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Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE
7/30/2004 15:24:45.32



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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

7/2 BKP _____ C/O _____ COMR *[Signature]*
DEL _____ SCAN _____ FV _____

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made effective on this 14th day of July, 2004, by SGD Investments, Inc., a Nebraska corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the following legally described real property, to-wit:

See attached Exhibit A

(hereinafter collectively referred to as the "Property"), which is adjacent to the residential neighborhood commonly known as "The Abbey".

WHEREAS, the Declarant intends to allow the development and operation of a convenience store and motor fuels station on the Property, which Property is and will be developed and operated in accordance with the special use permit and submittals approved by the Omaha City Council on July 13, 2004, by Resolution Case No. C8-87-209, which may be amended from time to time.

WHEREAS, Declarant has, for the benefit of the adjacent residential neighborhood to the north of the Property (Lots 9 through 12, inclusive, The Abbey, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to collectively as the "Adjoining Landowners")), agreed to install and maintain certain improvements and landscaping and adopt operational standards for the benefit of the Adjoining Landowners as set forth herein.

WHEREAS, by virtue of the recording of this Declaration, the Property shall be held, transferred, sold, leased, conveyed, developed, used, occupied, 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, by acceptance of a deed or other conveyance of such interest, and every owner of 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 consented to the terms hereof.

131671

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 (as described 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 Property, 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 Property or any portion thereof, the Adjoining Landowners, and their respective heirs, legal representatives, successors and assigns, and any mortgagees.

Section 1. The Declarant agrees to each of the following items:

(a) Declarant agrees to cause the installation of a six (6') foot high wooden fence along the boundary line between the Property and the Abbey as shown on Exhibit B attached hereto. The design of the fence shall be similar to the existing fence along the boundary line of the Property and the Abbey. The Declarant or its designee shall be responsible for the maintenance, repair and replacement of the fence, unless the cause for such maintenance, repair and/or replacement is caused by the negligence or willful misconduct of the Adjoining Landowners or any one of them. The Adjoining Landowners hereby grant the Declarant, its agents, tenants and contractors, a five (5') foot easement along the rear boundary line of their respective properties for the purpose of installing, maintaining, repairing and replacing the fence.

(b) Declarant shall generally conform to and satisfy or exceed the landscape plan shown on Exhibit C attached hereto. In addition, the Declarant agrees to maintain the landscaped buffer, including the removal of broken or weak limbs, leaves, trash from the buffer area, and agrees to water the landscaped buffer area with an automatic sprinkler system. In addition, the Declarant shall provide additional screening, to the extent reasonably necessary, to protect the owner of 806 North 131st Court from automobile headlights.

(c) The Declarant shall illuminate or require the illumination of the north side of the convenience store and motor fuels station with sharp-cutoff lighting fixtures.

(d) No pole signs advertising the convenience store or motor fuels station shall be permitted on the Property at the intersection of 132nd Street and the north entryway into the Property. Nothing herein shall prohibit the Declarant to allow directional signs under six (6') feet in height or such other signage as may be permitted on the Property by the City of Omaha, Nebraska.

(e) No owner or tenant of the Property shall allow the trash dumpster located on the north side of the buildings to be emptied not before 6:00 a.m. and not after 6:00 p.m. No owner or tenant shall maintain an open dumpster on the Property, except on a temporary basis for the construction, repair, remodeling, or any reconstruction of the structures or improvements located on the Property.

(f) No owner or tenant of the Property shall maintain an outside speaker system that is audible to the Adjoining Landowners.

Section 2. Enforcement. The covenants and restrictions contained in this Declaration shall run to and shall be for the benefit of the Adjoining Landowners and may be enforced by any owner of such property or by The Abbey Homeowners Association by any proceeding at law or in equity. Failure by any such owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to enforce such covenant or restriction thereafter.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Duration and Amendment of Declaration. The covenants, conditions and restrictions contained in Section 1, above, shall be perpetual unless that portion of the Property is no longer being operated as a convenience store and motor fuels station. This Declaration may not be amended or modified without the prior written consent of sixty (60%) percent or more of the Adjoining Landowners. To be effective, any amendment to this Declaration must be recorded in the office of the Register of Deeds of Douglas County, Nebraska.

Section 5. Requirements of City. The covenants and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the City of Omaha, Nebraska. In the event of a conflict or inconsistency between the provisions of this Declaration and the requirements, codes or ordinances of the City applicable to the Property, then the more restrictive requirement shall govern.

