

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2003-68504

2003 NOV 17 P 4: 25 8

Glenn J. Lowery

REGISTER OF DEEDS

COUNTER SM C.E. SM
VERIFY SM D.E. SM
PROOF SM
FEES \$ 26.50
CHECK# 14884
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

Re: Lot 1, Hickory Hill Plaza and
Lots 1 and 2, Hickory Hill Plaza Replat,
subdivisions in Sarpy County, Nebraska, as
surveyed, platted and recorded.

FIRST AMENDMENT TO ECR DECLARATION

THIS FIRST AMENDMENT TO ECR DECLARATION (this "Amendment") is hereby made and entered into as of this 14 day of November, 2003, by HICKORY HILL ASSOCIATES, L.L.C., a Nebraska limited liability company ("Declarant").

PRELIMINARY STATEMENT

Declarant executed a certain ECR Declaration dated August 25, 1994, and recorded August 26, 1994 as Instrument No. 94-19130F through 94-19130U, inclusive, in the official records of Sarpy County, Nebraska (the "Declaration") which creates certain easements and restrictions affecting Lots 1, 2, 3 and 4 of Hickory Hill Plaza, a subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded.

The Declaration was recorded as Attachment "A" to that certain Development Agreement dated August 23, 1994, and recorded as Instrument No. 94-19130 through 94-19130E, inclusive, in the official records of Sarpy County, Nebraska.

Lots 2, 3 and 4, Hickory Hill Plaza have been subdivided by Administrative Subdivision into two lots now known as Lots 1 and 2, Hickory Hill Plaza Replat, a subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded.

Declarant is the owner of Lot 1, Hickory Hill Plaza and Lots 1 and 2, Hickory Hills Plaza Replat.

Subsequent to the recordation of this Declaration, Fareway Stores, Inc., an Iowa corporation ("Fareway"), will purchase Lot 1, Hickory Hill Plaza Replat, a subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded (sometimes referred to as the "Fareway Parcel").

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Declarant desires to make certain modifications to the Declaration as set forth below.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing Preliminary Statement, which by this reference is repeated and incorporated in this portion of this Amendment in its entirety, and for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant establishes the following:

1. Parcel. Subsection 1.4 of the Declaration shall be deleted in its entirety and the following substituted in its place:

1.4 Parcel. The term "Parcel" shall mean or refer to any of the following platted lots: Lot 1, Hickory Hill Plaza, and Lots 1 and 2, Hickory Hill Replat, subdivisions in Sarpy County, Nebraska, as surveyed, platted and recorded. The term "Parcels" shall mean all of the platted lots identified in this subsection 1.4 and any administrative subdivision(s), replat(s) or lot combination(s) of such Parcels. From time to time reference to one or more Parcels will be made in this Declaration by its or their platted lot number(s).

2. Driveway Easement. A new subsection 2.9 shall be added to the Declaration as follows:

2.9 Driveway Easement. Nonexclusive easements for the purpose of vehicular and pedestrian traffic and access over and upon the portions of the Shopping Center depicted and legally described on the site plan annexed to this Amendment as Exhibit "A" (collectively the "Driveways").

3. Maintenance of Driveway Easement. A new subsection 2.10 shall be added to the Declaration as follows:

2.10 Maintenance of Driveway Easement. Until such time as another Parcel in the Shopping Center is improved and any business thereon has opened for business to the public (a "New Business"), the Owner of the Fareway Parcel shall be solely responsible for the removal of snow and ice from the Driveways.

