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By

RICHARD N. TARELLO
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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WALNUT GROVE PLAZA
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of this 30 day of September, 1999, by West Bay, Inc., a Nebraska corporation and its successors and assigns ("Declarant").

RECITALS:

WHEREAS, Declarant is the sole owner of certain real property situated in the County of Douglas, State of Nebraska, legally described as follows, to-wit:

Lots 1 through 7, inclusive, and Lots 12 and 13, all in Walnut Grove Plaza, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 1 and 2, Walnut Grove Plaza Replat One, being a replat of Lots 14 through 17, inclusive, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (referred to individually as a "Lot" and collectively as the "Lots," as defined below).

WHEREAS, Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners and Occupants (as defined below), or any part thereof, certain mutually beneficial restrictions and obligations with respect to the use, operation and maintenance thereof consistent with a first class retail, commercial, and office development.

WHEREAS, By virtue of the recording of this Declaration, the Lots shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in any Lot or any portion thereof, by acceptance of a deed or other conveyance of such interest, and every Owner of a Lot or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof; and

WHEREAS, Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Lots and shall be binding on the present owners of the Lots and all its successors and assigns and all subsequent

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owners of the Lots and Improvements (as defined below), together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, Declarant hereby imposes the following covenants, conditions and restrictions on the Lots, which shall run with the equitable and legal title to the land and shall be for the benefit or burden, as the case may be, of the Owners and Occupants of the Lots or any portion thereof within the Shopping Center, their respective heirs, legal representatives, successors and assigns, and any mortgagees.

ARTICLE I Definitions.

Definitions. The following words and phrases shall have the following meanings:

1.1 "Common Areas" means these portions of the Shopping Center, and any improvements thereon, designated from time to time by Declarant, its successor or assigns, to be used for the common benefit of all or certain Owners and/or Occupants of the Shopping Center. The initial Common Area is depicted on the Site Plan attached hereto as Exhibit A and incorporated herein by this reference.

1.2 "Improvements" means any building, structure, tunnel, drainage way, driveway, walkway, fence, wall, trellis, lake, water feature, landscaping, and any other building, structure or improvement of every kind and nature whatsoever now or hereafter located on any Lot.

1.3 "Lot" or "Lots" means the Lots described above or any subsequent administrative subdivision, replat, revision or amendment thereof and includes the Perimeter Lots (as defined below). If any Lot is hereafter lawfully subdivided, by administrative lot split, lot line adjustment, lot combination, or otherwise, the Owner of the effected Lot shall record an instrument, which shall serve as an amendment to this Declaration, with copies attached thereto of the Land Surveyor's Certificates or Replat (in the event of a replatting approved by the Omaha City Council) recorded in the Records of Douglas County, Nebraska, showing such subdivision.

1.4 "Development Agreement" means that certain Development Agreement dated as of April 19, 1999, between the City of Omaha and Declarant, which is attached hereto as Exhibit B, as may be amended from time to time. The Development Agreement includes, without limitation, use, density and other requirements for the Shopping Center. Terms not defined in this Agreement shall have the same meaning as those in the Development Agreement.

1.5 "Mortgage" means any instrument recorded or filed in the Records encumbering a Lot 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 a Lot or Lots (such as leasehold mortgage).

1.6 "Occupant" means any person or legal entity who is entitled to the exclusive use occupancy of any building or portion thereof, or any Lot or portion thereof located within the Shopping Center under rights contained in any deed, lease or similar agreement.

1.7 "Owner" means the owner of Record, whether one or more, of the fee simple title, whether or not subject to any Mortgage, to any Lot, and any purchaser of fee simple title under a land contract of Record, but does not mean those having such interest merely as security for the performance of an obligation or a seller under a land contract of Record.

1.8 "Perimeter Lot(s)" means Lots 1, 2, 12 and 13, Walnut Grove Plaza; and Lots 1 and 2, Walnut Grove Plaza Replat One.

1.9 "Permittees" means any Owner, and any officer, director, employee, agent contractor, customer, invitee, licensee, vendor, subtenant, mortgagee or concessionaire of any Owner or Occupant insofar as their activities relate to the intended use of the Shopping Center.

1.10 "Shopping Center" means the area designated on Exhibit A attached hereto and incorporated herein by this reference.

1.11 "Supermarket Parking Lot" means the area designated on Exhibit A attached hereto and incorporated herein by this reference.

ARTICLE II Restrictions.

2.1 Shopping Center. No Owner or Occupant shall permit the use or condition of any Lot that is inconsistent with a comparable first class business and retail center. Without limiting the generality of the foregoing, the following uses or services shall not be consistent with the concept of a first class business and retail shopping center:

(a) Zoning. All uses must conform to the Development Agreement and any subsequent amendments thereto, and all other applicable zoning regulations;

(b) Parking Restrictions. Each Owner or Occupant shall use reasonable efforts to ensure that its Permittees do not park or block the Common Area or public streets, and each Owner or Occupant of a Perimeter Lot shall use reasonable efforts to ensure the Permittees do not park in the Supermarket Parking Lot.

(b) Use Restrictions. Except as otherwise provided for in this Declaration, as may be amended from time to time, no Lot within the Shopping Center shall:

(i) be used in violation of any applicable federal, state or local laws, ordinances, rules or regulations;

(ii) be used, operated or maintained in a dangerous or hazardous condition;

(iii) constitute a nuisance or be used, operated or maintained in an obnoxious manner by reason of unsightliness or excess emission or odors, dust, fumes, smoke, liquid waste, noise, glare, vibration or radiation;

(iv) be used for the operation and maintenance of as a theater or cinema, circus, carnival, bowling alley, veterinary hospital, second hand store, roller rink, skating rink, odd lot, closeout or liquidation store, auction house, flea market, funeral parlor or mortuary, car wash, game room or arcade, billiard or pool hall; unemployment office, school or place of instruction attended by students, 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), lawn and garden center, an adult book store, adult theatre, adult amusement facility, or any facility selling or displaying pornographic materials or having such displays,

(v) be used for any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operations (provided that any Owner or Occupant that goes out of business shall be entitled to hold one going out of business sale not exceeding four (4) weeks in duration.

