

DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into by and between the CITY OF PAPIILLION, a municipal corporation located in Sarpy County, Nebraska, (City) and HICKORY HILL ASSOCIATES, a Nebraska Limited Liability Company organized and existing by virtue of the Statutes of the State of Nebraska (Developer).

WHEREAS, Hickory Hill Associates has applied to the City Council of the City of Papillion for approval of a final plat for an area known as Hickory Hill Plaza and has requested rezoning of Lots 1 through 4, Hickory Hill Plaza, a tract of land located in the North Half (N1/2) of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section 23, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE1/4) of said Section 23; thence N89°05'39" West (assumed bearing) along the Northerly line of said Section 23 a distance of 90.00 feet; thence S00°52'02" West a distance of 60.00 feet to the intersection of the Southerly right-of-way line of Giles Road and the Westerly line of 72nd Street which is the true point of beginning; thence S00°52'02" West along the Westerly right-of-way line of 72nd Street a distance of 601.39 feet to the point of intersection with the Northeast corner of the Hickory Estates Subdivision; thence N89°05'16" West along the Northerly line of said Hickory Estates Subdivision a distance of 1,233.16 feet to the Northwest corner of Hickory Estates Subdivision; thence N00°52'55" East a distance of 608.25 feet to a point on the Southerly right-of-way line of Giles Road; thence Easterly along said Southerly right-of-way line of Giles Road the next Six (6) Course (1.) S72°19'23" East, 76.24 feet; (2.) S89°05'39" East, 150.00 feet; (3.) N83°46'51" East, 201.56 feet; (4.) S89°05'39" East, 325.93 feet; (5.) S81°24'21" East 74.74 feet; (6.) S89°05'39" East, 410.01 feet to the point of beginning and said tract of land contains 17.04 acres more or less, and

FILED IN PUBLIC RECORDS
INSTRUMENT NUMBER
94-19130
AUG 26 PM 4:03
and J. Davis
REGISTER OF DEEDS

Proof 9
D.E. W
Verify 9
Filmed _____
Checked _____
Fee \$ 112.50

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WHEREAS, Hickory Hill Associates is desirous of entering into this Development Agreement with the City of Papillion which agreement shall become effective upon the passage of Papillion City Ordinance No. 1165 and approval of the final plat for Hickory Hill Plaza by the Mayor and City Council of the City of Papillion and,

WHEREAS, Hickory Hill Associates has presented a Development Plan to the Papillion Planning Commission and to the Papillion City Council which plan requires the Developer to either provide for or accomplish the following at Developer's cost.

- A. Construct a fence along the entire south boundary line of the property. The fence will match exactly the fence which currently exists along the east side of Hickory Estates and parallel to 72nd Street.
- B. Immediately inside the fence described in Subsection A above, the Developer will berm, landscape and shrub (including prominent trees) so that the residential neighbors immediately south will eventually be screened to the extent reasonably practicable from the view of the proposed development.
- C. Install parking lot lighting which will be cast downward and which is designed to reasonably minimize "spill" into adjoining residential areas. The goal is to eliminate as much spillage and contamination of the night sky as is reasonably possible using lighting equipment and fixtures which are readily available and reasonably affordable from the electrical industry for commercial development.
- D. Unpaved areas of the development shall be planted in a combination of grass and landscaping so as to be complementary with the adjacent residential neighborhood.
- E. Developer will utilize berming to screen to the extent reasonably practicable to the rear side of any buildings on Lot 2 from the view of the residential areas immediately adjacent to such Lot to the South.
- F. The use of Lot 4 will be restricted in that its use shall not include fast food restaurants, tavern or bar or other entertainment uses which would cause unreasonable light or sound to spill into the adjacent residential areas.

- G. Lot 1 will be restricted to those uses permitted by B-1 (Light Business) or more restrictive zoning classification.
- H. Developer will install a fence similar to the type identified in Subsection A above to separate the western most property line of Lot 1 from the Hickory Hill Elementary School.
- I. Developer will install sidewalks along Giles Road.
- J. No alcoholic liquor sales shall be allowed on Lot 1.

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS and other good and valuable consideration the parties hereby agree as follows:

1. The requirements set forth immediately above as they apply to each lot must be in place and approved by the Papillion Building Inspector prior to the issuance of an occupancy permit for any buildings within each lot.
2. The ECR Declaration, as it may be amended from time to time, consisting of sixteen typewritten pages which is marked Attachment "A" and incorporated herein by reference as if fully set forth herein shall be binding in perpetuity on the above described property and Hickory Hill Associates, or its assigns, respective successors, heirs, personal representatives, mortgagees and beneficiaries under deeds of trust.
3. Sections 3, 4.3 and 4.7 of the ECR Declaration and those provisions thereof which pertain to Subsections A through J of this Development Agreement shall not be amended by the Developer without first having obtained approval of the City, which approval shall be evidenced by an affirmative vote of a majority of those members elected to the Papillion City Council.
4. The City of Papillion, through its duly authorized representatives, shall have the right to enforce, through all legal means, including actions at law or equity, those provisions and covenants of the attached ECR Declaration which may not be amended without prior approval of the City.
5. In addition to any legal or equitable remedies possessed by the City, the City may also withhold the issuance of an occupancy permit as to any lot if the Developer is not in substantial compliance with the Development Agreement or commits a substantial breach of this agreement as to such lot.

