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DECLARATION OF RESTRICTIONS  
AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the 11 day of January, 1989, by and between KV WESTRIDGE LIMITED PARTNERSHIP, a Nebraska limited partnership, and FIRST WESTSIDE BANK, a Nebraska banking corporation, being all of the owners of the Shopping Center hereinafter described (sometimes hereinafter called the "Declarants").

Declarants, for themselves and for their respective successors and assigns, do hereby declare, grant and covenant as follows:

1. Preliminary.

1.1 Definitions:

As used in this Declaration, the following words shall have the definitions hereinafter set forth.

(a) "Building Area" of each Parcel: That area shown as Building Area of each Parcel on the Site Plan attached hereto (the "Site Plan").

(b) "Common Area": All those areas on all Parcels which are not Building Areas and, from time to time, those portions of the Building Area on each Parcel not actually, at such time, covered by a building or other commercial structure or cannot, under the terms of this Declaration, be used for buildings in order to retain the respective Common Area requirements set forth in Section 2.3. The Common Area shall include, but not be limited to, parking areas, access roads, truck loading areas, delivery areas, walkways, bus stops, landscaped areas, driveways and sidewalks.

(c) "Hy-Vee": Means Hy-Vee Food Stores, Inc., an Iowa corporation, lessee of a portion of the improvements constructed on a portion of Parcel 1.

(d) "Lienholder": Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

(e) "Parcel": Parcels 1, 2, 3, 4 and 5, described below in this Subparagraph (d). Each Parcel constitutes a Lot, or a portion of a Lot or Lots platted as KVI-132nd Street Plaza, a Subdivision, as surveyed, platted and recorded, Douglas County, Nebraska, in accordance with the Plat and Dedication of said Subdivision filed June 13, 1988, in Book 1827 at Page 723 in the Office of the Register of Deeds of Douglas County, Nebraska. The Parcels are more particularly described as follows:

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Parcel 1: Lot 1, KVI-132nd Street Plaza, a Subdivision, as surveyed, platted and recorded, Douglas County, Nebraska.

Parcel 2: Portions of Lots 2 and 3, KVI-132nd Street Plaza, a Subdivision, as surveyed, platted and recorded, Douglas County, Nebraska, more particularly described on the Land Surveyor's Certificate recorded June 23, 1988 in Miscellaneous Record Book 853 at Pages 95 and 96 in the Office of the Register of Deeds of Douglas County, Nebraska, a copy of which is attached hereto marked "Parcel 2" and by this reference incorporated herein.

Parcel 3: A Portion of Lot 3, KVI-132nd Street Plaza, a Subdivision, as surveyed, platted and recorded, Douglas County, Nebraska, more particularly described on the Land Surveyor's Certificate recorded June 23, 1988 in Miscellaneous Record Book 853 at Pages 97 and 98 in the Office of the Register of Deeds of Douglas County, Nebraska, a copy of which is attached hereto marked "Parcel 3" and by this reference incorporated herein.

Parcel 4: Portions of Lots 4, 2 and 3, KVI-132nd Street Plaza, a Subdivision, as surveyed, platted and recorded, Douglas County, Nebraska, more particularly described on the Land Surveyor's Certificate recorded June 23, 1988 in Miscellaneous Record Book 853 at Pages 93 and 94 in the Office of the Register of Deeds of Douglas County, Nebraska, a copy of which is attached hereto marked "Parcel 4" and by this reference incorporated herein.

Parcel 5: Lot 5, KVI-132nd Street Plaza, a Subdivision, as surveyed, platted and recorded, Douglas County, Nebraska.

(f) "Owner": A person who is then the owner of a Parcel.

(g) "Restrictions": The easements, covenants, restrictions, liens, charges, obligations and benefits contained in this Declaration.

(h) "Shopping Center": Parcels 1, 2, 3, 4 and 5, as shown on the Site Plan.

(i) "Small Shops": The businesses now or hereafter located within the spaces designated as "Small Shops" on the Site Plan.

1.2 Declarants: Declarant KV Westridge Limited Partnership is the owner of all of the Shopping Center, except Parcel 4 ("Bank Parcel"), which is owned by Declarant First Westside Bank. The Parcels are located at the northeast corner of the intersection of 132nd Street and West Dodge Road, in the City of Omaha, County of Douglas, State of Nebraska, and are more particularly shown on the Exhibit "A" attached hereto.

1.3 Purpose: Declarant KV Westridge Limited Partnership plans to develop the Shopping Center as an integrated retail sales complex for the mutual benefit of all real property in the Shopping Center and, therefore, the Declarants, as Owners of all of the Parcels comprising the Shopping Center, hereby establish the Restrictions to:

(a) have the Shopping Center developed as an integrated shopping center;

(b) establish a general plan and scheme for development and to create and establish certain easements, restrictions, rights and obligations pursuant to such plan and scheme with regard to the Shopping Center;

(c) assure all:

(i) Owners, their respective heirs, personal representatives, successors and assigns;

(ii) future tenants, subtenants and/or occupants of any part of the Shopping Center; and

(iii) future holders of any mortgage, deed of trust or other security interest against all or any part of the Shopping Center

that the Shopping Center will be subject to the provisions of this Declaration.

## 2. Building and Common Area Development.

2.1 Building Location: All buildings and other structures (except those permitted in Section 2.2 below) shall be placed or constructed upon the Parcels only in the Building Areas, provided, however, canopies and roof overhangs (including columns or pillars supporting them), normal foundations and doors for ingress and egress may project from the Building Area a distance not greater than ten feet into the Common Area. All the foregoing must comply with all applicable laws, rules, ordinances and regulations of all governmental authorities having jurisdiction.

2.2 Common Area: The Common Area may be used for vehicular driving, parking (except that there shall be no double-deck parking), pedestrian traffic, directional signs, sidewalks, walkways and landscaping, charitable events and limited promotional events authorized by the Owner of Parcel 1 and for no other purposes, unless otherwise specifically provided in this Declaration. No buildings or structures

shall be placed or constructed in the Common Area, except pylon and directional signs, as provided in Article IV, paving, bumper guards or curbs, landscape planters, lighting standards, and, to the extent that they do not impede access to the rear or sides of buildings, loading docks, trash enclosures, bottle storage areas and other service facilities. The Common Area may be increased with respect to all Parcels of the Shopping Center, from time to time, by such events as removal of existing buildings or commercial structures previously located within the Building Area. Nothing herein shall preclude reconstruction or additional construction upon Common Area within the Building Area. The Common Area shall be improved, kept and maintained as provided for in that certain Common Area Maintenance Agreement among the parties covering the Shopping Center. Following the construction of any portion of the Common Area improvements, the sizes and arrangements of the Common Area improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be changed without the written consent of the Owner of Parcel 1.

2.3 Common Area Requirements: The Common Area for each Parcel shall not be less than three times the square footage of floor area contained in all buildings (but excluding mezzanines therein) allowed to be built on that Parcel. Except for Parcel 4, there shall be provided on each Parcel of the Shopping Center five parking stalls for standard-sized American cars per 1,000 square feet of usable building area, unless the prior written consent of the Owner of Parcel 1 is secured for a reduction of such parking ratio and such consent is recorded in the Office of the Register of Deeds of Douglas County, Nebraska. The parking for Parcel 4 shall be seventy-four (74) parking stalls for standard-sized American and compact cars. It is understood that the areas designated "Building Area" for each Parcel on Exhibit "A" are only to show where buildings may be located; but the entire amount of Building Area so designated for any Parcel is not necessarily to be used for buildings.

