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*Shawn J. Dowling*  
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**DECLARATION OF CROSS-EASEMENTS AND COVENANTS AND RESTRICTIONS AFFECTING LAND**

(La Vista, Nebraska)  
(96<sup>th</sup> & Giles)

**THIS DECLARATION OF CROSS-EASEMENTS AND COVENANTS AND RESTRICTIONS AFFECTING LAND** (this "Declaration") is made as of the 20<sup>th</sup> day of August, 2000, by and between SHOPKO STORES, INC., a Wisconsin corporation, ("Company") and RKS FAMILY INVESTMENTS, LTD., a Nebraska limited partnership ("Developer").

**WHEREAS**, Company is the owner of a certain parcel of real estate located in Sarpy County, Nebraska, described on **EXHIBIT "1"** appended hereto (the "Company Site"); and

**WHEREAS**, the Developer is the owner of certain parcel of real estate located in Sarpy County, Nebraska, described on **EXHIBIT "2"** attached hereto (the "Developer's Site") and the property adjacent to Developer's Site and more particularly described as Lot 118, Mayfair 2nd Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 118"); and

**WHEREAS**, the parties hereto desire to develop and utilize the Company Site and the Developer's Site (hereinafter collectively referred to as (the "Entire Parcel") as an integrated and unified shopping center and the parties desire to place restrictions on Lot 118 as set forth herein with respect to signage, uses, and building limitations; and

**WHEREAS**, the parties hereto desire to submit their respective Sites and Lot 118 to those covenants, restrictions, and reciprocal easements set forth below in, over, upon, across and through the Common Areas and such other areas as are hereinafter provided; and

**WHEREAS**, Developer and Company desire to form a Nebraska nonprofit corporation (the "Association") to be known as the Mayfair Commons Landowners Association, Inc. in accordance with the Outline of Mayfair Commons Landowners Association attached hereto as **EXHIBIT 5** (the "Association Document") for the purposes of, among other things, preserving the values and amenities of the Entire Parcel in regard to which the Association will be delegated certain powers of administering and maintaining that part of the Common Area designated and depicted on the Site Plan as the ingress and egress easement areas throughout the Entire Parcel, and storm sewer, street-lighting, general shopping center identification signs, and any landscaping thereon (the "Ring Road"), and with respect to the rights and obligations regarding the Ring Road enforcing this Declaration, collecting, and disbursing and enforcing the

2000-21199A

assessments authorized in the Association Document, subject to the powers, rights and duties reserved by Developer and Company as set forth in this Declaration.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00), the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt, value and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

**ARTICLE I**  
**Definitions**

In addition to terms defined elsewhere in this Declaration, as used herein the following terms shall have the meanings ascribed to such terms as set forth below:

1.01. **Benefited Site**. With respect to the particular easements and rights hereinafter set forth, the term "**Benefited Site**" shall mean and refer to those portions of the Entire Parcel which are benefited by such easements and rights and constitute the dominant estate.

1.02. **Burdened Site**. With respect to the particular easements and rights hereinafter set forth, the term "**Burdened Site**" shall mean and refer to those portions of the Entire Parcel which are burdened by such easements and rights and constitute the servient estate.

1.03. **Common Areas**. "**Common Areas**" shall mean and include all parts of the Entire Parcel which are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads and other similar areas.

1.04. **Environmental Laws**. "**Environmental Laws**" shall mean all present and future federal, state, or local laws, ordinances, rules, regulations, decisions and other requirements of governmental authorities relating to the environment or to any Hazardous Material, including the following federal laws: the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and any amendments enacted or regulations adopted, published and/or promulgated pursuant thereto.

1.05. **Floor Area**. "**Floor Area**" shall mean the actual number of square feet of floor space within the exterior walls of all floors of a building located in the Entire Parcel, measured to the center lines of all common walls, and including stairs, interior elevators, escalators, air conditioning and other interior equipment rooms; but excluding (i) loading docks and platforms, transformer vaults, utility or mechanical penthouses or utility enclosures; (ii) patio or outside selling areas which are not heated or air conditioned; (iii) any mezzanine space; and (iv) basement space.

1.06. **Hazardous Material**. "**Hazardous Material**" shall mean materials and substances defined as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," including asbestos, polychlorinated biphenyls, petroleum (or Petroleum products), hydrocarbonic substances and constituents of any of the foregoing, or other similar designations under any Environmental Laws, and further, any substance or material which because of toxicity,

corrosivity, reactivity, ignitability, carcinogenicity, magnification or concentration within biologic chains, presents a demonstrated threat to biologic processes when discharged into the environment.

1.07. Major Owner. "Major Owner" or "Major Owners" initially shall mean Company and Developer until a building consisting of greater than 50,000 square feet is constructed on the Company Site and Developer's Site, respectively; thereafter such terms shall mean and refer to any Owners owning a Site containing a building with greater than 50,000 square feet of Floor Area.

1.08. Occupant. "Occupant" shall mean and include each of the parties hereto, their respective heirs, successors and assigns (including mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Entire Parcel under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.09. Outlots. "Outlot" or "Outlots" shall mean and refer to those portions of the Entire Parcel, the approximate size and location of which are designated and depicted on the Site Plan, which have been or may be divided or subdivided from the Company Site or the Developer's Site so that such Outlots are legally distinct parcels that may be conveyed to a third party but which shall remain subject to the easements, covenants, restrictions and other provisions of this Declaration.

1.10. Owner. "Owner" shall refer to and mean any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental agency, limited liability company, limited liability partnership, or other entity now or hereafter holding an ownership interest in fee simple in any part of the Entire Parcel.

1.11. Permittees. "Permittees" shall mean and refer to all Occupants and all customers, employees, licensees and other business invitees of Occupants.

1.12. Site. "Site" shall mean and refer to the Company Site, the Developer's Site or any Outlot.

1.13. Site Plan. "Site Plan" shall mean and refer to the site plan and landscaping plan of the Entire Parcel attached hereto as EXHIBIT "3".

## ARTICLE II Easements

2.01. Grant of Easements. Company and the Developer hereby each grant to the other and to the Owners the following easements for use by the Owners, Occupants and their respective Permittees, without payment of any fee or charge, except as otherwise provided herein or agreed in writing between the Owners:

2.01.1. Pedestrian Easements. Nonexclusive easements for the purpose of pedestrian traffic between each Site and (i) each other Site which is contiguous thereto; (ii) the public or private streets and alleys now or hereafter abutting or located on any

2000-21199C

portion of the Entire Parcel; (iii) the parking areas now and hereafter located on the Entire Parcel; and (iv) over, upon, across and through the Common Areas; limited, however, to those portions of each Site which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use by the Permittees in conformity with this Declaration and the Site Plan.

2.01.2. Vehicular Easements. Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Site and the public streets and alleys now and hereafter abutting or located on any portion of the Entire Parcel; limited, however, to those portions of the Entire Parcel which are improved by the Owner thereof from time to time for vehicular accessways in conformity with this Declaration and the Site Plan.

2.01.3. [Intentionally Deleted].

2.01.4. Common Component Easements. Nonexclusive easements for the purpose of furnishing connection, support and attachment to walls, footings, foundations, slabs, roofs and other structural systems of any improvement now and hereafter constructed on either the Company Site or the Developer's Site (but excluding any Outlot), the encroachment of common components of improvements and the maintenance, repair and replacement of the same; limited, however, to those portions of such Sites on which an improvement is contiguous to an improvement constructed on either the Company Site or the Developer's Site (but excluding any Outlot). Any Owner of a Benefited Site which desires to claim the benefit of the foregoing easement for common components and encroachments will be entitled to exercise such right on the following conditions:

(a) The Owner of the Benefited Site will submit plans and specifications showing the improvements proposed to be constructed on the Benefited Site to the Owner of the Burdened Site which will be burdened by the easements hereby created for approval of such plans and specifications by the Owner of the Burdened Site.

(b) Approval of such plans and specifications by the Owner of the Burdened Site will constitute a designation of the portion(s) of the Burdened Site to be used for the purposes therein described. Any approval requested shall not be unreasonably delayed, denied or withheld.

(c) The construction of the improvements on the Benefited Site will be diligently prosecuted by the Owner thereof with due care and in accordance with sound design, engineering and construction practices in a manner which is customary for such improvements and which will not unreasonably interfere with the use of the Burdened Site or the improvements thereon or impose an unreasonable load on such improvements.

(d) The Owner of the Benefited Site will indemnify and hold the Owner of the Burdened Site harmless from all loss, cost and expense arising from the construction, use, maintenance, repair, replacement and removal of the improvements on the Benefited Site and the exercise of the rights of the Owner of

the Benefited Site hereunder. When the exercise of the rights hereby granted to the Owner of the Benefited Site requires entry upon the Burdened Site or the improvements thereon, the Owner of the Benefited Site will give due regard to the use of the Burdened Site and the improvements thereon in the exercise of such rights and will promptly repair, replace or restore any and all improvements on the Burdened Site which are damaged or destroyed in the exercise of such rights.

(e) Absent a binding agreement to the contrary, the Owner of the Burdened Site and the Owner of the Benefited Site will share proportionately the cost of construction, operation, maintenance, repair and replacement of any common component constructed by either of them which provides enclosure or vertical or lateral support to contiguous improvements, in accordance with the greater of (i) one-half of the cost of the common components used for enclosure or (ii) that ratio which the load contributed by the improvements of each Owner bears to the total load on such common components; the cost of maintenance, insurance, property taxes, repair and replacement of any common wall, roof or structural joinder constructed by the owner of the Benefited Site (other than components providing support) will be paid solely by the Owner of the Benefited Site (except that each Owner shall bear the costs of routine maintenance, repair and decoration of its side of any common wall).

(f) The Owner of the Burdened Site agrees on the written request of the Owner of the Benefited Site, to execute and deliver an instrument in recordable form legally sufficient to evidence further the grant of the easements herein described, the location thereof and such other conditions affecting the grant of such easements, as might have been approved by such Owners.

#### 2.01.5. Utility Easements.

(a) Nonexclusive easements for the installation, use, testing, connection to, operation, maintenance, repair, replacement and removal of: water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems; and other utility lines or systems hereafter developed to serve one or more of the Sites; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment (hereafter called "Utility Facilities") will be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the Entire Parcel or improvements on the Burdened Site on which such Utility Facilities are located.

(b) The Owner of each Burdened Site affected by a utility easement granted herein will operate and maintain all Utility Facilities located within the boundaries of such Burdened Site in sound structural and operating condition (except to the extent that such operation and maintenance is performed by public authorities or utilities) and any expenses occasioned thereby will be borne by the Owners of the Benefited Site(s) which are serviced by such Utility Facilities in the ratio which the Floor Area of the improvements located on each Benefited

2000-21199E

Site bears to the total Floor Area of the improvements located on all Benefited Sites serviced by the Utility Facilities.

(c) The Owner of any Burdened Site affected by any utility easements granted herein will have the right, at any time, and from time to time, to relocate any Utility Facilities then located on the Burdened Site on the conditions that: (i) such right of relocation will be exercisable only after thirty (30) days' prior written notice of the intention to relocate has been given to all Owners using the Utility Facilities to be relocated; (ii) other than in an emergency situation, such right of relocation of any Utility Facilities located in the front of a building will not be exercised between October 1 and December 27 of any year; (iii) such relocation will not unreasonably interrupt any utility service to the improvements then located on the Benefited Site(s); (iv) such relocation will not reduce or unreasonably impair the usefulness or function of the Utility Facilities to be relocated; and (v) all costs of such relocation will be borne by the Owner relocating the Utility Facilities.

2.01.6. Access Easements. Nonexclusive easements in accordance with the access points and driving lanes shown on the Site Plan between each Site and the public or private streets and ways abutting or crossing any portion of the Entire Parcel for the purpose of providing ingress, egress and access to the easements hereby created and to the Common Areas.

2.01.7. Construction Easements. Nonexclusive temporary easements for the purpose of constructing, renovating, repairing or remodeling the improvements on the Entire Parcel, including grading, balancing and compaction of soils and other site work materials, reconstruction, storage of supplies and materials, installation, replacement, modification, care and maintenance, provided such use of a Burdened Site is reasonably necessary, will be diligently prosecuted in accordance with sound construction practices, will not unreasonably interfere with the use of the Burdened Site or the improvements thereon and that such easements shall automatically expire upon completion of the purpose for such easement. The Owner of any Benefited Site taking advantage of the construction easement granted herein shall pay all costs associated therewith, including without limitation restoration of the Burdened Site to the condition existing prior to such exercise, and shall indemnify and hold the Owner of the Burdened Site harmless from all loss, cost and expense in connection with the use of such easement.

2.01.8. Lighting Facilities Easement. Nonexclusive easements for access to and use by the Owners and Occupants of any Site to the light poles located adjacent to the perimeters of any Site for installation, repair, replacement, maintenance and removal of electrical wires, conduit, lighting fixtures and related apparatus to share the use of such poles for lighting the Common Area on any Site. The costs of operation and maintenance of the shared lighting facilities as provided herein shall be shared in an equitable manner between the Owner of the Burdened Site and the Owners of any Benefited Sites. The Owner of any Benefited Site taking advantage of the lighting facilities easement granted herein shall indemnify and hold the Owner of the Burdened Site harmless from all loss, cost and expense in connection with the use of such easement and any shared lighting facilities.

2000-21199F

2.01.9. Fire and Emergency Access. A nonexclusive easement at least sixty (60) feet wide contiguous to and surrounding each building on the Entire Parcel to provide access, ingress and egress for emergency fire exits, fire protection, emergency access or other emergency service corridor. For purposes of this easement, all buildings immediately contiguous to each other shall be deemed and treated as a single building, which shall be surrounded by a sixty-foot clearance on all sides. The Owner(s) of the Entire Parcel (other than the Company Site) shall be responsible for providing and maintaining a corridor at least Sixty (60) feet wide from the building on the Company Site to permit fire and emergency ingress and egress to and from the building on the Company Site in accordance with all applicable legal requirements.

2.01.10. Self-Help Easements. Nonexclusive rights of entry and easements over, across and under each Site for all purposes reasonably necessary to enable any other Owner of a Site to perform any of the provisions of this Declaration which a defaulting Owner has failed to perform. The costs of operation and maintenance of such easements shall be borne by the Owner of the Benefited Site unless default of the Owner of the Burdened Site caused the use of the easement, in which event the defaulting Owner shall bear such cost.

2.01.11. Sign Easements. Non-exclusive easements under, through and across the Common Area of each Site for the installation, operation, maintenance, repair and replacement of such sign(s) as are shown on the Site Plan attached hereto or as may be erected by agreement of the Major Owners, including all appurtenant utility lines and facilities. Except where otherwise specifically stated herein to the contrary, the Owner of the Benefited Site shall bear all costs related to the installation, maintenance, repair and replacement of its sign and appurtenant facilities and shall repair to the original specifications any damage to the Common Area resulting from such use.

2.01.12. Surface Water Drainage. Non-exclusive easements for the flow of a reasonable volume of surface water to the nearest drainage catch basins or waterways; provided, however, that (a) the easement for surface water drainage shall be consistent with an overall surface water drainage plan for the Entire Parcel; and (b) following the initial construction of Common Areas and buildings on a Benefited Site in accordance with the Site Plan, no Owner of the Benefited Site shall alter the flow of surface water onto a Burdened Site in a manner that would materially increase the volume, or materially decrease the purity or quality, of surface water flowing onto the Burdened Site.