6. If the Developer breaches any of the terms of this Development Agreement or is otherwise in default of this agreement, the City may give notice to the Developer that if the Developer fails to cure such breach or default within thirty (30) days after notice is received that the City may then employ all legal and contractual remedies to effectuate compliance and enforcement of this agreement including those above described. The City may, however, and without any obligation whatsoever to do so, extend the period within which to allow the Developer to cure any such breach or default. No decision made or to be made hereunder by the City, through either any elected official or city employee, shall be unreasonable, arbitrary nor capricious; nor shall they be unreasonably delayed. Nothing herein shall be construed so as to limit or preclude the right of the Developer to appeal from any decision made hereunder by the City, its officials, agents or employees to the District Court of Sarpy County, Nebraska. Provided, however, Developer shall not be considered in default if any alleged default cannot be cured within thirty (30) days and Developer has commenced and is diligently pursuing the curing of such default.
7. The Developer has requested approval for B-1 (Light Business) Zoning but agrees that although the following are permitted uses in B-1 (Light Business) Zoning the same shall not be allowed as a primary use.
- (a) Bus depots and transit stations
 - (b) Feed and seed stores
 - (c) Food lockers
 - (d) Gunsmith shops
 - (e) Hotel, motels and apartment hotels
 - (f) Parking garages
 - (g) Radio and television broadcasting studios
 - (h) Pawnshops
 - (i) Shooting galleries
 - (j) Sports arenas within buildings
 - (k) Storage garages
 - (l) Auditoriums
 - (m) Utility pumping stations
8. Developer must commence construction of utilities as shown on the final plat, including but not limited to water and sewer, within two years of the date of this agreement or show cause why subject property should not be rezoned or an extension of time granted to comply with this paragraph. Jersey Street may be paved by Developer for its access and ingress and egress to the development but shall not be connected to the Hickory Estates Subdivision until the City directs such connection; in no event shall such connection be made until completion of the Giles Street widening project.

- 9. The exterior rear walls of any buildings to be constructed in the development, which rear walls face South into Hickory Estates residential area, must be finished with the same or similar materials as the front exterior walls.

- 10. Developer shall submit to the City a landscaping plan simultaneously with a building permit application. Prior to the implementation of the landscaping plan the same must be approved by the City Zoning Director. Said plan shall illustrate location of fencing, berming, shrubs and trees, approximate size and height of both shrubs and trees including front, side and rear elevation views of the buildings for which a building permit is being requested.

- 11. Ashley Street shall not be connected to the development so as to give access thereto.

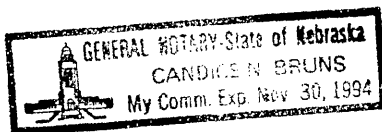
IN WITNESS HEREOF the parties have executed this Agreement the 23rd day of August, 1994.

HICKORY HILL ASSOCIATES, A Nebraska Limited Liability Company,

BY: [Signature]
Its MEMBER

STATE OF NEBRASKA)
)ss
COUNTY OF SARPY)


The foregoing instrument was acknowledged before me this 23rd day of August, 1994, by JAY R. LERNER of HICKORY HILL ASSOCIATES, a Nebraska Limited Liability Company.



[Signature: Candice N. Bruns]
Notary Public

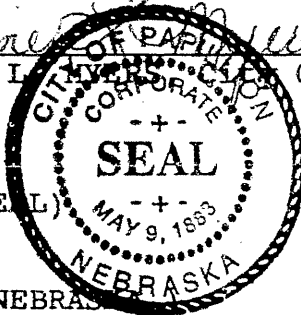
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CITY OF PARIILLION,

BY: 
PETE GOODMAN, Mayor

Attest:

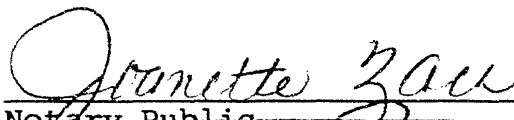

CHRISTINE L. MYERS, Clerk

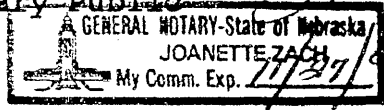


(SEAL)

STATE OF NEBRASKA)
COUNTY OF SARPY)SS

The foregoing instrument was acknowledged before me this 25 day of August, 1994, by PETE GOODMAN, Mayor, and CHRISTINE L. MYERS, City Clerk of the CITY OF PAPIILLION, a Municipal Corporation.


