



MISC 2006137933



DEC 06 2006 07:54 P 11

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
INDIAN CREEK COMMERCIAL PLAZA,
DOUGLAS COUNTY, NEBRASKA**

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
12/6/2006 07:54:17.67



2006137933

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") made this 21st day of November 2006 by Gottsch Land Company, a Nebraska corporation ("Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of certain real estate legally described as:

Lots 1-11 INDIAN CREEK COMMERCIAL PLAZA, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as the "Property"); and

WHEREAS, Declarant and Village Development - Elkhorn, L.L.C., a Nebraska limited liability company (hereinafter referred to as "Village Development"), have entered into a Real Estate Purchase Agreement dated June 29, 2006 (the "Purchase Agreement"), pursuant to which Declarant agreed to sell and Village Development agreed to purchase the real property legally described as follows ("Lot 2"):

Lot 2, INDIAN CREEK COMMERCIAL PLAZA, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, Village Development has entered into a Purchase and Sale Agreement with Walgreen Co. with respect to Lot 2, and intends to develop Lot 2 for use by Walgreen Co.; and

WHEREAS, by virtue of the recording of this Declaration, the Property shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in the Property or any portion thereof, and every owner of the Property 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 consent to the terms hereof.

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BKP _____ C/O _____ COMP BW
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return to
Union Title Company
3806 Normal Blvd. *Jefferson*
Lincoln, NE 68506 *EC TITLE*
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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 Property and shall be binding on the present owners of the Property or any portion thereof and all its successors and assigns and all subsequent owners of the Property and any improvements thereon, together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, In consideration of the recitals set forth above and the covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares as follows:

ARTICLE I USE RESTRICTIONS

1.1 Nuisances. Throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of the Property shall be used, directly or indirectly, for any use which creates a nuisance or which endangers the health or unreasonably disturbs the quiet enjoyment of the owners of the Property, their tenants, and their respective subtenants.

1.2 Compliance with Laws. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Property which is in violation of any applicable governmental law, regulation, rule, ordinance or code, including without limitation all zoning and other ordinances, regulations and codes of the City of Elkhorn, Nebraska, or its successors and assigns.

1.3 Specific Use Restrictions.

1.3.1 No portion of the Property except Lot 2, shall be used for the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind, except as may be incidentally sold or dispensed in conjunction with medical, dental, veterinarian or other services with offices located on the Property.

1.3.2 No portion of the Property except Lot 2, shall be used for the sale of so-called health and/or beauty aids and/or drug sundries, except to the extent that the combined sales and display area with respect to such use does not exceed one hundred (100) lineal feet of shelf space. Lineal feet of shelf space for purposes of this Section 1.3, shall be defined as the lineal length of any shelf measured by its lineal footprint, but shall not include each additional row of shelving that may be stacked upon the length of its lineal footprint. For example, a shelving rack with four shelves that are each four feet in length shall only count as four lineal feet of shelf space.

1.3.3 No portion of the Property except Lot 2, shall be used for the operation of a business in which photofinishing services (including, without limitation, digital photographic

processing or printing, or the sale of any other imaging services, processes or goods) or photographic film are offered for sale, except as may be incidental to any merchant whose primary business is printing, photocopying or the sale of business machines or supplies or imaging services incidental to any medical, dental or veterinarian with offices located on the Property.

1.3.4 No portion of the Property except Lot 2, shall be used for the operation of a business in which greeting cards and/or gift wrap are offered for sale, except to the extent that the combined sales and display area with respect to such use does not exceed one hundred (100) lineal feet of shelf space.

1.3.5 No portion of the Property except Lot 2, shall be used for the operation of a business in which prepackaged food items for off premises consumption are offered for sale, except to the extent that the combined sales and display area with respect to such use does not exceed fifty (50) lineal feet of shelf space; provided, however, that in no event shall such exception permit the operation of a convenience store on the Property except one (1) convenience store may be located on the Property adjacent to the 204th Street entrance. Notwithstanding the forgoing, the use restrictions contained in this subparagraph 1.3.5 above shall not apply to: (a) a delicatessen or restaurant including, without limitation, a take-out or fast food restaurant; (b) a bakery, pastry, bagel or similar shop selling bread products; (c) a butcher or meat shop, (d) the sale of such items from vending machines; (e) the sale of such items by a business on the Property solely to its employees.