2.4 Type and Design of Building:

(a) Each building (which term shall include a structure of any kind) in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevation (including signs) and color will be architecturally and aesthetically compatible and harmonious with the buildings constructed on Parcel 1 of the Shopping Center. No building or other improvement may be constructed, nor the exterior of any existing building changed in any way without the prior written approval of the Owner of Parcel 1, as to landscape plan and the exterior design, materials, grade elevations, color and roof elevation of the building to be constructed or modified. The standard signs of Hy-Vee (but not its successors and assigns), as they may exist from time to time, and the opening, closing or relocation of any door, however, shall not require approval. No exterior antennas or satellite communication devices may be installed or permitted to remain on any Parcel without the prior written approval of the Owner of Parcel 1. Any building constructed on Parcel 2 of the Shopping Center as an extension of the existing Small Shops presently constructed on part of

Parcel 1 shall be substantially identical in appearance, design and construction to the Small Shops presently constructed on Parcel 1 of the Shopping Center. Before construction or modification of any building or other improvement is commenced, sufficient information shall be sent to the Owner of Parcel 1 to enable it to make a reasonable determination. The Owner of Parcel 1 may not arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is in conformity with the intent of this paragraph. The Owner of Parcel 1 must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproving. If the Owner of Parcel 1 rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such Owner shall be deemed to have approved same (provided that when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that if a disapproval with explanation was not made within the thirty (30) day period, approval will then be deemed to have been given). If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) Every building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any other building built upon the same or any other Parcel. The purpose of this paragraph is to allow buildings built on each Parcel to be fire rated as separate and distinct units without deficiency charge.

(c) No building shall be constructed or built in such a manner as to adversely affect the structural integrity of any other building on the Shopping Center.

(d) All buildings, except on Parcels 2 and 4, where two story buildings shall be permitted, shall be single story (with mezzanine permitted if approved in writing by the Owner of Parcel 1) and shall not exceed 36 feet in height, if on Parcel 1, 18 feet if on Parcel 3 or 5 or 34 feet if on Parcel 2 or 4, as measured from the finished first floor elevation, as approved by the Owner of Parcel 1.

(e) Wherever the consent or approval of the Owner of Parcel 1 is required in this Paragraph 2.4, the Owner of Parcel 1 reserves the right to waive its power of consent or approval, provided that the mortgagee of Parcel 1 concurs with such waiver. The consent of such mortgagee shall be deemed to have been given if written notice of the proposed waiver is given by the Owner of Parcel 1 to such mortgagee, such notice states that such mortgagee will be deemed to have waived any objection to the proposed waiver if it does not object in writing to the Owner of Parcel 1 within a thirty (30) day period

following the giving of such notice by the Owner of Parcel 1 to such mortgagee and a thirty (30) day period passes without objection having been given by such mortgagee to the Owner of Parcel 1.

2.5 Maintenance of Buildings and Improvements:

(a) The Owner of each Parcel shall maintain, or cause to be maintained, in a safe, clean and tenantable condition and in good order and repair, all landscaped areas, all buildings and improvements located on the Parcel, and the common areas of such Parcel, free and clear of any litter. In the event any building or other structure in the Shopping Center is damaged or destroyed by any casualty, the Owner of the Parcel upon which the same is located shall not be obligated to restore the same, but if such building or structure is not restored within a reasonable time after such casualty, which shall, in no event, be greater than nine (9) months, the Owner shall raze the same, and then forthwith grade, pave and stripe the area which it occupies so that the Shopping Center shall be left in a safe and sightly condition. Thereafter, any subsequent construction of a building or other improvement on such location shall be in conformity with the relevant provisions of this Declaration. The restoration of any building or structure which is substantially completed within the nine (9) month period following damage or destruction shall not require the prior written approval of the Owner of Parcel 1 if the exterior design, materials, grade elevations, color and roof elevation of the completed building or structure are not changed from that of the building or structure prior to the occurrence of the casualty necessitating the restoration.

(b) Any construction work conducted on the Building Areas shall always be done in such a manner and at such times as to cause the least interference as may be practicable under the circumstances with the businesses operated upon the other Parcels.

3. Easements.

3.1 Ingress, Egress and Parking: Each Owner hereto, as grantor, hereby grants to the other Owners, for the benefit of the other Owners, their respective successors, assigns, tenants, employees, agents, customers and invitees and the customers, employees and invitees of such tenants, and for the benefit of each Parcel belonging to the other Owners as grantees, the right, in common with each other, of nonexclusive ingress and egress by vehicular and pedestrian traffic and the right of vehicular parking upon, over and across the portion of the Common Area within the grantor's Parcels, including, without limitation, the access corridors providing access for Parcel 1 to West Dodge Frontage Road, as shown on the Site Plan, except for those areas devoted to loading docks, designated drive-in bank teller lanes, trash enclosures, bottle rooms and other service facilities permitted by Section 2.2 above and devoted to any other purpose as shown on the Site Plan. These reciprocal rights of ingress and egress shall apply to the Common Area for each Parcel, as such area shall be increased pursuant to Section 2.2 above. The Owner of each Parcel shall take all reasonable

steps necessary to prevent any person from parking upon, or otherwise blocking, temporarily, or otherwise, any driveway shown on the Site Plan and located upon such Owner's Parcel. The Owner of Parcel 1 reserves the right, at its sole cost and expense, to install paving over, upon and across the access corridor shown on the Site Plan running from the West Dodge Frontage Road along the East line of Parcel 4 to the South line of Parcel 1.

3.2 Utility Lines: Each Owner hereto, except the Owner of Parcel 4, as grantor, hereby grants to the other Owners, for the benefit of the other Owners and their Parcels, nonexclusive easements under, through and across the Common Area of the grantor's Parcel for water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones or electrical conduits or systems, gas mains, other public utilities and service easements. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of such easements, except for electric transformers. In the event it is necessary for the Owner of a Parcel to cause the installation of a storm drain, utility line or sewer across the Common Area of another Parcel after the initial paving and improving thereof, the other Owners shall not unreasonably withhold the granting of an additional easement or easements. The construction and use of such easement facilities shall be accomplished so as not to unreasonably interfere with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the use of the easement and shall repair to the original specifications any damage to the Common Area resulting from such use. At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation (a) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the utility line or facility; (b) shall not unreasonably interfere with or diminish utility service to the Parcels served by the lines or facility; (c) shall not reduce or unreasonably impair the usefulness or function of the line or facilities; and (d) shall be performed without cost or expense to the Owner or occupant of any Parcel served by the line or facility, and (e) the original and relocated area shall be restored to the original specifications.

3.3 Signs: Each Owner, as grantor, hereby grants to the other Owners, for the benefit of the other Owners, easements under, through and across the Common Area for the purpose of installing and maintaining the free-standing pylon signs hereinafter referred to in Section 4.3 of this Declaration.

3.4 Building Encroachments: Each Owner, except the Owner of Parcel 4, with respect to its Parcel, hereby grants to the other Owners for the benefit of the other Owners and their respective Parcels, an easement for any portion of any buildings or structures on any Parcel which may encroach into or over an adjoining Parcel, including, but without limitation, the existing building encroachment of the Retail Shops of 1.17 to 1.128 feet on to Parcel 2, as shown by the Land Title Survey



of Kirkham, Michael and Associates dated October 1988, Job No. B881035; provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two feet and the easement for canopies, eaves and roof overhangs does not exceed four feet. The easements granted in this Section 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following a reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

3.5 Surface Water Drainage: Each Owner grants to the Owners of all other Parcels in the Shopping Center, their successors and assigns, perpetual easements over the Common Area portions of the Shopping Center owned by such Owner for the drainage of surface waters.