Notary Public



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RE: Lots 1, 2, 3 & 4
Hickory Hill Plaza

ECR
DECLARATION

Hickory Hill Associates a Nebraska Limited Liability Company, hereby establishes the following easements, covenants and restrictions.

PRELIMINARY STATEMENT

Hickory Hill Associates, a Nebraska Limited Liability Company ("Declarant"), is the record owner of Lots 1, 2, 3 and 4 of Hickory Hill Plaza, a subdivision in Sarpy County, Nebraska as surveyed, platted and recorded.

The Declarant desires to establish certain covenants and restrictions and provide easements for pedestrian and vehicular ingress, egress, passage and traffic as though such lots were developed and utilized as a single integrated shopping center.

TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement, which by this reference is repeated and incorporated in this portion of this Declarant in its entirety, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby establishes the following easements, covenants, and restrictions.

1. Definitions. The terms in this Section 1 shall have the following meanings:

1.1 Building Area. The term "Building Area" means and includes that area of the Shopping Center upon which a building, buildings, or other structures may be constructed or erected.

1.2 Common Areas. The term "Common Areas" shall mean and include all parts of the Shopping Center which are devoted primarily for parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads, loading areas (excluding loading docks) and other similar areas or exterior areas not used as a "Building Area".

1.3 Owner. The term "Owner" shall mean any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental agency or other business entity now or hereafter holding of record an ownership interest in fee in a portion or all of a Parcel.

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1.4 Parcel. The term "Parcel" shall mean or refer to any of the following platted lots: Lots 1, 2, 3 and 4 of Hickory Hill Plaza, a subdivision 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. From time to time reference to one or more of such Parcels will be made in this Declaration by its or their platted lot number.

1.5 Permittees. The term "Permittees" shall mean (i) the respective Owners of each Parcel comprising the Shopping Center and its respective successors, assigns, heirs, and personal representatives, (ii) such Owners' agents, customers, invitees, licensees, employees, servants, and contractors, (iii) such Owners' tenants and subtenants and their respective customers, invitees, employees, servants, licensees, contractors, and agents, and (iv) such Owners' land contract purchasers, mortgagees and beneficiaries under deeds of trust.

1.6 Shopping Center. The term "Shopping Center" shall mean all of the Parcels as a group.

2. Grant of Easements. The Declarant hereby grants to the Permittees the following easements:

2.1 Pedestrian Easements. Nonexclusive easements for the purpose of pedestrian traffic between each Parcel and: (i) each other Parcel; (ii) the public streets now or hereafter abutting or located on any portion of the Shopping Center; and (iii) the public walkways now and hereafter abutting or located on any portion of the Shopping Center; limited however, to those portions of each Parcel which are improved by the Owner thereof from time to time for pedestrian walkways and made available for general use, as such portions may be altered, relocated, or eliminated from time to time by each such Owner.

2.2 Vehicular and Access Easements. Nonexclusive easements for the purpose of vehicular traffic and access between each Parcel and: (i) each other Parcel; and (ii) the public streets now and hereafter abutting or located on any portion of the Shopping Center; limited however to those portions of the Parcels which are improved by the Owner thereof from time to time for vehicular accessways and made available for general use, as such portions may be altered, relocated or eliminated from time to time by each such Owner.

2.3 Utility Easements. The Owners of the Parcels shall cooperate in the granting of appropriate and proper underground easements for the installation, repair and replacement of and connection to storm sewers, sanitary

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sewers, electrical, water, gas, and telephone lines and related systems necessary for the orderly development and operation of the Shopping Center. The Owner of the Parcel affected shall use its best efforts to cause the installation of such underground sewers and utilities prior to paving of the Common Areas on such Parcel. No such lines, systems, sewers, or utilities serving one or more Parcels shall be installed within any portion of any Parcel whose Owner has designated such portion as a Building Area or expansion area, it being the intent hereof that such easements, if any, shall be situated under Common Areas.

The Owner of any Burdened Parcel affected by any of such sewer and utility easements will have the right, at any time, and from time to time, to relocate any such easements then located on the Burdened Parcel on the conditions that: (i) such right of relocation will be exercisable only after thirty (30) days' prior written notice of the intention to relocate has been given to all Owners using the easements to be relocated; (ii) such relocation, without the prior consent of the Owner of the Benefited Parcels, will not interrupt during business hours any sewer or utility service to the improvements then located on the Benefited Parcels; (iii) such relocation will not materially reduce or impair the usefulness or function of the easements to be relocated; and (iv) all costs of such relocation will be borne by the Owner relocating the easements.