2.2 Private Use Restrictions. Declarant and/or its successors and assigns may, from time to time, enter into purchase agreements and/or deed restrictions, and/or leases, which may contain certain use or occupancy restrictions. Prior to any Owner or Occupant changing any prior use of any Lot or a portion thereof from one use to another such Owner or Occupant shall advise Declarant of such event and obtain Declarant's prior written approval of such change. The foregoing provision shall not apply to Lot 1, Walnut Grove Replat One.

2.3 Special Provisions for Lot 1, Walnut Grove Plaza Replat One. Notwithstanding anything to the contrary set forth herein, the Owner of Lot 1, Walnut Grove Plaza Replat One, may change the signage (except for the size and location of the readerboard monument sign located or to be located on the southwest corner of the Lot as approved by Declarant), drive through facilities, the opening, closing or relocation of any door in the building on the Lot, and/or any change or alteration to the store fronts (reasonably consistent with the then-existing buildings in the Shopping Center), partitions, floors, and the electric, plumbing, heating, ventilating and cooling systems or components thereof, without the prior written consent of Declarant.

2.4 No Interference. No Owner or Occupant shall keep or maintain anything or shall permit any condition to exist upon such Owner's or Occupant's Lot or cause any other condition on any Lot which materially impairs or interferes with any other Owner or Occupant. No Owner or Occupant shall engage in or permit any activity which interferes with the reasonable enjoyment of any other Owner or Occupant within the Shopping Center.

2.5 Design Regulations and Performance Standards.

- (a) All Improvements will be designed and built so as to present an appearance on all sides consistent with that of a first-class business center. Exterior materials of any building shall consist of brick, marble, granite or other natural stone, architectural concrete, materials having the appearance of these items, glass, or any combination of these. No pre-engineered metal buildings will be permitted.
- (b) Height limits required minimum building setbacks, and other basic development standards are established by the Development Agreement.
- (c) The Owner or Occupant of each Lot will make provisions for adequate off-street parking to serve the Lot. Such parking shall be in the form of hard-surfaced parking lots. No on-street parking will be permitted except as provided for in the Development Agreement.
- (d) All loading areas, docks, antennae, and exterior mechanical equipment, including rooftop equipment, must be screened when viewed from adjacent streets, and/or at ground level along an adjacent Owner's lot lines. Such screening will consist of permitted building materials and/or landscaping.
- (e) Immediately upon completion of building construction, or at the next available planting season, the Owner shall 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.
- (f) No outdoor advertising signs or billboards, and no signs incorporating flashing, pulsating, or rotating lights will be permitted without the written consent of Declarant, which consent may be withheld in its absolute and sole discretion.
- (g) Owners will install sufficient exterior lighting so as to properly illuminate drives, sidewalks, and parking areas. No spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any Improvement or which in any manner will allow light to be directed or reflected onto any adjoining Lot or any other part of the Shopping Center. All exterior lighting installed upon within the Shopping Center, including all street lighting, shall comply in all respects with the Zoning Ordinances and any other applicable ordinances, rules and regulations of the City of Omaha as the same may be amended from time to time.
- (h) 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 Lot or building that are visible from any other Lot 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 Lot to be washed or cleaned regularly.

(i) Prior to building construction, any Owner must install and maintain temporary landscaping on their Lots, 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.

(j) During any building construction or renovation, the Owner and such Lot 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 Lot or adversely affect other Lots, Common Areas, or public streets.

2.6 Design Review.

(a) The Declarant may, from time to time, establish reasonable rules, regulations, restrictions, architectural standards and design guidelines with respect to the exterior (but not the interior) of any Improvements on the Lots, which it may from time to time, in its sole discretion, amend, repeal or augment including, without limitation, regulations in conjunction with the construction of a Building on a Lot, the regulation of all landscaping (including, without limitation, absolute prohibition of certain types of landscaping, trees and plants) and regulation of all construction, reconstruction, exterior additions, changes or alterations to or maintenance of any Building or Improvement, including, without limitation, the exterior nature, kind, shape, height, material, color, surface texture and location thereof.

(b) The Declarant may also, from time to time, enter into agreements, by lease, purchase agreement, deed restrictions or other agreements, with other Owners or Occupants regarding design restrictions, sign restrictions, site planning, or other architectural standards affecting the Shopping Center or any portion thereof.

(c) No excavation, fill, grading or other alteration of the topography or drainage of any Lot shall be commenced and no Building or Improvements of whatever type other than improvements or alterations to the interior of a Building shall be constructed, erected or maintained upon any Lot, nor shall there be any addition or change to the exterior appearance of any Building or Improvement, including, without limitation, the color (other than repainting with the same color of paint as previously existed) of exterior walls, entryways, overhangs, parapets,

atriums and fences, except in compliance with plans and specifications therefor, which have been submitted to the Declarant for its prior review.

(d) Such plans and specifications shall consist of, at a minimum, site plans, grading plans, utility plans, signage plans, landscaping plans, and building elevations showing exterior building materials to be used. Declarant may employ architects, engineers, and other professional consultants and agents to review such plans.

(e) Declarant will complete its plan review in a reasonable and timely fashion and provide the Owner or Occupant requesting such review with a written report of the conclusions and recommendations resulting from such review.

2.7 Maintenance.

(a) Each Owner shall maintain its Lot in good and clean condition and repair, such maintenance to include, but not be limited to, the following:

(i) maintaining the surface of the roadways, parking areas and sidewalks in a level, smooth and evenly covered condition with the type of surface material originally installed or such substitutes as shall in all respects be equal or superior in quality, use and durability;

(ii) removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition;

(iii) placing, keeping in repair and replacing any necessary or appropriate directional signs, marker and lines;

(iv) repairing and replacing when necessary such artificial lighting facilities as shall be reasonably required;

(v) maintaining all landscaped areas and making replacement of shrubs and other landscaping as is necessary;

(vi) maintain all signage in proper working order and appearance;
and

(vii) maintain all perimeter walls in good condition and state of repair.

2.8 Indemnification/Insurance.

(a) Indemnification. Each Owner and/or Occupant shall indemnify and hold the other Owners and/or Occupants harmless from any and all liability, damage, expense, causes of action, suites, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act of negligence of the Owner and/or Occupant of another Lot.

(b) Insurance.