Section 6. Rights Granted Do Not Create Obligations; Termination. Notwithstanding any provision in this Declaration to the contrary, the foregoing rights in favor of the Adjoining Landowners shall not in any way be construed as creating any obligation on the part of Declarant to develop the Property or construct any of the improvements on the Property. The terms and conditions of this Declaration shall terminate and shall be of no force or effect in the event the plans envisioned by the special use permit are not carried out and the special use permit approved by the City of Omaha, Nebraska, is withdrawn or terminated by the City of Omaha, Nebraska, or the Declarant.

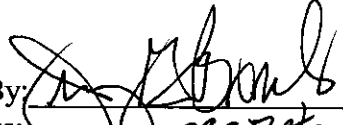
Section 7. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Douglas County, Nebraska, and each person with rights hereunder hereby waives the right to sue or be sued in any other place.

Section 8. 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 sections to which they refer.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

DECLARANT:

SGD Investments, Inc., a Nebraska corporation,

By: 
Its: secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14 day of July, 2004, by Jerry Banks, secretary of SGD Investments, Inc., a Nebraska corporation, on behalf of said corporation.

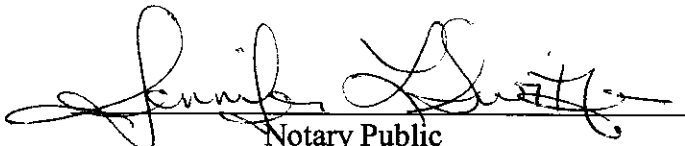

Notary Public



Exhibit A

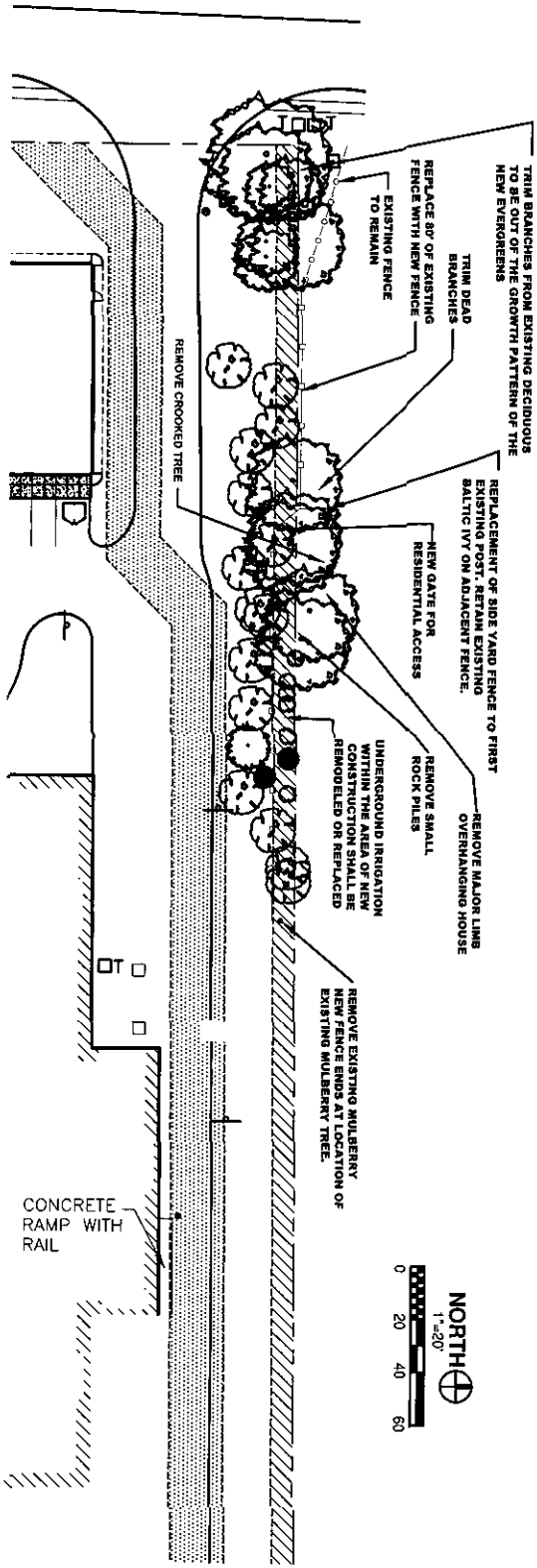
LEGAL DESCRIPTION

Lot 1, in KVI - 132nd Street Plaza, an Addition to the City of Omaha, Douglas County, Nebraska