Upon the opening of a New Business on a Parcel other than the Fareway Parcel, the Declarant shall become responsible, subject to reimbursement as hereafter provided, for the maintenance (including snow removal), repair, replacement and operation of the Driveways. Upon the opening of such New Business, the Owner of the Fareway Parcel shall have no further responsibility with respect to the Driveways except that the Owner of the Fareway Parcel shall then be responsible, beginning with the opening of such New Business, to pay eight

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percent (8%) of the costs of maintenance, repair, replacement and operation (collectively "Maintenance Costs") of the Driveways. Declarant shall submit invoices to the Owner of the Fareway Parcel together with supporting data for such Maintenance Costs no more frequently than quarterly. Such invoices shall be paid within thirty (30) days of their receipt; payments not paid within such thirty (30) days shall accrue interest at the National prime rate (as published in the *Wall Street Journal* or substitute publication) plus three percent (3%) until paid.

4. References to Owner of Lot 2. In all sections of the Declaration in which specific references are made to the "Owner of Lot 2" with respect to approvals, consents or actions to be taken by the "Owner of Lot 2", all such references are hereby deleted in their entirety, and the Declarant is substituted therefor.

5. References to Lot 1. In all sections of the Declaration in which specific references are made to "Lot 1," all such references shall refer to both Lot 1, Hickory Hill Plaza and Lot 1, Hickory Hill Plaza Replat.

6. References to Lot 2. In all sections of the Declaration in which specific references are made to "Lot 2", all such references are amended to read Lots 1 and 2, Hickory Hill Plaza Replat.

7. References to Lots 3 and 4. In all sections of the Declaration in which specific references are made to Lots 3 and 4, all such references are amended to read Lot 2, Hickory Hill Replat.

8. Sections 4.4, 4.5(b) and 4.12 of the Declaration shall be deleted in their entirety.

9. Section 4.11(a) of the Declaration is hereby amended in part by adding after the reference to numeral "4" in the third line of such Section 4.11(a) the following: "unless screened from public view."

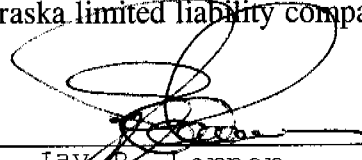
10. Amendment. The second sentence of Section 15 beginning "Except as otherwise specifically provided. . ." shall be deleted in its entirety and the following sentence substituted in its place:

"Except as otherwise specifically provided in this Declaration, this Declaration and any provision herein contained may be terminated, modified or amended as to any Parcel (excluding the Fareway Parcel) by the Declarant except for any termination, modification or amendment adversely affecting the Driveways which requires the consent of the Owner of the Fareway Parcel."

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11. Ratification. Except as amended herein, the Declaration is hereby ratified and approved.

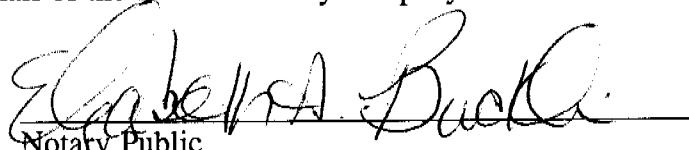
HICKORY HILL ASSOCIATES, L.L.C.,
a Nebraska limited liability company, Declarant

By: 
Name: Jay R. Lerner
Title: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14 day of November, 2003, by Jay R. Lerner, Member of HICKORY HILL ASSOCIATES, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.




Notary Public

2003-68504D

EXHIBIT "A"