(i) Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration comprehensive occurrence basis general liability insurance, including personal injury and contractual liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each Party's insurance to afford protection to the limit of not less than \$1,000,000 for injury or death of a single person, and the limit of not less than \$1,000,000 for any one occurrence, and to the limit of not less than \$1,000,000 for property damage. Each Owner shall provide the other Owners with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsements on any master policy of insurance carried by the Owner which may cover other property in addition to the property covered by this Declaration, provided the policy specifically allocates to the properties the liabilities required to be insured hereunder in amounts not less than the minimum coverage requirements set forth herein. Such insurance shall provide that the same may not be canceled without thirty (30) days' prior written notice to the other Parties.

(ii) At all times during the term of this Declaration, each Owner shall keep improvements on its Lot insured against loss or damage by fire and other perils and events as may be insured against under the "all risk" policy broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Nebraska, with such insurance to be for the full replacement cost of the insured improvements.

2.9 Obligation To Rebuild or Restore. In the event that any Improvement on a Lot shall be damaged or destroyed (whether partially or totally) by fire, the elements or any other casualty, the Owner of such building shall, at its expense, within a reasonable time after such destruction, and with due diligence repair, rebuild and restore the same as nearly as practical to the condition existing just prior to such damage or destruction, or, alternatively, if such building is totally destroyed, the Owner of such building shall be required to clear, clean and rebuild and/or restore the damaged building and either landscape or pave the damaged area. The Owner of such damaged or destroyed building shall have the right to make reasonable alterations as part of the reconstruction. Any rebuilding or restoration shall comply with this Article II.

2.10 Enforcement and Remedies. If an Owner defaults in any of its obligations or covenants hereunder, the Declarant or any other Owner or any mortgagee holding a first lien against any other Lot within the Shopping Center (a "First Mortgagee") shall have the right, but not the obligation, to enforce this Declaration by all remedies available at law or in equity, including, but not limited to, injunctive relief, specific performance and/or monetary damages. Any enforcement of any right or remedy hereunder by the Declarant, Owner or First Mortgagee, either prior to, simultaneously with or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

ARTICLE III Amendments, Duration and Termination.

3.1 Amendment, Modification. The Owner(s) of 51% of the total area, as measured in square feet, of all the Lots located within the Shopping Center may amend or grant waivers to the provisions of the Declaration. All such amendments or waivers must be in writing and recorded in the Records of Douglas County, Nebraska, as a modification to this Declaration.

3.2 Termination. The Declaration herein shall not be terminated except with the written acknowledge consent of seventy-five percent (75%) of the Owners, and such termination shall be effective when duly recorded in the office of the Register of Deeds in the county in which the Lots are situated.

3.3 Duration. Unless otherwise canceled or terminated, this Declaration and all of the covenants, easements, restrictions, rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof or such earlier date as may be required in order that this Declaration shall be invalidated or be subject to invalidation by reason of a limitation imposed by law or the duration thereof.

ARTICLE IV Miscellaneous.

4.1 Effective Covenants. Each grantee of the Declarant, its successors and assigns, by the acceptance of a deed of conveyance, accept the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest of estate in said property, and shall inure to the benefit of such Owners on like manner as though the provisions, terms and restrictions of this Declaration were received and stipulated at length in each and every deed of conveyance.

4.2 Waiver. No covenant, restriction, condition or provision of this Declaration shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

4.3 Dedication. Nothing contained in this Declaration shall be deemed to create a gift of all or any portion of the Premises to the general public or as a dedication for public use or public purpose, it being the intention of each Owner that this Declaration shall be for the exclusive benefit of the Premises, or any portion thereof, the Owner and its mortgagees; provided, however, that dedication shall be made by an Owner for any public rights of way, utilities or other public improvements deemed necessary by the City of Omaha to serve the Premises as contemplated by the Mixed Use District Development Agreement.

4.4 Savings Clause. If any covenant, restriction, condition, limitation or any other provision of this Declaration or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Declaration and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

4.5 Successors and Assigns. Each and all of the covenants, restrictions, limitations, terms, provisions, and agreements contained in this Declaration shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Declaration and by applicable law, their respective heirs, legal representatives, successors, and assigns.

4.6 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

4.7 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on the day and year set forth above.

DECLARANT:

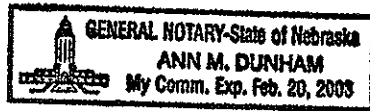
WEST BAY, INC., a Nebraska corporation,

By: 
Thomas E. Smith, President

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

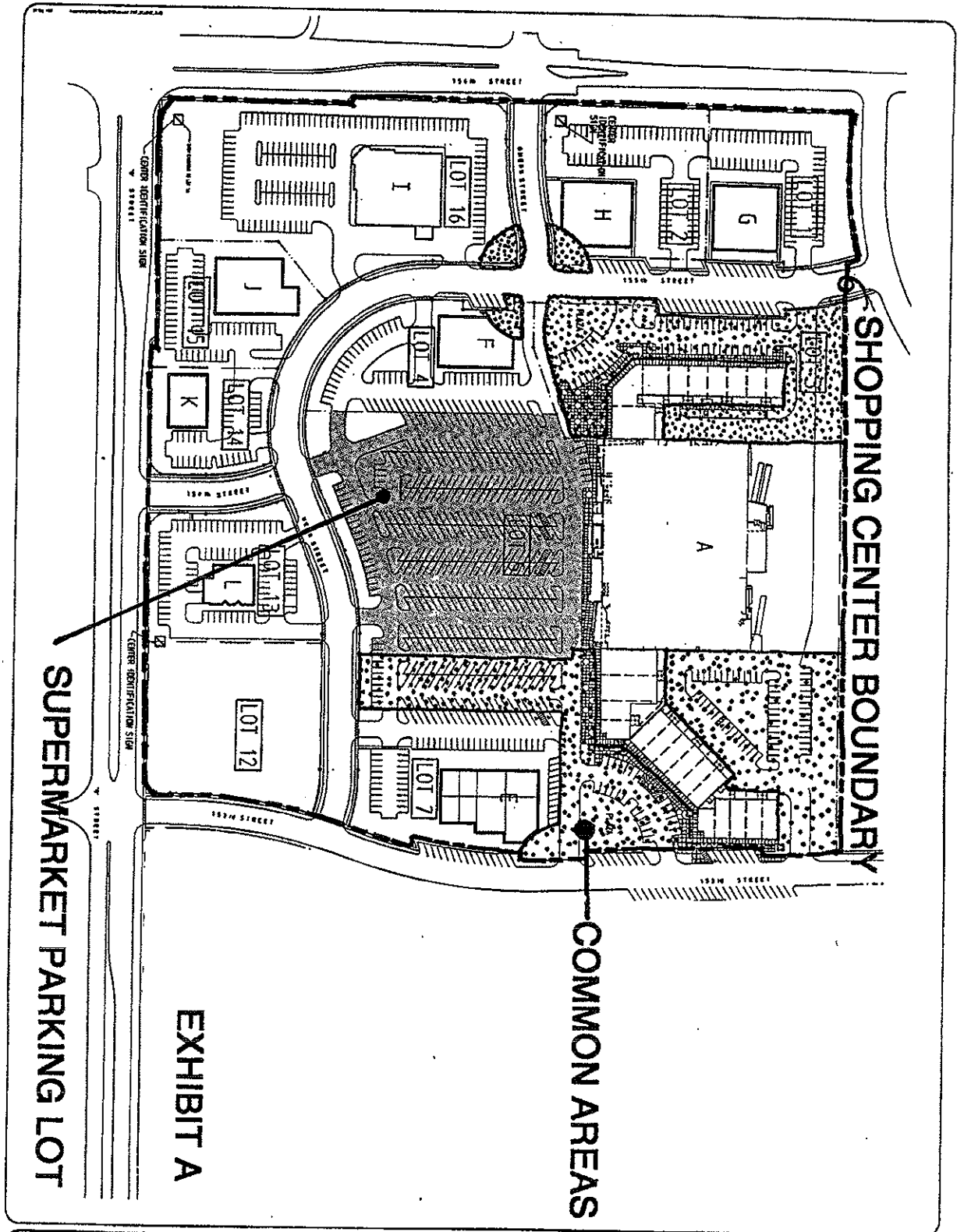
Before me, a notary public, in and for said county and state, personally came Thomas E. Smith, President of West Bay, Inc., known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 30th day of September 1999.





Notary Public



<p> <small> SHEET NO. 001 DATE: 08/14/00 DRAWN BY: [unintelligible] CHECKED BY: [unintelligible] </small> </p>	<p style="text-align: center;"> <i>Purdy & Slack</i> ARCHITECTS <small>1005 NORTH 115th STREET, SUITE 200, OMAHA, NEBRASKA 68154 (402) 499-8448</small> </p>	<p style="text-align: center;"> WALNUT GROVE PLAZA 15614 & O OMAHA, NEBRASKA </p>	<p> <small> SCALE: 1/8" = 1'-0" NORTH: [unintelligible] </small> </p>
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EXHIBIT A



City of Omaha
Hal Daub, Mayor

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CITY CLERK
OMAHA, NEBRASKA

March 30, 1999

Planning Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 1100
Omaha, Nebraska 68183-0110
(402) 444-5200
(402) 444-5150
Telefax (402) 444-6140

Robert C. Peters
Acting Director


Honorable President

and Members of the City Council,

The attached Ordinance approves a Mixed Use Development Agreement for property located Northeast of 156th and "Q" Streets (Walnut Grove Plaza). The agreement provides site development and use standards and assures that the subject site is developed in accordance with the approved agreement.

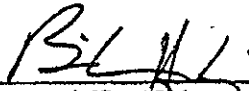
Respectfully submitted,

Referred to City Council for Consideration:



Robert C. Peters
Acting Planning Director

Date



Mayor's Office/Title

Date

P:PLN36895.SAP



EXHIBIT B

ORDINANCE NO. 34964

AN ORDINANCE to approve the Mixed Use Development Agreement for property located Northeast of 156th and "Q" Streets (Walnut Grove Plaza) between the City of Omaha and West Bay, Inc., providing site development and use standards; and to provide for an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That the City of Omaha, in the interest of maintaining public health, safety, and welfare, desires to assure that the property located Northeast of 156th and "Q" Streets (Walnut Grove Plaza), is developed in accordance with the provisions of this Mixed Use Development Agreement attached hereto and made a part by reference.

Section 2. That if this Ordinance, Mixed Use Development Agreement, or portion thereof, is found to be invalid, any zoning ordinance applicable to such site shall not be invalidated for such reason.

Section 3. That this Mixed Use Development Agreement, is hereby approved.

Section 4. That this Ordinance shall be in full force and take effect fifteen (15) days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

Frank Brown

APPROVED BY:

Hal Daub
MAYOR OF THE CITY OF OMAHA DATE 4/19/99

PASSED APR 13 1999 6-0

ATTEST:

Quetta Brown
CITY CLERK OF THE CITY OF OMAHA DATE 4/19/99

APPROVED AS TO FORM:

Phil Harmon
ASSISTANT CITY ATTORNEY DATE 3-11-99



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter "Agreement") made pursuant to Section 55-561 of the Zoning Mixed Use Ordinance of the City of Omaha, made and entered into this 19th day of April, 1999, by and between THE CITY OF OMAHA, NEBRASKA, A Municipal Corporation, (hereinafter "City") and West Bay Inc. (hereinafter "Developer").

WITNESSED:

WHEREAS, Developer is the legal owner of the real estate described on the attached Exhibit A, which is incorporated herein by this reference and desires to establish and develop such property according to the provisions of Section 55-561 of the City Zoning Ordinances for the development of a mixed use project;

WHEREAS, in accordance with the requirements of the City Code, Developer has presented a Development Plan to the City; and

WHEREAS, City, in the interest of maintaining the public health, safety and welfare, desires to assure that such project is developed substantially in accordance with the Development Plan and therefore considers this Agreement to be in the best interests of the City; and

WHEREAS, Developer is willing to commit itself to the development of a project substantially in accordance with the Development Plan and desires to have a reasonable amount of flexibility to carry out the development and therefore considers this Agreement to be in its best interests; and

WHEREAS, the City and Developer desire to set forth this Agreement their respective understandings and agreements with regard to (Walnut Grove Plaza).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

I. Definitions

For the purposes of this Agreement the definitions in the Omaha Municipal Code, Chapter 55, Article II, shall apply. In addition, the following words and phrases shall have the following meanings:

- A. The "cost" or "entire costs" of a site improvement shall be deemed to include all construction costs, engineering fees, attorneys' fees, testing expenses, publication costs, financing costs, and miscellaneous costs.
- B. "Site improvements" shall mean any building, parking, landscaping, sign age, fencing, or other regulated structures.