3.6 Declaration of Party Wall.

(a) Construction of Party Wall. KV Westridge Limited Partnership has constructed a building, designated as "Parcel 1 Small Shops," as more particularly shown on the Site Plan. The South wall of such existing building encroaches onto Parcel 2 1.17 feet on the East and 1.28 feet on the West and is hereby declared to be a party wall (the "Party Wall") which the Owners of Parcels 1 and 2 shall have the right to use jointly. The Owner of Parcel 2 acknowledges that the fee simple ownership of the Party Wall is vested solely in the Owner of Parcel 1.

(b) Right to Use and Restrictions. KV Westridge Limited Partnership does hereby grant and convey to the future owners of Parcel 2, their successors and assigns, the right to use the Party Wall in any lawful manner to such height and extent as may be required for the benefit and support of future Small Shops on Parcel 2, provided that the Owner of Parcel 2 shall follow good engineering practices in the use of the Party Wall, including, without limitation:

(i) Footings: Dowel pin the new footings to the existing footings.

(ii) Foundation: Dowel pin the new foundation to the existing foundation.

(iii) Walls: Dowel pin the new walls to the existing walls with the expansion joint sealed and calked to prevent moisture penetration and/or dissimilar movement.

(iv) Ledger: Fasten ledger to Party Wall for deck seat.

(v) Flashing and Counterflashing: Saw, cut and install a flashing reglet and counterflash.

(vi) EPDM: Sweep ethylene propylene diene monomer (EPDM) membrane up and over parapet penetration and install galvanized cap.

(vii) Mansard and Canopy: Install degree slant tie-in with a bar or galvanized reglet.

(viii) Penetrations: Not penetrate the Party Wall beyond a maximum of four inches in depth, nor make or provide openings in the Party Wall without the consent of the Owner of Parcel 1.

The Owner of Parcel 2 shall use all reasonable care and effort and shall incur such expense as may be necessary to fully protect the Owner of Parcel 1 in the use and occupation of Parcel 1 without unnecessary hindrance or annoyance during the time of construction of the future Small Shops.

(c) Future Repairs. If it shall become necessary to rebuild or repair the Party Wall, or any part thereof, either the Owner of Parcel 1 or the Owner of Parcel 2 may enter upon the property of the other for the purpose of rebuilding or repairing the Party Wall upon reasonable notice to the other party. Subject to provisions of Section 3.6 (e) below, the expense of rebuilding or repairing the Party Wall shall be born and paid one-half (1/2) by the Owner of Parcel 1 and one-half (1/2) by the Owner of Parcel 2, provided, however, that any insurance proceeds of either party covering damage to the Party Wall shall be applied to the rebuilding or repair of the Party Wall, unless the Owners of Parcel 1 and 2 agree otherwise. Any rebuilding or repair of the Party Wall, or any portion thereof, shall be on the same location, of the same size, of the same or similar material and of the same quality as the original Party Wall.

(d) Destruction of Party Wall. Neither party may, without the consent of the other, alter, destroy, tear down or in any manner interfere with the Party Wall, except as hereinbefore set forth.

(e) Indemnification. The Owner of Parcel 1 and the Owner of Parcel 2 each hereby indemnifies and agrees to hold the other harmless from and against any and all loss, cost, claim, liability and expense, including any obligation to contribute to repair or restoration arising out of, or relating to, any damage caused to the Party Wall by the negligent act or omission of the indemnifying Owner, its employees, agents and representatives. No such indemnifying Owner shall be permitted to seek contribution from the indemnified Owner for repairs or restoration of the Party Wall resulting from any negligent act or omission.

#### 4. Operation of Common Area.

4.1 Parking: There shall be no charge for parking in the Common Area without the prior written consent of the Owner of Parcel 1, unless otherwise required by law.

4.2 Employee Parking: Employees shall not be entitled to park on the Common Area, except while working in the Shopping Center and immediately before and after that time. Anything in this Declaration to the contrary notwithstanding, areas to be used for motor vehicle

parking by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time by the Owners of Parcels with the prior written consent of the Owner of Parcel 1. In the event employee parking areas are designated as provided herein, then employees of any Owner, lessee, or other occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees park within 200 feet of the front of any building on Parcels 1 or 2 of the Shopping Center. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or commercial establishment in the Shopping Center.

4.3 Signs: One free-standing sign may be erected by the Owners of Parcels 1 and 2 at each of the locations designated as "Center Pylon Sign" on the Site Plan. Only one business on Parcel 1 and one business on Parcel 2 shall have a designation on the sign, and the Owners of those Parcels shall each pay one-half of the cost of constructing and erecting the signs. In addition, the name of the Shopping Center may be on the signs with the Owners of Parcels 1 and 2 each paying one-half of such designation. There shall be no other signs, except signs on buildings, in the Shopping Center.

4.4 Protection of Common Areas: Each Owner shall have the right to take such steps as it deems necessary to prevent those persons not authorized by Section 3.1 to use the Common Area from using the Common Areas for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walks or barricades along the perimeter boundary lines of any portion of the Shopping Center, except along the Common boundary of any Parcel with any other Parcel.

#### 5. Restrictions on Use.

5.1 Food Restrictions: Except with the prior written consent of the Owner of Parcel 1, so long as that portion of Parcel 1 designated as "Grocery" on the Site Plan is occupied by Hy-Vee, its successors or assigns, for a retail supermarket, no other portion of the Shopping Center, except the "Hy-Vee expansion area", as shown on the Site Plan, shall be used as a retail supermarket food store or convenience food store (which shall be defined as any store or department containing at least ten percent of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption).

5.2 Financial Institutions Restrictions: For a period of thirty (30) years from the 20th day of July, 1988, without the prior written consent of the Owner of Parcel 4, no "financial institution", as defined in Nebraska Statute §30-2701, as in effect on such date, will be permitted to operate a facility on Parcels 1, 2 or 5, except any financial institution in the space on Parcel 1 designated as "Grocery", including the area designated as "Future Expansion". This covenant shall not preclude:

(a) a mortgage loan production office anywhere in the Shopping Center; or

(b) the use anywhere in the Shopping Center of inside cash machines, or whatever nonhuman equipment may hereafter replace cash machines, as presently known.

Parcel 4 shall be used primarily for a commercial bank for a period of thirty (30) years from July 20th, 1988. During such thirty (30) year period, the Owner of Parcel 4 shall have the one time right of first refusal to install in the Shopping Center an outside cash machine, or whatever nonhuman equipment may, during that thirty (30) year period replace cash machines ("Cash Machine"), as presently known. At such time as the Owner of a Parcel desires to install an outside Cash Machine or to enter into an agreement with a third party to permit such third party to install an outside Cash Machine, such Owner must first present the Owner of Parcel 4 with a copy of the proposed agreement and give the Owner of Parcel 4 a thirty (30) day window during which time the Owner of Parcel 4 may agree to install its own Cash Machine at such location. In the event that the Owner of Parcel 4 elects to install its own Cash Machine at such location, all cost and expense of such installation shall be paid by the Owner of Parcel 4. If the Owner of Parcel 4 declines to exercise the right of first refusal, the right of first refusal hereby granted shall terminate, provided that the proposed Cash Machine is installed by such other Parcel Owner, or third party with whom such Parcel Owner has contracted, within four (4) calendar months following the expiration of the thirty (30) day window period.

5.3 Shopping Center Restrictions: No part of the Shopping Center shall be used as a theater, bowling alley, skating rink, bar, tavern, saloon (except that a cocktail lounge shall be permitted in a restaurant), adult (pornographic) book store, gym, automotive repair facility, dance hall, billiard or pool hall, game parlor, massage parlor, health spa, warehouse, car wash or for the renting, leasing or sale of or displaying for the purposes of renting, leasing or sale of any motor vehicle or trailer, or for industrial purposes.

