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INST. NO 98

REGISTER OF DEEDS

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**SOUTHPOINTE PAVILION
DRAINAGE EASEMENT AND COVENANTS**

These SouthPointe Pavilion Drainage Easement and Covenants ("Drainage Covenants" or "Agreement") were made and entered into as of this 1st day of April, 1998, by Zermatt Equity Corporation, a Nebraska corporation, and its successors and assigns ("Zermatt") and R.E.D. CAPITAL MANAGEMENT, L.L.C., a Kansas limited liability company, and its successors and assigns ("R.E.D."). Zermatt and R.E.D. are sometimes collectively referred to herein as the "Property Owners".

WHEREAS, Zermatt is the owner of Block 2, Lot 1, SouthPointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska ("Lot 1"); and

WHEREAS, R.E.D. is the owner of Block 1, Lot 8, SouthPointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska ("Lot 8"); and

WHEREAS, the Property Owners desire to grant a mutually beneficial easement for the purpose of constructing a permanent drainage system over, along and under said Outlots to the detention pond located in the northeast corner of Lot 1 ("Detention Pond"). The layout of the aforementioned lots is shown on Exhibit A attached hereto; and

WHEREAS, the Property Owners further desire to grant a mutually beneficial easement, as legally described on the attached Exhibit B, which creates and establishes a perpetual, non-exclusive right-of-way and easement to the benefit of Lot 8 to dispose of storm water into the Detention Pond to the point of entry of such Detention Pond or to any subsequent location, for the comfort and convenience of customers, invitees, subsequent owners of property within the lots, licensees, tenants, and employees of all businesses and occupants of the buildings constructed on the lots; and

WHEREAS, the Property Owners desire to establish each party's responsibility for mowing, dredging, removing weeds, re-vegetating, repairing, reconstructing, replacing and insuring (collectively "Maintenance") the Detention Pond.

NOW, THEREFORE, the Property Owners hereby agree as follows:

1. Zermatt hereby declares, create and establish a perpetual, non-exclusive right-of-way and easement on, over and across Lot 1 for the purpose of constructing, maintaining, and developing, a permanent drainage system over, along and under said tract and further declares, creates and establishes a perpetual, non-exclusive right-of-way and easement appurtenant to Lot 8, to dispose of storm water into the Detention Pond to the point of entry of such Detention Pond or to any subsequent location as may be determined by Zermatt. R.E.D. or the owner of Lot 8 shall have the right to perpetually survey and test soil conditions; to excavate, fill, regrade, construct, install, operate, maintain, repair, inspect, rebuild, and remove within said easement a detention basin and all related equipment together with the perpetual right of access to and from such

easement for its employees, agents, contractors, vehicles, materials and equipment. Zermatt, at its sole expense, shall have the right to designate and change the location or nature of the Detention Pond so long as Zermatt shall (i) provide reasonable access as provided herein, to the then owners of Lot 8 (ii) provide drainage facilities of an equal capacity as existed at the time of change, and (iii) shall obtain all necessary approvals by any and all applicable governmental authorities.

2. R.E.D. shall be responsible for providing the Maintenance of the Detention Pond. Such Maintenance shall be done in a commercially reasonable manner as determined by R.E.D. R.E.D. shall have the right to remove, trim and clear away any interfering trees, rocks, shrubs, roots, limbs or surfacing materials, but within a reasonable time after completion of any such activity, R.E.D. shall completely fill and sufficiently tamp any excavation to an appropriate elevation to prevent settling, with any improved surface restored to its former condition, and any lawn resodded. If Zermatt determines, based upon a standard of commercial reasonableness, that the Detention Pond is in need of Maintenance, Zermatt shall, except in the event of an emergency, provide a written request to R.E.D. to complete the work requested within forty five (45) days of receipt of the notice. If R.E.D. fails to complete the work requested within said forty-five (45) days of receipt of said notice, Zermatt may complete the work requested. In the event of an emergency, however, Zermatt may immediately complete the necessary Maintenance after notice to R.E.D.

3. The costs and expenses of Maintenance of the Detention Pond shall be the responsibility of and paid by the Property Owners based upon the percentages set forth below, which percentages reflect each party's "Fair Share" of the Maintenance of the Detention Pond within fifteen (15) days of invoice:

Lot 8 (R.E.D.)	80.6%
Lot 1 (Zermatt)	19.4%

The "Fair Share" of each party is based upon the amount of potential stormwater that will generally drain from Lot 8 and Lot 1 once the lots are substantially developed based upon a standard coverage of buildings, parking areas and other nonpermeable areas compared to the total amount of potential stormwater that will drain into the Detention Pond after the development of the entire drainage area based upon a standard coverage of buildings, parking areas and other nonpermeable areas. However, the parties agree that the Fair Share above stated shall be used for the purpose of determining each parties obligations under this Agreement.