2.4 Fire and Emergency Access. Nonexclusive easements for the purpose of fire protection and emergency access between each Parcel and each other Parcel for pedestrian and vehicular access, ingress and egress over, across, on and through the Common Areas of each Parcel.

2.5 Self Help Easements. Nonexclusive rights of entry and easements in favor of the Owner of Lot 2 over, across, and under each Parcel for all purposes reasonably necessary to enable the Owner of Lot 2 to perform any of the provisions of this Declaration which a defaulting Owner has failed to perform, such easements to be exercised as provided in Section 16.2 of this Declaration.

2.6 Unimpeded Access. No barricades, fences or other dividers will be constructed between the Parcels and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic throughout the Shopping Center in the areas designated for such purpose by the Owner of each Parcel except for curbing reasonably designed and installed to assist traffic control; provided that each Owner will have the right to erect barriers, once each year (but not during the months of October, November, and December) for a period not exceeding twenty-four (24) hours, to avoid the possibility of

dedicating such areas for public use or creating prescriptive rights therein.

2.7 Use of Easements. Subject to the reasonable rules and regulations adopted for the use of each Parcel by the Owner thereof, the use of all easements created by this Declaration will, in each instance, be nonexclusive and for the use and benefit of the Permittees. Each Owner specifically reserves the right, at any time and from time to time, to promulgate such rules and regulations applicable to the Owner's Parcel as might be reasonably imposed but in all cases consistently applied and uniformly enforced to promote the health, safety, welfare and security of such Parcel, the improvements located thereon and the Owner's tenants and subtenants and their customers. Each Owner may, at any time and from time to time, remove, exclude and restrain any person from the use, occupancy or enjoyment of any easement hereby created or the area covered thereby for failure to observe the reasonable rules and regulations established as permitted herein. If the unauthorized use is being made of any easement area by any of the Permittees, such unauthorized use may be restrained or terminated by appropriate proceedings after written notice to the defaulting Owner and failure to abate such unauthorized use within fourteen (14) days after receipt of such notice.

Nothing in this Declaration shall be interpreted to permit nor shall the Owner of any Parcel impose any charge or cost for the use of any of the Common Areas.

2.8 Maintenance of Easement Areas. Except to the extent that such areas might be operated and maintained by public authorities or utilities and except as otherwise specifically provided in this Declaration, the Owner of each Burdened Tract will operate, maintain and replace all of the areas of the Burdened Tract which are subject to the pedestrian and vehicular easements created in this Declaration in sound structural and operating condition at the sole expense of the Owner of the Burdened Tract. Additionally, the Owner of each Parcel, at its own expense, shall repair, maintain and replace the Common Areas and all improvements within or upon any Building Area (the "Improvements") from time to time located on such Parcel. Such repairs, replacements and maintenance shall include, but shall not be limited to:

(a) maintenance, repair and replacement of the surface and subsurface of any parking areas so as to maintain level, smooth and evenly covered parking areas with the type of materials originally installed or used thereon or such substitutes as will in all material respects be equal to such materials in quality, appearance, use and durability;

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(b) maintenance, repair and replacement of all buildings and other improvements. Nothing in this paragraph shall be construed to obligate the Owner of any Parcel to restore any building or improvement destroyed by fire or other casualty; however, if such building or improvement is not replaced then it shall be razed within a reasonable time, all debris removed, and all unpaved or unlandscaped areas seeded;

(c) maintenance and care of all grass, shrubs and landscaping, including, but not limited to the fertilizing, weeding, watering, mowing and trimming thereof and the making of such replacements of shrubs, trees, and other landscaping as is necessary to maintain the same in first class condition;

(d) removal from the Common Areas of papers, debris, ice, snow, refuse, filth and any hazards to persons using such areas, and washing or thoroughly sweeping paved areas as required to keep such areas in a clean and orderly condition;

(e) maintenance of such appropriate parking area entrance, exit and directional signs, markers and lights as may be reasonably required from time to time;

(f) such striping, painting and repainting as may be required to maintain the parking areas and equipment installed thereon in good condition and repair; and

(g) maintenance and replacement of all lighting equipment, facilities and identification signs.

The standard of care applicable to repairs and maintenance required under this Declaration shall be that of a first-class shopping center.

The Owner of each Burdened Tract will operate, maintain, and replace at all sewers and utilities located within the boundaries of such Burdened Tract in sound structural and operating condition (except to the extent that such operation and maintenance is performed by public authorities or utilities) and any expenses occasioned thereby will be borne by the Owners of the Benefited Tract or Tracts which are serviced by such Utility Facilities in the ratio which the gross leasable area of the improvements located on each Benefited Tract bears to the total gross leasable area of the improvements located on all Benefited Tracts; provided however, that each Owner will pay all costs associated with the construction, operation, maintenance and replacement of utilities and the consumption of utility services which relate solely to the improvements located on an individual Parcel and no other Owner will have any liability with respect thereto.