HICKORY HILL PLAZA REPLAT
AN ADMINISTRATIVE SUBDIVISION

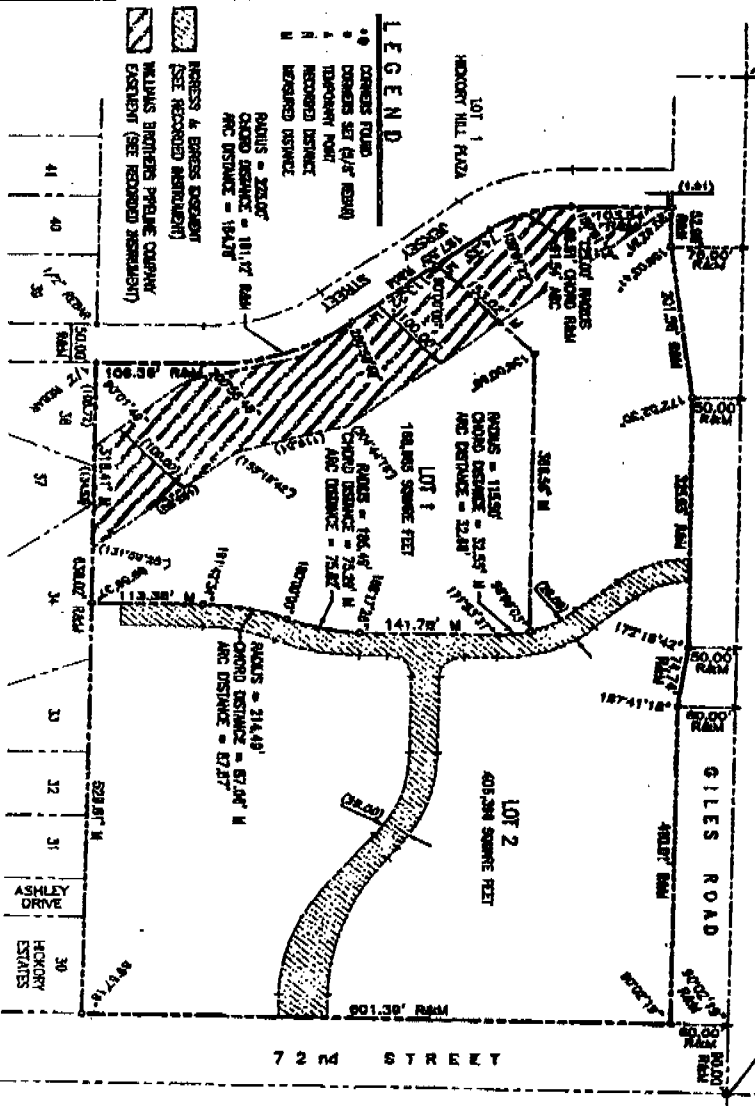
1. HICKORY HILL PLAZA REPLAT
2. HICKORY HILL PLAZA
3. HICKORY HILL PLAZA
4. HICKORY HILL PLAZA

1. HICKORY HILL PLAZA
2. HICKORY HILL PLAZA
3. HICKORY HILL PLAZA
4. HICKORY HILL PLAZA



NOTES:

1. ALL SURVEYS AND ANGLES SHOWN IN PARAGRAPHS HEREIN TO BE CORRECTED TO THE CURVED LINE OF SURVEY.
2. ALL SURVEYS AND ANGLES SHOWN IN PARAGRAPHS HEREIN TO BE CORRECTED TO THE CURVED LINE OF SURVEY.



- LEGEND**
- CORNER POINT
 - CORNER SET (6" IRON)
 - △ IRON PIN
 - RECORDED DISTANCE
 - RECORDED DISTANCE

HICKORY ESTATES

| | | | | | | | | | | | |
|----|----|----|----|----|----|----|----|----|----|----|----|
| 41 | 40 | 39 | 38 | 37 | 36 | 35 | 34 | 33 | 32 | 31 | 30 |
|----|----|----|----|----|----|----|----|----|----|----|----|

APPROVAL BY HICKORY CITY ENGINEER
APPROVAL BY HICKORY CITY ENGINEER
APPROVAL BY HICKORY CITY ENGINEER
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THOMPSON, DRESSEN & DORNER, INC.
Consulting Engineers & Land Surveyors
10836 OLD MILL ROAD OMAHA, NEBRASKA 68154
TEL: (402)330-1880 FAX: (402)330-1880
EMAIL: TD2MAIL@TD200.COM WEB: WWW.TD200.COM

HICKORY HILL PLAZA REPLAT
AN ADMINISTRATIVE SUBDIVISION
DATE: SEPT. 16, 2003
DRAWN BY: RJR
CHECKED BY: JOW
FINAL PLAT