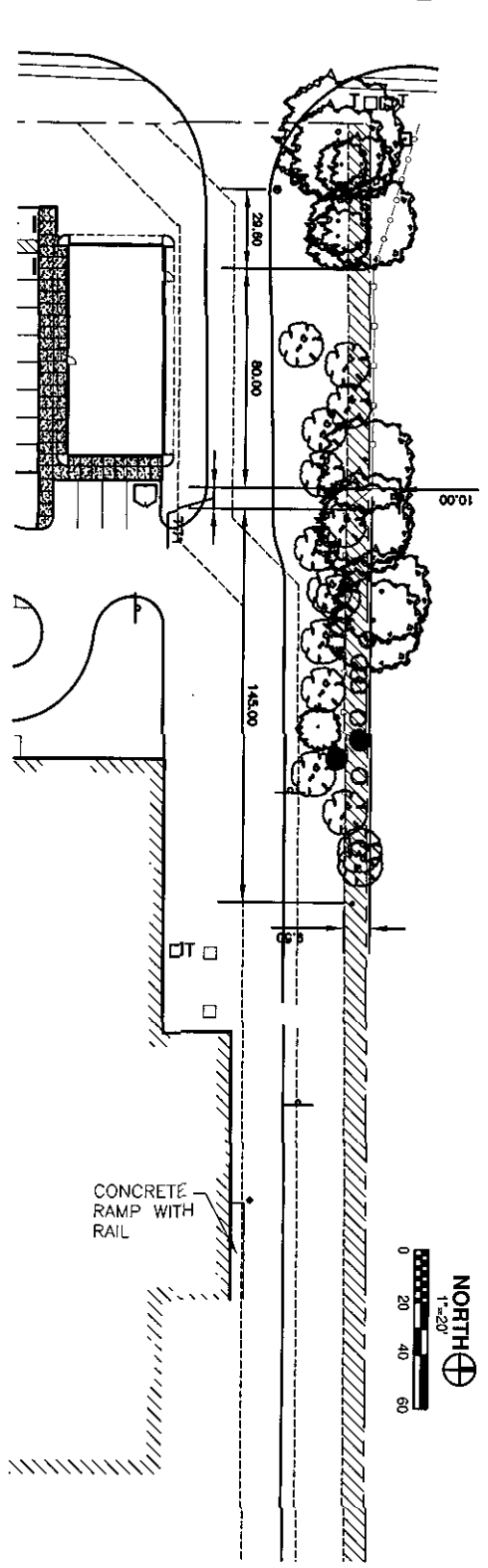
AND

A tract of land being part of Lot 2, as originally surveyed and platted, of the KVI - 132nd Street Plaza, a subdivision located in the Southwest Quarter (SW ¼) of Section 18, Township 15 North, Range 12 East of the 6th P.M., Douglas County Nebraska. Said tract of land being more particularly described as follows: Beginning at the Southeast corner of said Lot 2 and said point also being the Southeast corner of the subdivision; thence N76°53'01"W (Platted Bearing) along the Southerly line of the subdivision a distance of 74.23 feet to a point; thence N0°06'18"W a distance of 247.76 feet to a point; thence N43°26'07"W a distance of 11.49 feet to a point; thence N0°00'22"E a distance of 233.41 feet to a point; thence S89°58'09"W a distance of 226.08 feet to a point; thence N00°01'53"W a distance of 49.29 feet to a point of curvature; thence Northeast along a curve to the right, said curve having a radius of 50.00 feet, a long chord of 38.27 feet bearing N22°28'07"E, an arc length of 39.27 feet to a point of tangency; thence N44°58'07"E a distance of 63.53 feet to a point of curvature; thence Northerly along a curve to the left, said curve having a radius of 80.00 feet, a long chord of 43.97 feet bearing N29°01'15"E, an arc distance of 44.54 feet to a point; thence N89°58'09"E a distance of 228.23 feet to the Northeast corner of said Lot 2; thence S0°12'00"W a distance of 674.42 feet to the Point of Beginning.