3. Use of Building Areas. Buildings in Lots 2, 3 and 4 shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, medical and dental offices, restaurants, and retail stores. Without the prior written consent of the Owner of Lot 2 and the prior written consent of the City of Papillion as evidenced by a motion approved by a majority of those members elected to the City Council, no part of the Shopping Center shall be used for any of the following purposes: (a) bingo or other game room, pool hall, teen club, theater, or gambling or live entertainment enterprise of any kind, (b) warehouse operation or manufacturing or assembling operation, (c) storage (except incidental to the primary commercial use), (d) central laundry facility, (e) facility in which fire sales, bankruptcy sales (unless pursuant to Court Order), or auction sales are conducted, (f) facility for the sale, leasing, display or repair of any automobiles, trucks, trailers, or recreational vehicles, (g) bowling alley, (h) skating rink, (i) mortuary, (j) establishment selling or exhibiting pornographic materials, (k) flea market, (l) health spa, (m) physical therapy facility, (n) massage parlor, (o) tanning parlor, (p) bar or tavern, (q) ballroom, dance hall, or discotheque, (r) facility for instruction; and (s) package sale of intoxicating liquors, including wine and beer, except within Lot 2 in which such package sale is expressly permitted; nothing in this subsection (s) shall preclude the sale or dispensation of wine, beer, and/or liquor in connection with the operation of a deli, restaurant, or cafe.

Notwithstanding the foregoing, in no event shall Lot 4 be leased, used, or occupied by or conveyed to any party for use as a fast food restaurant, tavern or bar.

4. Buildings and Site Improvements. Except as otherwise specifically provided herein, or as otherwise expressly permitted by the Owner of Lot 2, the following standards shall apply to the Lots identified:

4.1 Design and Construction. The Buildings Areas of Lots 3 and 4 shall be designed so that the exterior elevations of buildings constructed on any such Lot shall be architecturally and aesthetically compatible with the buildings to be constructed on Lot 2 as determined by the Owner of Lot 2 in its sole discretion. The design and construction of any building or expansion thereof constructed on any of such Lots shall be of high quality. No building constructed within any of such lots shall have a metal exterior.

4.2 No more than one building shall be constructed on Lots 3 and 4; such building shall not exceed sixteen (16)

feet in height, as measured from finished grade. No detached facilities, buildings or structures (except approved signage) of any kind shall be constructed on any of such Lots.

4.3 The Owner of Lot 2 will utilize berming to screen to the extent reasonably practicable the rear side of any buildings constructed thereon from the view of the residential area immediately adjacent to such Lot to the South.

4.4 Any building constructed on Lot 3 or Lot 4 shall not exceed 5,000 square feet in gross leasable area.

4.5 Any rooftop equipment or building components on buildings constructed on Lots 3 and 4 shall be screened from public view from all directions in a manner satisfactory to the Owner of Lot 2 in its sole discretion.

(a) No rooftop sign shall be erected on any building constructed within Lots 1, 2, 3, and 4.

(b) Only one freestanding identification sign may be erected on Lots 3 and 4 and may advertise only the name and logo of the business conducted thereon; such identification sign shall not exceed eighteen feet in height, and shall in all other respects, including but not limited to the size of such sign, be acceptable to the Owner of Lot 2, and contain no more than one-hundred square feet of signage as calculated by the City of Papillion. Such sign shall be of a design and erected in a location approved by the Owner of Lot 2 in its sole discretion. In no event, shall any approved sign exceed the height of the Shopping Center pylon sign or signs constructed on Lot 2 or materially block the visibility of the buildings constructed on Lot 2. Notwithstanding the foregoing, there may be erected entrance-exit and directional signs to facilitate the free flow of traffic, which signage shall be of a monument type, not to exceed 3'3" in height.

4.6 No building or other improvements shall be constructed, erected, expanded or altered on Lots 1, 3, and 4 until the plans for same (including site layout, elevations, exterior building materials, colors, landscaping, signage, and parking layout) have been approved in writing by the Owner of Lot 2.

4.7 Landscaping on Lots 1, 3, and 4 shall not materially obstruct in the sole judgment of the Owner of Lot 2, (either through original planting or through untrimmed growth) the front view of the buildings constructed on Lot 2. All trees shall be of an ornamental, low-growing type. All areas which are not paved in any manner or on which improvements of any type are constructed or installed shall

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be planted with grass or landscaped or otherwise improved in a manner which will not detract from the adjoining residential areas.

