

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
**98-008543**

98 APR -7 PM 4: 53

*Lloyd J. Dowding*  
REGISTER OF DEEDS

RECORDER NOTE

"Check Notary"  
Page 7

98-08543  
Counter *FILE m*  
Verify *ik*  
D.E. *m*  
Proof *m*  
Fee \$ **57.00**  
Chk ☒ Cash ☐ Chg ☐

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**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**LLOYD J. DOWDING**

SARPY COUNTY REGISTER OF DEEDS  
1210 GOLDEN GATE DRIVE #1109  
PAPILLION, NE 68046-2895  
402-593-5773

98-08543A

# RESTRICTIVE COVENANT AND EXCLUSIVE USE AGREEMENT

THIS **RESTRICTIVE COVENANT AND EXCLUSIVE USE AGREEMENT** (this "Agreement") is made as of the 7th day of April, 1998, by and between JUNCTION CORNER, INC., a Nebraska corporation ("Junction Corner") and CBOCS WEST, INC., a Nevada corporation ("CBOCS West").

## **W H E R E A S:**

A. Junction Corner is the owner of that certain real property more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes ("Seller's Property").

B. CBOCS West is the owner of that certain real property more particularly described on Exhibit "B" attached hereto and made a part hereof for all purposes (the "Property").

C. Junction Corner and CBOCS West have agreed to enter into this Agreement in connection with the use of Seller's Property.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereby agree as follows:

1. **Prohibited Use of Seller's Property.** The use of Seller's Property by Junction Corner or any other occupant shall be subject to the provisions of this Agreement and the following covenants and restrictions:

No property owned or controlled by Junction Corner (or owned or controlled by Junction Corner's officers, directors, subsidiaries and affiliates) within a two (2) mile radius of the Premises, including Seller's Property, shall be used, sold, leased, or occupied for (i) any family style, sit down, free-standing restaurant such as Denny's, IHOP, Bob Evan's, Waffle House, Big Boy, Bakers Square, Country Kitchen, Shoney's, Perkins, Po Folks, Black Eyed Pea, Morrison's Fresh Cooking, etc. for a period of twenty (20) years from the date hereof, or (ii) for a period of twenty (20) years from the date hereof, any theater, video rental store, book store and/or any other establishment, operation, and/or business offering items and/or materials with an adult content or x-rated theme or as may be deemed offensive in content and/or theme at any time.

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2. **Miscellaneous.**

2.1 **Notice.** All communications required or permitted under the terms of this Agreement shall be in writing, addressed as follows, and shall be deemed given when delivered by hand or when mailed, postage prepaid, by certified or registered mail, return receipt requested:

**If to Junction Corner:** 9505 South 144th Street  
Omaha, Nebraska 68138  
Attention: W.J. Curd

**If to CBOCS West:** CBOCS West, Inc.  
307 Hartmann Drive  
Lebanon, Tennessee 37088  
Attn: Vice President-Development

**With a copy to:** McGlinchey Stafford  
643 Magazine Street  
New Orleans, Louisiana 70130  
Attn: Thomas P. McAlister, Esq.

The above addresses shall be effective until changed by either party in accordance with the terms of this Agreement.

2.2 **Amendment or Termination.** This Agreement and the Exhibits made a part hereof constitute the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior agreements between the parties (or their predecessors) whether written or oral concerning the subject matter hereof, and may only be amended (so as to add, modify, or release these restrictions as to any portion of Seller's Property) or terminated, except as otherwise provided herein where automatic termination may occur under certain circumstances, by written instrument filed of record in the Registered Land Records of Sarpy County, Nebraska, evidencing the agreement of the then owners of Seller's Property and the Property and the mortgagees then holding mortgages on Seller's Property and the Property.

2.3 **Exclusiveness of Agreement.** This Agreement is made for the sole benefit and protection of CBOCS West and its respective tenants, successors and assigns, and no other person shall have any right of action hereunder.

2.4 **No Partnership.** Neither party shall be deemed under this Agreement to be a partner or associate of the other party in the conduct of the other party's business, nor shall

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either party be responsible for any debts incurred, actions taken, or omissions made by the other party.

**2.5 Construction.** The laws of the State of Nebraska are intended to govern the interpretation and enforcement of this Agreement. The singular number as used herein shall be deemed to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof and, accordingly, the parties agree this Agreement shall not be more strictly construed against any one of the parties hereto.

**2.6 Materiality.** All covenants, representations and warranties made herein shall be deemed to have been material and relied on by each party to this Agreement.

**2.7 Headings.** All paragraphs and descriptive headings or captions in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

**2.8 Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

**2.9 Severability.** Inapplicability or unenforceability of any provision of this Agreement or any instrument executed and delivered pursuant hereto shall not limit or impair the operations or validity of any other provision of this Agreement or any such other instrument.

**2.10 Waiver of Default.** The waiver of any breach or default under any of the terms of this Agreement shall not be deemed to be nor shall the same constitute a waiver of any subsequent breach or default.

**2.11 Recording.** This Agreement may be recorded in the Registered Land Records of Sarpy County, Nebraska, at any time at CBOCS West's or Junction Corner's option.

**2.12 Intended Effect.** The provisions hereof shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, as appropriate, and shall be deemed to be covenants that run with the Property and Seller's Property.