II. Development Plan

- A. Except as otherwise permitted in this Agreement the project shall be developed in accordance with the City of Omaha Master Plan, the City of Omaha Zoning and Subdivision regulations, the terms and conditions of this Agreement, and the Development Plan (Plan) a/k/a site plan, which is attached hereto as Exhibit A and by this reference incorporated herein.



- B. It is intended that this Development Plan be a general schematic of the development. All parties recognize that from time to time for good and sufficient reasons it may be necessary for Developer to alter the size, location, use or type of the buildings or other site improvements. Developer reserves the right to modify the Development Plan provided that such modifications conform to the provision of Chapter 55, Omaha Municipal Code and this agreement.

iii. Improvements - (Not Used)

IV. Installation of Improvements

Developer agrees to commence the timely and orderly installation of the improvements following execution of this Agreement pursuant to appropriate provisions of the Omaha Municipal Code. The installation of such improvements may occur concurrently with private improvements on the site, but shall be completed prior to an occupancy certificate being issued for the project.

Prior to the commencement of the construction of the improvements, Developer shall submit to the Public Works Department plans and specifications for such improvements, adequate liability insurance and indemnity in favor of the City, and adequate material and labor bonds. All plans shall be prepared by an approved licensed professional engineer and shall be subject to review and approval by the Public Works Director.

V. Payment for Improvements - (Not Used)

VI. Right-Of-Way Dedication - (Not Used)

VII. Easements - (Not Used)

VIII. Permitted Uses

- A. The uses shall be those permitted under CC or GO Zoning per City of Omaha zoning code.

IX. Site Development Regulations

- A. As long as the site development regulations are not violated, Developer may alter the location, physical shape or exterior dimensions of any structure shown on the site plan, within the boundaries of any platted lot.
- B. Except as shown on Exhibit A, Lots 1-16 shall be developed in accordance with the applicable site development regulations of the CC district.
- C. The site plan-Floor Area Ratio (FAR) Summary (Exhibit B) identifies maximum and minimum Floor Area Ratio (FAR) for each lot. Developer may increase the maximum GBA and the corresponding FAR for any individual lot, as provided in the site development regulations as long as such increase is accompanied by a corresponding decrease in GBA and FAR for another lot or lots so as to not exceed the total GBA and FAR for the entire project. Developer may decrease the minimum GBA and FAR for any individual lot by as long as such decrease is accompanied by a corresponding increase in GBA and FAR for another lot or lots so as not to reduce the minimum GBA and FAR for the entire project. Allocated FAR and GBA amounts may be transferred between lots when a signed agreement between the owners of both lots is filed with the Planning Department-Permits and Inspection Section at the time of building permit application, specifying the increase or decrease in FAR budget for each lot. The gross building area on each of lot 1, 2, 10, 11, 12, 13, 14, 15, and 16 shall not be reduced below 5,000 square feet on four of such lots.
- D. In addition to the above Site Development Regulators, the provision of the Omaha Master Plan relating to Mixed-Use Areas, as amended or adopted from time to time shall also apply. Not



withstanding the foregoing, there exists no specific Impervious Coverage requirement per lot for the lots with the Mixed-Use Area; however, the Mixed-Use area in its entirety cannot exceed an Impervious Coverage of eighty-five percent.

- E. So long as the site development regulations are not violated, Developer may reduce or increase the number of buildings or lots as shown on the Plan by revising lot lines, combining, or dividing lots. The City shall, by administrative subdivision, grant any such revisions, combinations or divisions as necessary to carry out the Plan. An application for an administrative subdivision to make such changes must include as an attachment a revision to the Floor Area Ratio (FAR) Summary (Exhibit B).

X. Parking

Parking for the project shall be in accordance to the Parking Plan, Exhibit A, attached hereto and made a part hereof. The parking shall meet or exceed the minimum requirements of the provisions of the Omaha City Code, Chapter 55, Article 14, Off-Street Parking and Loading.

XI. Landscaping

Landscaping for the project shall be according to the Landscape Plan, Exhibit C, attached hereto and made a part hereof. The landscaping shall meet or exceed the minimum requirements of the provisions of the Omaha City Code, Chapter 55, Article 13, Landscaping and Screening, for the CC district.

XII. Signage

- A. Signage for the project shall be in accordance with the Sign Plan, Exhibit D attached hereto and made a part hereof. The Signage shall meet the minimum requirements of the Omaha Municipal Code, Chapter 55, Article 18, Signs and Street Graphics. All signs on Lots 1-16 shall have the right to separate Signage which will be installed pursuant to the applicable regulations for the CC District.
- B. The project may have no more than 2 center identification sign(s), which are included in the total sign budget. The location of the center identification sign(s) is shown on Exhibit A, Site Plan.
- C. All other Signage will be limited to wall signs, projecting signs, roof signs or ground monument signs, all as defined in Article 18, Chapter 55, OMC. No pole signs shall be allowed other than center identification signs. Directional and informational signs not exceeding four (4) square feet per sign face with no advertising copy on them, and located within parking lots, parking structures, and outlets are exempt from the sign budget.
- D. A sign budget is attached hereto as Exhibit D. The permitted sign area for each lot is based on the frontage of each lot in relation to the total net street frontage in the development. The total sign budget for the development is 11,058 square feet. The owner of each lot may allocate its pro rata share of this sign budget for each lot between and among the various permitted sign types, and between and among the structures located or to be located on each lot.
- E. Unused sign budget amounts may be transferred between lots on a square foot to square foot basis when a signed notification from developer is filed with the Planning Department-Permits and Inspection Section at the time of sign permit application, specifying the increase or decrease in budget for each lot.
- F. All signs will be installed subject to a sign permit from the City of Omaha. Unless provided for in this agreement, all other provisions and regulations governing signs in effect at the time of application for a sign permit shall apply.