Notwithstanding the forgoing, none of the exclusive use restrictions contained in subparagraph 1.3.1 above shall apply to one grocery store, supermarket, department store or other retailer (other than a retailer whose primary business is pharmacy, i.e. Osco Drug, Rite Aid, CVS/pharmacy, Eckerd Pharmacy) occupying at least forty thousand (40,000) square feet of building improvements on the Property, and subparagraphs 1.3.2 through 1.3.5 above shall not apply to a grocery store, supermarket, department store or other retailer occupying at least twenty five thousand (25,000) square feet of building improvements on the Property, provided the primary purpose of any such retailer shall not be one or more of the uses described in subparagraphs 1.3.2 through 1.3.5 above (i.e. Party America, Hallmark Store, Mangelsen's, Sally Beauty Co., Beauty First, Beyond Beauty).

In addition to the foregoing, it is expressly agreed that neither all nor any portion of the Property shall be used, directly or indirectly, for purposes of the operation of a adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, flea market, the outdoor housing or raising of animals (except up to five hundred (500) square feet incidental to a Veterinary Clinic), any industrial use (including, without limitation, any manufacturing, smelting, rendering, brewing, refining, chemical manufacturing or processing, or other manufacturing uses), any mining or mineral exploration or development except by non-surface means, a carnival, amusement park or circus, an assembly hall, off track betting establishment, bingo hall, a church, temple, synagogue, mosque, or other house of worship, or any facility for the sale of paraphernalia for use with illicit drugs.

ARTICLE II
BUILDING RESTRICTIONS

2.1 Approval of Improvement Plans. No improvements shall be constructed, erected, placed, maintained or permitted to remain on the Property until plans and specifications for such improvements and alterations, which may include without limitation site plans, exterior elevations, grading plans, drainage plans, utility plans, landscaping, and any other information needed to accurately describe the exterior appearance of the proposed improvements (the "Application"), have been submitted to and approved in writing by the Declarant.

2.2. Basis for Approval. The Declarant shall have the right to approve or disapprove the Application submitted to it in its reasonable discretion. The Declarant will be considered among any other relevant items, the following criteria:(i) The building facades shall be composed of any of the following materials: (a) Painted or colored rock face concrete block; (b) Clay brick; (c) Synthetic Stucco (EFFIS); (d) Aluminum frame glass windows and doors; and/or (e) Other similar materials approved by the Declarant; and (ii) At least 20% of the building facade shall consist of glass and accent materials.

2.3 Time for Decision. The Declarant shall approve or disapprove each Application within fifteen (15) days from the receipt thereof. If the Declarant fails either to approve or disapprove the Application within said fifteen (15) day period; then it shall be deemed that the Declarant has approved said Application. If Declarant is dissolved without an assignment of its rights and duties under this Declaration, a majority of the owners of the Property may appoint a committee of three (3) persons to carry out the provisions of this Section 2.3.

Declarant hereby indicates its approval of the plans for the improvements to be constructed on Lot 2 prepared by Davis Design dated November 2006 (including the site plan, landscaping plan, exterior elevations, signage, engineering and other plans a part thereof). Notwithstanding the foregoing, Walgreen Co. may alter any improvements on Lot 2 without the approval of Declarant, so long as such alterations are made using materials of quality similar to those used in the original construction of the improvements approved by Declarant and in full compliance with all laws, rules, orders, ordinances, regulations and requirements of law.