4. R.E.D. may be relieved of its Maintenance responsibility by forming an association of property owners that is responsible for Maintenance of the Detention Pond. R.E.D. may also transfer its responsibility to pay for the percentage of the costs and expenses of the Maintenance attributable to Lot 8 to an association of property owners, provided the Association has the authority to lien and collect Maintenance assessments. Upon the sale of the parcel by R.E.D., R.E.D. shall be relieved of any all obligations

under this Agreement, except that R.E.D. shall be liable for any past due and unpaid portions of R.E.D.'s Fair Share of completed Maintenance.

5. Zermatt hereby covenants and agrees to pay for the percentage of the costs and expenses of Maintenance attributable to Lot 1 as set forth above. Zermatt may form an association of property owners that is responsible for the percentage of the costs and expenses associated with the Maintenance attributable to Lot 1 as set forth above, provided the Association has the authority to lien and collect Maintenance assessments.

6. When R.E.D. performs, or has performed, Maintenance on all or any portion of the Detention Pond, R.E.D. may, within a reasonable time after the completion of such work, submit to Zermatt a written invoice for each party's share of the Maintenance costs and expenses. The parties agree to pay all such Maintenance costs and expenses within fifteen (15) days of receipt of the written invoice. The amount of the invoice shall be a charge on the parties' property described hereunder and shall be a continuing lien upon the property. The amount of the written invoice shall also be the personal obligation of the person who was the owner of such property at the time when the invoice fell due. The personal obligation for the invoice shall not pass to his or her successors in title unless expressly assumed by them. Any invoice not paid within fifteen (15) days after receipt shall bear interest from the due date at the rate of sixteen percent (16%) per annum or the maximum rate allowed by law, whichever is greater. The owners who perform the work represented by the invoice, may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property and in addition, may offset any amounts owed as and against any then existing obligation of the other.

7. Any lien created pursuant to these Drainage Covenants shall be subordinate to the lien of any first mortgage or first deed of trust now or hereafter placed upon the lot against which such lien is created.

8. Any notice to be given or to be served upon any party hereto in connection with this Agreement must be in writing and may be delivered by a national courier delivery service for overnight delivery or certified mail. Any such notice shall be considered given on the earliest date of: the next business day after deposit with overnight courier for next business day delivery; or three (3) business days after deposit in the United States mail in certified form. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. All deliveries to be effective must be provided to all parties listed.

To Zermatt: **Zermatt Equity Corporation**
 % Dr. Gregory E. Sutton
 4000 South 59th Street Court
 Lincoln, NE 68506
 Tax ID # 47-0715675
 (402) 483-6284 / (402)483-6734 fax

With copy to: Jennifer J. Strand
Woods & Aitken Law Firm
206 South 13th Street, Suite 1500
Lincoln, NE 68508
(402) 474-0321 / (402) 474-5777 fax

To R.E.D.: R.E.D. Capital Management, L.L.C.
4435 Main Street, Suite 1000
Kansas City, MO 64111
Attn: Dan Lowe
Tax ID # 47-0810225
(816) 360-1403 / (816) 360-1415 fax

R.E.D. Capital Management, L.L.C.
Ebert & Rehorn
4455 E. Camelback Rd., Suite E-180
Phoenix, AZ 85018
Attn: Mike Ebert
Tax ID # 47-0810225
(602) 947-7772 / (602) 947-7997 fax

With copy to: Richard B. Katz, Esq.
Katz & Hanson, L.C.
2980 City Center Square
1100 Main Street
Kansas City, MO 64105
(816) 421-8210 direct / (816) 421-8247 fax

8. All the foregoing covenants shall be perpetual and shall run with the land.

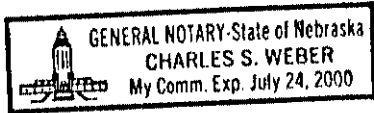
9. This Agreement may be executed in counterparts and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and shall run with the land.

ZERMATT EQUITY CORPORATION,
a Nebraska corporation

By: 
Gregory E. Sutton, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7th day of April, 1998 by Gregory E. Sutton, President of Zermatt Equity Corporation, a Nebraska corporation, on behalf of the corporation.



[Signature]

Notary Public

R.E.D. CAPITAL MANAGEMENT, L.L.C.,
a Kansas limited liability company

By: **R.E.D. CAPITAL DEVELOPMENT OF LINCOLN, L.L.C.,** a Kansas limited liability company, It's Manager

By: *[Signature]*
Dan Lowe, Authorized Signatory

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing was acknowledged before me this 8th day of April, 1998, by Dan Lowe, Authorized Signatory of R.E.D. Capital Development of Lincoln, L.L.C., a Kansas limited liability company, manager of R.E.D. Capital Management, L.L.C., a Kansas limited liability company, on behalf of the limited liability company.