XIII. Miscellaneous Provisions

- A. The Mayor of the City of Omaha shall have the authority to administer this Agreement on behalf of the City and to exercise discretion with respect to those matters contained herein so long as the development proceeds in general accord with the Development Plan and with regard to those matters not fully determined at the date of this Agreement. The provisions of this Agreement shall run with the land in favor of and for the benefit of the City and shall be binding upon present and all successor owners of the real estate described in the attached Exhibit A.
- B. Nondiscrimination. Developer shall not, in the performance of this contract, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations, or national origin.
- C. Applicable Law. Parties to this contract shall conform with all existing and applicable City ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this contract.
- D. Interest to the City. Pursuant to Sec. 8.05 of the Home Rule Charter, no elected official or any officer or employee of the City of Omaha shall have a financial interest, direct or indirect, in any City of Omaha contract. Any violation of this section with the knowledge of the person or corporation contracting with the City of Omaha shall render the contract voidable by the Mayor or Council.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

DEVELOPER : WEST BAY, INC.

BY [Signature]
Thomas E. Smith

(Type Name)

President
Title

Date 2/8/98

CITY OF OMAHA, NEBRASKA

By [Signature] 4/19/99
Mayor

Attest:

By [Signature]
City Clerk

Approved as to form:

By [Signature] 3-16-99
Assistant City Attorney

(Note: All Owner's signatures must be notarized)

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

The attached instrument was acknowledged before me this 8th day of Feb., 1998.
by Thomas E. Smith, Pres of West Bay Inc.

Witness my hand and notarial seal at Omaha, Nebraska, in said County, the date aforesaid.