6. Curb Cuts and Access Corridors. Notwithstanding any other provision contained in this Declaration, Declarants covenant that there will be no alteration of the location of the curb cuts and access corridors of the Shopping Center as shown on the Site Plan, nor any modification of the provisions of Sections 2.3, 2.4(d), 3.1 or this Paragraph 6, directly or indirectly without the prior written consent of The Prudential Insurance Company of America, so long as it is the holder of a mortgage or deed of trust on any portion of the Shopping Center.

7. Eminent Domain.

In the event that any part of the Shopping Center shall be taken by eminent domain or any other similar authority of law, the entire award for value of the land and improvements so taken shall belong to the Owner of the Parcel on which the land and improvements are located, subject to the rights of any tenant on the land and improvements so taken, and no other owner or tenant in the Shopping Center shall claim any portion of such award by virtue of any interest created by this Declaration; provided, however, that any such other owner may file a collateral claim with the condemning authority over and above the value

of the land and improvements so taken to the extent of any damage suffered by such other owner resulting from the severance of the area so taken. The Owner of the Parcel so condemned shall promptly repair and restore the remaining portion of the Shopping Center owned by him as nearly as practicable to the condition existing immediately prior to such condemnation; but this provision shall not relieve any tenant from any obligation it may have to repair and restore as provided by its lease.

8. Mortgages Subordinate to Declaration.

Any mortgage or deed of trust affecting any portion of the Shopping Center shall, at all times, be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage or deed of trust shall acquire title to the foreclosed premises subject to all of the terms of this Declaration. However, no foreclosure or enforcement of any lien arising in favor of any party hereto as a result of a breach of this Declaration shall affect the continued validity and effectiveness of any mortgage or deed of trust affecting any Parcel.

9. Severability.

If any term or provision of this Declaration, or the application of it to any person or circumstance, shall, to any extent be invalid and unenforceable, the remainder of this Declaration, or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

10. General Provisions.

10.1 Covenants Run With the Land: Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to, and for the benefit of, the other Parcels and each part thereof, and shall run with the land.

10.2 Successors and Assigns: This Declaration, and the Restrictions created hereby, shall inure to the benefit of, and be binding upon, the Declarants and their successors and assigns; provided, however, that if any Owner sells any portion or all of its interest in any Parcel, such Owner shall thereupon be personally released and discharged from any and all obligations as owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title.

10.3 Duration: Except as otherwise provided herein, the term of this Declaration shall be for sixty-five (65) years from the date hereof.

10.4 Injunctive Relief: In the event of any violation or threatened violation by any Owner, lessee or occupant of any portion of the Shopping Center of any of the terms, covenants and conditions of this Declaration, any or all of the Owners of the property included

within the Shopping Center shall have the right to enjoin such violation, or threatened violation, in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration and all remedies available under statute, law and equity.

10.5 Modification Provision: The provisions of this Declaration may be abrogated, modified, rescinded or amended, in whole or in part, only with the consent of the Owners of all Parcels and of each and every mortgagee and beneficiary under any recorded first mortgage or deed of trust covering any Parcel, by declaration in writing, executed and acknowledged by all of said Owners, beneficiaries and mortgagees, duly recorded in the Office of the Register of Deeds of Douglas County, Nebraska; but this Declaration may not otherwise be abrogated, modified, rescinded or amended, in whole or in part.

10.6 Waiver: No delay or omission of any party in the exercise of any right accruing upon any default of any other party shall impair any such right or be construed as a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any party of a breach or a default of any of the terms and conditions of this Declaration by any other party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Declaration. Except as otherwise specifically provided in this Declaration, no remedy provided in this Declaration shall be exclusive, but each shall be cumulative with all other remedies provided in this Declaration and at law or in equity.

10.7 Method of Approval: Whenever the approval or consent of any Owner is required, such approval or consent shall be exercised only in the following manner. Each Parcel shall have only one vote. The record Owners of each Parcel shall agree among themselves and designate in writing to the record Owners of each of the other Parcels a single person or entity who is entitled to cast the vote for that Parcel. In the event the record Owners of any Parcel cannot agree who shall be entitled to cast the single vote of that Parcel, that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary.

10.8 Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Declarants that this Declaration shall be strictly limited to and for the purposes herein expressed.

10.9 Breach Shall Not Permit Termination: It is expressly agreed that no breach of the Declaration shall entitle any Owner to cancel, rescind or otherwise to terminate this Declaration, but such limitations shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective

against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

10.10 Non-merger: Ownership by one person or party of all or part of the Shopping Center shall not result in a cancellation or partial cancellation of this Declaration, through merger or otherwise. This agreement shall remain in full force and effect notwithstanding any change of ownership of the Shopping Center or any Parcel contained therein.

10.11 Construction: This Declaration shall be construed in accordance with the laws of the State of Nebraska.

10.12 Headings: Headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration and shall not be considered in any instruction or interpretation of this Declaration, or any part thereof. Nothing in this Declaration shall be construed to make Owners partners or joint venturers or render any of said parties liable for the debts or obligations of another Owner.

10.13 Notices: All notices, approvals, consents or requests given or to be given pursuant to this Declaration ("Notices") shall be given or made in writing and must be given by United States certified or registered mail, postage prepaid. So long as the following Declarants have an interest in any portion of the Shopping Center, the following addresses shall be used for them:

KV Westridge Limited Partnership  
c/o KV International, Inc.  
11213 Davenport Street, Suite 222  
Omaha, Nebraska 68154

First Westside Bank  
222 South 72nd Street  
Omaha, Nebraska 68114,

which addresses may be changed by either Declarant by written notice to the other Declarant. In the event that a party other than a Declarant becomes an Owner, Notices to such Owner shall be sent to such Owner at the address recorded for the giving of Notices to such Owner in the Office of the Register of Deeds of Douglas County, Nebraska and indexed against such Owners' Parcel.

## 11. Phase Development.

Notwithstanding anything set forth above, Declarants acknowledge that the Shopping Center shall be developed in phases. Each Parcel shall constitute a separate phase for development purposes and no Owner of a Parcel may require the Owner of any other Parcel to commence or complete the development of that Parcel solely by reason of the existence of this Declaration.

EXECUTED as of the day and year first above written.

KV WESTRIDGE LIMITED PARTNERSHIP, a Nebraska limited partnership

By: KV International, Inc., a Nebraska corporation, General Partner

By: [Signature]

Its: President

By: [Signature]  
George W. Venteicher, General Partner

By: [Signature]  
Frank R. Krejci, General Partner

FIRST WESTSIDE BANK, a Nebraska banking corporation

By: [Signature]

Its: President

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public, this 11<sup>th</sup> day of January, 1989, by George Venteicher, the President of KV International, Inc., a Nebraska corporation, on behalf of said corporation, as General Partner of KV Westridge Limited Partnership, a Nebraska limited partnership, on behalf of said limited partnership.

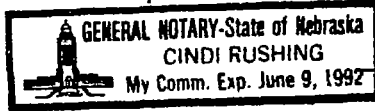


Cindi Rushing  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public, this 11<sup>th</sup> day of January, 1989, by George W. Venteicher and Frank R. Krejci, general partners of KV WESTRIDGE LIMITED PARTNERSHIP, a Nebraska limited partnership, on behalf of said limited partnership.