2.4 Disclaimer of Liability. Neither Declarant, nor any member thereof, nor any agents, officers or employees of Declarant, shall be liable in any way for any damage, loss or prejudice suffered or claimed by an owner, lessee or any other person who submits an Application until this Article II. Any person or entity who submits an Application shall for ever defend, indemnify and hold the Declarant, the members thereof, and the employees, officers and agents of each, harmless from all damage, loss or liability (including reasonable attorney's fees) suffered or claimed by any third party on account of (i) any defects in any plans, drawings, specifications or other documentation submitted in any Application, or revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; or (ii) the construction or performance of any work, whether or not pursuant to any approved Application.

2.5 No Representations or Warranties. In no event shall an approval by the Declarant of any Application, or any written or oral statements made by the Declarant or any officer or employee of the Declarant, be deemed to constitute in any way representations or warranties of any kind, express or implied, with regard to the Application and any plans, drawings, specifications or other documentation constituting a part of the Application, including without limitation representations or warranties regarding compliance with zoning, subdivision and land use laws, or compliance with any other applicable codes, regulations and laws, or with regard to fitness for a particular purpose.

ARTICLE III MAINTENANCE AND OPERATION

3.1 Outdoor Storage. No article of merchandise (except merchandise offered for sale) shall be kept, stored, or displayed outside the confines of a walkway building, unless it is screened by fences, walls or plantings so that it cannot be seen from any public way. In no event shall any part of the Property be used for storage or abandonment of any property that is not screened from any public streets, private drives or adjoining property, unless the owner has obtained the express written approval of the Declarant.

3.2 Maintenance of Completed Improvements. The owner of the Property shall maintain or cause to be maintained, at its expense and all improvements completed thereon in a well-maintained, clean, neat and attractive condition at all times and shall comply with all governmental health, fire, building, and safety ordinances, codes, regulations and requirements applicable thereto.

ARTICLE IV DURATION, MODIFICATION AND TERMINATION

4.1 Duration of Covenants. This Declaration, and all covenants, conditions, and restrictions herein shall continue and remain in full force and effect at all times with respect to the Property and each part thereof, now or hereafter made subject thereto (subject, however, to the right to amend and terminate as provided in Section 4.2 below), commencing on the date this Declaration is recorded in the Office of the Register of Deeds of Douglas County, Nebraska and thereafter in perpetuity.

4.2 Termination or Modification. Except for the provisions of Section 1.3, this Declaration, or any provisions hereof, may be terminated, modified, or amended with respect to all or any portion of the Property, by the terms of a recorded document executed by not less than seventy-five percent (75%) of the owners of the Property covered by this Declaration and Walgreen Co., for so long as Walgreen Co. is the owner of Lot 2. For the purposes of establishing the number of votes, each owner, including the Declarant, shall have one vote for each Lot owned.

ARTICLE V
Remedies and Enforcement

5.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any owner or its tenants, or their respective employees, agents, contractors, customers, invitees and licensees, of any of the terms, covenants, restrictions or conditions hereof, the other owner(s) and Walgreen Co. shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including specific performance. Walgreen Co. shall have the right, but not the obligation, to enforce this Declaration on behalf of the owner of Lot 2 and/or to cure a breach or default hereunder by the owner of Lot 2, which enforcement or cure shall be accepted by the other owner(s).

5.2 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Lot made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any owner of all or a portion of the Property covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

5.3 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of Section 1 of this Declaration, each owner agrees that such violation or threat thereof shall cause the non-defaulting owner and its tenants and their respective subtenants to suffer irreparable harm and such non-defaulting owner and its tenants and their respective subtenants shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of Section 1 of this Declaration, the non-defaulting owner, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Section 1 of this Declaration.

ARTICLE VI
Indian Creek Commercial Plaza Owners Association, Inc.