4.8 Until such time as a Parcel is developed and improved by its Owner, such Owner shall keep the same planted with grass, mowed and in a clean and sightly condition. In the event berms are required to be installed on a Parcel, they shall be completed and in place prior to the issuance of a permanent occupancy permit for such Parcel.

4.9 In the event any of such Lots abuts 72nd Street or Giles, the portion of such Right-of-way which adjoins such Lot and which has not been improved by the appropriate governmental body as a street or highway shall be seeded, fertilized, and mowed by such abutting Lot Owner and maintained in the same condition as the grass areas within such Lot.

4.10 The Owner of Lots 3 and 4 shall continuously provide and maintain a parking ratio equal to one of the following: (i) ten (10) spaces for every one thousand (1,000) square feet of building space utilized for any restaurant use or (ii) six (6.0) spaces per one thousand (1,000) square feet of building space utilized for any other use.

4.11 (a) No outdoor satellite shall be installed on the roof of any building or within or on any portion of Lots 3 and 4.

(b) All areas of Lots 1, 3, and 4 which house refuse dumpsters or garbage containers shall be completely surrounded on all sides with decorative fencing, approved by the Owner of Lot 2, and designed to preclude public view.

4.12 Lots 3 and 4 may not be subdivided, in any manner, into smaller lots.

4.13 Perimeter Improvements. The Owner of Lots 1, 2, and 4 shall erect, within ten (10) months of the commencement of construction of a building on any of such Lots ("Construction Commencement"), a fence (the "Fence") which will match identically the fence which currently exists along the east side of Hickory Estates Subdivision running parallel to 72nd Street. In addition to such fence, the Owner of Lots 1, 2, and 4 will berm, landscape and shrub (including prominent trees) the area immediately inside the Fence to the end that the residential neighbors adjoining such Lots immediately south and east of the Fence will eventually be screened to the extent reasonably practicable from the view of the Shopping Center.

5. Limitations on Use.

(a) Customers. Each of the Owners shall use reasonable efforts to ensure that its customers and invitees and those of its tenants and subtenants shall not be permitted to park on the Common Areas of the other Owners unless parking easements are expressly granted in this Declaration.

(b) Employees. Each of the Owners shall use reasonable efforts to ensure that its employees and those of its tenants and subtenants shall not park on the Common Areas of the other Owners unless parking easements are expressly granted in this Declaration.

(c) General. Without the prior consent of the Owner of Lot 2 which may be withheld in its sole discretion, the Common Areas of Lots 1, 3, and 4 shall not be used for any purpose other than the primary purpose of such Common Areas which is to provide for parking for the customers, invitees and employees of the business conducted within the Building Areas of such Parcels and for the servicing and supplying of such business.

6. Taxes and Assessments. The Owners of the Parcels shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied and assessed against their respective Parcels.

7. Indemnification. The Owner of each Parcel shall hereby indemnify and save the Owners of the other Parcels harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Parcel, except if caused by the act or negligence of the Owner to be indemnified.

8. Insurance.

8.1 Liability Insurance. The Owners of the Parcels (until such time as a Parcel is sold to another party who shall thereby assume this obligation) shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, Owner's insurance to afford protection to the limit of not less than \$1,000,000.00 for injury or death of a single person, and to the limit of not less than \$1,000,000.00 for any one occurrence, and to the limit of not less than \$100,000.00 for property damage. Each Owner shall provide the Owners of the remaining Parcels with certificates of such insurance from time to time upon

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written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the property covered by this Declaration. Such insurance shall provide that the same may not be cancelled without ten (10) days prior written notice to the Owner of Lot 2.

8.2 Casualty Insurance. At all times during the term of this Declaration, the Owner or its tenants or subtenants shall keep the improvements on its Parcel insured against loss or damage by fire and other perils and events as may be insured against under the all-risks form in effect from time to time in Nebraska, with such insurance to be for the full replacement value of the insured improvements.

In the event of a fire or other casualty, the building and other improvements shall be repaired and restored as soon as practicable or shall be razed and all debris and other improvements (excluding undamaged landscaping) removed and the Parcel so affected shall be planted with grass seed and properly maintained.

8.3 Release. Each Owner of a Parcel hereby releases all of the Owners of the remaining Parcels from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty, whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released, or by any agent, associate or employee of the party being released; this release is effective only to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry or, if for any reason the releasing party is not carrying such insurance, then to the extent such damage or loss would be covered if the releasing party were carrying such insurance.

9. Eminent Domain.

9.1 Owner's Right to Award. Nothing herein shall be construed to give an Owner of any Parcel any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting another Owner's Parcel or granting the public or any government any rights in such Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Shopping Center.