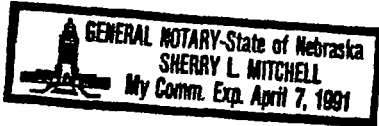


Cindi Rushing  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public, this 10<sup>th</sup> day of January, 1989, by Raymond D. Pope, Jr., the President of First Westside Bank, a Nebraska banking corporation, on behalf of said corporation.

Sherry L. Mitchell  
Notary Public



RECEIVED  
1988 JUN 23 PM 3:30

THOMAS D. DOYLE  
County Surveyor and Engineer  
Douglas County

This is to certify that I find no regular or special taxes due or delinquent against the property as described in the Surveyor's Certificate and as shown by the records of this office.

6-23-88  
Date

Charles W. Ahern  
County Treasurer

Field Notes:  
GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEBR.

LAND SURVEYOR'S CERTIFICATE

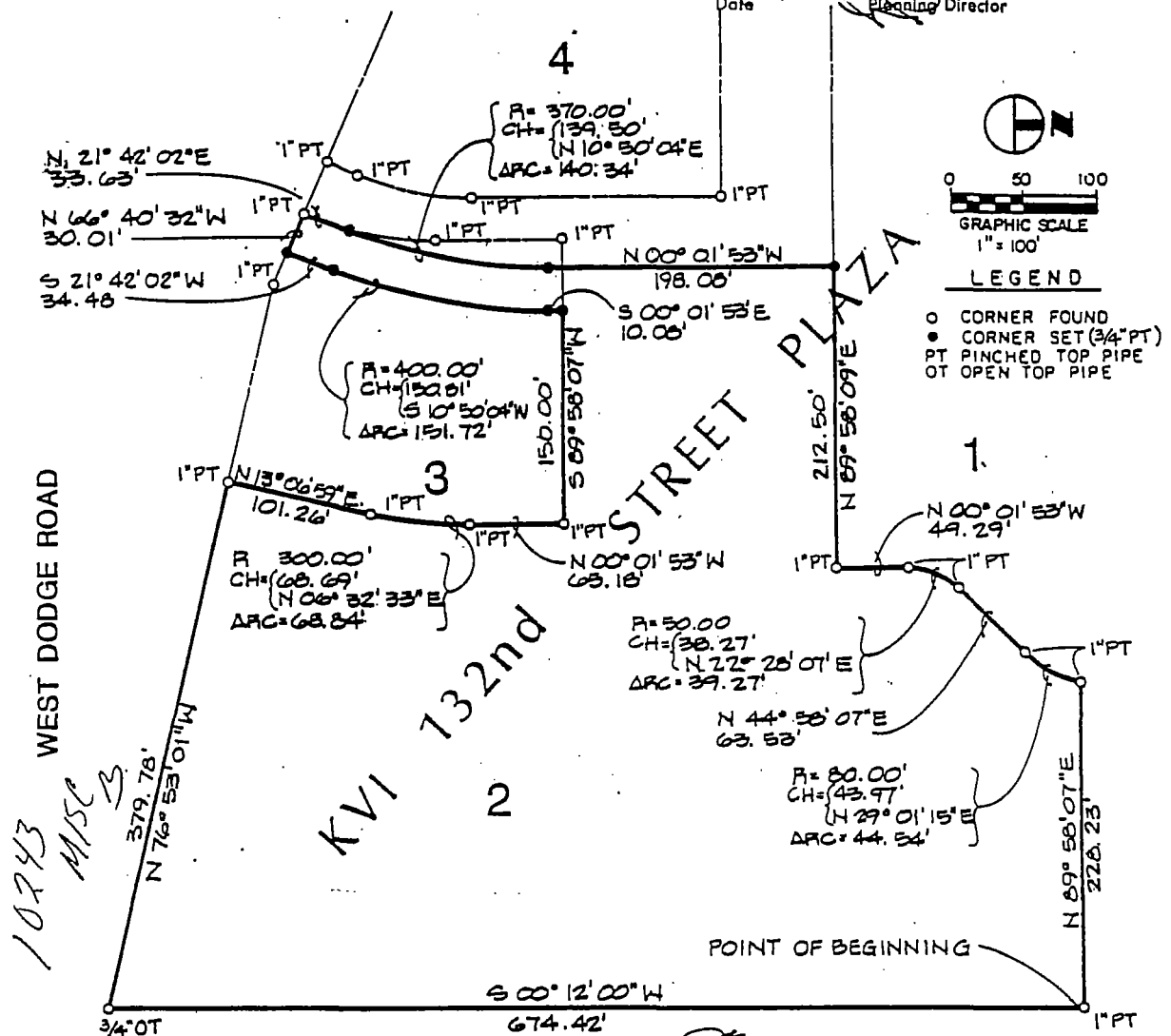
I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description  
See Attached Exhibit A

Approved as a subdivision of only two (2) lots with plat requirement waived per Section 7.08 Home Rule Charter of the City of Omaha, 1956. This subdivision approval is void unless filed and recorded with the County Register of Deeds within thirty (30) days of this date.

Plat to scale showing tract surveyed with all pertinent points.

6/23/88  
Date  
Planning Director



BK 853 N 92-277 T C/O FEE 11.00  
PG 95-96 DEL 1/4  
OF M... COMP Q. F/B MC-21330

Signature of Land Surveyor  
Charles W. Ahern, L.S. 112

DATE RECEIVED: \_\_\_\_\_ Date: June 15, 1988

OFFICIAL ADDRESS: 629 N 132ND ST

PARCEL 2

BLDG. PERMIT NO.: \_\_\_\_\_

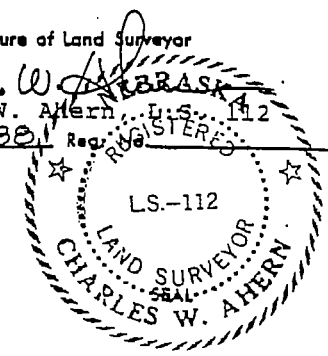


EXHIBIT ALEGAL DESCRIPTION

A tract of land being part of Lots 2 and 3, KVI 132nd Street Plaza, a subdivision as platted and recorded in Douglas County, Nebraska. Said tract of land being more particularly described as follows:

Beginning at the NE corner of said Lot 2; thence  $S00^{\circ}12'00''W$  (Platted Bearing) along the East line of said Lot 2 a distance of 674.42 feet to a point, said point being the SE corner of said Lot 2; thence  $N76^{\circ}53'01''W$  along the South line of said Lot 2 a distance of 379.78 feet to a point, said point being the SE corner of said Lot 3; thence  $N13^{\circ}06'59''E$  along the Easterly line of said Lot 3, a distance of 101.26 feet to a Point of Curvature; thence Northerly along said Easterly line of Lot 3 along a curve to the left, said curve having a radius of 300.00 feet, a chord length of 68.69 feet, and a chord bearing of  $N6^{\circ}32'33''E$ , an arc length of 68.84 feet to a point; thence  $N00^{\circ}01'53''W$  along the said Easterly line of Lot 3 a distance of 65.18 feet to a point, said point being the NE corner of said Lot 3; thence  $S89^{\circ}58'07''W$  along the North line of said Lot 3 a distance of 150.00 feet to a point; thence  $S00^{\circ}01'53''E$  a distance of 10.08 feet to a Point of Curvature; thence Southwesterly along a curve to the right, said curve having a radius of 400.00 feet, a chord length of 150.81 feet, and a chord bearing  $S10^{\circ}50'04''W$ , an arc length of 151.72 feet to a Point of Tangency; thence  $S21^{\circ}42'02''W$  a distance of 34.48 feet to a point on the Southerly line of said Lot 3; thence  $N66^{\circ}40'32''W$  along the Southerly line of said Lot 3 a distance of 30.01 feet to a point, said point being the SW corner of Lot 3 as originally platted; thence  $N21^{\circ}42'02''E$  a distance of 33.63 feet to a Point of Curvature; thence Northerly along a curve to the left, said curve having a radius of 370.00 feet, a chord length of 139.50 feet, and a chord bearing  $N10^{\circ}50'04''E$ , an arc length of 140.34 feet to a Point of Tangency; thence  $N00^{\circ}01'53''W$  a distance of 198.08 feet to a point on the Northerly property line of said Lot 2; thence  $N89^{\circ}58'09''E$  along said Northerly line a distance of 212.50 feet to a point, said point also being a property corner of said Lot 2; thence  $N00^{\circ}01'53''W$  along said Northerly property line of Lot 2 a distance of 49.29 feet to a Point of Curvature; thence Northeasterly along said Northerly line of Lot 2 along a curve to the right, said curve having a radius of 50.00 feet, a chord length of 38.27 feet, and a chord bearing  $N22^{\circ}28'07''E$ , an arc length of 39.27 feet to a Point of Tangency; thence  $N44^{\circ}58'07''E$  along said Northerly line of Lot 2 a distance of 63.53 feet to a Point of Curvature; thence Northeasterly along said Northerly line of Lot 2 along a curve to the left, said curve having a radius of 80.00 feet, a chord length of 43.97 feet, and a chord bearing  $N29^{\circ}01'15''E$ , an arc length of 44.54 feet to a point, said point also being a property corner of said Lot 2; thence  $N89^{\circ}58'07''E$  along said Northerly line of Lot 2 a distance of 228.23 feet to the Point of Beginning; said tract of land containing 5.6874 acres more or less.

RECEIVED

1988 JUN 23 PM 3:30

To The Office of

THOMAS D. DOYLE

County Surveyor and Engineer

Douglas County

This is to certify that I find no regular or special taxes due or delinquent against the property as described in the Surveyor's Certificate and as shown by the records of this office.

6-22-88  
Date

*W. Scott*  
County Treasurer

Field Notes:

GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEBR.

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

3011-0002-01-MC  
3010-0002-01-MC

Legal Description

See Attached Exhibit A

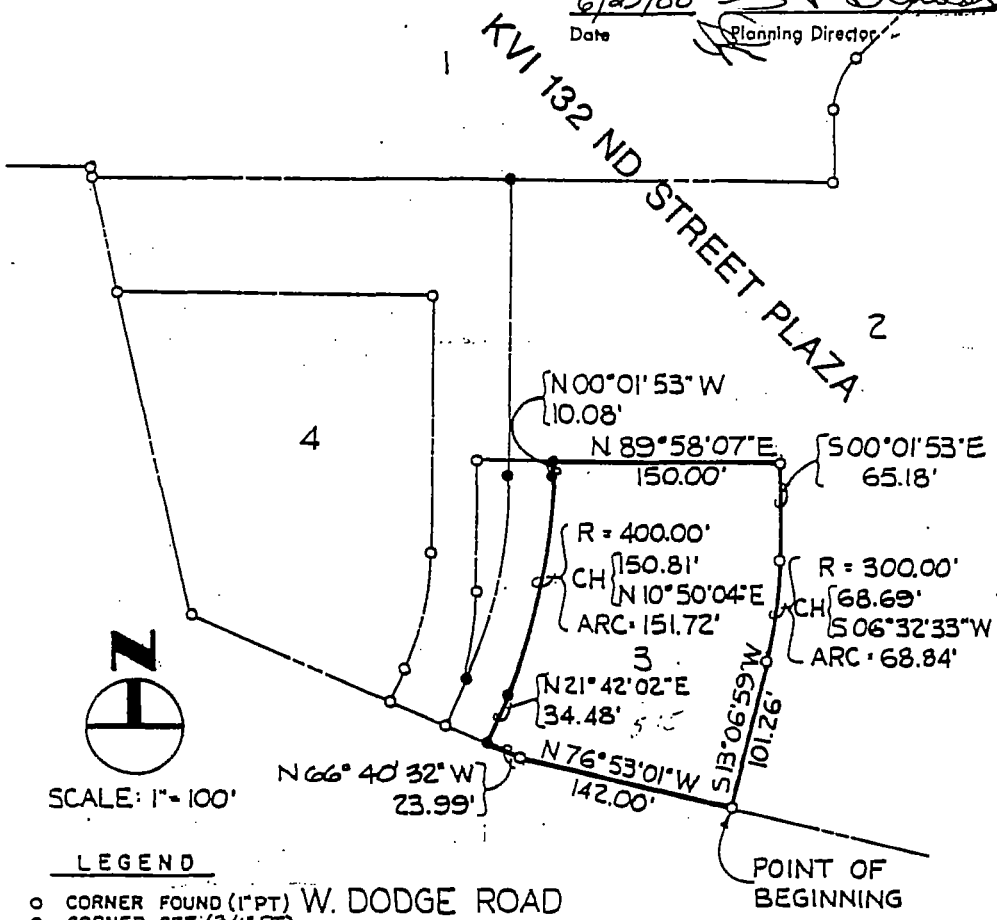
Plat to scale showing tract surveyed with all pertinent points.

Approved as a subdivision of only two (2) lots with plat requirement waived per Section 7.08 Home Rule Charter of the City of Omaha, 1956. This subdivision approval is void unless filed and recorded with the County Registrar of Deeds within thirty (30) days of this date.

6/23/88  
Date

*J. B. B...*  
Planning Director

10244 MISC



SCALE: 1"=100'

LEGEND

- CORNER FOUND (1" PT) W. DODGE ROAD
- CORNER SET (3/4" PT)
- PT PINCHED TOP PIPE
- OT OPEN TOP PIPE

AK 853 N 92-277 CJO FEE 10.50  
 1258 97-98 N 92-279 DEL IN WS  
 OF M... COMP. W.F.B. MC-21330

Signature of Land Surveyor  
*Charles W. Ahern*  
 Charles W. Ahern, L.S. 112  
 REGISTERED  
 LAND SURVEYOR  
 CHARLES W. AHERN

DATE RECEIVED: \_\_\_\_\_

Date: June 15, 1988

OFFICIAL ADDRESS: 515 N 132ND ST

BLDG. PERMIT NO.: \_\_\_\_\_ PARCEL 3

EXHIBIT "A"  
LEGAL DESCRIPTION

A tract of land being part of Lot 3, KVI 132nd Street Plaza, a subdivision located in the SW 1/4 of the SW 1/4 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 SE corner of said Lot 3; thence N76°53'01"W (Platted Bearing) along the South line of said Lot 3, a distance of 142.00 feet to a point; thence N66°40'32"W along the South line of said Lot 3, a distance of 23.99 feet to a point; thence N21°42'02"E, a distance of 34.48 feet to a Point of Curvature; thence Northerly along a curve to the left, said curve having a radius of 400.00 feet, a chord length of 150.81 feet, a chord bearing of N10°50'04"E, an arc length of 151.72 feet to a Point of Tangency; thence N00°01'53"W, a distance of 10.08 feet to a point on the North line of said Lot 3; thence N89°58'07"E along the North line of said Lot 3, a distance of 150.00 feet to a point, said point also being the Northeasterly corner of said Lot 3; thence S00°01'53"E along the East line of said Lot 3, a distance of 65.18 feet to a Point of Curvature; thence Southwesterly along a curve to the right, said curve having a radius of 300.00 feet, a chord length of 68.69 feet, a chord bearing of S06°32'33"W, an arc length of 68.84 feet to a Point of Tangency; thence S13°06'59"W along the East line of said Lot 3, a distance of 101.26 feet to the Point of Beginning; said tract containing 0.7779 acres more or less.