2.02 Parking Easements. Company and the Developer hereby each grant to the other for use by Company and the Developer and their respective Permittees, a non-exclusive easement for the purpose of vehicular parking in any parking areas now or hereafter located on the Company Site or the Developer's Site, but excluding any Outlot. The easement granted herein shall not benefit any Owner, Occupant, or Permittees of any Outlot.

2.03 Truck-Turnaround Easement. Developer hereby grants to Company and its Permittees, an exclusive easement over, across and upon a strip of land on the northerly portion of Developer's Site and adjacent to the Company Site as depicted on the Site Plan for the purpose of constructing, installing, maintaining, repairing and replacing an asphalt or similar pavement

2000-211996

material as necessary for the Company to enjoy reasonable truck and semitrailer access to the Company's loading dock area. The Company shall maintain and keep the pavement in good condition and repair, as Company determines necessary, at no cost to Developer.

2.04. Unimpeded Access. Except as provided in Section 6.10, no barricade or other divider will be constructed between the Sites and the Owners will do nothing to prohibit or discourage the free and uninterrupted flow of vehicular or pedestrian traffic throughout the Site in the areas designated for such purpose by the Owner of each Site; provided, however, that each Owner shall have the right to temporarily erect barriers to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein.

2.05. Prohibition Against Granting Easement. Except as dedicated on the recorded re-plot of the Entire Parcel as of the date hereof, Developer shall not grant or otherwise convey an easement or easements of the nature or type set forth in this Article II for the benefit of any parcel of real estate not within the Entire Parcel.

### ARTICLE III Nature of Easements and Rights Granted

3.01. Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Entire Parcel and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions.

3.02. Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

(a) Are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Sites;

(b) Create mutual equitable servitudes upon each parcel in favor of the other Sites;

(c) Constitute covenants running with the land; and

(d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Entire Parcel or Lot 118 at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

3.03. Transfer of Title. The acceptance of any transfer or conveyance of title from any party hereto or its respective heirs, representatives, successors or assigns of all or any part of its interest in its Site or any portion thereof, including any Outlot, or Lot 118 shall be deemed to:

(a) Require the prospective grantee to agree not to use, occupy or allow any lessee or occupant of such Site or Lot 118 to use or occupy the Site or Lot 118 in any manner



which would constitute a violation or breach of any of the easements, covenants or restrictions contained herein; and

(b) Require the prospective grantee to assume and agree to perform each and all of the obligations of the conveying party under this Declaration with respect to any such Site or Lot 118 which will be conveyed to each grantee, in each case by a written instrument executed, acknowledged and recorded in the Office of the Register of Deeds of the county in which the Entire Parcel is located. Notice of each such conveyance and agreement shall be served by the conveying party upon each party or entity then owning fee title to any part of the Entire Parcel or Lot 118 within Ten (10) days after such conveyance. The notice shall be accompanied by a copy of the conveyance and agreement. Upon such assumption by the new grantee and the service of proper notice, the conveying party shall thereupon be released from any future obligation under this Declaration with respect to the parcel so conveyed to the prospective grantee in compliance with this document, but shall not be relieved from past obligations. The parties hereto agree to execute and deliver any and all documents or assurances necessary or desirable to evidence such release for the purpose of recording or otherwise. When a grantee is a mortgagee, no personal liability or responsibility shall be deemed to be assumed by such mortgagee until and unless such mortgagee actually takes possession of a Site in connection with a mortgage foreclosure action.

#### ARTICLE IV

#### Maintenance of Common Areas & Easement Areas

4.01. Common Area Maintenance. Except as otherwise provided below in Section 4.06, each Owner shall maintain, or cause to be maintained, the Common Areas from time to time located on its Site in good order, sound structural and operating condition and repair. Such maintenance shall include, but shall not be limited to:

(a) Maintenance, repair and replacement of the surface and subsurface of parking lot and driveways situated on the Common Area to maintain it level, smooth and evenly covered with the type of materials originally constructed thereon or such substitutes as will in all respects be equal to such materials in quality, appearance and durability;

(b) Maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, watering, mowing and trimming thereof and maintaining, repairing and replacing (when necessary) automatic sprinkler systems and water lines;

(c) Removal from the Common Areas of papers, debris, ice, snow, refuse and other hazards to persons using the said Areas, and washing or thoroughly sweeping paved areas as required;

(d) Maintenance of such appropriate parking area entrance, exit and directional signs, markers and lights as will be reasonably required from time to time; and

(e) Such painting and repainting as may be required to maintain parking area and equipment installed thereon in high quality condition.

2000-21199I

4.02. Failure to Properly Maintain. In the event that any Owner shall fail to properly maintain that portion of the Common Area which is from time to time located on its Site (such party being herein referred to as the "Defaulting Party"), any other Owner (hereinafter referred to as the "Nondefaulting Party") may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "Deficiencies") in the Defaulting Party's performance of the Common Area maintenance to be performed by it. Notwithstanding anything to the contrary in Section 5.02, the Defaulting Party shall have ten (10) days after receipt of the said notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten (10) day period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. In the event that the Defaulting Party shall unreasonably fail or refuse to timely correct or to begin to correct the Deficiencies, as the case may be, the Nondefaulting Party may, at its option, correct the Deficiencies. In the event that the Nondefaulting Party shall exercise the said option and shall correct the Deficiencies, the Defaulting Party shall, immediately upon receipt from the Nondefaulting Party of an itemized invoice for the costs incurred by the Nondefaulting Party in correcting the Deficiencies, pay all costs to the Nondefaulting Party plus interest thereon from the date of receipt of such invoice at a rate equal to the lesser of fifteen percent (15%) or the maximum rate allowed by applicable law.

4.03. Maintenance of Easement Areas. With respect to each of the easements granted in Article II, except as otherwise specifically provided in this Declaration, each Owner of the Burdened Site shall be responsible for the cost of operation and maintenance of the areas subject to such easements.

4.04. Surface Water Drainage. Developer, its successors or assigns, shall perform all required monitoring, maintenance and repairs with respect to any detention pond or drainage basin located on the Entire Parcel, and all costs associated therewith shall be borne by the Developer, unless a default by the Owner of a Benefited Site with respect to the surface water drainage easement provided in Article II made such monitoring, maintenance and repairs necessary, in which event such defaulting Owner shall bear such costs.

4.05. Taxes. The Owners of each Site shall pay or cause to be paid all taxes and special assessments levied against their respective Site, including any portion of the Common Area on its Site, prior to delinquency of such taxes or special assessments.

4.06. Ring Road Maintenance. Notwithstanding anything to the contrary contained in this Declaration, the Ring Road, including any improvements, storm sewer, street-lighting, general shopping center identification signs, and landscaping located thereon, shall be maintained or caused to be maintained by the Association in accordance with the standards set forth in Section 4.01. Developer, at its sole cost and expense, shall form or cause to be formed the Association as set forth in the Association Document prior to the sale, transfer or other conveyance of any portion of the Developer's Site, including any Outlot.

2000-21199J

**ARTICLE V**  
**Enforcement - Injunctive Relief**

5.01. **Remedies.** In the event of any violation by any party hereto or by any Permittee or Occupant of any part of the Entire Parcel of any of the terms, restrictions, covenants and conditions provided herein, any of the parties, or their respective successors or assigns, as the case may be, shall have in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days' written notice of the violation will be given to all other Owners and to the persons or entity guilty of such violation or threatened violation.

5.02. **Notice.** Except as provided in Section 4.02, a party will not be in default under this Declaration unless such party shall have been served with a written notice specifying the default and shall fail to cure such default within thirty (30) days after receipt of such notice, or shall fail to commence to cure the default within such period of time if the default cannot be cured within the said thirty (30) day period, and thereafter, to proceed diligently to complete the curing of the default.

5.03. **Breach Does Not Affect Declaration.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but this limitation shall not affect, in any manner, any other rights or remedies which the parties may have by reason of any breach of this Declaration.

**ARTICLE VI**  
**Restrictions on Development and Use**

6.01. **Site Plan.** It is agreed that the Entire Parcel shall be developed and utilized consistently with the Site Plan. Notwithstanding the foregoing, it is intended that the Site Plan be a general schematic of the unified shopping center and it is understood that it may be necessary for the Developer to alter the size or location of buildings or other site improvements as depicted on the Site Plan provided such alterations conform to the provisions of this Declaration.

6.02. **Signs.** No Owner or Occupant (or owner or occupant of Lot 118) shall erect or install, or permit to be erected or installed, anywhere on the Entire Parcel (or Lot 118, as the case may be) any sign except in accordance with the following:

(a) Except as provided below or in Section 6.07, no free-standing pylon sign shall be erected or installed anywhere on the Entire Parcel except in locations (i) designated for such signs on the Site Plan or (ii) approved in writing by the Major Owners.

(b) In the event Developer erects or installs one or more general shopping center signs in accordance with this Section, Company's name or trade name shall be placed on the top panel of such signs in letters at least as large as any other lettering on such signs, and the square footage of any other parties' panel on such signs shall not exceed the square footage of Company's panel on such signs. Company shall design and specify the lettering, display, size, location and coloring of its panel on such signs, and

2000-21199K

Company shall reasonably approve the remainder of such signs. Any such shopping center sign erected shall be maintained by Developer in a good and usable condition with any costs and expenses incurred for such maintenance apportioned among the Owners pro-rata based upon each of their percentage shares of the sign panels; provided, however, that each Owner shall maintain (including repairing, replacing and improving) its sign panels at such Owner's sole cost and expense. In addition, each panel of any shopping center sign erected shall be separately metered and each Owner thereof shall be responsible for the cost of operation of such panel. In the event it is not possible to separately meter such panels, the cost of operation shall be apportioned among the Owner's pro-rata based upon each of their percentage shares of the sign panels collectively metered.

(c) Notwithstanding (a) above and subject to (e), Company, at its option and at its own expense, shall have the right to erect, install and maintain on the Company Site signs of such size, color and design (including without limitation pylon signs) as Company elects.

(d) Any sign to be erected anywhere on the Entire Parcel or Lot 118 shall conform in all respects to the sign plan and criteria attached hereto as **EXHIBIT 4** (the "Sign Criteria"). It is understood and agreed that Company's standard identification sign conforms to the Sign Criteria.

(e) Any sign erected or installed anywhere on the Entire Parcel or Lot 118 shall conform to local sign ordinances and is subject to obtaining any required governmental approvals and permits.

6.03. Use Restrictions. It is agreed that no portion of the Entire Parcel, other than the Company Site, and no portion of Lot 118 may be used for or by a general merchandise discount department store (as listed in the most current edition from time to time of the Directory of Discount Department Stores published by Business Guides, Inc., Division of Lebhar-Friedman, Inc., or a like successor publication); retail pharmacy or drugstore; nutritional, health or wellness center; optical center; toy store; or lawn and garden center. This restriction shall not be deemed to prevent or prohibit any sale of toys, nutritional, health, medical or beauty aid items which are customarily sold from other types of retail or grocery stores, nor shall it be deemed to prevent Developer's Site, any of the Outlots, or Lot 118 from being leased, subleased, occupied or used for the sale of miscellaneous items similar to those which may be sold by Company. This restriction may be waived solely by Company in writing by an instrument recorded in the Office of the Register of Deeds for the county in which the Entire Parcel is located. The foregoing restriction, however, shall not prohibit on any portion of the Developer's Site, any single Outlot, or on any portion of Lot 118 (i) one (1) nutritional store of no more than 4,000 square feet of Floor Area nor (ii) a pharmacy located within a grocery store or supermarket, provided that such pharmacy shall not contain more than 750 square feet of Floor Area within physical boundaries not accessible to the general public and may not utilize or contain a drive-up window or drive-thru facility. It is also agreed that the Company Site shall not be occupied or used as a supermarket or other grocery store, or as a similar department within a store in excess of 7,500 square feet, for the sale of food, groceries, fruit, produce, dairy products, vegetables, bakery products, meats, or delicatessen products. In addition, it is agreed that no portion of the Entire Parcel or Lot 118 shall be used or operated:

2000-21199L

- (a) In violation of applicable laws or rules.
- (b) In a dangerous or hazardous manner.
- (c) As a nuisance, or as an obnoxious use by reason of unsightliness or excess emission of odors, dust, fumes, smoke, liquid waste, noise, glare, vibration or radiation; provided, however, that nothing contained in this subsection shall limit or prohibit the erection of business communications satellite dishes on the roof of any building.
- (d) As an adult bookstore, nightclub or discotheque, massage parlor, or any other establishment which provides live adult entertainment or which sells, rents or exhibits pornographic or obscene materials.
- (e) For any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (provided that any Occupant that goes out of business shall be entitled to hold one going out of business sale not exceeding four weeks in duration).
- (f) As a second-hand store, flea market, pawn shop, government surplus store, Goodwill Store, salvage store, Salvation Army Store, surplus store or liquidation store.
- (g) As a sports, health, fitness, exercise or dance facility.
- (h) As a liquor store (or any other establishment, except supermarkets or grocery stores, where beer, wine or liquor is sold for off-premises consumption).
- (i) As an automobile, truck, trailer or recreational vehicle sales, leasing, display or repair facility.
- (j) As a bar or tavern (or any other establishment where beer, wine or liquor is served for on-premises consumption, except a restaurant whose primary purpose is the sale of food).
- (k) As a theater or cinema; circus; carnival; bowling alley; funeral parlor or mortuary; car wash; game room or arcade; billiard or pool hall; unemployment office; school or place of instruction attended by students; business office; post office; bingo parlor, casino, off-track betting facility, or any betting establishment (except that the sale of state lottery tickets is not prohibited or restricted).
- (l) For any non-retail use, except that (i) a bank, credit union or other financial related facility shall not be prohibited on the Outlots; (ii) in the aggregate fifteen percent (15%) of the total planned Floor Area of the Developer's Site, including the Outlots, may be used or operated for any non-retail purposes not otherwise prohibited herein (including any additional bank, credit union or other financial related facility); and (iii) Lot 118 may be used or operated for any non-retail purposes not otherwise prohibited herein.

6.04. Parking Requirements. It is agreed that a parking ratio of not less than five (5.0) spaces per 1,000 square feet of Floor Area will be maintained on the Company Site (inclusive of

2000-21199M

parking spaces, if any, occupied by any seasonal lawn and garden area) and on the Developer's Site.

**6.05. Building Restrictions.** Each building, structure or other improvement constructed in the Entire Parcel shall be of first quality construction and architecturally designed so that the exterior elevation (including signs) and color will be architecturally and aesthetically compatible and harmonious with all other buildings on the Company Site and the Developer's Site. Except as otherwise agreed in writing by the Company, no building, structure or other improvement may be constructed within the areas of the Entire Parcel or Lot 118 designated and depicted as visibility corridors on **EXHIBIT 6** attached hereto (the "Site Corridors"). No building, structure or other improvement may be constructed nor the exterior of any existing building changed in any material way without the prior written approval of the Developer or Developer's designee (the "Reviewing Party"), which approval shall not be unreasonably withheld, delayed or denied, as to the exterior design, color and elevations of the building, structure or other improvement to be constructed or modified. Upon the Developer no longer holding fee simple title to any portion of the Developer's Site, each of the Major Owners shall automatically become a "Reviewing Party" for purposes of this Section. Before any construction or modification which requires approval hereunder is commenced, written notice requesting such approval shall be sent to the Reviewing Party(ies) including sufficient information to enable the Reviewing Party(ies) to make a reasonable determination. A Reviewing Party must approve or disapprove the proposed construction or modification within thirty (30) days after receipt of the proposal, and if such Reviewing Party disapproves, it shall provide a written explanation in reasonable detail of its objections. If a Reviewing Party fails to provide its written objections as required within the thirty (30) day period, such Reviewing Party shall be deemed to have approved the proposed construction or modification provided that the notice seeking approval stated that such Reviewing Party's failure to provide written objections within thirty (30) days shall be deemed approval of such proposal.