[Signature]
Notary Public

MY COMMISSION EXPIRES:
JULY 26, 2001



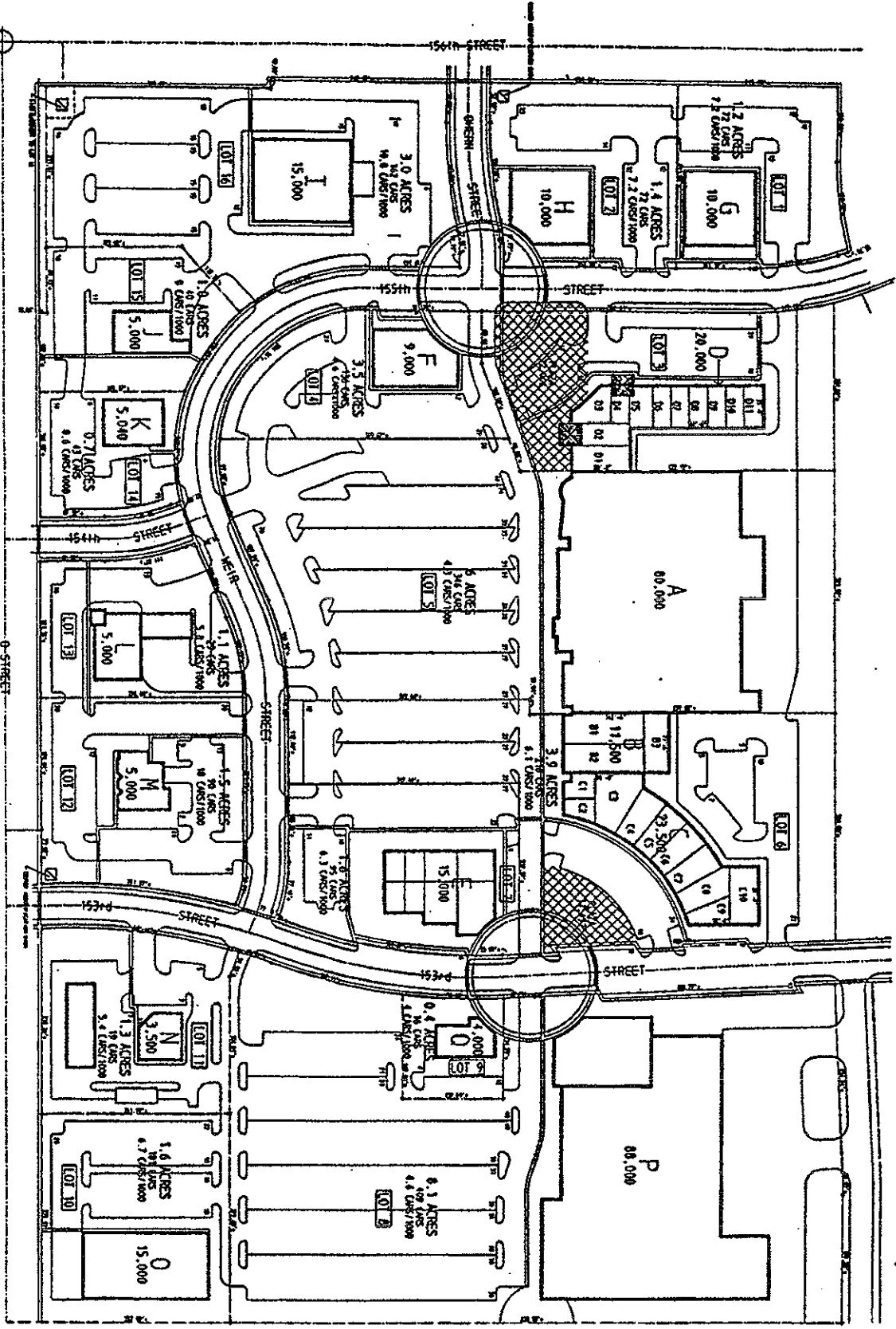


EXHIBIT A
 2001 P-15-02

Purdy & Shook
 ARCHITECTS

WALNUT GROVE PLAZA
 15475 & O
 OMAHA, NEBRASKA

SITE PLAN
 L

102 North 15th Street, Suite 200, Omaha, Nebraska 68102 (402) 442-1100

**EXHIBIT "B":
WALNUT GROVE PLAZA
FLOOR AREA SUMMARY**

LOT #	LOT AREA	LOT AREA	BLDG. S.F. AS SHOWN EXHIBIT "A"	FAR.	MINIMUM SQUARE FOOTAGE	MINIMUM FAR.	MAXIMUM SQUARE FOOTAGE	MAXIMUM FAR
Lot 1	1.2 Acres	52,272 Sq. Ft.	10,000 Sq. Ft.	.19	3,500 Sq. Ft.	.067	52,272	1.0
Lot 2	1.4 Acres	60,984 Sq. Ft.	10,000 Sq. Ft.	.16	5,000 Sq. Ft.	.08	60,984	1.0
Lot 3	2.2 Acres	95,832 Sq. Ft.	20,000 Sq. Ft.	.20	10,000 Sq. Ft.	.10	95,832	1.0
Lot 4	1.3 Acres	56,628 Sq. Ft.	9,000 Sq. Ft.	.15	5,000 Sq. Ft.	.08	56,628	1.0
Lot 5	6.0 Acres	261,360 Sq. Ft.	80,000 Sq. Ft.	.30	45,000 Sq. Ft.	.17	261,360	1.0
Lot 6	3.9 Acres	169,884 Sq. Ft.	35,000 Sq. Ft.	.20	20,000 Sq. Ft.	.11	169,884	1.0
Lot 7	1.6 Acres	69,696 Sq. Ft.	15,000 Sq. Ft.	.21	10,000 Sq. Ft.	.14	69,696	1.0
Lot 8	8.1 Acres	352,836 Sq. Ft.	88,000 Sq. Ft.	.24	50,000 Sq. Ft.	.14	35,836	1.0
Lot 9	.4 Acres	17,424 Sq. Ft.	4,000 Sq. Ft.	.22	3,500 Sq. Ft.	.20	17,424	1.0
Lot 10	1.6 Acres	69,696 Sq. Ft.	15,000 Sq. Ft.	.21	5,000 Sq. Ft.	.07	69,696	1.0
Lot 11	1.3 Acres	56,628 Sq. Ft.	3,500 Sq. Ft.	.06	3,500 Sq. Ft.	.061	56,628	1.0
Lot 12	1.5 Acres	65,340 Sq. Ft.	5,000 Sq. Ft.	.07	3,500 Sq. Ft.	.053	65,340	1.0
Lot 13	1.1 Acres	47,916 Sq. Ft.	5,000 Sq. Ft.	.10	5,000 Sq. Ft.	.10	47,916	1.0
Lot 14	.8 Acres	34,848 Sq. Ft.	5,000 Sq. Ft.	.14	5,000 Sq. Ft.	.14	34,848	1.0
Lot 15	.8 Acres	34,848 Sq. Ft.	5,000 Sq. Ft.	.14	3,500 Sq. Ft.	.10	34,848	1.0
Lot 16	3.0 Acres	130,680 Sq. Ft.	15,000 Sq. Ft.	.11	10,000 Sq. Ft.	.76	130,680	1.0
	36.2 Acres	1,578,872 Sq. Ft.	324,500 Sq. Ft.	.20				1.0