1258

To The Office of

**THOMAS D. DOYLE**  
County Surveyor and Engineer  
Douglas County

This is to certify that I find no regular or special taxes due or delinquent against the property as described in the Surveyor's Certificate and as shown by the records of this office.

Field Notes:

Date 6-22-88  
County Treasurer Thurill Sathop

**LAND SURVEYOR'S CERTIFICATE**

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

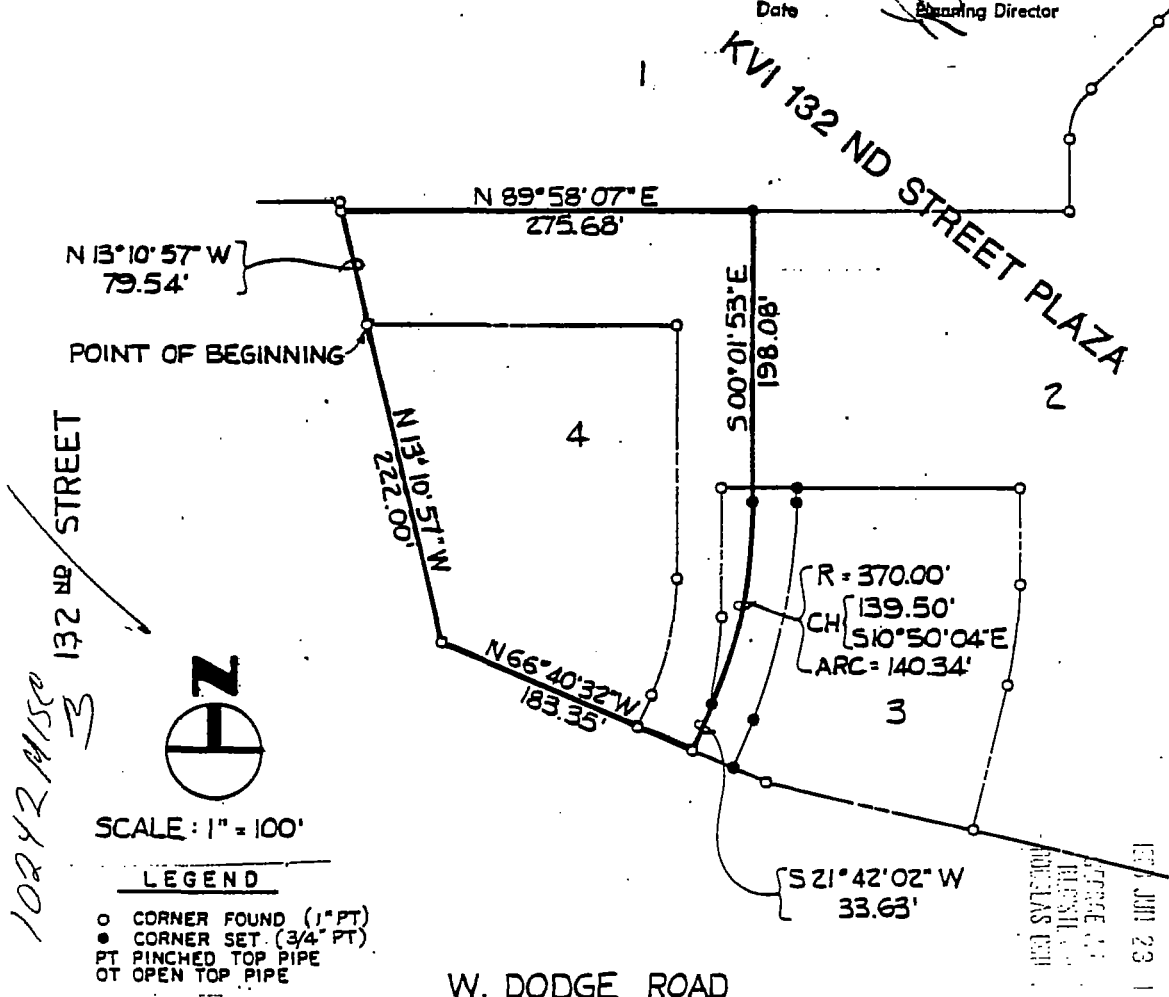
Legal Description

See Attached Exhibit A

Plat to scale showing tract surveyed with all pertinent points.

Approved as a subdivision of only two (2) lots with the requirement waived per Section 7.08 Home Rule Charter of the City of Omaha, 1956. This subdivision approval is void unless filed and recorded with the County Register of Deeds within thirty (30) days of this date.

Date 6/23/88  
Boarding Director [Signature]



10242 MISO B

SCALE: 1" = 100'

**LEGEND**

- CORNER FOUND (1" PT)
- CORNER SET (3/4" PT)
- PT PINCHED TOP PIPE
- OT OPEN TOP PIPE

W. DODGE ROAD

BK 853 N 98-277 LT C/O FEE 1150.00  
 PLS 93-94 N \_\_\_\_\_ DEL' 17  
 OF 1350 COMP [Signature] P/B MC-21330

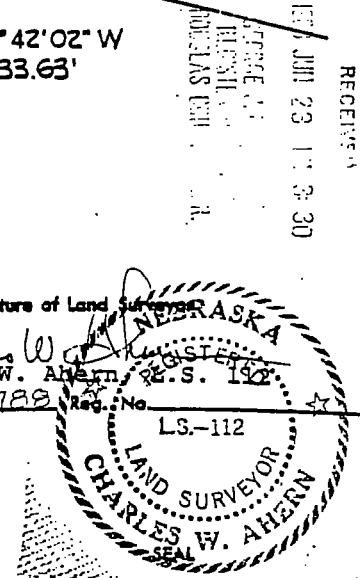
Signature of Land Surveyor  
Charles W. Ahern  
 Charles W. Ahern, R.S. 192