In addition, any development or construction anywhere on the Entire Parcel shall be subject to the following restrictions:

(a) Height limitations, required minimum building setbacks, and other basic development standards established by the zoning ordinances and regulations of the City of LaVista, Nebraska (the "City"), the City's "Commercial Building Design Guide" dated September 15, 1999, and the applicable specific architectural building exterior design and lighting features agreed upon by the Owner(s) and the City with respect to such development.

(b) Immediately upon completion of building construction, or at the next available planting season, the Owner will install and maintain permanent landscaping. Such landscaping will consist of plant materials, paving materials, ground cover, and other landscaped features consistent with the overall development theme of the Shopping Center. All permanent landscaping will include automatic underground irrigation systems sufficient to support the living plant materials used.

(c) No outdoor billboards and no signs incorporating flashing, pulsating, or rotating lights will be permitted without the written consent of the Major Owners, which consent may be withheld in their absolute and sole discretion.

2000-21199N

(d) Owners will install sufficient exterior lighting so as to properly illuminate drives, sidewalks, and parking areas. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any part of the Site or any improvement or which in any manner will allow light to be directed or reflected onto any adjoining Site or any other Site. All exterior lighting installed on any Site, including all street lighting, shall comply in all respects with the design criteria established by Developer and set forth on EXHIBIT 3, the zoning ordinances of the City of LaVista and any other applicable ordinances, rules and regulations of the City of LaVista as the same may be amended from time to time.

(e) No Owner shall place or permit any garbage, debris or refuse to be placed on or to accumulate in any areas on, in or adjacent to any Site or building that are visible from any other Site within the shopping center. All garbage, debris and refuse shall be placed in a dumpster or similar receptacle and removed at regular intervals. Each Owner, at its expense, shall cause the windows and exterior surfaces of any building on the Owner's Site to be washed or cleaned regularly.

(f) Prior to building construction, any Owner must install and maintain temporary landscaping on their Sites, and adjacent street rights-of-way. Such landscaping must be sufficient to present a neat and attractive appearance. Owners will maintain such landscaping, including mowing and trimming lawns and proper care of trees and shrubs.

(g) During any building construction or renovation, the Owner of such Site shall insure that such construction is carried out in a good and workman-like manner and completed in a timely fashion. Owner's agents, contractors, and employees shall insure that the construction site is maintained in an orderly appearance, trash and debris is contained on-site, building materials are stored in an orderly manner, and that no debris, soil erosion, or building materials are permitted to leave the Site or adversely affect other Sites, Common Areas, or private roadways.

6.06. Restrictions on Divisions; Conveyances. Company or the Developer may divide or subdivide and sell and convey those portions of their respective Sites identified on the Site Plan as Outlots. It is understood that the size and location of the Outlots as depicted on the Site Plan are approximations and that the exact size and location of the Outlots may differ from that depicted on the Site Plan, provided such differences do not materially alter the overall Common Areas as shown on the Site Plan. Except for the Outlots, no other portions of the Company Site or the Developer's Site shall be divided and conveyed unless the owner and transferee thereof shall record in the Office of the Register of Deeds of the county in which the Entire Parcel is located a supplement to this Declaration establishing such parcel as an "Outlot" and setting forth the revised legal descriptions of the Company Site or the Developer's Site, as the case may be, and the conveyed parcel as an "Outlot" and thereafter any reference in this Declaration to the Company Site or the Developer's Site, as the case may be, shall be deemed to be a reference to the revised described parcel. Except as otherwise agreed in writing by the Major Owners, any portion of the Entire Parcel conveyed shall remain subject to all easements, covenants, restrictions and other provisions set forth in this Declaration.

6.07. Outlot Restrictions. Except as otherwise agreed in writing by the Major Owners, in addition to the other restrictions set forth in this Declaration, the Outlots shall be subject to the following restrictions:

(a) Only one building may be constructed on an Outlot and such building shall not be a multi-tenant retail building.

(b) No building, structure or improvement constructed on an Outlot shall (i) exceed one story; (ii) have a roof or parapet (including HVAC equipment and other mechanical devices or screening) exceeding twenty-two (22) feet above grade, except that no more than twenty percent (20%) of the building facade may be as high as twenty-six (26) feet above grade; (iii) have any rooftop equipment unless such equipment is screened; or (iv) have a rooftop sign, except for building facade signage if no part of such signage exceeds that height restriction set forth above.

(c) The building ground cover of any building constructed on an Outlot shall not exceed fifteen percent (15%) of the area of such Outlot.

(d) Only one free-standing, monument sign may be erected on each Outlot and such sign shall not exceed eight (8) feet in height and a total square footage of fifty (50) square feet.

(e) The Owner or Occupant of each Outlot shall maintain a parking ratio of not less than five (5.0) parking spaces per 1,000 square feet of Floor Area of building on such Outlot. Such parking shall be in the form of hard-surfaced parking lots. No on-street parking will be permitted.

(f) All loading areas, docks, antennae, and exterior mechanical equipment, including rooftop equipment, must be screened when viewed from adjacent streets or from ground level along an adjacent Owner's Site; such screening to consist of permitted building materials and/or landscaping.

6.08. Access Modification. No curbcuts or public highway access points shown on the Site Plan shall be altered, modified, vacated or discontinued in any manner whatsoever without the written approval of the Major Owners

6.09. Fire Rating Integrity. The building to be constructed on the Company Site shown on the Site Plan will be Type V-N Construction as defined in the Uniform Building Code of the controlling State or municipality or a substantially similar type building in accordance with the applicable local building code. The Owners of all adjacent Sites agree that they will not construct, nor cause nor permit to be constructed on their Site any building, improvement or structure which will impair in any manner the sprinklered fire insurance rating of the building to be constructed on the Company Site and that any building, improvement or structure constructed on an adjacent Site will be constructed and maintained in such manner as to not require any structural or nonstructural modifications to the building on the Company Site from Type V-N Construction requirements. All contiguous buildings constructed on the Entire Parcel shall have an automatic sprinkler system constructed in accordance with NFPA Standard 13, for a minimum protection level based on ordinary hazard, group 2 occupancy (or a like successor standard). No



building shall be constructed on the Entire Parcel which blocks or impedes the exit from any fire door in the building constructed on the Company Site.

6.10. Common Area Promotions. The Owner of any Site having an outdoor sales area designated on the Site Plan (including Company's outdoor lawn and garden area) may use the same from time to time for the promotion and sale of seasonal merchandise or special sale promotions. Notwithstanding anything contained herein to the contrary, Company may relocate, use and maintain Company's outdoor lawn and garden area anywhere in the Common Area of the Company Site; provided, however, the lawn and garden area shall not unreasonably interfere with the free flow of traffic and shall be kept and maintained in a neat and orderly condition.

#### ARTICLE VII Mutual Indemnification

7.01. Indemnification. Each Owner, with respect to its portion of the Entire Parcel, shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify, defend and hold each other Owner harmless from and against any and all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and reasonable attorneys' fees) arising out of or in any way related to the failure by such Owner to maintain its portion of the Entire Parcel in a safe and proper condition. Each Owner shall give each other Owner prompt and timely notice of any claim made or suit or action commenced which, in any way, could result in indemnification hereunder.

#### ARTICLE VIII Insurance and Subrogation

8.01. Casualty and Liability Insurance. Each Owner shall obtain and maintain all-risk insurance covering all of the buildings and improvements now or hereafter located on its Site, in an amount equal to ninety percent (90%) of the full replacement cost thereof. Each Owner shall also obtain and maintain comprehensive general liability insurance covering injuries to persons and property on, in or about its Site, with coverage in an amount not less than Three Million Dollars (\$3,000,000.00) per occurrence with a deductible not in excess of One Hundred Thousand Dollars (\$100,000.00). All such policies of insurance shall be issued by solvent and responsible insurance companies authorized to do business in the State within which the Entire Parcel is located, and all such policies shall contain a waiver of the right of subrogation. Notwithstanding the foregoing, any insurance required to be maintained hereunder may be self-insured in whole or in part if the party obligated to insure shall then have and thereafter maintain a net worth of at least One Hundred Million Dollars (\$100,000,000.00), or may be taken out under a blanket insurance policy or policies covering other premises or property in addition to property within the Entire Parcel. Each Major Owner shall furnish any of the Major Owners with Certificates of Insurance reflecting this coverage upon request. In addition, whenever (a) any loss, cost, damage or expense resulting, directly or indirectly, from fire, explosion or any other casualty, accident or occurrence is incurred by any Owner, and (b) such Owner is then required to be covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then such Owner hereby releases each other Owner from any liability it may have on account of loss, cost, damage or expense. If any Owner sustains an insured casualty loss to the building on its Site, said Owner may, at its sole cost and expense and with all due diligence,

either (i) repair and restore its building on the Site or (ii) raze the remaining portion of the building, remove the debris, and cover the area from which the building was removed with landscaping, asphalt or some other dustcap material.

**ARTICLE IX**  
**Condemnation**

9.01. Condemnation Awards. If all or any part of the Entire Parcel is sold to or taken by any duly constituted authority for a public or quasi-public use under its power of condemnation or threat thereof, then that portion of the resulting award (whether obtained by agreement or by judgment or court order) attributable to the value of any land within the Common Areas so taken shall be payable only to the Owner thereof and no claim thereto shall be made by any other Owner; provided, however, that all other Owners may file collateral claims with the condemning authority, over and above the value of the land within the Common Areas so taken, to the extent of any damage suffered by the Sites of such other Owners resulting from the severance of the appurtenant Common Areas so condemned or taken. The Owner of the Common Areas so condemned or taken shall promptly repair and restore the remaining portion of the Common Areas owned by such Owner as near as practicable to the condition of same immediately prior to such condemnation or taking and without contribution from any other Owner. Nothing contained herein shall require any Owner to construct any improvements other than a ground-level parking lot. If any buildings or other improvements on a Site are condemned or taken, then the resulting award shall first be made available and used for repair and reconstruction of such buildings or other improvements, and the same shall promptly be repaired and reconstructed as near as practicable to the condition of same immediately prior to such condemnation or taking and any amounts of the award not needed for the repair and replacement that can be reasonably made shall be retained and be the sole property of the Owner of the land, building or improvement taken.

**ARTICLE X**  
**Environmental Matters**

10.01. Duties of Users. Except as provided in Section 10.03, no Occupant shall release, generate, use, store, dump, transport, handle or dispose of any Hazardous Material within the Entire Parcel or otherwise permit the presence of any Hazardous Material to be on the Entire Parcel. Any use, handling or storage permitted under Section 10.03 shall be in accordance with all Environmental Laws and all other applicable laws, ordinances, rules and regulations now or hereafter promulgated by any governmental authority having jurisdiction thereof.

Each Owner with respect to its Site shall immediately notify the other Owners by providing a copy of the following with respect to such Owner's Site: (1) any notice of violation or potential or alleged violation of any laws, ordinances or regulations which the Owner shall have received from any governmental agency concerning the use, storage, release and/or disposal of Hazardous Materials; (ii) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to such Site(s); (iii) all claims made or threatened by any third party relating to any Hazardous Materials; and (iv) any release of Hazardous Materials on or about the Entire Parcel which such Owner knows of or reasonably believes may have occurred.

2000-21199 R

10.02. Specific Substances. Neither any Owner nor any Occupant(s) nor any Permittee shall introduce, or permit any other Person to introduce, any friable asbestos, radioactive material, urea formaldehyde foam insulation or devices containing polychlorinated biphenyls (PCBs) into any portion of the Entire Parcel.

10.03. Permitted Use, Storage, Handling and Disposal of Hazardous Materials. Notwithstanding anything contained in Section 10.01 to the contrary, any Owner, or any other Occupant or Permittee may use products containing Hazardous Materials and equipment fueled by or containing Hazardous Materials in, on or about such Owner's Site or the Common Areas to the extent such products and/or equipment are incident to the normal operations of vehicles. Examples of such products and equipment include, but are not limited to, gasoline and petroleum products used to fuel and/or lubricate vehicles. In addition, notwithstanding anything contained in Section 10.01 to the contrary, the Owners or Occupants may merchandise products such as paints, oils, solvents, sealers, adhesives, and finishes, fertilizers, insecticides and rodent poisons and the like, which may contain Hazardous Materials, so long as such products are frequently merchandised in general merchandise discount stores, supermarkets, and full-line home improvement, gardening and hardware stores. In addition, Owners or Occupants may use products such as photocopy equipment, ordinary office supplies, photographic chemicals and supplies, building materials, maintenance supplies, cleaning agents and solvents in quantities commonly stored, found or maintained for use by retail operators.

An Owner or an Occupant may also use other Hazardous Materials in connection with its use of its Site if such Owner or Occupant has received the other Owner's prior consent to the same. An Owner shall not unreasonably withhold its consent provided (i) the Owner demonstrates to the other Owner's reasonable satisfaction that such Hazardous Materials (a) are necessary or useful to the Owner's or its Occupant's business, (b) will be monitored, used, stored, handled and disposed of in compliance with all Environmental Laws, (c) will not endanger any persons or property and (d) will not invalidate or limit the coverage or increase the premiums of any insurance policy affecting or covering any portion of the Entire Parcel, (ii) the Owner or Occupant provides the other Owners with such security as may be reasonably required by the Owners to help secure such Owner's or Occupant's performance of its obligations under Section 10.04 and (iii) such Owner or Occupant satisfies any other requirements any other Owner may reasonably impose with respect to the Owner's or an Occupant's use of the subject Hazardous Materials.

10.04. Cleanup of Hazardous Materials. In the event Hazardous Materials are released within the Entire Parcel in violation of any Environmental Law and such release occurred as a direct or indirect result of an Owner's or an Occupant's use, handling, storage, or transportation of such Hazardous Material, as between the Owners, such Owner or Occupant engaged in such activity shall be solely responsible and shall be liable for the prompt cleanup and remediation of any resulting contamination and all claims, costs, expenses (including reasonable attorney and consultant fees) and damages, including consequential damages, suffered by the other Owners and Occupants.

2000-211995

**ARTICLE XI**  
**Duration and Termination**

11.01. Duration. The easements, covenants, restrictions and other provisions of this Declaration shall be of perpetual duration and shall run with the land.

11.02. Amendment. This Declaration may not be modified, terminated, or rescinded except by written instrument executed by all the Major Owners as of the date of such instrument and recorded in the Office of the Register of Deeds of the County in which the Entire Parcel is located; provided, however, that no such amendments shall impose any materially greater obligation on, or materially impair any right of, the Owner of a Site (or owner of Lot 118), without the consent of the Owner of such Site (or owner of Lot 118). Any amendments or modifications of this Declaration shall be superior to any and all liens, to the same extent as this Declaration, and to the same extent as if such amendment or modification had been executed and recorded concurrently herewith.