6.1 Formation of Owners Association. Indian Creek Commercial Plaza Owners Association, Inc. (the "Association") covenants and each member of the Association, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the landscape areas reflected on Exhibit "A" attached hereto and incorporated herein by this reference (the "Landscape Areas"), which covenants by the members shall be satisfied by the payment of assessments for the maintenance or improvement of the Landscape Areas. The Association shall keep accurate records of the costs associated with the maintenance of the Landscape Areas ("Landscape Maintenance Expenses") for the purpose of making assessments as provided by this Declaration. The Declarant, at Declarant's sole cost and expense, shall be responsible for the initial installation of the landscaping in the Landscape Areas. The Association shall exercise powers, duties and responsibilities as shall be more particularly set forth in the Articles of Incorporation and the Bylaws of the Association. Every

owner of a platted lot within the Property (the "Lots") shall be deemed a member of the Association. The Declarant specifically reserves the right to annex additional properties to the Association, which properties shall be mandatory members of the Association. The Association shall have the power to enforce, by an action at law or in equity, the provisions of this Declaration against the owner of any Lot in violation thereof. Each Lot shall pay a pro rata share of the Landscape Maintenance Expenses on an annual basis. Said payment shall be made within thirty (30) days of receipt of the invoice and reasonable supporting documentation identifying the landscaping maintenance costs therefore. Pro rata share shall be based upon the square footage of land in said particular lot over the square footage of land in all lots 1-11. The pro rata share of Lot 2 shall be 7.74 percent based on Lot 2 containing 1.81 acres of land and the total acreage of land in Lots 1-11 being 23.38 acres.

6.2 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges as hereinafter provided, as such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such owner's successors in title unless expressly assumed by them.

6.3 Association Lien for Non-Payment of Common Area Expenses.

6.3.1 All sums assessed by the Association but unpaid for the share of Landscape Maintenance Expenses chargeable to any Lot shall constitute a lien on such Lot superior to all other liens and encumbrances, except only for tax and special assessment liens of the Lot in favor of any assessing entity, and all sums unpaid on any mortgage filed of record prior to the filing of the Declaration, including all unpaid obligatory sums as may be provided by such encumbrances. In the event of default in the payment of the assessment, the owner shall be obligated to pay interest at the maximum rate of interest allowable by law, on the amount of the assessment from due date thereof, together with all expenses, including attorney's fees incurred together with such late charges as provided by the Bylaws of the Association. To evidence such lien, the Board of Directors of the Association shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest, late charges and expenses, including attorney's fees thereon, the name of the owner of the Lot and legal description of the Lot. Such notice of lien shall be signed by one of the members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Douglas County, Nebraska. Such lien shall attach and be effective from the due date of the assessment until all sums with interest and other charges thereon, shall have been fully paid.

6.3.2 Such lien may be enforced by the foreclosure on the defaulting owner's Lots by the Association in the manner of a deed of trust or mortgage on real property upon the

recording of a notice to claim thereof or by an action at law against the owner personally obligated to pay the same. In any such proceedings, the owner shall be required to pay the costs, expenses and attorney's fees incurred, and in the event of foreclosure, all additional costs, all expenses and reasonable attorney's fees incurred. The owner of the Lot being foreclosed or subject to litigation shall be required to pay the Association any assessments for the Lot during the period of foreclosure or litigation, and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey and otherwise deal with the same.

6.3.3 Any mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Landscape Maintenance Expenses payable with respect to such Lot, and upon such payment, such encumbrancer shall have a lien on such Lot for the amount paid of the same rank as the lien of this mortgage or encumbrance without the necessity of having to record a notice of claim of such lien. Upon request of a mortgagee, the Association shall report to the mortgagee of a Lot any unpaid assessments remaining unpaid for longer than thirty (30) days after the same is due; provided, however, that a mortgagee shall have furnished to the Association notice of such encumbrance.

6.3.4 The recorded lien may be released by recording a release of lien signed by one of the Members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Douglas County, Nebraska.

6.3.5 Notwithstanding any of the foregoing provisions, any mortgagee who obtains a title to a Lot pursuant to the remedies set forth in its mortgage or deed of trust shall take title to the Lot free and clear of all annual assessments levied thereon prior to such transfer of title and free and clear of all liens created as a result of such assessments.

