by the Owner of the Lot on which it is located and such Owner shall remove all debris resulting therefrom. Such election shall be made within one hundred eighty (180) days from the date of taking. In the event the remaining building improvements are removed, thereafter the Owner shall maintain the Lot in the manner provided for in Section 5 above, provided, however, such maintenance obligations shall be limited to that portion of Section 5 which is applicable to an unimproved Lot.

16. **Default**,

- a. **Right to Cure**. Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform or, if such performance cannot be reasonably completed within thirty (30) days, to commence the performance of and continue to diligently pursue, such obligation within thirty (30) days of its receipt of any other Owner's written demand therefore, the Owner giving such notice or the Declarant shall, in addition to any other remedy provided at law or in this Declaration, have the right (but not the obligation) to perform such obligation on behalf of the Defaulting Owner and the Defaulting Owner shall reimburse the curing Owner or Declarant for the cost of performing such work within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the Defaulting Owner does not reimburse the curing Owner or Declarant within such ten (10) days, the curing Owner or Declarant shall have (i) the right to exercise any and all rights which such curing Owner or Declarant might have at law to collect the same, and (ii) have a lien on the property owned by the Defaulting Owner to the extent of the amount paid by the curing Owner or Declarant but not reimbursed by the Defaulting Owner, which amount shall bear interest at a rate equal to the then published Prime Rate of First National Bank of Omaha plus four percent (4%) per annum, or the highest legal rate of interest, whichever is less, from the date of billing until paid. Such lien may be filed for record by the curing Owner or Declarant as a claim against the Defaulting Owner, in the form required by law, in the office wherein mortgages are recorded, which lien shall contain at least the following information:

- (i) The name of the lien claimant;
- (ii) the name of the Defaulting Owner;
- (iii) A description of work performed on behalf of such Defaulting Owner and a statement itemizing the cost thereof; and
- (iv) A description of the property being liened.

The lien so claimed shall attach from the date of recordation in the amount

claimed by the Owner or Declarant curing the default and it may be enforced and foreclosed in any manner allowed by law. Such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien, provided however, such lien shall be subordinate to the terms and conditions of any existing first lien against the real property.

- b. **Injunctive Relief.** In the event of any violation or threatened violation of any provision of this Declaration, any Owner or Declarant shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation. Notwithstanding the foregoing, tenants in the Lot shall not have the right of injunction but shall rather be limited to their rights by law and by their respective leases.
- c. **Breach Shall Not Permit Termination.** No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise 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.
- d. **No Limitation of Remedies.** The various rights and remedies herein contained and reserved to the Declarant and Owners, except as otherwise provided in this Declaration, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

17. **No Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Declarant, the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for the Declarant or another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Declarant or the Owner to be charged.

18. **Amendment, Waiver.** Except where only the signature of Declarant is required, any of the foregoing restrictions may be waived, amended, modified, released or terminated at any time and from time to time only by a written amendment to this Declaration signed by Declarant, together with all other Owners.

[Signature Page to Follow]

DRGE Final 9-1-05