9.2 Tenant's Claim. Nothing in this Section 10 shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and such Owner for all or a portion of any such award or payment.

9.3 Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer and without contribution from any other Owner.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon any Parcel, such lien shall expressly be subordinate and inferior to the lien of any first lien holder now or hereafter placed on such Parcel. Except as set forth in the preceding sentence, however, any holder of a first lien on any Parcel, and any assignee or successor in interest of such first lien holder, shall be subject to the terms and conditions of this Declaration.

11. Release from Liability. Any person acquiring fee or leasehold title to any Parcel shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired by such person. In addition, such person shall be bound by this Declaration only during the period for which such person is the fee or leasehold owner of such Parcel or portion thereof and shall be responsible for all obligations and liabilities which accrue during such period. Although persons may be released under this Section 11, the easements, covenants, and restrictions in this Declaration shall continue to be benefits to and servitudes upon such Parcel or Parcels, running with the land.

12. Breach. In the event of the breach or threatened breach of this Declaration, either (a) any or all of the Owners of Parcels adversely affected by such breach or threatened breach, or (b) the Owner of Lot 2 shall be entitled to institute proceedings for full and adequate relief from the consequences of such breach or threatened breach. The unsuccessful party in any action shall indemnify the prevailing party from all reasonable attorney's fees and other reasonable costs and expenses incurred by the prevailing party in connection with such proceedings.

No breach or threatened breach of this Declaration will entitle any Owner of any of the Parcels to cancel, rescind or otherwise terminate this Declaration.

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13. Legal Effect. Each of the easements and rights created by this Declaration are appurtenant to the Parcel to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purpose of each such easement and right, the Benefited Tract will constitute the dominant estate and the Burdened Tract will constitute the servient estate. Each easement or covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of each other Parcel now or hereafter constituting a part of the Shopping Center; (b) creates mutual equitable servitudes on each Parcel in favor of each other Parcel; (c) constitutes a covenant running with the land; (d) binds every Owner now having or hereafter acquiring an interest in any Parcel; and (e) will inure to the benefit of each Owner and each Owner's successors, assigns, mortgagees and beneficiaries under deeds of trust.

Upon the conveyance of all or any part of a Parcel, the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration and will be deemed to have assumed and agreed to perform each of the obligations of the conveying Owner under this Declaration with respect to the Parcel or portion thereof conveyed to such grantee. Upon recordation of such conveyance with the Register of Deeds of Douglas County, Nebraska, the conveying Owner will be released from any obligation under this Declaration arising thereafter with respect to the portion of the Parcel so conveyed but will remain responsible for any and all liability which has accrued prior to such recordation.

14. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant, or dedication of any portion of a Parcel to the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited, in accordance with the terms hereof, to the private use of the Permittees of each Parcel to whom easements have been granted in this Declaration. Except as otherwise specifically provided herein, this Declaration is intended to benefit the Owners and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust, and is not intended to constitute any person or entity which are not Permittees of Parcels to whom easements or other rights have been granted in this Declaration a third party beneficiary hereunder or to give any such person or entity any rights hereunder.

15. Duration; Amendment; Termination. Unless otherwise modified, or terminated, as permitted in this Section 15 or in this Declaration, the easements, rights, obligations, covenants and restrictions contained in this Declaration shall continue in perpetuity.

Except as otherwise specifically provided in this Declaration, this Declaration and any provision herein contained may be terminated or modified or amended as to the Shopping Center or any Parcel, only with the express written consent of (a) the Owners of Lots 3 and 4 thereby adversely affected and (b) the Owner of Lot 2. No modification or termination of this Declaration will be effective against any mortgagee or beneficiary under a deed of trust subsequent to such mortgagee's or beneficiary's acquiring title to a portion or all of a Parcel by foreclosure or deed in lieu of foreclosure, unless such mortgagee or beneficiary has so consented in writing. No tenant, subtenant, licensee or other person having only a possessory interest in a Parcel is required to join in the execution of any agreement of any type entered into or consent to any action of the Owners taken pursuant to this Declaration.

16. Default; Remedies. Subject to the provisions of Section 12 of this Declaration, the provisions of this Declaration will be enforced as follows:

16.1 Injunctive Relief. In the event of any violation or threatened violation by any Owner of any of the provisions of this Declaration, in addition to the right to collect damages, each Owner will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days written notice of the violation will be given to the Owner claimed to have committed such violation during which period such Owner shall have the right to cure such default; in the event such default cannot be cured during such period and such Owner is diligently pursuing such cure, such Owner shall not be considered in default.