ARTICLE VII ADDITIONAL PROVISIONS

7.1 Constructive Notice and Acceptance of Declaration. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any references to this Declaration is obtained in the instrument by which such person or entity acquired an interest in the Property.

7.2 Governing Law. This Declaration shall be governed by and constructed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Douglas County, Nebraska, and each person with rights hereunder hereby waives the right to sue or be sued in any other place.

7.3 Benefited Property. This Declaration is made for the benefit of the Declarant and each owner of the Property; shall create equitable servitudes in favor of the Property; and shall be binding upon all grantees of the Property, their heirs, successors and assigns.

7.4 Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

7.5 Effect of Invalidation. In the event that any provision of this Declaration is held to be invalid by any court, the same shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired and in full force and effect.

7.6 Notices.

7.6.1 To Declarant. Any and all notices, or other communication made pursuant hereto, shall be in writing and shall be deemed properly delivered, given to or received by Declarant (a) when personally delivered against receipted copy, (b) four (4) business days after being mailed by certified or registered mail, postage prepaid, or (c) upon receipt when delivered by national overnight courier service; in either case to the Declarant at the following address:

Gottsch Land Co.
20507 Nicholas Cir
Suite 100
Elkhorn, NE 68022

A reasonable search should be inquired as to the current location of Gottsch Land Co.

7.6.2 To Owners. A notice to an Owner of the Property shall be deemed duly given, delivered and received (a) when personally delivered against receipted copy, (b) four (4) business days after mailing by certified or registered mail, postage prepaid, or (c) upon receipt when delivered by national overnight courier service; in either case to the address of the Owner's Lot or to such other address as the Owner has specified in writing to the Declarant and other Owners and, with respect to Lot 2, with a copy to Walgreen Co. at the following address:

Walgreen Co. Walgreen Co.
104 Wilmot Road, MS#1420
Deerfield, IL 60015-4616
Attn: Real Estate Law Department (Store 11204)

7.7 Requirements of City. The covenants and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the City of Elkhorn, Nebraska, its successors and assigns, on the Property. In the event of a conflict or inconsistency between the provisions of this Declaration and the requirements, codes or ordinances of the City of Elkhorn, Nebraska, its successors and assigns, then the more restrictive requirement shall govern.

7.8 No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Property subjected to this Declaration. No easements shall be implied by this Declaration;

in that regard, and without limiting the foregoing, no easements for parking, signage, drainage or utilities are granted or implied herein.

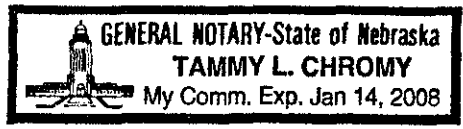
DECLARANT:

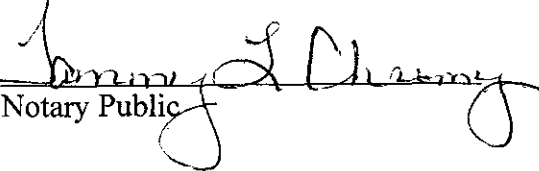
GOTTSCH LAND COMPANY,
a Nebraska corporation

By: 
Brett Gottsch, President

State of Nebraska)
)ss.
County of Douglas)

The foregoing instrument was acknowledged before me this 27 day of November, 2006 by Brett Gottsch, President on behalf of Gottsch Land Company, a Nebraska corporation.