REBEKAH DAILY
Notary Public-Notary Seal
State of Missouri
Jackson County 8-8-98
My Commission Exp. _____

[Signature]
Notary Public

EXHIBIT A
LAYOUT REFLECTING THE LOTS

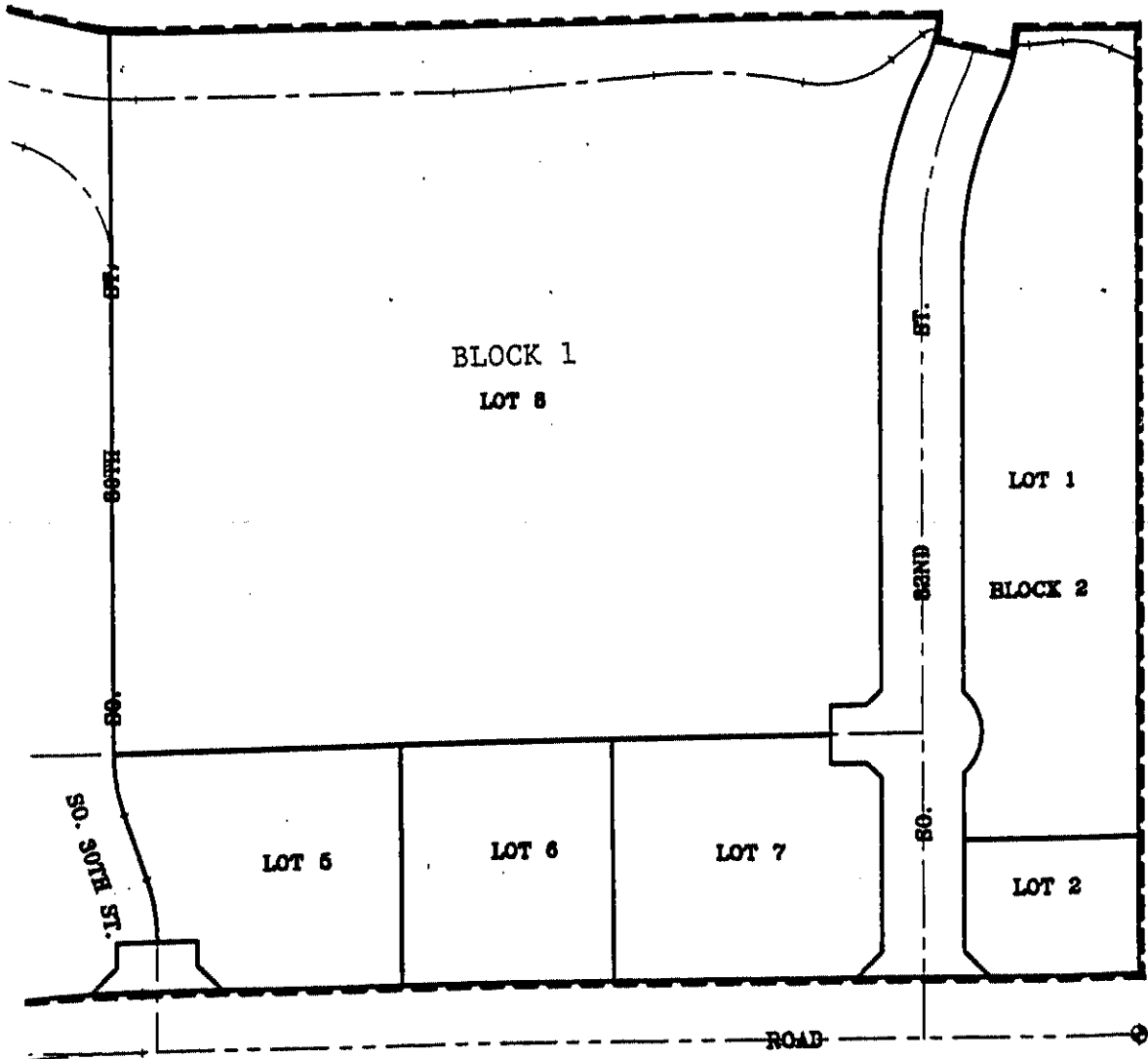


EXHIBIT B

**LEGAL DESCRIPTION
OF EASEMENT**

1st Addition

All of that parcel known as Block 2, Lot 1, SouthPointe Pavilions/ Addition,
located in Lancaster County, Lincoln, Nebraska, as shown on the recorded plat
thereof.

NTE (GFW)