16.2 Self Help. In the event any Owner fails to perform any of the provisions of this Declaration, the Owner of Lot 2 will have the right, without being obligated to do so, to enter upon the Parcel and improvements of such defaulting Owner and perform the obligations of the defaulting Owner hereunder; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the defaulting Owner not less than thirty (30) days prior to the commencement of such action or without notice if such default is of an emergency nature. During such thirty (30) day period, the defaulting Owner will have the right to perform or commence performance of action appropriate to remedy such default, and provided such action is diligently carried to completion, the right of the Owner of Lot 2 to perform such obligation of the defaulting Owner will terminate without prejudice to correct future defaults. If the Owner of Lot 2 elects to perform the action to have

been performed by a defaulting Owner, on completion of such action, or from time to time, if the action is of continuing nature, an itemized statement of the reasonable cost thereof will be submitted to the defaulting Owner and the amount thereof will be immediately due and payable by the defaulting Owner which amount will bear interest at the rate of sixteen percent (16%) per annum from the date such costs are incurred to the date reimbursement is made by the defaulting Owner; such amount, including interest shall be a lien on the Parcel of the defaulting Owner until paid.

16.3 Force Majeur. If performance of any action by any Owner is prevented or delayed by act of God, war, labor disputes or other cause beyond the reasonable control of such Owner, the time for the performance of such action will be extended for the period that such action is delayed or prevented by such cause.

16.4 Notice of Default. An Owner will not be in default under this Declaration unless the Owner has received written notice specifying the nature of such default and has failed to cure or commence appropriate action to cure such default within the times herein provided. The legal propriety of the assertion of such default shall be subject to judicial interpretation.

16.5 No Termination. No breach of this Declaration will entitle any Owner to cancel, rescind or otherwise terminate this Declaration. The foregoing limitation will not affect, in any manner, any other right or remedy which any Owner might have by reason of any breach of this Declaration.

17. Miscellaneous:

17.1 Approvals. Except for the consent or approval required of the Owner of Lot 2 pursuant to Section 4 of this Declaration, which consents and approvals may be withheld in its sole discretion, when approval by any Owner is required hereunder, such approval will not be unreasonably withheld or delayed. Unless provision is made for a specific period of time, the period of time in which approval will be granted will be thirty (30) days, and if an Owner neither approves nor disapproves a proposed action within that period, the Owner will be deemed to have given approval. If an Owner disapproves of any action proposed by another Owner hereunder, such disapproval shall set forth in writing the specific reasons for such disapproval.

17.2 Notices. All notices, statements, demands, approvals and other communications given pursuant to this Declaration will be in writing and will be delivered in person, by certified or registered mail, postage prepaid or by recognized courier service to the Owners at the addresses

on file with the office of the Douglas County Assessor for delivery of ad valorem tax statements relating to their respective Parcels. All such notices which are mailed shall be deemed delivered on the third day after postmark unless delivered sooner.

17.3 Waiver of Default. No waiver of any default by any Owner will be implied from the failure by any other Owner to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Declaration will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Declaration are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner might otherwise have by virtue of a default under this Declaration; and the exercise of any right or remedy by any Owner will not impair such Owner's standing to exercise any other right or remedy.

17.4 No Partnership. Nothing contained in this Declaration and no action by the Owner of any Parcel will be deemed or construed by any Owner or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Owners of any of the Parcels.

17.5 Severability. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

17.6 Governing Law. This Declaration will be construed in accordance with the laws of the State of Nebraska.

17.7 Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

17.8 Time. Except as otherwise provided in this Declaration, time is of the essence.

17.9 Estoppel Certificates. The Owner of any Parcel shall, from time to time upon not less than twenty (20) days written notice from any other Owner, execute and deliver to such other Owner a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or if modified, indicating the modifications, and stating whether or not, to the best of its knowledge, any Owner is in default under the Declaration and if so, specifying such default.

17.10 Notice of Default to Mortgagee. Any Owner serving notice of default under this Declaration shall provide written notice of such default in the manner permitted in this Declaration to any holder of any mortgage or beneficiary under any deed of trust covering the Parcel of the Owner allegedly in default provided such holder or mortgagee shall have provided the Owner responsible for serving such notice of default a written notice informing it of the existence of such mortgage or deed of trust and the address to which notices of default are to be sent.

17.11 Merger. This Declaration and the easements and rights created herein shall not be subject to the doctrine of Merger.

17.12 Binding Effect. The provisions of this Declaration will be binding on the Owners and their respective successors, assigns, heirs, personal representatives, mortgagees, and beneficiaries under deeds of trust to the extent herein provided.

Dated as of August 25, 1994

HICKORY HILL ASSOCIATES, a
Nebraska Limited Liability Company

By: [Signature]

Its: [Signature]

ACKNOWLEDGMENTS

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 25th day of August 1994, by Jay R. Lerner, a member of Hickory Hill Associates, a Nebraska Limited Liability Company.

[Signature]
Notary Public