DATE RECEIVED: \_\_\_\_\_ Date: June 15, 1988 Reg. No. \_\_\_\_\_

OFFICIAL ADDRESS: 525 N 132 ND ST

PARCEL 4

BLDG. PERMIT NO.: \_\_\_\_\_



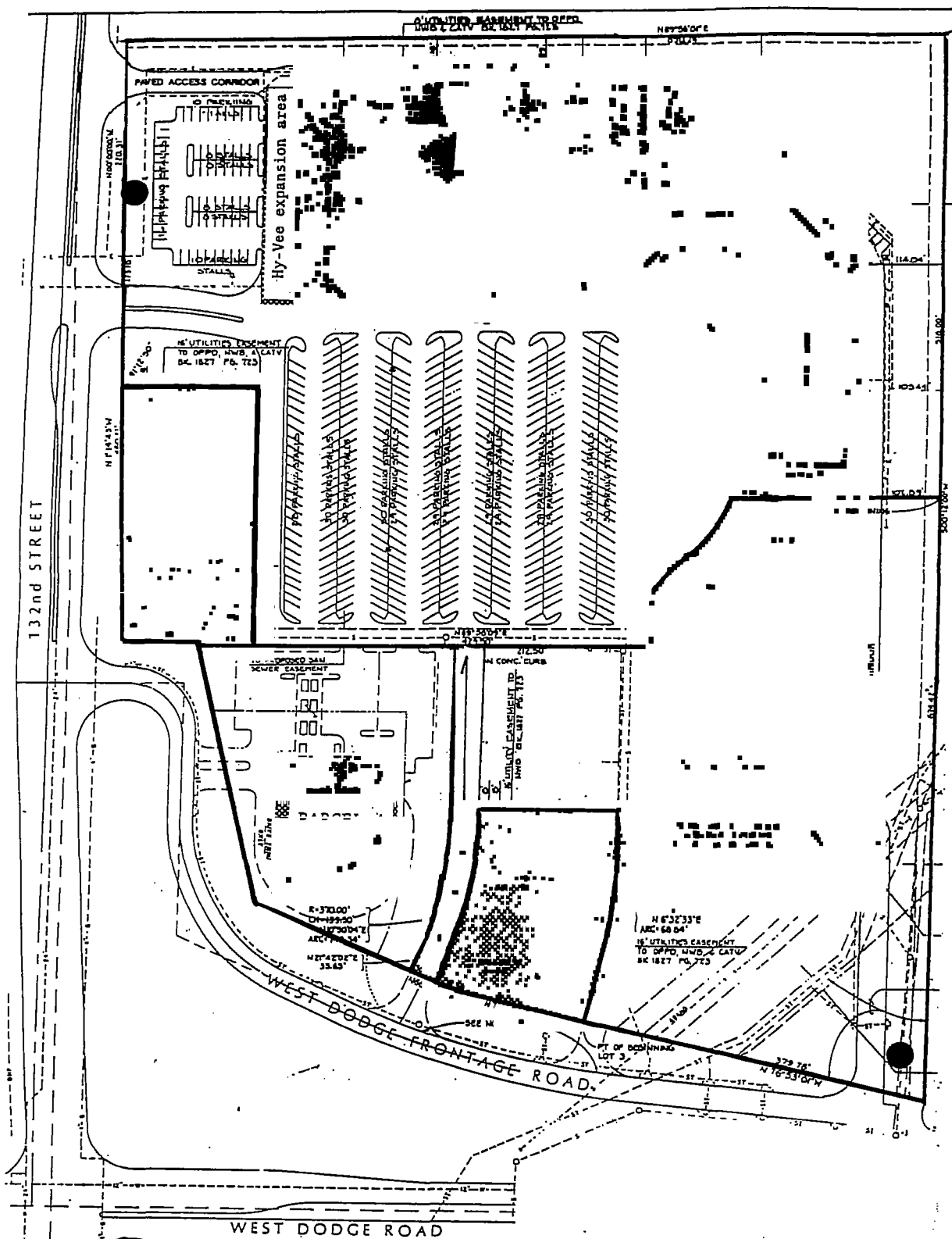
RECEIVED  
 JUN 23 11 30 AM '88  
 REGISTER OF DEEDS  
 OMAHA, NEBRASKA

LEGAL DESCRIPTION

A tract of land being all of Lot 4 and part of Lots 2 and 3, KVI-132nd Street Plaza, a subdivision located in the SW 1/4 of the SW 1/4 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 NW corner of said Lot 4; thence N13°10'57"W (Platted Bearing) along the West line of said Lot 2, a distance of 79.54 feet to a point; thence N89°58'07"E along the North line of said Lot 2, a distance of 275.68 feet to a point; thence S00°01'53"E, a distance of 198.08 feet to a point of curvature; thence Southwesterly along a curve to the right, said curve having a radius of 370.00 feet, a chord length of 139.50 feet, a chord bearing S10°50'04"W, an arc length of 140.34 feet to a point of tangency; thence S21°42'02"W, a distance of 33.63 feet to a point on the Northerly ROW line of West Dodge Road; thence N66°40'32"W along said ROW, a distance of 183.35 feet to a point, said point also being the Southwestern corner of said Lot 4; thence N13°10'57"W along said ROW and the West line of said Lot 4, a distance of 222.00 feet to the Point of Beginning; said tract of land containing 1.7817 acres more or less.

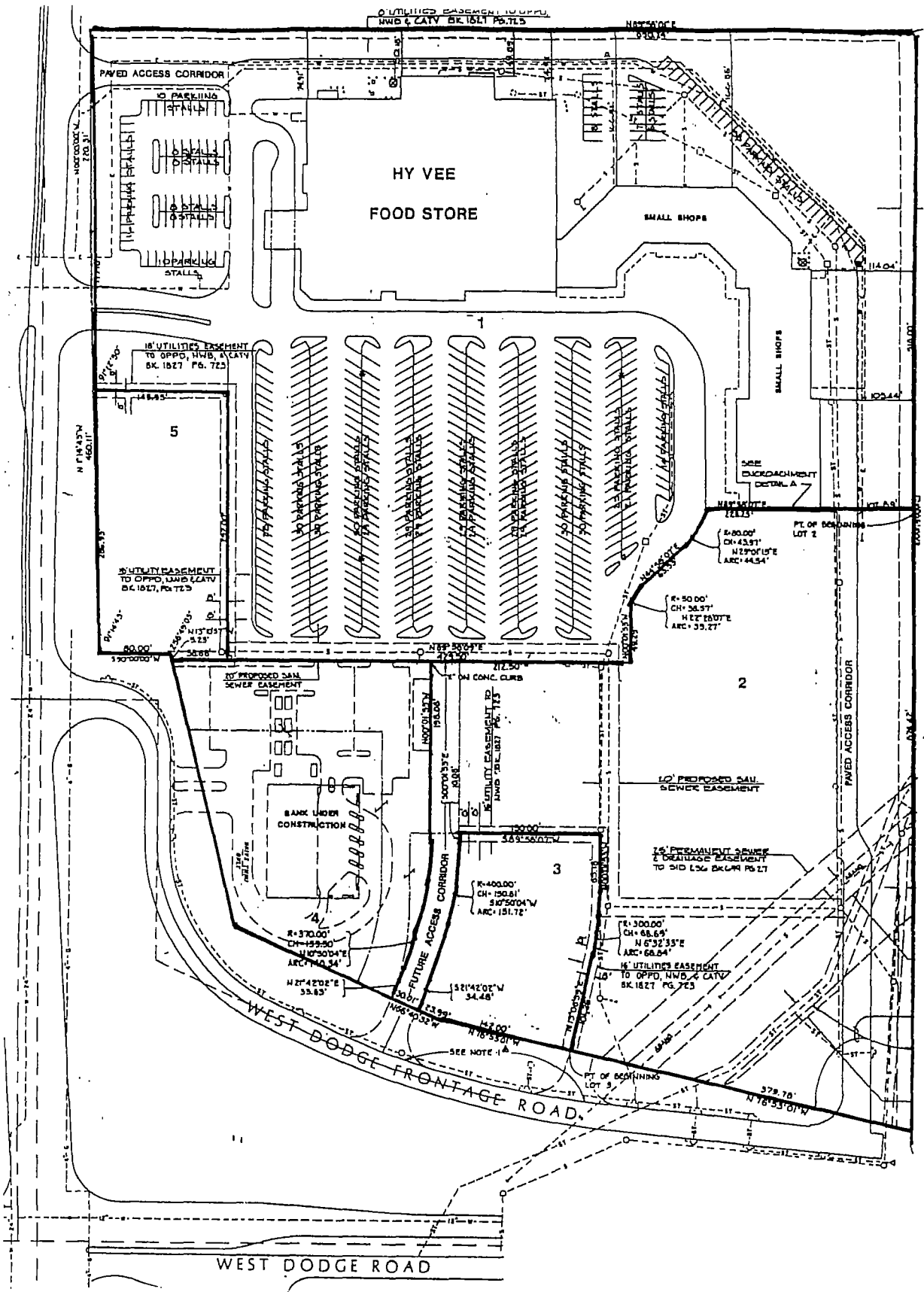
1258



● Designates pylon sign location  
 ● Designates building area

WESTRIDGE SHOPPING CENTER SITE PLAN





WESTRIDGE SHOPPING CENTER SITE PLAN