11.03. Modifications of Site Plan. Notwithstanding anything to the contrary contained in this Declaration, the Major Owners shall have the right to modify the Site Plan by mutual agreement, by recording in the Office of the Register of Deeds of the County in which the Entire Parcel is located a supplement to this Declaration setting forth the revised Site Plan executed and acknowledged by the Major Owners and any other Owner whose Site boundaries are directly affected by such modification.

**ARTICLE XII**  
**Not a Public Dedication**

12.01. Nothing contained in this Declaration shall, or shall be deemed to, constitute a gift or dedication of any portion of the Entire Parcel to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration will be strictly limited to and for the purposes expressed herein.

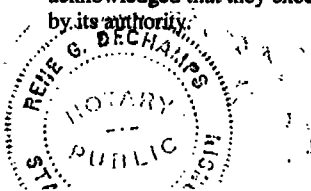
**ARTICLE XIII**  
**Reasonableness of Consent**

13.01. Unless otherwise provided herein, whenever an Owner's agreement or approval is required hereunder, such Owner shall not unreasonably withhold or delay such agreement or approval. If an Owner shall not agree, or shall disapprove, the reasons therefor shall be stated in writing and in reasonable detail within thirty (30) days after receipt of the request seeking agreement or approval. If an Owner fails to provide such reasons within the required time period, such Owner shall be deemed to have agreed or approved provided that the notice seeking agreement or approval stated that such Owner's failure to provided written objections within thirty (30) days shall be deemed approval of such request.

13.02. Notwithstanding anything to the contrary in this Declaration, no consent, agreement or approval shall ever be required of any Occupant or other Permittee other than the Owners of any Site.

acknowledged that they executed the foregoing instrument as such officers as the act of said corporation,

by its authority:



Rene G. DeChamps  
Notary Public, Louisiana  
My Commission expires: 11-16-03

2000-21199 T

**ARTICLE XIV**  
**No Covenant to Operate**

14.01 Nothing, either expressed or implied, contained in this Declaration shall obligate any Owner or Occupant to continuously operate any type of business on its Site.

**ARTICLE XV**  
**Miscellaneous**

15.01. Recording. A fully executed counterpart of this Declaration shall be recorded in the Office of the Register of Deeds of the County in which the Entire Parcel is located.

15.02. Benefit. This Declaration shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns.

15.03. Waiver. No waiver of any breach of any of the easements, covenants, restrictions or agreements herein contained shall be construed as, or constitute, a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other easement, covenant, restriction or agreement.

15.04. Severability. If any term or provision of this Declaration shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Declaration shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

15.05. Applicable Law. This Declaration shall be construed and enforced in accordance with the laws of the State in which the Entire Parcel is located.

15.06. Counterparts. This Declaration may be executed in several counterparts, all of which together shall be deemed an original single document.

15.07. Notice. All notices given or permitted under this Declaration shall be in writing and shall be sent by: (a) U.S. Mail, postage prepaid, certified or registered mail, return receipt requested or (b) for delivery on the next business day with a nationally-recognized express courier. All such notices shall be sent to the following addresses, until such addresses are changed by thirty (30) days' notice, and to any subsequent Owners at such address, such party sending such notice has received:

A. If to Company:

SHOPKO STORES, INC.,  
700 Pilgrim Way  
Green Bay, WI 54304  
Attention: Vice President of Real Estate

2000-21199U

B. If to Developer:

RKS FAMILY INVESTMENTS, LTD.  
440 Regency Parkway, Suite 133  
Omaha, NE 68114  
Attention: Real Estate Department

15.08. Entire Agreement. This Declaration and the Exhibits hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations, understandings or agreements are superseded. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any party. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Declaration and shall not negate or invalidate any provision of this Declaration.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of the day and year first above written.

SHOPKO STORES, INC., <sup>(940)</sup>  
a Wisconsin corporation

By: Thomas Sowa

Its: VICE PRESIDENT REAL ESTATE

Attest: [Signature]

Its: Senior Vice President, General Counsel Secretary  
Richard D. Schopp

Date of Execution: 8/17/00

STATE OF Wisconsin )  
 ) ss.  
COUNTY OF Brown )

Personally came before me this 17<sup>th</sup> day of August, 2000, Thomas Sowa and Richard Schopp, Vice President and Senior Vice President, respectively, of SHOPKO STORES, INC., a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, and to me known to be the persons who executed the foregoing instrument, and to me known to be such Vice President and Sr. Vice President of said corporation and acknowledged that they executed the foregoing instrument as such officers as the act of said corporation, by its authority.



Rene G. DeChamps  
Notary Public, Wisconsin  
My Commission expires: 11-16-03

2000-21199 V

**RKS FAMILY INVESTMENTS, LTD.,**  
a Nebraska limited partnership

By: Ronald E. Smith

Its: General Partner

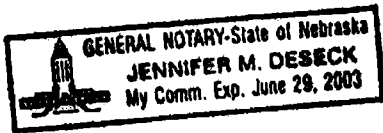
Attest: N/A

Its: \_\_\_\_\_

Date of Execution: 8/22/00

STATE OF Nebraska  
COUNTY OF Douglas ss.

Personally came before me this 22 day of August, 2000, \_\_\_\_\_ and Ronald E. Smith and \_\_\_\_\_, respectively, of RKS FAMILY INVESTMENTS, LTD., a limited partnership duly organized and existing under and by virtue of the laws of the State of Nebraska, and to me known to be the persons who executed the foregoing instrument, and to me known to be such General Partner and \_\_\_\_\_ of said limited partnership and acknowledged that they executed the foregoing instrument as general partner as the act of said limited partnership, by its authority.



Jennifer M. Deseck  
Notary Public, \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

THIS DOCUMENT WAS RECORDED BY  
AND SHOULD BE RETURNED TO:  
PETER G. VANDENHOUTEN  
SHOPKO STORES, INC.  
700 PILGRIM WAY  
GREEN BAY, WI 54304

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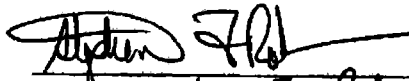
**CONSENT TO DECLARATION OF CROSS-EASEMENTS  
AND COVENANTS AND RESTRICTIONS AFFECTING LAND**

The undersigned, being the Trustee and Beneficiary of a certain Deed of Trust and Construction Security Agreement dated March 17, 1999, and recorded March 23, 1999 as Instrument No. 99-08327 in the Mortgage Records of Sarpy County, Nebraska, does hereby consent to this Declaration of Cross-Easements and Covenants and Restrictions Affecting Land.

DATED: August 16<sup>th</sup>, 2000.

BENEFICIARY AND TRUSTEE:

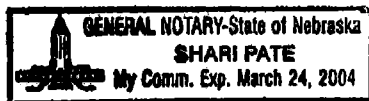
FIRST WESTROADS BANK, INC.,  
Nebraska corporation

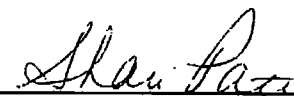
By:   
Name: Stephen F. Robinson  
Title: Executive Vice President

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

Before me, the undersigned Notary Public, in and for said County and State, personally appeared Stephen F. Robinson Executive Vice President of FIRST WESTROADS BANK, INC., a Nebraska corporation, to me known to be the identical person who executed the above instrument and acknowledged his or her execution to be his or her voluntary act and deed for said Corporation.

WITNESS my hand and notarial seal this 16<sup>th</sup> day of August, 2000.



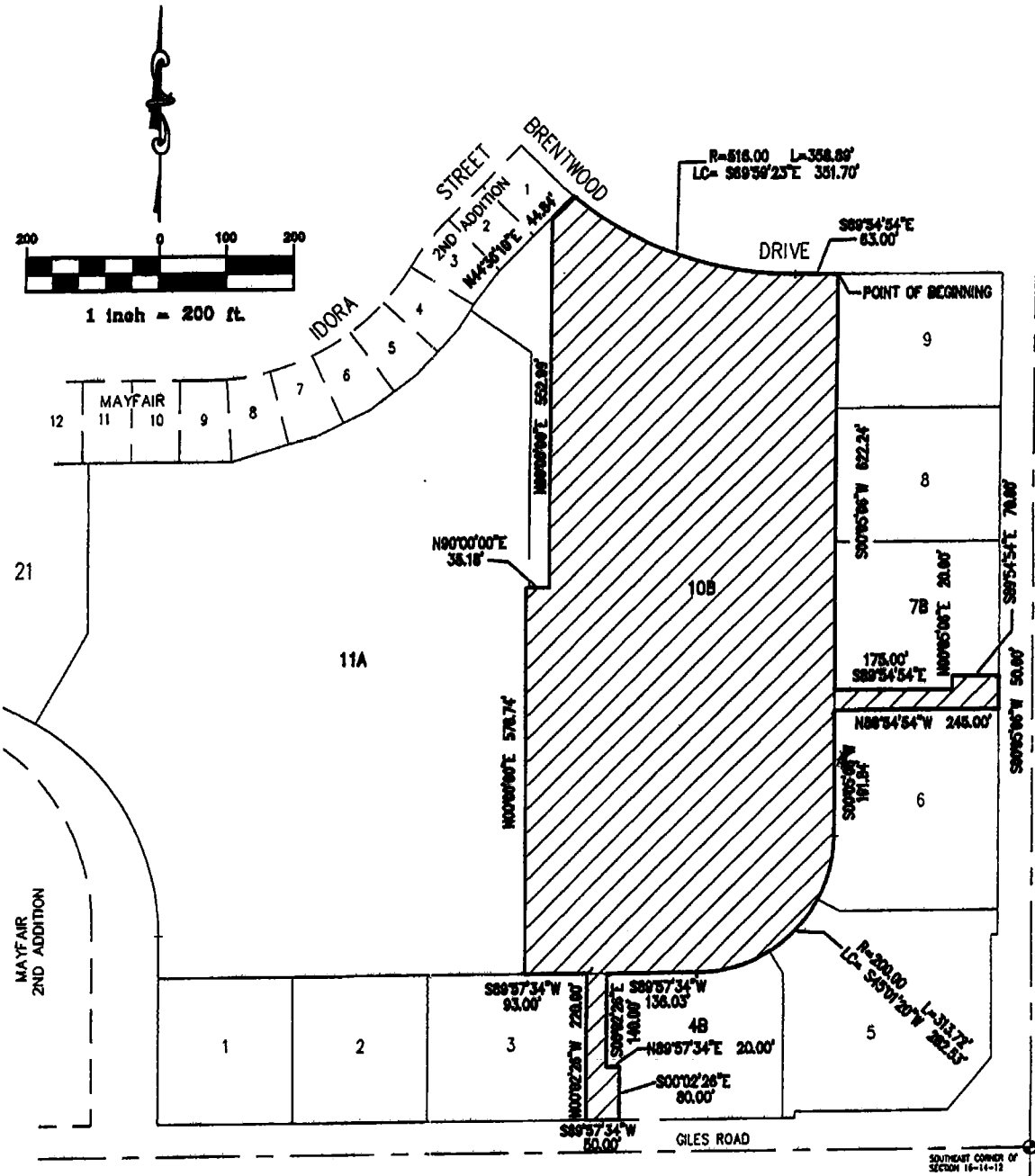
  
Notary Public



2000-21199X

# EXHIBIT 1 COMPANY SITE

LEGAL DESCRIPTION; SEE ATTACHED SHEET.



E & A CONSULTING GROUP, INC.  
12001 "Q" STREET  
OMAHA, NEBRASKA 68137  
PHONE (402) 895-4700

DATE 8-15-2000  
JOB #97054.04

2000-211994

LEGAL DESCRIPTION  
LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE

ALL OF LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, A SUBDIVISION LOCATED IN THE SE1/4 OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 9, SAID MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BRENTWOOD DRIVE; THENCE  $S00^{\circ}05'06''W$  (ASSUMED BEARING) ALONG THE EAST LINE OF SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE WEST LINE OF LOTS 9, 8 AND 7B, SAID MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 622.24 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7B, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE ALONG THE SOUTH LINE OF SAID LOT 7B, MAYFAIR 2ND ADDITION REPLAT ONE ON THE FOLLOWING DESCRIBED COURSES; THENCE  $S89^{\circ}54'54''E$ , A DISTANCE OF 175.00 FEET; THENCE  $N00^{\circ}05'06''E$ , A DISTANCE OF 20.00 FEET; THENCE  $S89^{\circ}54'54''E$ , A DISTANCE OF 70.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7B, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF 96TH STREET; THENCE  $S00^{\circ}05'06''W$  ALONG SAID WEST RIGHT-OF-WAY LINE OF 96TH STREET, SAID LINE ALSO BEING THE EAST LINE OF SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF LOT 6, SAID MAYFAIR 2ND ADDITION REPLAT ONE; THENCE  $N89^{\circ}54'54''W$  ALONG THE NORTH LINE OF SAID LOT 6, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 245.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 6, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING ON SAID EAST LINE OF LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE SOUTHERLY AND WESTERLY ALONG THE EASTERLY AND SOUTHERLY LINE OF SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE WESTERLY LINE OF SAID LOT 6, MAYFAIR 2ND ADDITION REPLAT ONE AND THE NORTHERLY LINE OF LOTS 5 AND 4B, SAID MAYFAIR 2ND ADDITION REPLAT ONE ON THE FOLLOWING DESCRIBED COURSES; THENCE  $S00^{\circ}05'06''W$ , A DISTANCE OF 191.84 FEET; THENCE WESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 200.00 FEET, A DISTANCE OF 313.72 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS  $S45^{\circ}01'20''W$ , A DISTANCE OF 282.53 FEET; THENCE  $S89^{\circ}57'34''W$ , A DISTANCE OF 136.03 FEET TO THE NORTHWEST CORNER OF SAID LOT 4B, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 4B, MAYFAIR 2ND ADDITION REPLAT ONE ON THE FOLLOWING DESCRIBED COURSES; THENCE  $S00^{\circ}02'26''E$ , A DISTANCE OF 140.00 FEET; THENCE  $N89^{\circ}57'34''E$ , A DISTANCE OF 20.00 FEET; THENCE  $S00^{\circ}02'26''E$ , A DISTANCE OF 80.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF GILES ROAD, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 4B, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE  $S89^{\circ}57'34''W$  ALONG SAID NORTH RIGHT-OF-WAY LINE OF GILES ROAD, SAID LINE ALSO BEING THE SOUTH LINE OF SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 50.00 FEET TO THE SOUTHEAST CORNER OF LOT 3, SAID MAYFAIR 2ND ADDITION REPLAT ONE; THENCE  $N00^{\circ}02'26''W$  ALONG THE EAST LINE OF SAID LOT 3, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 220.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 3, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING ON SAID SOUTHERLY LINE OF LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE  $S89^{\circ}57'34''W$  ALONG SAID SOUTHERLY LINE OF LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE NORTH LINE OF SAID LOT 3, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 93.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 11A, SAID MAYFAIR 2ND ADDITION REPLAT ONE; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID LOT 10B,

2000-211992

MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE EASTERLY LINE OF SAID LOT 11A, MAYFAIR 2ND ADDITION REPLAT ONE ON THE FOLLOWING DESCRIBED COURSES; THENCE N00°00'00"E, A DISTANCE OF 578.74 FEET; THENCE N90°00'00"E, A DISTANCE OF 35.18 FEET; THENCE N00°00'00"E, A DISTANCE OF 552.99 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 1, MAYFAIR 2ND ADDITION, A SUBDIVISION LOCATED IN SAID SE1/4 OF SECTION 16, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT 11A, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE N44°36'10"E ALONG SAID SOUTHEASTERLY LINE OF LOT 1, MAYFAIR 2ND ADDITION, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 44.84 FEET TO THE NORTHWEST CORNER OF SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE EASTERLY CORNER OF SAID LOT 1, MAYFAIR 2ND ADDITION, SAID POINT ALSO BEING ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF BRENTWOOD DRIVE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF BRENTWOOD DRIVE, SAID LINE ALSO BEING THE NORTHERLY LINE OF SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE ON THE FOLLOWING DESCRIBED COURSES; THENCE EASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 516.00 FEET, A DISTANCE OF 358.89 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S69°59'23"E, A DISTANCE OF 351.70 FEET; THENCE S89°54'54"E, A DISTANCE OF 63.00 FEET TO THE POINT OF BEGINNING.

