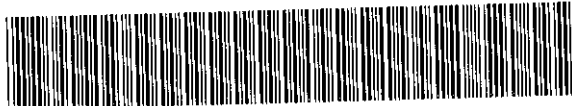


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2006103754

DECLARATION OF RESTRICTIVE COVENANTS AND AGREEMENTS

THIS DECLARATION OF RESTRICTIVE COVENANTS AND AGREEMENTS (the "Agreement"), is entered into this 6th day of September, 2006, by M.J.A., L.L.C., a Nebraska limited liability company ("Declarant").

WITNESSETH:

A. Ryan Companies US, Inc., a Minnesota corporation ("Developer"), intends to construct and operate a portion of the shopping center (the "Shopping Center") commonly known as Whispering Ridge, located in the City of Omaha, Douglas County, Nebraska, on the land (the "Shopping Center Land") more particularly legally described on Exhibit "A" attached hereto. The Shopping Center is designated on the Site Plan attached hereto as Exhibit "C" and made a part hereof.

UTC/pd

B. Target Corporation, a Minnesota corporation ("Target") intends to purchase that portion of the land out of the Shopping Center legally described as Lot 3 on Exhibit "A" (the "Target Tract").

C. Declarant is the fee owner of five (5) unimproved tracts of land adjacent to the Shopping Center, more particularly legally described as Lot 299 ("Lot 299"), Lot 301 ("Lot 301"), Lot 302 ("Lot 302"), Lot 303 ("Lot 303") and Lot 304 ("Lot 304") on Exhibit "B" attached hereto and made a part hereof, and there are not currently any improvements located thereon (Lot 299, Lot 301, Lot 302, Lot 303 and Lot 304 being at times collectively referred to as the "Out Parcels" or individually, an "Out Parcel"). The Site Plan shows the Out Parcels but designates Lot 299 as "Lot 2 Replat 3".

D. Declarant desires to impose certain restrictions on the Out Parcels to promote the orderly development and use thereof in a manner compatible with the Shopping Center.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that the following restrictions are imposed on the development of the Out Parcels for the benefit of the Shopping Center, and Declarant agrees as follows:

misc

29 FEE 147.00 FB _____ return

45796982.4 BKP _____ C/O _____ COMP _____ - 1 -

4 DEL _____ SCAN _____ FV _____

Union Title Company
3800 Normal Blvd. Suite 100
Lincoln, NE 68506

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A. **SITE IMPROVEMENTS**

1. **Buffer Strip:**

A buffer strip containing landscaping only shall be maintained between the property line of and the edge of the pavement around the perimeter of each Out Parcel, and no above-ground improvements of any type shall be erected thereon other than signs approved by Developer, landscaping, directional signs, fencing, traffic barriers, light poles and walkways. Said buffer strip shall be at least as wide as required by applicable governmental requirements without variance.

2. **Curbs and Pavement:**

a. Concrete curbs and gutters shall be constructed on or adjacent to the Out Parcels in each of the following locations: (i) around the entire perimeter of each Out Parcel, at the edge of the pavement, to separate the paved area from the adjacent property, adjacent public roadways and/or adjacent landscaped buffer; (ii) around the building(s) and any landscaped islands constructed on each Out Parcel; and (iii) at all vehicular entrances to the Out Parcels from adjacent public roadways. All such curbs shall be full-depth 18" poured-in-place concrete curbs. No bumper blocks nor precast, extruded or asphaltic curbs shall be permitted. Minimum height of curb or curb gutter above paved areas shall be six (6) inches except in entrances. Handicapped ramps shall be provided as required by applicable governmental regulation.

b. The pavement section of the parking areas shall be asphalt or concrete and shall be constructed and maintained in a uniform manner consistent in quality and otherwise with the pavement sections used for the Shopping Center parking areas.

c. There shall be no curb cuts between the street designated as "Birch Plaza" on the Site Plan and Lot 301 or Lot 302.

3. **Parking and Access:**

a. Each Out Parcel shall be self-sustaining as to parking. There shall be maintained at all times on each Out Parcel the greater of: (i) the number of automobile parking spaces required by applicable governmental regulation without variance or (ii) the minimum requirements specifically listed in b. below.

b. Notwithstanding subparagraph a. above, there shall be maintained on such Out Parcel the following minimum requirements:

- (i) Five (5.0) parking spaces for each one thousand (1,000) square feet of Floor Area, plus any Restaurant parking requirements set forth below; provided, however, that compact car parking spaces, which may not exceed twenty percent (20%) of total parking spaces, shall be located only

in the areas, if any, designated on the Site Plan. "Restaurant" shall mean any operation or business that requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, a supermarket, grocery store or similar operation shall not be deemed a Restaurant.