EXISTING SITE WITH NEW FENCE MATERIAL

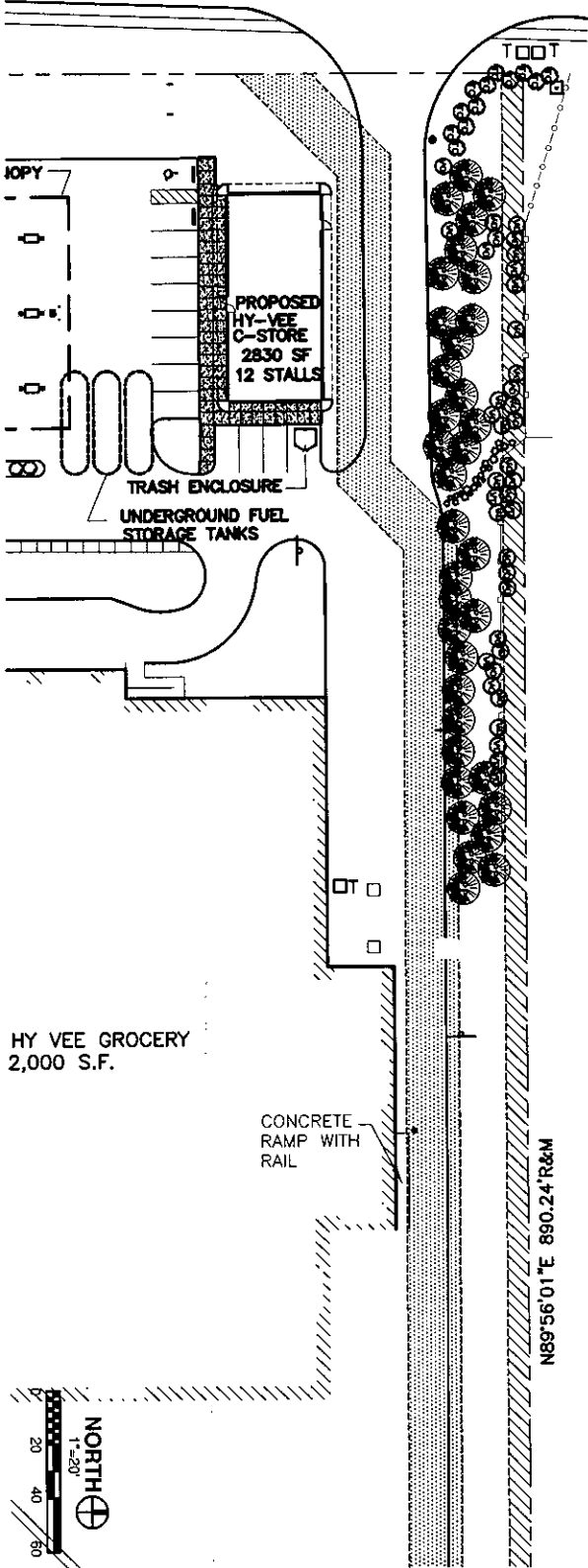


DIMENSION OF NEW FENCE



EX. B		Pinsky & Shook ARCHITECTS <small>1999 Grant Street, Suite 200, Omaha, Nebraska 68104 (402) 499-4446</small>	HY VEE C-STORE <small>1330 & DODGE OMAHA, NEBRASKA</small>
	PROJECT NO. _____ DATE _____ DRAWING NO. _____ SHEET NO. _____		

JND



- ALL EXISTING PLANT MATERIAL IS NOT SHOWN TO AID IN THE CLARITY OF THE PLANTING PLAN.
- WOOD MULCH WILL BE PLACED AROUND ALL SHRUB BEDS.
- PEDESTRIAN STEPPING STONES WILL BE PLACED FROM THE NEW GATE TO THE EXISTING CURB.

PLANTING SCHEDULE FOR RESIDENTIAL SCREENING

QUANTITY	SYMBOL	COMMON NAME	BOTANICAL NAME	SIZE	METHOD
12	TC	HICKS YEW	TAXUS CUSPIDATA "HICKSII"	36" x 42"	BB
16	PG	BLACK HILLS SPRUCE	PICEA GLAUCA DENSATA	8'-10"	BB
15	PP	COLORADO BLUE SPRUCE	PICEA PLUNGENS GLAUCA	8'-10"	BB
17	VD	ARROWWOOD	VIBURNUM DENTATUM	N/A	5 GAL
21	VO	EUROPEAN CRANBERRY	VIBURNUM OPULIS	N/A	5 GAL
237'		6" TALL BOARD ON BOARD FENCE TO BE SIMILAR TO EXISTING			

HY VEE GROCERY
2,000 S.F.

CONCRETE
RAMP WITH
RAIL

PROPOSED
HY-VEE
C-STORE
2830 SF
12 STALLS

TRASH ENCLOSURE
UNDERGROUND FUEL
STORAGE TANKS

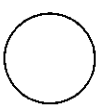
LOPY

HY VEE GROCERY
2,000 S.F.



N82R, 42°068 3, 10, 95, 69N

EX. C



Randy & Slack
ARCHITECTS

11018 Grand Street, Suite 200 Omaha, Nebraska 68164 (402) 498-4448

HY VEE C-STORE

LEND & DODGE
CHAMPA, NEBRASKA