SAID LOT 10B, MAYFAIR 2ND ADDITION REPLAT ONE, CONTAINS AN AREA OF 487,126 SQUARE FEET OR 11.183 ACRES, MORE OR LESS.

#97054.4  
8-10-2000

E & A CONSULTING GROUP, INC.  
12001 "Q" STREET  
OMAHA, NEBRASKA 68137

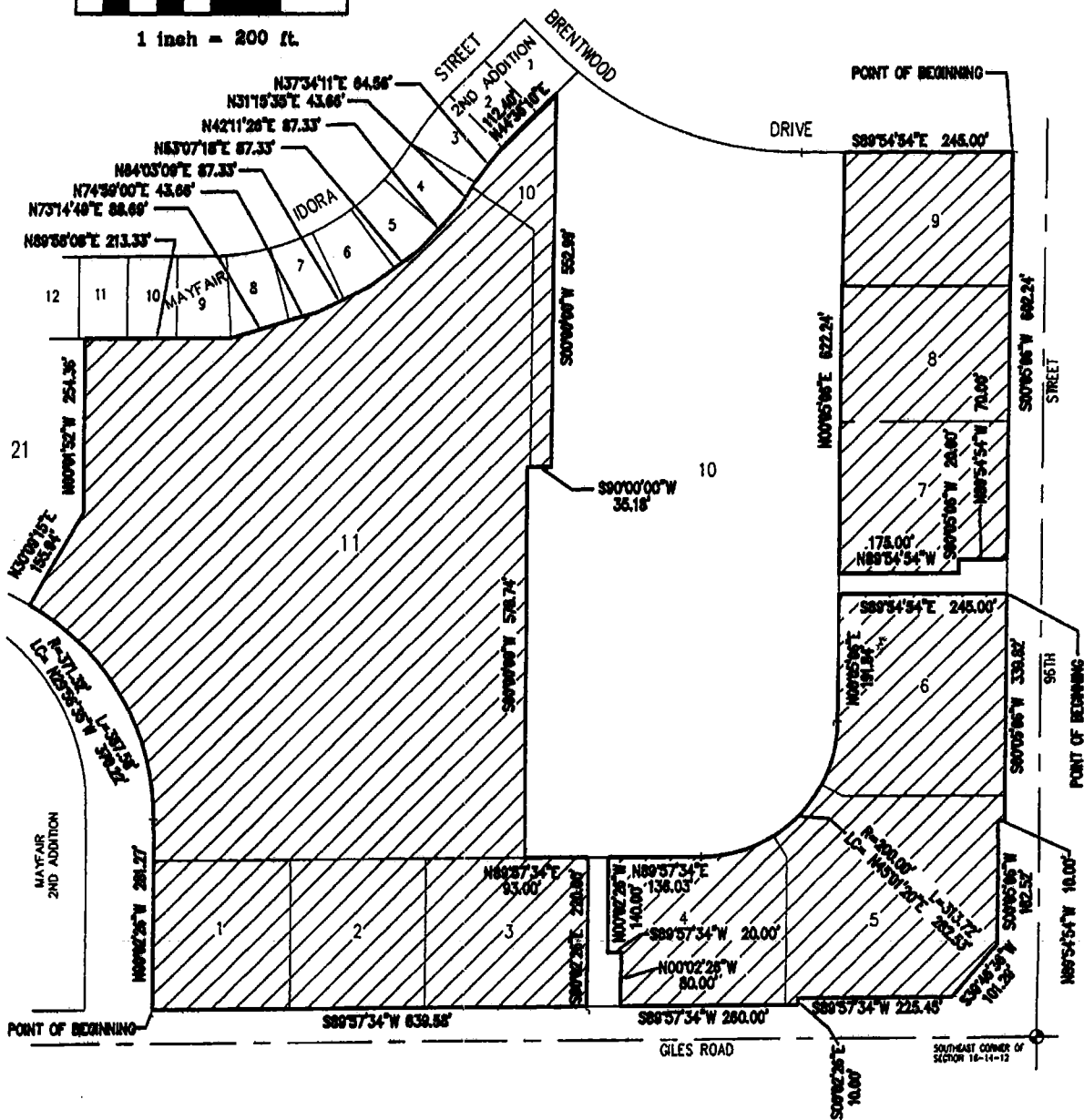
2000-21199Aa

# EXHIBIT 2 DEVELOPERS SITE

LEGAL DESCRIPTION: SEE ATTACHED SHEET.



1 inch = 200 ft.



E & A CONSULTING GROUP, INC.  
 12001 "Q" STREET  
 OMAHA, NEBRASKA 68137  
 PHONE (402) 895-4700

DATE: 8-15-2000  
 JOB #97054.04

2000-21199Ab

LEGAL DESCRIPTION  
DEVELOPERS SITE

PART OF LOT 7, MAYFAIR 2ND ADDITION REPLAT ONE; AND ALSO TOGETHER WITH ALL OF LOTS 8 AND 9, SAID MAYFAIR 2ND ADDITION REPLAT ONE, A SUBDIVISION LOCATED IN THE SE1/4 OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 9, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BRENTWOOD DRIVE AND THE WEST RIGHT-OF-WAY LINE OF 96TH STREET; THENCE S00°05'06"W (ASSUMED BEARING) ALONG THE EAST LINE OF SAID LOTS 9, 8 AND 7, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING SAID WEST RIGHT-OF-WAY LINE OF 96TH STREET, A DISTANCE OF 602.24 FEET; THENCE N89°54'54"W, A DISTANCE OF 70.00 FEET; THENCE S00°05'06"W, A DISTANCE OF 20.00 FEET; THENCE N89°54'54"W, A DISTANCE OF 175.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 7, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING ON THE EAST LINE OF LOT 10, SAID MAYFAIR 2ND ADDITION REPLAT ONE; THENCE N00°05'06"E ALONG SAID EAST LINE OF LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE WEST LINE OF SAID LOTS 7, 8 AND 9, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 622.24 FEET TO THE NORTHWEST CORNER OF SAID LOT 9, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE OF BRENTWOOD DRIVE; THENCE S89°54'54"E ALONG SAID SOUTH RIGHT-OF-WAY LINE OF BRENTWOOD DRIVE, SAID LINE ALSO BEING THE NORTH LINE OF SAID LOT 9, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 245.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 151,049 SQUARE FEET OR 3.467 ACRES, MORE OR LESS.

AND ALSO TOGETHER WITH

PART OF LOT 4, MAYFAIR 2ND ADDITION REPLAT ONE; AND ALSO TOGETHER WITH ALL OF LOTS 5 AND 6, SAID MAYFAIR 2ND ADDITION REPLAT ONE, A SUBDIVISION LOCATED IN THE SE1/4 OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 6, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 7, SAID MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF 96TH STREET; THENCE S00°05'06"W (ASSUMED BEARING) ALONG SAID WEST RIGHT-OF-WAY LINE OF 96TH STREET, SAID LINE ALSO BEING THE EAST LINE OF SAID LOTS 6 AND 5, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 339.82 FEET; THENCE N89°54'54"W ALONG SAID WEST RIGHT-OF-WAY LINE OF 96TH STREET, SAID LINE ALSO BEING SAID EAST LINE OF LOT 5, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 10.00 FEET; THENCE S00°05'06"W ALONG SAID WEST RIGHT-OF-WAY LINE OF 96TH STREET, SAID LINE ALSO BEING SAID EAST LINE OF LOT 5, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 182.52 FEET; THENCE S39°46'36"W ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID 96TH STREET, SAID LINE ALSO BEING THE EASTERLY LINE OF SAID LOT 5, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 101.29 FEET TO THE POINT OF INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE OF 96TH STREET AND THE NORTHERLY RIGHT-OF-WAY OF GILES ROAD, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 5, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE

2000-21199Ac

S89°57'34"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, SAID LINE ALSO BEING THE SOUTHERLY LINE OF SAID LOT 5, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 225.45 FEET; THENCE S00°02'26"E ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, SAID LINE ALSO BEING SAID SOUTHERLY LINE OF LOT 5, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 10.00 FEET; THENCE S89°57'34"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, SAID LINE ALSO BEING SAID SOUTHERLY LINE OF LOT 5, MAYFAIR 2ND ADDITION REPLAT ONE AND THE SOUTHERLY LINE OF SAID LOT 4, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 260.00 FEET; THENCE N00°02'26"W, A DISTANCE OF 80.00 FEET; THENCE S89°57'34"W, A DISTANCE OF 20.00 FEET; THENCE N00°02'26"W, A DISTANCE OF 140.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 4, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE SOUTHERLY LINE OF LOT 10, SAID MAYFAIR 2ND ADDITION REPLAT ONE; THENCE EASTERLY AND NORTHERLY ALONG THE SOUTHERLY AND EASTERLY LINE OF SAID LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE NORTHERLY AND WESTERLY LINE OF SAID LOTS 4, 5 AND 6, MAYFAIR 2ND ADDITION REPLAT ONE ON THE FOLLOWING DESCRIBED COURSES; THENCE N89°57'34"E, A DISTANCE OF 136.03 FEET; THENCE NORTHERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 200.00 FEET, A DISTANCE OF 313.72 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N45°01'20"E, A DISTANCE OF 282.53 FEET; THENCE N00°05'06"E, A DISTANCE OF 191.08 FEET TO THE NORTHWEST CORNER OF SAID LOT 6, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 7, SAID MAYFAIR 2ND ADDITION REPLAT ONE; THENCE S89°54'54"E ALONG THE NORTH LINE OF SAID LOT 6, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE SOUTH LINE OF SAID LOT 7, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 245.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 222,139 SQUARE FEET OR 5.100 ACRES, MORE OR LESS.

AND ALSO TOGETHER WITH

PART OF LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE, AND ALSO TOGETHER WITH ALL OF LOTS 1, 2, 3 AND 11, SAID MAYFAIR 2ND ADDITION REPLAT ONE, A SUBDIVISION LOCATED IN THE SE1/4 OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID 1, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF GILES ROAD AND THE EAST RIGHT-OF-WAY LINE OF 99TH STREET; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 1, MAYFAIR 2ND ADDITION REPLAT ONE AND THE WESTERLY LINE OF SAID LOT 11, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING SAID EASTERLY RIGHT-OF-WAY LINE OF 99TH STREET, AND ALSO THE EASTERLY LINE OF LOT 21, MAYFAIR 2ND ADDITION, A SUBDIVISION LOCATED IN SAID SE1/4 OF SECTION 16 ON THE FOLLOWING DESCRIBED COURSES; THENCE N00°02'26"W (ASSUMED BEARING), A DISTANCE OF 281.27 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 371.32 FEET, A DISTANCE OF 387.58 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N29°56'35"W, A DISTANCE OF 370.22 FEET; THENCE N30°09'15"E, A DISTANCE OF 155.94 FEET; THENCE N00°01'52"W, A DISTANCE OF 254.36 FEET TO A POINT ON THE SOUTH LINE OF LOT 11, SAID MAYFAIR 2ND ADDITION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT 21, MAYFAIR 2ND ADDITION, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID LOT 11, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE EASTERLY AND NORTHERLY ALONG THE NORTHERLY LINE OF SAID LOT 11, MAYFAIR 2ND ADDITION REPLAT ONE AND THE WESTERLY

2000-21199Ad

LINE OF SAID LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE SOUTHERLY LINE OF LOTS 11 THRU 1, INCLUSIVE, SAID MAYFAIR 2ND ADDITION ON THE FOLLOWING DESCRIBED COURSES; THENCE N89°58'08"E, A DISTANCE OF 213.33 FEET; THENCE N73°14'49"E, A DISTANCE OF 88.69 FEET; THENCE N74°59'00"E, A DISTANCE OF 43.66 FEET; THENCE N64°03'09"E, A DISTANCE OF 87.33 FEET; THENCE N53°07'18"E, A DISTANCE OF 87.33 FEET; THENCE N42°11'26"E, A DISTANCE OF 87.33 FEET; THENCE N31°15'35"E, A DISTANCE OF 43.66 FEET; THENCE N37°34'11"E, A DISTANCE OF 64.56 FEET; THENCE N44°36'10"E, A DISTANCE OF 112.40 FEET; THENCE S00°00'00"W, A DISTANCE OF 552.99 FEET; THENCE S90°00'00"W ALONG THE WEST LINE OF SAID LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE AND THE EASTERLY EXTENSION THEREOF, SAID LINE ALSO BEING THE EAST LINE OF SAID LOT 11, MAYFAIR 2ND ADDITION REPLAT ONE AND THE EASTERLY EXTENSION THEREOF, A DISTANCE OF 35.18 FEET; THENCE S00°00'00"W ALONG SAID EAST LINE OF LOT 11, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING SAID WEST LINE OF LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 578.74 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 3, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 11, MAYFAIR 2ND ADDITION REPLAT ONE; THENCE N89°57'34"E ALONG THE SOUTH LINE OF SAID LOT 10, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE NORTH LINE OF SAID LOT 3, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 93.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 3, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 4, SAID MAYFAIR 2ND ADDITION REPLAT ONE; THENCE S00°02'26"E ALONG THE EAST LINE OF SAID LOT 3, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE WEST LINE OF SAID LOT 4, MAYFAIR 2ND ADDITION REPLAT ONE, A DISTANCE OF 220.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 3, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 4, MAYFAIR 2ND ADDITION REPLAT ONE, SAID POINT ALSO BEING ON SAID NORTH RIGHT-OF-WAY LINE OF GILES ROAD; THENCE S89°57'34"W ALONG THE SOUTH LINE OF SAID LOTS 3, 2 AND 1, MAYFAIR 2ND ADDITION REPLAT ONE, SAID LINE ALSO BEING SAID NORTH RIGHT-OF-WAY LINE OF GILES ROAD, A DISTANCE OF 639.58 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 696,410 SQUARE FEET OR 15.987 ACRES, MORE OR LESS.

SAID ABOVE THREE TRACTS OF LAND CONTAINS A TOTAL AREA OF 1,069,598 SQUARE FEET OR 24.555 ACRES, MORE OR LESS.