Notary Public

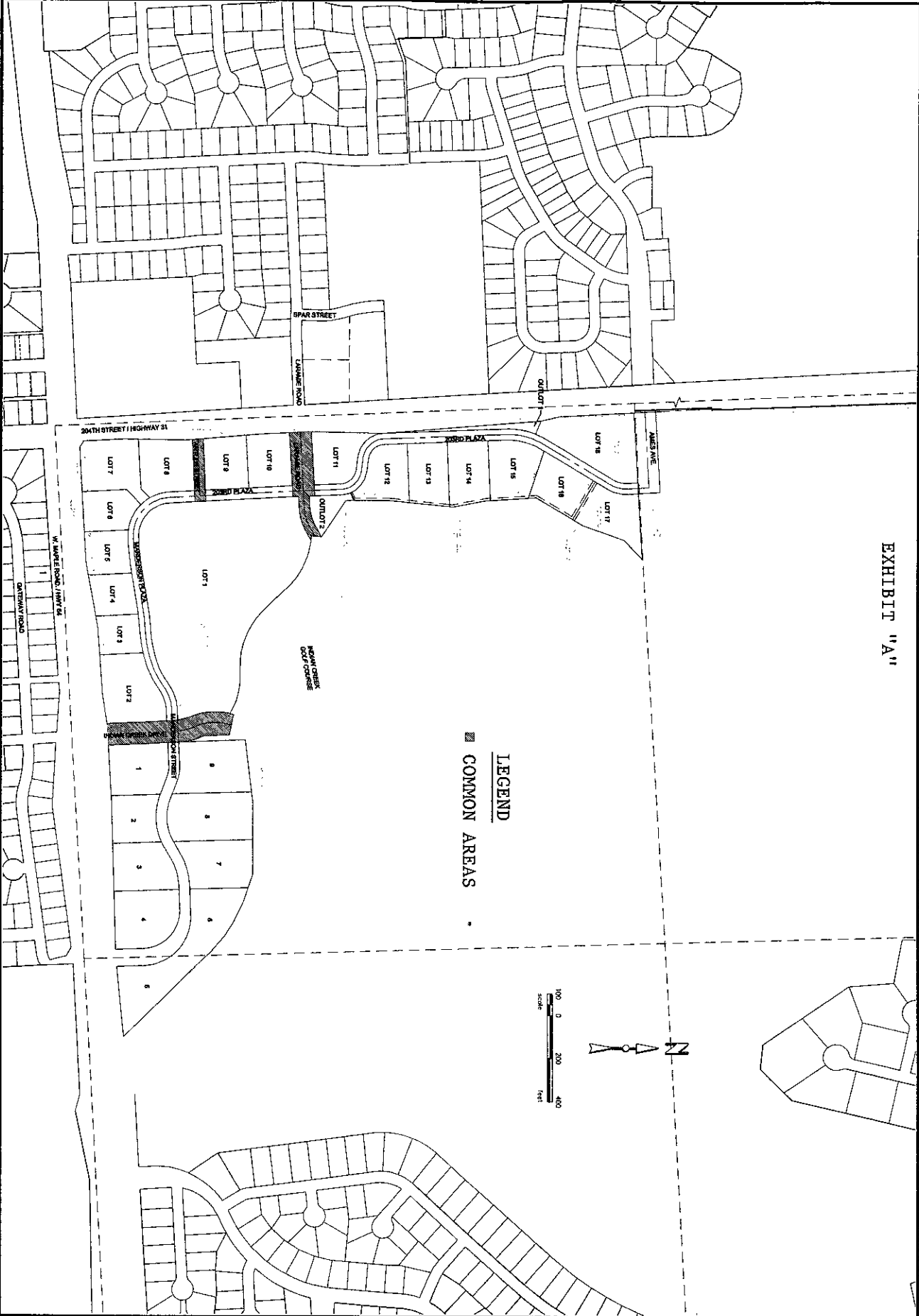


EXHIBIT 'A'

LEGEND
 COMMON AREAS



PROJECT 1 OF 1	SID 455 (INDIAN CREEK COMMERCIAL PLAZA AND INDIAN CREEK BUSINESS PARK) MAINTENANCE AREAS	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">No.</td> <td style="width: 15%;">DATE</td> <td style="width: 40%;">REVISION DESCRIPTION</td> <td style="width: 5%;">BY</td> <td style="width: 5%;">D/P</td> <td style="width: 5%;">C/C</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	No.	DATE	REVISION DESCRIPTION	BY	D/P	C/C												
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20077 NICHOLAS CIRCLE • ELKHORN, NE 68022 • (402) 732-8475