- (ii) If a business use contains a drive-up unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit.
- (iii) For each single Restaurant which has less than five thousand (5,000) square feet of Floor Area, then five (5) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.
- (iv) For each single Restaurant that has at least five thousand (5,000) square feet of Floor Area, but less than seven thousand (7,000) square feet of Floor Area, then ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.
- (v) For each single Restaurant which has seven thousand (7,000) square feet or more of Floor Area, then fifteen (15) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

If an occupant of an Out Parcel operates a Restaurant incidental to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the application of (iii), (iv) and (v) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than fifteen percent (15%) of the occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. In the event an occupant utilizes Floor Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements set forth above. Each occupant of an Out Parcel shall cause its employees to park on such Out Parcel.

c. The owners, patrons and occupants of the Out Parcels shall not have any right of parking upon the Shopping Center.

d. Design of the parking areas shall be in accordance with the following:

- (i) Compact car spaces may not exceed twenty percent (20%) of the total parking spaces on each Out Parcel, and they

shall be located only in the areas, if any, designated on the Site Plan.

- (ii) Handicapped spaces should be provided in accordance with applicable governmental regulations.
- (iii) In general, parking aisles should be perpendicular to the building serviced by same, when possible.
- (iv) Whenever possible, curbed islands should separate a change in direction of parking stalls and aisles.
- (v) Parking lot striping shall match that of the Shopping Center parking lot in width, length, angle, color and paint specification. Striping shall be maintained in good order and re-striping shall be provided as reasonably required by Developer.

4. **Traffic Flow:**

Pavement markings, directional signs and other traffic indicators on the Out Parcels shall be substantially similar to those in the Shopping Center and shall provide for a traffic plan compatible with that of the Shopping Center. Design of the interior traffic flow and parking layout of each Out Parcel shall be in accordance with the following:

- a. All access points will allow for sufficient vehicle stacking distance.
- b. Entrances directing traffic to a "head-on parking condition" shall be avoided, if possible.
- c. Drive-thru facilities shall allow for sufficient vehicle stacking distance and shall be removed from parcel access points.
- d. All two-way access shall be via 24'-0" wide (face to face of curb) curbed driveways.
- e. All one-way access, when required, shall be via 12'-0" wide (face to face of curb) curbed driveways.
- f. All access driveways shall have a 15'-0" minimum radius.
- g. Service access for use by semi-tractor trailer or fire trucks shall be designed to require wider driveways with greater radius as needed or recommended by traffic engineering practices.
- h. Access driveways to public roads and/or Shopping Center access drives (if allowed) shall require special acceleration/deceleration lanes as needed or recommended by traffic engineering practices.

i. All pedestrian access shall be clearly identified. When same crosses a landscaped area it will be via a 5'-0" wide hard-surfaced sidewalk.

j. The minimum distance between access driveways shall be 100'-0". No driveway shall be closer than 100'-0" to a Shopping Center access drive.

5. **Landscaping:**

All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, grass, or suitable ground cover in a uniform manner consistent in quantity, quality and otherwise with the Shopping Center landscaping. All parking areas shall have internal landscaping, including building permitted landscaping as required by applicable governmental requirements. All internal landscaping shall be protected from vehicular encroachment by concrete curbing as provided above. All landscaped or grassed areas shall be provided with an underground irrigation system.

6. **Grading and Drainage:**

Each Out Parcel shall be graded to provide positive drainage to the retention/detention area (if required or necessary) or to storm sewer lines that have been sized to receive Out Parcel discharge and all other discharge. All necessary erosion control methods shall be utilized to avoid siltation onto adjacent properties and into pipelines. Stockpiling of topsoil or excessive material shall be done so as not to interfere with drainage before, during or after construction. Existing drainage areas will be not altered during the grading sequence or after unless approved by Developer. Parking lot slopes shall be a minimum 1.5 percent and maximum 4 percent. All trenches and excavation near or adjacent to existing curbs, sidewalks and pavement shall be backfilled with trench backfill material. Required density of compaction shall be indicated on the plans.