#97054.4  
8-11-2000

E & A CONSULTING GROUP, INC.  
12001 "Q" STREET  
OMAHA, NEBRASKA 68137

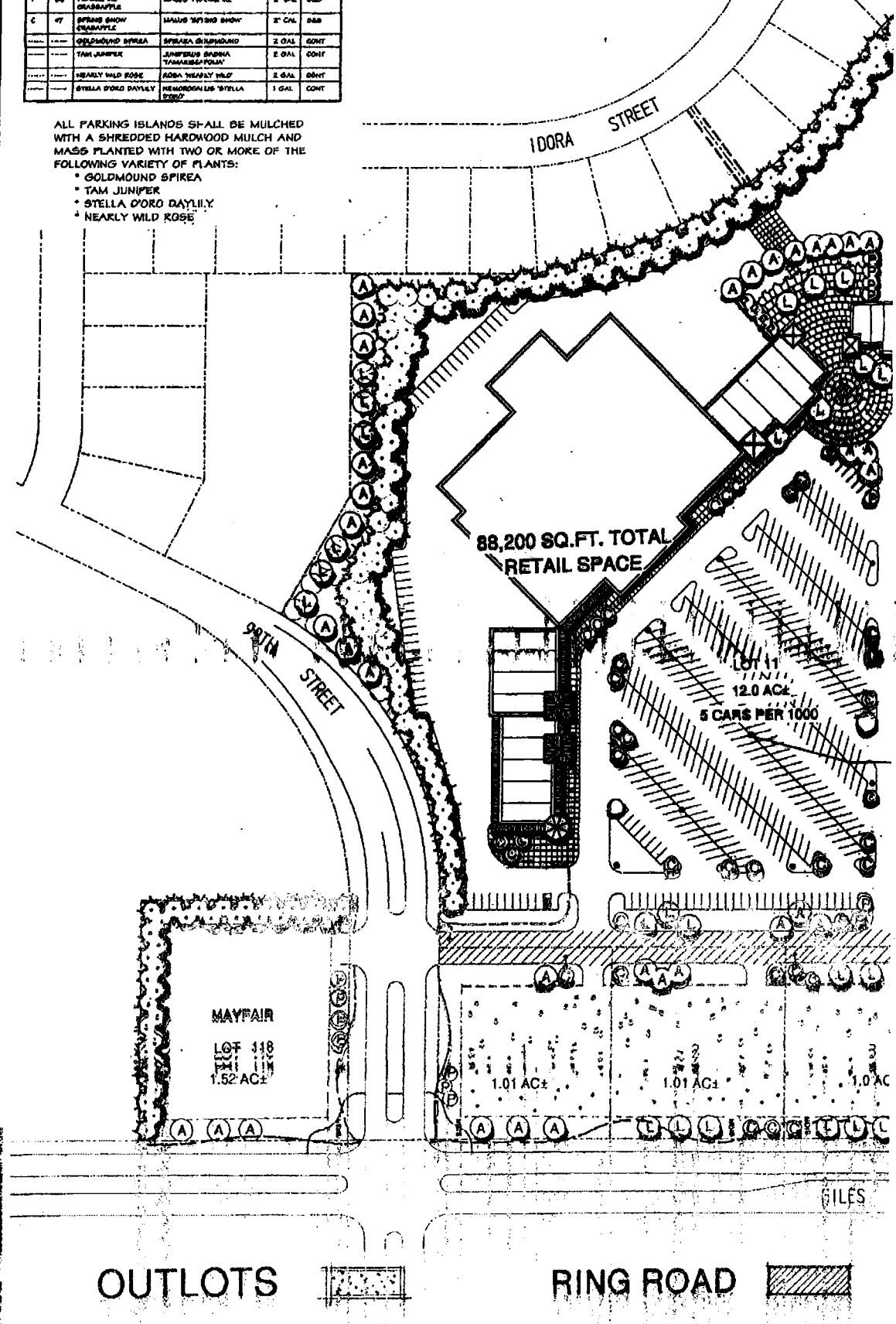
2000-21199 Ac

### PLANT MATERIAL LEGEND

SYM	QTY	COMMON NAME	BOTANICAL NAME	SIZE	METHOD
B	180	BAGTCH PINE	PINUS STYRENSIS	8'-7"	BAR
B	150	COLORADO SPRUCE	PICEA PUMILANA	8'-7"	BAR
A	72	AUTUMN PURPLE ASH	FRAXINUS PENNSYLVANICA 'AUTUMN PURPLE'	2" CAL	BAR
L	72	SNYLERE LOGSPT	OLESTRA 'SANTHOS SYLVERE'	2" CAL	BAR
F	84	FRASERIE GRABAPPLE	MAHUS 'FRASERIE'	2" CAL	BAR
C	47	SPIREAS SNOW GRABAPPLE	MAHUS 'SPRING SNOW'	2" CAL	BAR
.....	.....	GOLDMOUND SPIREA	SPIREA GILGIBRAND	2 GAL	CONT
.....	.....	TAM JUNIPER	JUNIPERUS SPARNA 'TAMMINGS-POLAR'	2 GAL	CONT
.....	.....	NEARLY WILD ROSE	ROSA 'NEARLY WILD'	2 GAL	CONT
.....	.....	STELLA D'ORO DAYLILY	HEMORODIUS 'STELLA D'ORO'	1 GAL	CONT

ALL PARKING ISLANDS SHALL BE MULCHED WITH A SHREDDED HARDWOOD MULCH AND MASS PLANTED WITH TWO OR MORE OF THE FOLLOWING VARIETY OF PLANTS:

- GOLDMOUND SPIREA
- TAM JUNIPER
- STELLA D'ORO DAYLILY
- NEARLY WILD ROSE



OUTLOTS

RING ROAD



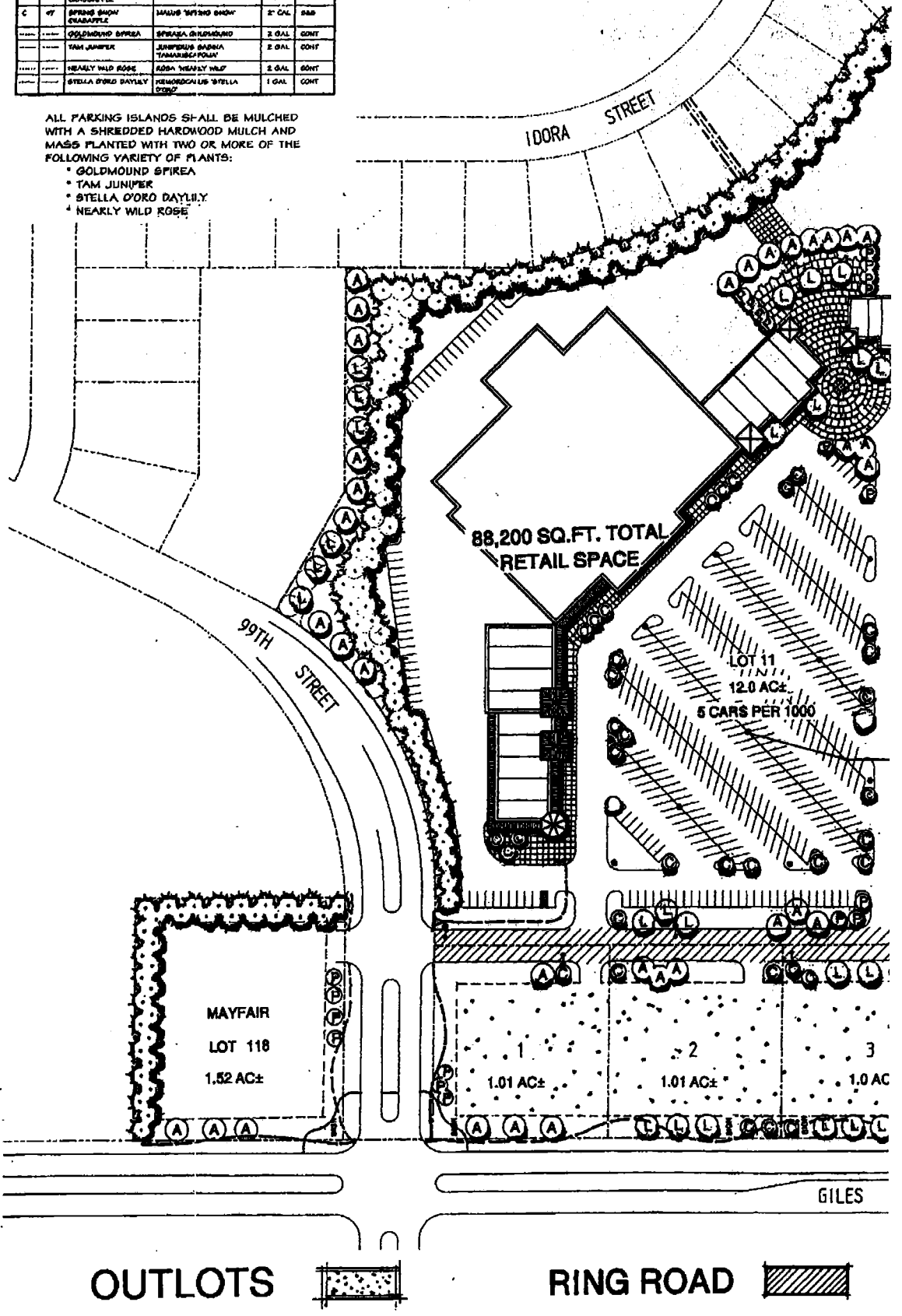
2000-21199 Ac

### PLANT MATERIAL LEGEND

SYM	QTY	COMMON NAME	BOTANICAL NAME	SIZE	METHOD
B	180	BUDGET PINE	PRUNUS STYLOSIS	6'-7'	BAR
B	180	COLORADO SPRUCE	PICEA PUMILANS	6'-7'	BAR
A	72	AUTUMN PURPLE ASH	FRAXINUS PENNSYLVANICA 'AUTUMN PURPLE'	2" CAL	BAR
L	72	BRYLARE LOGS	QUERCUS VIREANTIS 'BRYLARE'	2" CAL	BAR
F	84	FRASER FERN CRABAPPLE	MALUS 'FRASER'	2" CAL	BAR
C	47	SPRING BLOWN CRABAPPLE	MALUS 'SPRING BLOWN'	2" CAL	BAR
---	---	GOLDMOUND SPIREA	SPIRAEA 'GOLDMOUND'	2 GAL	CONT
---	---	TAM JUNIPER	JUNIPERUS BARBA 'TAMARISC-FOLIY'	2 GAL	CONT
---	---	NEARLY WILD ROSE	ROSA 'NEARLY WILD'	2 GAL	CONT
---	---	STELLA D'ORO DAYLILY	HEMORODONUS 'STELLA D'ORO'	1 GAL	CONT

ALL PARKING ISLANDS SHALL BE MULCHED WITH A SHREDDED HARDWOOD MULCH AND MASS PLANTED WITH TWO OR MORE OF THE FOLLOWING VARIETY OF PLANTS:

- \* GOLDMOUND SPIREA
- \* TAM JUNIPER
- \* STELLA D'ORO DAYLILY
- \* NEARLY WILD ROSE



OUTLOTS

RING ROAD

GILES

MAYFAIR  
LOT 118  
1.52 AC±

88,200 SQ. FT. TOTAL  
RETAIL SPACE

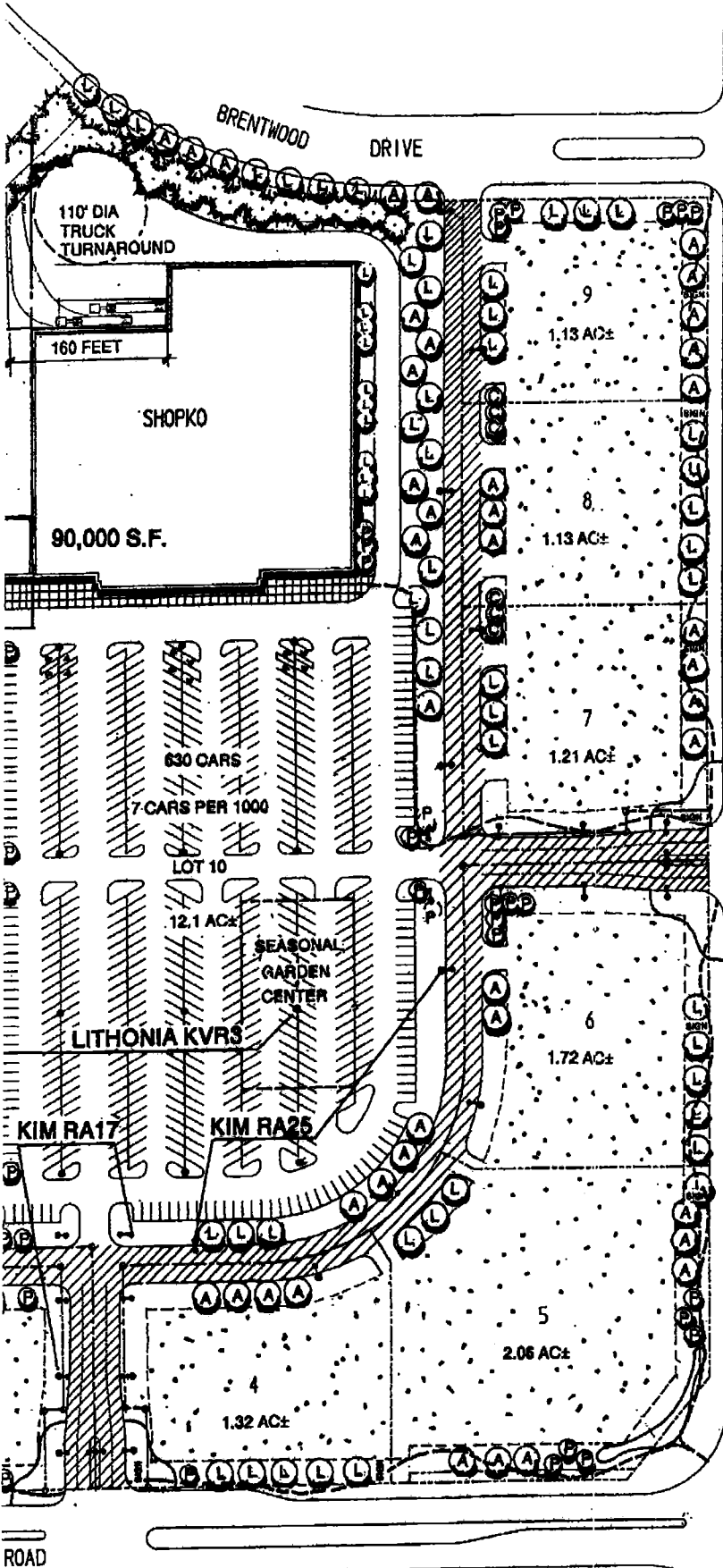
LOT 11  
12.0 AC±  
5 CARS PER 1000

1.01 AC±

1.01 AC±

1.0 AC

2000-21199AF



MASTER PLAN DOCUMENTS

AUGUST 10, 2000

MAYFAIR COMMONS

96TH STREET AND GILES ROAD

LA VISTA, NEBRASKA

*Purdy & Stone*  
 ARCHITECTS  
 1025 North 153rd Street, Suite 200, Omaha, Nebraska 68154 (402) 494-1400

PROJECT NO:	_____
DATE:	_____
REVISION:	_____
DATE:	_____

EXHIBIT 3

2000-21199 A9

MAYFAIR COMMONS					
LOT #	LOT FRONTAGE (Feet)	LESS 50' (For 225' side setbacks)	BUILDING FRONTAGE	LOT FRONTAGE - 5 X 1.5 = PERMITTED SIGNAGE	SIGNAGE ALLOCATION
1	200'	150'		225 S.F.	275 S.F.
2	200'	150'		225 S.F.	275 S.F.
3	210'	160'		240 S.F.	275 S.F.
4	260'	210'		310 S.F.	275 S.F.
5	320'	270'		405 S.F.	350 S.F.
6	300'	250'		375 S.F.	275 S.F.
7	230'	180'		270 S.F.	275 S.F.
8	200'	150'		225 S.F.	275 S.F.
9	200'	150'		225 S.F.	275 S.F.
10	420'		Max. 400'	400 S.F.	917 S.F.
11	420'		725'	1088 S.F.	1599 S.F.
Mayfair 118	240'	190'		285 S.F.	275 S.F.