**2.13 Attorneys' Fees.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees.

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2.14 **Exhibits.** All exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth in the body hereon.

2.15 **Time of Essence.** Time is of the essence in the performance of all obligations under this Agreement.

2.16 **Enforcement.** The covenants and restrictions set forth in this Agreement are specifically enforceable and may be specifically enforced by and on behalf of CBOCS West.

IN WITNESS WHEREOF, Junction Corner has executed this Agreement as of the date set forth on its acknowledgement.

**WITNESSES:**

**JUNCTION CORNER, INC.**

a Nebraska corporation

By: W.J. Curd Pres  
Its: W.J. Curd President

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IN WITNESS WHEREOF, CBOCS West has executed this Agreement as of the date set forth on its acknowledgement.

**WITNESSES:**

Taman Nollan

Joseph M. Sweeney

**CBOCS WEST, INC.**  
a Nevada corporation

[Signature]

By: DONALD G. KRAVITZ  
Title: Authorized Signatory

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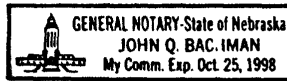
CBOCS West, Inc.  
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STATE OF Nebraska  
COUNTY OF Douglas

Before me, the undersigned authority, on this date personally appeared W.J. Curd, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same in his capacity as President of JUNCTION CORNER, INC., for and on behalf of said corporation for the purposes and consideration therein expressed.

Given under my hand and seal of office this 7th day of April, 1998.



John Q. Bac. Iman  
Notary Public, State of Nebraska

My Commission Expires:  
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STATE OF TENNESSEE )  
 )  
COUNTY OF WILSON )

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Before me, the undersigned authority, on this date personally appeared DONALD G. KRAVITZ, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same in his capacity as Authorized Signatory of CBOCS WEST, INC., a Nevada corporation, for and on behalf of said corporation for the purposes and consideration therein expressed.

Given under my hand and seal of office this 23 day of March, 1998.

Rita Painter  
Notary Public, State of Tennessee

My Commission Expires:

6-24-01



**EXHIBIT "A"**

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**PARCEL LEGAL DESCRIPTIONS:**

NOTE: LOTS 1, 4, 8A, 9A, 9B, 13, 14 AND 15, THE MEADOWS II REPLAT I, LOT 2, THE MEADOWS II REPLAT II, AND TAX LOTS 2A AND 2B, ARE SHOWN FOR LOCATION CLARIFICATION ONLY, AND ARE NOT A PART OF THIS DOCUMENT.

**PARCEL "B"**

**LEGAL DESCRIPTION:**

LOT 1, THE MEADOWS II REPLAT III, AS PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA.

**PARCEL "C"**

**LEGAL DESCRIPTION:**

LOT 2, THE MEADOWS II REPLAT III, AS PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA.

**PARCEL "D"**

**LEGAL DESCRIPTION:**

LOT 10B, THE MEADOWS II REPLAT I, BEING A REPLAT OF LOT 10, THE MEADOWS II REPLAT I, A SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6th P.M., SARPY COUNTY, NEBRASKA.

**PARCEL "E"**

**LEGAL DESCRIPTION:**

LOT 10A, THE MEADOWS II REPLAT I, BEING A REPLAT OF LOT 10, THE MEADOWS II REPLAT I, A SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6th P.M., SARPY COUNTY, NEBRASKA.

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**EXHIBIT "B"**

LOT 3, THE MEADOWS II, REPLAT III, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED, IN SARPY COUNTY, NEBRASKA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERNMOST CORNER OF LOT 10, THE MEADOWS II REPLAT I, AS PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA; THENCE NORTHERLY ALONG THE EASTERLY RIGHT-OF-WAY LINE OF 142nd STREET BEING CURVED TO THE LEFT AND HAVING A RADIUS OF 100.11 FEET, AN ARC DISTANCE OF 115.99 FEET (CHORD DISTANCE = 109.61', CHORD BEARING = NORTH 16 DEGREES 30 MINUTES 14 SECONDS EAST) TO A POINT ON THE NORTH LINE OF THE AFORESAID LOT 3; THENCE NORTH 49 DEGREES 41 MINUTES 36 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 184.14 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3; THENCE SOUTH 40 DEGREES 18 MINUTES 24 SECONDS EAST ALONG SAID EAST LINE OF LOT 3, A DISTANCE OF 60.00 FEET; THENCE SOUTH 40 DEGREES 20 MINUTES 11 SECONDS EAST ALONG SAID EAST LINE OF LOT 3, A DISTANCE OF 317.54 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 80; THENCE ALONG SAID RIGHT-OF-WAY LINE BEING CURVED TO THE RIGHT AND HAVING A RADIUS OF 2764.79 FEET, AN ARC DISTANCE OF 277.01 FEET (CHORD DISTANCE = 276.89', CHORD BEARING S 53 DEGREES 47 MINUTES 39 SECONDS W) TO THE SOUTHEAST CORNER OF SAID LOT 10; THENCE N 40 DEGREES 16 MINUTES 40 SECONDS W ALONG THE EASTERLY LINE OF SAID LOT 10, A DISTANCE OF 297.74 FEET TO THE POINT OF BEGINNING. CONTAINING 2.25 ACRES MORE OR LESS.

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