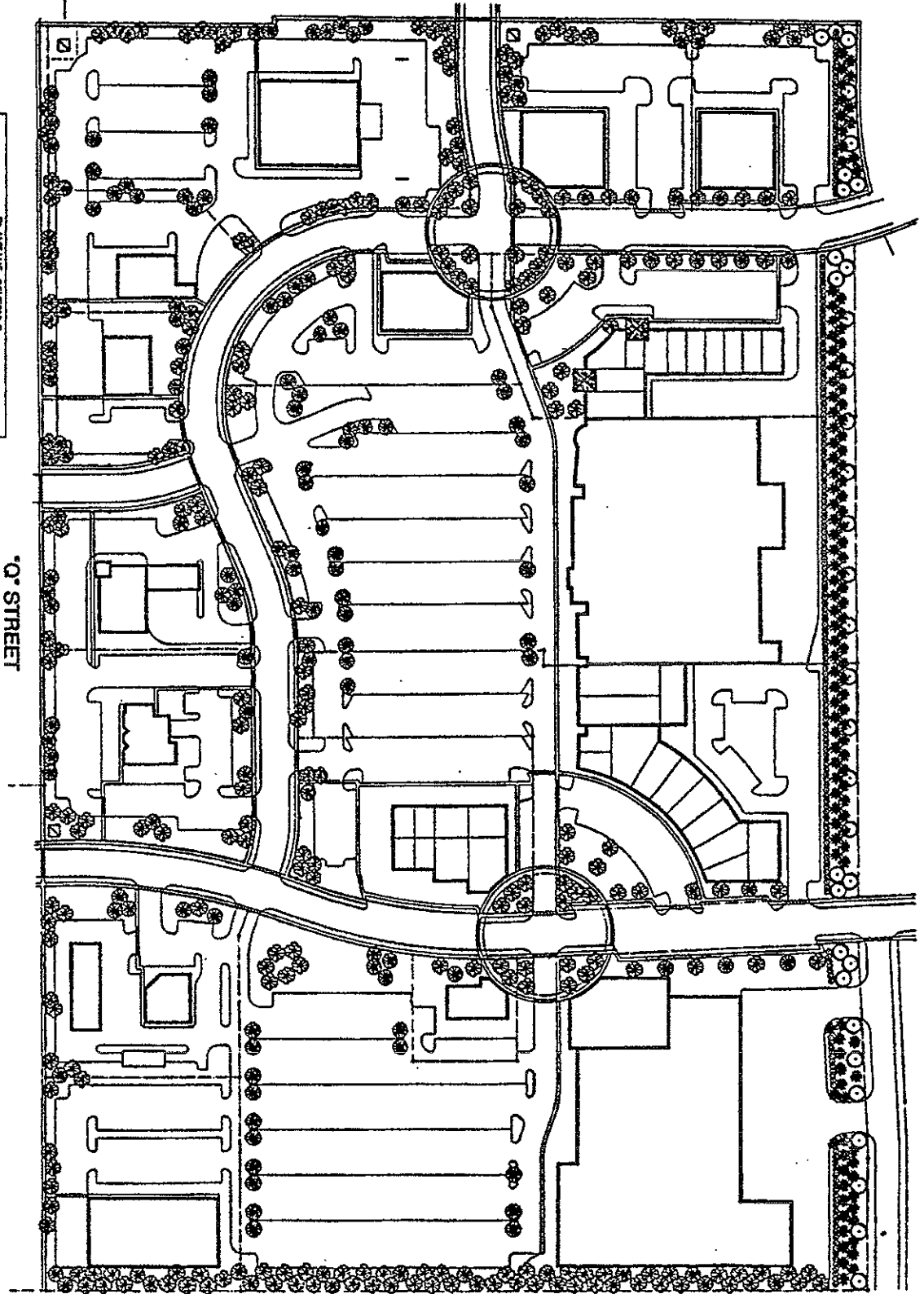
156TH STREET

PLANTING SCHEDULE

NO.	SYMBOL	PLANT SPECIES	QUANTITY
1	(Symbol)	...	...
2	(Symbol)	...	...
3	(Symbol)	...	...
4	(Symbol)	...	...
5	(Symbol)	...	...
6	(Symbol)	...	...
7	(Symbol)	...	...
8	(Symbol)	...	...
9	(Symbol)	...	...
10	(Symbol)	...	...
11	(Symbol)	...	...
12	(Symbol)	...	...
13	(Symbol)	...	...
14	(Symbol)	...	...
15	(Symbol)	...	...
16	(Symbol)	...	...
17	(Symbol)	...	...
18	(Symbol)	...	...
19	(Symbol)	...	...
20	(Symbol)	...	...
21	(Symbol)	...	...
22	(Symbol)	...	...
23	(Symbol)	...	...
24	(Symbol)	...	...
25	(Symbol)	...	...
26	(Symbol)	...	...
27	(Symbol)	...	...
28	(Symbol)	...	...
29	(Symbol)	...	...
30	(Symbol)	...	...
31	(Symbol)	...	...
32	(Symbol)	...	...
33	(Symbol)	...	...
34	(Symbol)	...	...
35	(Symbol)	...	...
36	(Symbol)	...	...
37	(Symbol)	...	...
38	(Symbol)	...	...
39	(Symbol)	...	...
40	(Symbol)	...	...
41	(Symbol)	...	...
42	(Symbol)	...	...
43	(Symbol)	...	...
44	(Symbol)	...	...
45	(Symbol)	...	...
46	(Symbol)	...	...
47	(Symbol)	...	...
48	(Symbol)	...	...
49	(Symbol)	...	...
50	(Symbol)	...	...

ALL AREAS THAT ARE DISTURBED BY CONSTRUCTION AND ARE NOT SCHEDULED TO BE PAVED SHALL BE SODED WITH TURF-TYPE PESCCO AND IRRIGATED WITH AN UNDERGROUND AUTOMATIC IRRIGATION SYSTEM

Q STREET



SCALE 1" = 30'-0"

Finley & Shook
ARCHITECTS

1008 NORTH 15TH STREET, SUITE 200, OMAHA, NEBRASKA 68102-1508

KALNUT GROVE PLAZA
156TH & Q
OMAHA, NEBRASKA

LANDSCAPING PLAN

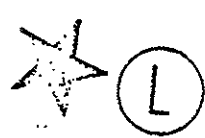


EXHIBIT 'D'
WALNUT GROVE PLAZA SIGN BUDGET

LOT #	PRIMARY FRONTAGE	SECONDARY FRONTAGE	ADJ.	MULT.	ALLOWABLE SIGN AREA	ALLOCATED SIGN AREA
Lot 1	234.0'	435.5'	217'	1.5	676 Sq. Ft.	500 Sq. Ft.
Lot 2	243.0'	503.8'	251'	1.5	741 Sq. Ft.	500 Sq. Ft.
Lot 3	475.7'	0'	0'	1.5	713 Sq. Ft.	1,000 Sq. Ft.
Lot 4	286.18'	116.3'	58'	1.5	516 Sq. Ft.	500 Sq. Ft.
Lot 5	365.5'	0'	0'	1.5	545 Sq. Ft.	1,000 Sq. Ft.
Lot 6	425.7'	110.0'	55'	1.5	721 Sq. Ft.	1,000 Sq. Ft.
Lot 7	403.0'	182.4'	91'	1.5	741 Sq. Ft.	1,000 Sq. Ft.
Lot 8	677.18'	454.0'	227'	1.5	1,356 Sq. Ft.	1,000 Sq. Ft.
Lot 9	138.0'	0'	0'	1.5	207 Sq. Ft.	300 Sq. Ft.
Lot 10	278.0'	0'	0'	1.5	417 Sq. Ft.	500 Sq. Ft.
Lot 11	267.0'	250.26'	125'	1.5	588 Sq. Ft.	500 Sq. Ft.
Lot 12	280.55'	511.87'	255'	1.5	802.5 Sq. Ft.	500 Sq. Ft.
Lot 13	216.00'	110.24'	55'	1.5	406.5 Sq. Ft.	500 Sq. Ft.
Lot 14	200.00'	375.35'	187'	1.5	580.5 Sq. Ft.	500 Sq. Ft.
Lot 15	159.97'	93.5'	46.5'	1.5	309.5 Sq. Ft.	500 Sq. Ft.
Lot 16	542.0'	770.0'	385'	1.5	1,390.5 Sq. Ft.	690 Sq. Ft.

TOTAL SIGNAGE ALLOWED ON THIS PROJECT 10,710 Sq. Ft.

Center Identification Sign 300 Sq. Ft.
 Center Identification Sign 300 Sq. Ft.
 TOTAL SIGNAGE ALLOCATED ON THIS PROJECT 10,710 Sq. Ft.



829-859-898 ✓

ORDINANCE NO. 4864

AN ORDINANCE to approve the Mixed Use Development Agreement for property located Northeast of 156th and "Q" Streets (Walnut Grove Plaza) between the City of Omaha and Westbay, Inc., providing site development and use standards; and to provide for an effective date.

*Agreement
156th
Walnut
West*

PRESENTED TO COUNCIL

1st Reading MAR 30 1999 - Motion
*at the second reading on 4/13/99 at
which it was approved with the following
4/13/99 by a vote of 6-0 with the remaining
accorded 6-0*

Hearing APR 6 1999 - Direct

Final Reading APR 13 1999
Passed 6-0

BUSTER BROWN
CITY CLERK

PUBLICATIONS

DATE OF HEARING

4-2-99

DATE OF ORDINANCE

4-26-99

OMAHA NEBRASKA 68144
CITY CLERK
WALNUT FULLER & DOUGLASS
CITY CENTER

Date