TOTAL PERMIT  
TOTAL ALLOCA

2000-21199 Ah

**Site and Building Signage**

- A. The sign budget is as shown for each lot including lot 118 of Mayfair addition.
- B. Each outlot is allowed one monument sign, each sign shall be a maximum of 8' tall and 16' long and 4' wide and should emulate the sign as shown herein.
- C. Shopko shall be allowed one sign as shown on the elevation on the east facing facade.

# SIGN BUDGET

Permitted Signage (S.F.)	4273
<u>25% Signage Bonus (S.F.)</u>	<u>1068</u>
Total Permitted Signage (S.F.)	5341
Total Signage Allocation Use (S.F.)	5341

**TRANSFER OF SIGN BUDGET**

The common sign plan bonus of 1068 square feet (as allowed by the City of LaVista) may be allocated to any individual lot or lots as determined, from time to time, by the Developer. The Developer shall provide the City of LaVista with a list of any such allocations as they are made from time to time.

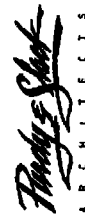
**ED SIGNAGE ON THIS PROJECT = 5341 S.F.**

**ED SIGNAGE ON THIS PROJECT = 5341 S.F.**

## EXHIBIT 4

**AUGUST 22, 2000**

**MAYFAIR COMMONS  
96TH STREET AND GILES ROAD  
LAVISTA, NEBRASKA**



1965 North 115th Street, Suite 200  
Omaha, Nebraska 68154 (402) 496-4488

PROJECT NO:	_____
DATE:	_____
REVISIONS:	_____
△	DATE
_____	_____
_____	_____
_____	_____

**EXHIBIT 5**

**ASSOCIATION DOCUMENT**

**OUTLINE OF MAYFAIR COMMONS LANDOWNERS ASSOCIATION**

In connection with the Declaration of Cross-Easements and Covenants and Restrictions Affecting Land, by and between ShopKo Stores, Inc., a Wisconsin corporation ("Company"), and RKS Family Investments, Ltd., a Nebraska limited partnership ("Developer") to which this Outline is attached and is a part (this "Declaration"), Developer shall form a Nebraska nonprofit corporation to be known as the Mayfair Commons Landowners Association, Inc. for the purposes of, among other things, preserving the values and amenities of the Entire Parcel in regard to which the Association will be delegated certain powers of administering and maintaining that part of the Common Area designated and depicted on the Site Plan as the ingress and egress easement areas throughout the Entire Parcel, and storm sewer, street-lighting, general shopping center identification signs, and any landscaping thereon (the "Ring Road"), and with respect to the rights and obligations regarding the Ring Road enforcing the Declaration, collecting, disbursing and enforcing the Assessments as provided below; subject to the powers, rights and duties reserved to the Owners as set forth in the Declaration.

**ARTICLE I**  
**DEFINITIONS**

In addition to terms defined elsewhere in this document and in the Declaration, the following terms shall have the meanings ascribed to such terms as set forth below:

1.01 **Articles.** "Articles" shall mean the Articles of Incorporation of the Association, as they may from time to time be amended or restated, which shall be filed with the Nebraska Secretary of State.

1.02 **Assessments.** "Assessments" shall mean all regular assessments described in Section 4.5, special assessments described in Section 4.6, and reimbursement assessments described in Section 4.7.

1.03 **Association.** "Association" shall mean and refer to the Nebraska nonprofit corporation (and its successors and assigns) organized by Developer to exercise the rights, powers and duties set forth in this Declaration. Developer intends to name the Association the "Mayfair Commons Landowners Association, Inc."

1.04 **Board or Board of Directors.** "Board" or "Board of Directors" may be used interchangeably herein and shall mean and refer to the Board of Directors of the Association.

1.05 **Bylaws.** "Bylaws" shall mean the Bylaws of the Association, as they may from time to time be amended or restated.

1.06 **Improvements.** "Improvements" shall mean all slope and grade alterations, lighting, roads, walkways, curbs, gutters, storm drains, drainageways, utilities, driveways,

2000-2199 A1

plantings, planted trees and shrubs, sidewalks, and all other structures, land development or landscaping improvements of every type and kind within the Ring Road area shown on the Site Plan.

1.07 Member. "Member" shall mean and refer to every person or entity who is a Member of the Association pursuant to Article III.

1.08 Mortgage. "Mortgage" means any instrument recorded or filed in the Records encumbering a Site or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, including, without limitation, a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in the Entire Parcel (such as leasehold mortgage).

1.09 Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust.

1.10 Net Acre. For the purposes of establishing the number of votes for each Site and the assessments for each Site, the term "Net Acre" shall mean and refer to an acre of land which does not include any area designated as a public or private right-of-way.

1.11 Period of Developer Control. The "Period of Developer Control" shall commence with the recording of this Declaration and shall continue as long as Developer owns fee simple title to at least fifty percent (50%) of the Developer's Site as determined by square footage or has a lien or encumbrance on any such property within the Entire Parcel, unless and until Developer elects, in its discretion, to transfer, relinquish and/or surrender all of its rights and obligations in this Declaration to the Association.

1.12 Prime Rate. "Prime Rate" shall mean the prime commercial lending rate announced by First National Bank of Omaha (or any successor) as its "prime rate", as the same may be changed from time to time. If for any reason any such institution shall at any time discontinue quoting or charging a prime rate in the manner set forth above, the Association shall, in the exercise of reasonable judgment, substitute another means of determining the annual lending rate of interest charged by major commercial banks in the Omaha metropolitan area on 90-day unsecured commercial loans to their most creditworthy borrowers, and the rate so determined shall thereafter be the Prime Rate as defined herein.

## ARTICLE II THE ASSOCIATION

2.1 Formation of Association. The Association shall be a nonprofit corporation formed under the laws of the State of Nebraska, charged with the duties and empowered with the rights prescribed by law and set forth herein and in the Bylaws and in the Articles. The purpose of the Association shall be limited to operating and maintaining the ingress and egress right-of-way easement throughout the Entire Parcel known as the "Ring Road" and storm sewer, street-lighting, general shopping center identification signs and any landscaping thereon. Subject to the

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foregoing, upon the incorporation of the Association by Developer, the Association shall be charged with the duties and vested with the powers set forth in the Articles, the Bylaws and this Declaration.

2.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board shall adopt Bylaws to govern the affairs of the Board and the Association. Except as otherwise provided herein or in the Articles or Bylaws, all acts of the Association shall be made by a majority of the members of the Board.

2.3 Powers. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Nebraska concerning nonprofit corporations, subject only to such limitations on the exercise of such powers as are set forth in the Articles, Bylaws and this Declaration. It shall have the power to do any lawful acts to further its purpose that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any act that may be necessary, or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

2.3.1 commence and maintain actions or restrain and enjoin any actual or threatened breach of this Declaration with respect to the rights and obligations regarding the Ring Road and enforce by mandatory injunction or otherwise any of the provision of this Declaration with respect to the rights and obligations regarding the Ring Road;

2.3.2 levy assessments and perfect and enforce liens as hereinafter provided;

2.3.3 enter into contracts to perform the duties set forth herein, including, without limitation, the maintenance and repair of the Common Areas and enforce said contracts;

2.3.4 adopt, amend and repeal rules and regulations with respect to the Ring Road as its deems reasonable;

2.3.5 enter onto the Sites to fulfill its duties pursuant to this Declaration;

2.3.6 enter into contracts with Owners or the City or such other governing authority regarding the maintenance of landscaped areas, parking areas or other areas;

2.3.7 purchase such insurance as the Board deems necessary or appropriate.

2.4 Duties of Association: Maintenance of Ring Road. The Association shall maintain, repair, operate, replace and otherwise keep the Ring Road in good repair in its reasonable judgment and discretion. The maintenance shall include, without limitation, the following:

- (1) Maintaining road surfaces in a level, smooth and evenly-covered

2000-21199 AI

condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

- (2) 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;
- (3) Inspecting, maintaining, repairing and replacing any storm drainage system installed along the roadway;
- (4) Operating, inspecting, maintaining, repairing and replacing the private street-lighting installed along the roadway.
- (5) Inspecting, maintaining, repairing and replacing any general shopping center identification signs located within the Ring Road easement area.

2.5 Disclaimer of Liability. No member of the Board, nor any officer or employee of the Association or any manager, or the Developer, or any agent employee or officer of Developer, shall be personally liable to any Owner, or to any Lessee, contract purchaser, or other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may possessed by such person, acted in good faith without willful or intentional misconduct.

2.6 Articles and Bylaws. Neither the Articles nor the Bylaws shall be amended or interpreted in a manner that is inconsistent with this Declaration.

### ARTICLE III ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1 Memberships. Each Owner, including the Developer, shall have one membership rounded off to the nearest Net Acre for each Net Acre owned by such Owner within its Site; provided, however, that any Owner owning an Outlot containing less than one acre shall have one membership. For example, an Owner of 6.3 Net Acres shall have six memberships, and the Owner of 1.8 Net Acres shall have two memberships and the Owner of 3.5 Net Acres shall have four memberships. The number of Net Acres in a Site (and the number of memberships attributable to each Site) are set forth on the Site Plan. In the event of (i) a subdivision or resubdivision of the Developer's Site, Company Site, or any Outlot or portion thereof, the revised number of Net Acres and the number of memberships attributable thereto will change from that set forth on the Site Plan, and the Site Plan shall be amended accordingly by the Developer and/or resolution of the Board of Directors.

3.2 Transfer of Memberships. An Owner shall, upon becoming the record Owner of Developer's Site, Company's Site or any Outlot, automatically become a Member of the Association and shall remain a Member thereof until such time as its ownership ceases for any reason, at which time its membership in the Association shall automatically cease. Such membership shall be appurtenant to and pass with the ownership of any such Site. The membership shall not be transferred, pledged or alienated in any way, except as appurtenant to a



2000-21199 Am

transfer of ownership of a Site. Any attempt to transfer a membership except as appurtenant to the transfer of ownership of a Site shall be void and shall not be reflected upon the Association's books and records.

3.3 Voting; Multiple Owners; Appointment of Agent. Each Owner shall have one vote for each membership owned as provided in Section 3.1 above. All voting pursuant to the terms of this Declaration shall be made in accordance with the provisions of this Section 3.3. Each vote must be cast as a single unit. If an Owner consists of more than one Person, then all persons constituting an Owner of such Site shall, simultaneously with or immediately after their acquisition of such Site, deliver to the Association a written instrument appointing one Person as the agent for all Persons constituting the Owner of such Site, which agent shall thereupon receive notices of Assessment and other notices, demands, cast votes hereunder, and take any and all actions required or permitted to be taken by an Owner under the terms of this Declaration. An Owner may change its designated agent by written notice to the Association as set forth above, which change shall be effective only upon actual receipt of such notice by the Association. No change in the ownership of a Site shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. If more than one Person casts or attempts to cast a vote for a particular Site, all such votes shall be deemed void.

3.4 Initial Board of Directors. The initial Board of Directors of the Association shall consist of not less than three Directors and shall be appointed by the Developer upon the incorporation of the Association; provided, however, that at least one Director shall be a representative of the Company. Subject to the foregoing, during the Period of Developer Control, the Developer shall have the sole right, in its absolute discretion, to appoint and remove the Directors of the Board; however, the Developer may temporarily or permanently relinquish its right to appoint or remove some or all of the Directors during Developer control period. If the Developer relinquishes its appointment rights, the Members (including the Developer) shall then elect all Directors as provided in the Bylaws.

3.5 Subsequent Board of Directors. After the expiration of the Period of Developer Control, the Members (including the Developer) shall elect the Directors as provided in the Bylaws; provided, however, that at least one Director shall be a representative of the Company, and the Bylaws may provide for staggered terms and lengths of terms for Directors chosen by the Association Members which are different than those initially set forth in this Declaration. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members.

3.6 Administration and Compliance. If the Articles or Bylaws are in any way inconsistent with the Declaration, then this Declaration shall prevail and control. Each Owner and Occupant of a Site shall comply with, and shall cause their respective Permittees to comply with the provisions of this Declaration, the Articles and Bylaws, and rules of the Association, as amended from time to time, and failure to so comply shall be grounds for (a) action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of this Declaration or by law, each of which remedies shall be cumulative and in additions to any other available remedy.

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ARTICLE IV  
FUNDS AND ASSESSMENTS

4.1 Creation of Lien: Personal Obligation for Assessments. Developer and Company, for each Site owned within Entire Parcel, hereby covenant, and each successive Owner, by acceptance of a deed therefor, whether or not expressed in such deed, is deemed to covenant and agree to pay to the Association the Assessments which the Board is authorized to levy pursuant to the provisions of this Declaration. All Assessments, which shall include all late charges, interest, costs and reasonable attorneys' fees due with respect thereto, shall be a charge on the land and shall be secured by a continuing lien upon the Site against which each Assessment is levied.

4.2 Purpose of Assessments. The Assessments shall be used for the improvement or operation, and maintenance of the Ring Road and fulfill the duties set forth in Section 2.4; to reimburse the Association for the costs incurred in bringing an Owner into compliance with provisions related to the Ring Road in this Declaration to reimburse the Association for amounts which may be paid for the maintenance, repair, modification and/or replacement of any shopping center identification sign located in the Ring Road easement area.

4.3 Budgets and Financial Statements of the Association. The following financial information shall be regularly prepared and distributed by the Board to all Members of the Association:

4.3.1 Within seventy-five (75) days after the end of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, and distribute to all Members of the Association an operating budget for the next fiscal year setting forth the estimated revenues and expenses for said fiscal year and the total cash reserves of the Association currently available for expenditures.

4.3.2 After the close of the Association's fiscal year, the Board shall prepare and distribute to each Member a balance sheet and a statement of actual expenses and income for the preceding fiscal year.

4.4 Accounts. The Association shall establish and maintain one or more operating accounts into which the Board shall deposit all funds paid to the Association as Assessments or otherwise received by the Association as provided in this Declaration. All funds shall be held in trust by the Association for the use and benefit of its Members.

4.5 Regular Assessments.

4.5.1 Purpose. Regular assessments shall be used for all expenses incurred by the Association for (i) the administration, operation, maintenance, repair and replacement of the Ring Road and any improvements located therein, including private street-lighting, snow removal, street sweeping and insurance; (ii) maintaining the landscaping in the Ring Road area as shown on the Site Plan, and (iii) carrying out the duties, rights and obligations of the Association.

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4.5.2 Date of Commencement of Regular Assessments. The regular assessments provided for in this Article IV shall commence as to all Sites on the first day of the month following the later of (i) the incorporation of the Association, or (ii) the conveyance of the first Site to an Owner; provided, however, that Developer may, at its option, delay the start of regular assessments so long as Developer elects to perform all maintenance and other obligations of the Association at its sole cost and expense. The first regular assessment shall be adjusted according to the number of months remaining in the fiscal year.

4.5.3 Budget. Within sixty (60) days after the end of each fiscal year of the Association, beginning with the first full fiscal year after regular assessments commence, the Board shall meet for the purpose of establishing the regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review an operating statement showing income and expenses for the preceding fiscal year and a preliminary budget, any written comments received from any Member, and any other information available to it and, after making any adjustments that the Board deems appropriate, without a vote of the Members of the Association, shall establish an operating budget and the regular assessment for the forthcoming year.

4.5.4 Payment of Assessments. Regular assessments shall be due and payable by the Owners to the Association in four equal quarterly installments on or before the first day of April, July, October and January, or in such other manner as the Board shall designate.

4.5.5 Failure to Fix Regular Assessments. Failure by the Board to fix regular assessments hereunder before the expiration of any fiscal year shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the Assessments, or any installment thereof, for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

#### 4.6 Special Assessments

4.6.1 Purpose. Special assessments may be levied by the Board from time to time during any fiscal year if the Board determines that the estimated total amount of funds necessary to defray the expenses of the Association for a given fiscal year is or will become inadequate to meet expenses due to unanticipated delinquencies or costs and fees incurred to enforce this Declaration, costs of construction or unexpected repairs, replacements or reconstruction of the Ring Road, including the storm sewer and street lighting.

4.6.2 Budgeting. The Board shall determine the approximate amount necessary to defray the expenses set forth in Subsection 4.6.1 above, and,

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if the amount is approved by a majority vote of the Board, it shall become a special assessment.

4.6.3 Time and Manner of Payment. The Board may, in its discretion, prorate a special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Site. Special assessments shall be due and payable within ten (10) days after a Member receives written notice from the Board specifying the amount of the special assessment, unless the Board specifies in such notice a later date of payment.

4.7 Reimbursement Assessment. The Board may levy a reimbursement assessment against any Owner who fails to comply in any respect with this Document, the Declaration provisions with respect to the Ring Road, the rules promulgated by the Board or as otherwise permitted elsewhere in this Declaration, in an amount equal to any monies expended by the Association in remedying an Owner's failure to comply under this Declaration or in the amount of a fine or penalty imposed pursuant to this Declaration. All such reimbursement assessments shall be paid to the Association within five (5) days after demand.

4.8 Rate of Assessment. All Assessments (other than a reimbursement assessment levied against an Owner pursuant to Section 4.7) shall be fixed at a uniform rate and levied based upon the proportion of Net Acres owned by each Owner in relationship to the total Net Acres in the Entire Parcel at the time the Assessment is levied or imposed, as reflected in the records of the Association.

4.9 Estoppel Certificate. The Board, on not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a written statement certifying whether or not, to the knowledge of the Association with no duty to investigate or make further inquiry, a particular Owner is in default as to its Site under the provisions of this Declaration, and further stating the dates to which installments of Assessments have been paid as to such Site. Any such certificate may be relied on by a prospective purchaser of the Site or a Mortgagee, but reliance on such certificate shall not extend to any default (except one involving the payment of Assessments) of which the signer had no actual knowledge.

## ARTICLE V COLLECTION OF ASSESSMENTS; ASSESSMENT LIENS

5.1 Right to Enforce. The right to collect and enforce Assessments, including all related interest, late charges, costs and fees, is vested in the Board acting for and on behalf of the Association. The Board, or its authorized representative, can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may enforce the continuing lien against the Owner's Site by judicial foreclosure proceedings. Any suit to recover a money judgment for unpaid Assessments, together with all other amounts described in this Article V, may be maintainable with or without foreclosing or waiving the lien rights.

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5.2 Notice of Default: Interest: Late Charges: Creation of Lien. Failure to make payment of any Assessment or installment thereof related to any Site on or before the due date shall constitute a default and all amounts that are delinquent shall bear interest at a rate per annum equal to five percent (5%) more than the Prime Rate on the date of default (and shall fluctuate thereafter as the Prime Rate changes from time to time) and, if not paid within ten (10) days, a late charge of five percent (5%) (or such lower interest and late charges as the Board shall determine in its discretion) shall also be due on the outstanding balance, and all costs and expenses incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees and costs, shall be part of the Assessment past due and the full Assessment shall be a lien against such Site. The lien created pursuant to this Article shall not be foreclosed until the Board or its authorized representative has delivered written notice to the delinquent Owner or Owners not less than fifteen (15) days before commencement of any proceedings to enforce such lien, which shall set forth notice of default and a demand for payment, and unless such delinquency has not been cured in full within said 15-day period, including payment in full of all interest and late charges.

5.3 Notice of Lien: Foreclosure. Upon the giving of notice and failure to cure as provided in Subsection 5.2, the Association may record a notice of assessment lien ("Recorded Assessment Lien") against the Site of the defaulting Owner. In addition, the Association may proceed to foreclose the Recorded Assessment Lien provided for in this Article in any manner provided or permitted for the foreclosure of realty mortgages in the State of Nebraska (including the right to recover any deficiency). The Association shall not be obligated to release any Recorded Assessment Lien until all delinquent Assessments, including interest, late charges, attorneys' fees and collection costs, have been paid in full, whether or not all such amounts are set forth in the recorded notice. On becoming delinquent in the payment of any Assessments or installments thereof, each delinquent Owner shall be deemed to have absolutely assigned all rents, issues and profits of his Site to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Site at foreclosure sale and to acquire, hold, lease, mortgage and convey the Site.

5.4 No Offsets. All Assessments shall be payable in the amounts covered by the particular Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, nonuse or abandonment of a Site or a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

5.5 Priority: Subordination of Lien to First Mortgages.

5.5.1 Priority of Lien. The Assessment lien herein shall be superior to all charges, liens and encumbrances, including without limitation all mortgages and deeds of trust (except as provided in Section 2 below), federal and state tax liens, judgment liens, and liens for labor or materials, which may be hereafter imposed against any portion of the Property.

5.5.2 Subordinate to First Mortgages. Notwithstanding the foregoing, the Assessment liens provided for herein shall be subordinate and subject to the lien for governmental taxes and assessments which is deemed superior

hereto by applicable law and the lien of any first Mortgage encumbering a Site which is recorded prior to the Recorded Assessment Lien referred to in Section 5.3, but only as to advances or payments made pursuant to said Mortgage prior to the time the Recorded Assessment Lien is placed of record, and provided further that each such first Mortgage must have been made in good faith and for value and duly recorded in the office of the Sarpy County Register of Deeds prior to the recording of the Recorded Assessment Lien. The sale or transfer of any Site pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments only as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Site from any obligation to pay any Assessments thereafter becoming due nor from the lien securing any subsequent Assessments. Where the holder of a first Mortgage or other purchaser of a Site obtains title to the same as a result of foreclosure, such title holder, its successors and assigns, shall not be liable for Assessments by the Association chargeable to such Site which became due prior to the acquisition of title to such Site by such acquirer, except for the share of Assessments resulting from a reallocation of Assessments which are made against all Sites. The Assessment lien herein shall not be subordinate to the lien of any Mortgage which is junior to a first Mortgage.

**5.5.3 Transfer of Property.** After the sale of any Site, the selling Owner or Owners shall not be personally liable for any Assessment levied on its Site after the date of such transfer of ownership and written notice of such transfer, is delivered to the Association. However, except as provided in Section 5 with respect to a transfer of a Site pursuant to foreclosure proceedings, the transferred Site shall remain subject to the lien securing payment of all Assessments, including Assessments levied prior to the date of transfer. The selling Owner(s) shall also remain personally responsible for all Assessments and charges levied on his Site prior to any such transfer.

**5.5.4 Other Enforcement Measures.** In addition to the other remedies set forth in this Article, the Board shall have the right to suspend the right of any Owner who is in default on any Assessments to vote pursuant to Section 3.3 above or the Articles and the Bylaws during the period of any default.

**5.5.5 Contracts with Owners.** If the Association elects to enter into contracts with Owners for the performance of special maintenance or other services to that Owner's Site, any fees charged to that Owner for such services shall be due within ten (10) days after billing, shall be an Assessment, shall be secured by the Assessment lien, shall be the Owner's personal responsibility, and shall be enforceable as provided herein with respect to the Assessments.

**5.5.6 Damages.** Developer, the Association or any such Owner may bring a suit for damages arising from or with respect to any such default.

5.5.7 Declaratory Relief. Developer, the Association or any such Owner may bring suit for declaratory relief to determine the enforceability of any of the provisions of this Declaration.

5.5.8 Injunctive Relief; Specific Performance. It is recognized that a default hereunder may cause material injury or damage not compensable by an award of money damages and that Developer, the Association and/or any Owner shall be entitled to bring an action in equity or otherwise for a specific performance to enforce compliance with this Declaration, or for any injunctive relief to enjoin the continuance of any default or to prevent a default.

5.5.9 Fines. This Subsection may be enforced only by the Association. Upon a default that is defined in this Section, the Board may assess fines based on a schedule of fines adopted from time to time by the Board for various types of defaults that may arise under this Declaration, or as the Board may assess for defaults not covered by existing schedule of fines, provided that the Board shall assess a fine that is reasonable and appropriate under the circumstances, and provided further that the assessment of a fine shall be in addition to all other rights and remedies available hereunder.

5.5.10 Rights of Lenders. No default under or violation of any provision of this Declaration shall defeat or render invalid the lien of any Mortgage or similar instruments securing a loan made in good faith and for value with respect to the development or permanent financing, or any refinancing, of any Site or portion thereof, or any Improvement thereon. However, all of the provisions of this Declaration shall be binding upon and effective against any subsequent Owner of any Site or any portion thereof whose title is acquired by foreclosure, trustee sale deed in lieu of foreclosure or otherwise pursuant to the lien rights under any such Mortgage or similar instrument.

5.5.11 Attorneys' Fees. In any legal or equitable proceeding to determine the rights of the parties and/or to enforce or restrain the violation of this Declaration, the losing party or parties, as determined by the court for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing party or parties, as fixed by the court in such proceedings.

5.6 Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any provision of this Declaration shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation, nor shall there be construed to be a duty upon Developer or the Board a duty to take any action to enforce the provisions of this Declaration.

5.7 No Liability Regarding Enforcement. Neither Developer, the Board or any member thereof, nor their successors or assigns (if such Persons have acted in good faith, without willful or intentional misconduct) shall be liable to any Owner or Occupant by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in regard to the enforcement or failure to enforce the provisions of this Declaration, or any part hereof. Each

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Owner and Occupant agrees that it will not bring any action or suit against Developer, the Board or any member thereof, from time to time, or their successors and assigns, to recover any such damages or to seek equitable relief.

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100RA STREET

99TH STREET

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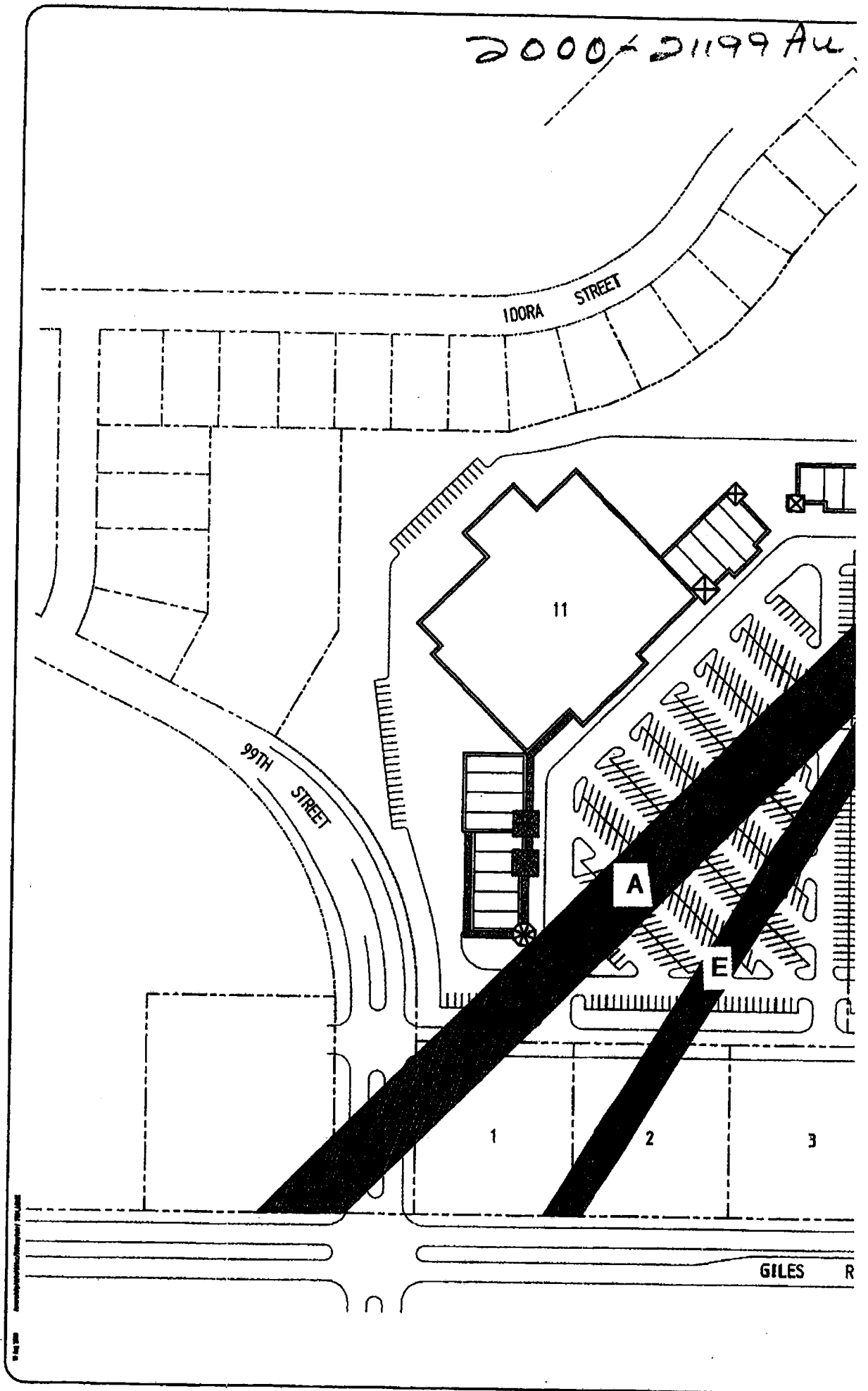
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GILES R

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BRENTWOOD DRIVE

110' D. TRUCK TURNOVER

SHOPKO

10

9

G

8

7

D

96TH STREET

6

MAYFAIR COMMONS  
96TH & GILES  
La Vista, Nebraska

NORTH



SCALE: 1" = 60'-0"

B

F

C

5

4

Exhibit 6

VISIBILITY CORRIDOR LEGEND

- A - 80' WIDE PERMANENT VISIBILITY CORRIDOR.
- B - 150' WIDE PERMANENT VISIBILITY CORRIDOR.
- C - 80' WIDE PERMANENT VISIBILITY CORRIDOR.
- D - 80' WIDE PERMANENT VISIBILITY CORRIDOR.
- E - 42' WIDE VISIBILITY CORRIDOR, FLEXIBLE BETWEEN VISIBILITY CORRIDORS A AND B.
- F - 42' WIDE VISIBILITY CORRIDOR, FLEXIBLE BETWEEN VISIBILITY CORRIDOR B AND C.
- G - 42' WIDE VISIBILITY CORRIDOR, FLEXIBLE BETWEEN LOTS 7, 8 AND 9.

MAYFAIR COMMONS  
96TH & GILES  
LA VISTA, NEBRASKA

*Parsons & Spink*  
ARCHITECTS

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