7. **Site Lighting:**

Poles shall be restricted to 30' in height, exclusive of base, or as otherwise required by local code. Illumination shall be not less than 2.00 nor more than 5.00 foot-candles minimum maintained throughout any parking lot. Cut-off fixtures (shrouds) shall be installed whenever necessary to avoid spillover to adjacent property. All lighting poles and fixtures installed on the Out Parcels shall be submitted to Developer for review and approval prior to installation thereof. Declarant agrees to cause to be installed antique globe lighting poles immediately adjacent to Birch Plaza, Evans Plaza and 168th Court. Developer shall be responsible for the electricity, maintenance, and upkeep of the poles after their initial installation.

B. **BUILDING CRITERIA**

1. **Architectural Design:**

The design of each building shall be compatible with and/or complement the Shopping Center and other peripheral buildings. The design shall be a simple

geometric shape and finished on all sides. No Out Parcel shall contain more than one (1) building without the consent of Developer.

2. **Materials and Colors:**

Substantially maintenance-free materials such as brick, architecturally treated concrete and stucco/drivvit shall be used wherever possible. Materials and colors shall be compatible with those used for the Shopping Center. Fire-treated wood shakes and shingles are preferred to asphalt shingles for sloping roof surfaces. Use of exterior colors shall be in good taste and in character with the Shopping Center. Color shall be an aesthetic consideration combined with the building form, proportions and materials.

3. **Screening:**

All mechanical and/or electrical units, roof-top or ground mounted, will be screened with the same material used on the building façade. Whenever possible, the exterior building walls will be extended to accomplish same.

4. **Delivery; Trash:**

Loading docks and refuse areas are to be located on the least visible side of the building and screened as called for above. Outside storage is specifically prohibited. Whenever possible, refuse areas should be accommodated inside the building. The location of any outside refuse area is subject to the prior written approval of Developer, which consent shall not be unreasonably withheld.

5. **Orientation:**

All buildings shall be subject to the set-back requirements in addition to those contained in applicable governmental requirements.

6. **Aesthetics:**

Exterior exposed fire escapes, exposed service stairs or ladders, radio or television towers and antennae or satellite receivers are not permitted, except that one satellite dish not exceeding 2 feet in diameter shall be permitted for each building.

7. **Utilities:**

All utilities are to be underground with no visible connections to Out Parcel facilities, except for required meters or transformers. Meters and transformers shall be screened.

8. **Height:**

No building(s) or other improvements erected upon the Out Parcels shall be more than one story above grade or exceed 31 feet in height, measured from the finished floor elevation to the top of the highest protrusion, including, without limitation, roof-mounted equipment, satellite dish, decorative roof screening and other such appurtenances. Provided, however, to the extent necessary to accommodate the Floor Area Ratio (FAR) required by the City of Omaha or the minimum parking requirements of Section 3b. hereof, the building on Out Parcel Lot 303 may consist of two (2) stories above grade and in no event shall any building or other improvements erected upon such Out Parcel have decorative architectural features such as, but not limited to, a spire, clock tower, or cupola which exceed 40 feet. With respect to the Out Parcels other than Lot 303, in no event shall any building or other improvements erected upon such Out Parcel have decorative architectural features such as, but not limited to, a spire, clock tower, or cupola which exceed 31 feet.

C. **SIGN CRITERIA**

Any sign structures constructed in connection with the use and occupancy of the Out Parcels shall be constructed in accordance with the criteria set forth in Exhibit "D". Once constructed, the owner or operator of each Out Parcel shall maintain any sign constructed by or on behalf of such owner or operator at its sole cost and expense.

D. **CONSTRUCTION**

1. A written schedule of construction and project events is required to be filed with Developer seven (7) working days in advance of construction start so that field personnel may be notified. Before starting any operations on site, the Out Parcel owner and such owner's contractor must supply Developer's personnel on site with the name and phone number of the field superintendent and copies of all required permits. Developer will issue written verification upon receipt of this information, at which time the contractor may commence his activities. The Out Parcel owner and such owner's contractor shall be liable for any damage caused to the facilities of the Shopping Center or adjacent property owners by their work and shall immediately repair any such damage.
2. Intentionally omitted
3. Construction hazard areas of and around the site must be clearly marked and barricaded from non-construction pedestrian and vehicular traffic.
4. Temporary structures, signs, barricades, and construction equipment must be clean, neat and uniform in appearance, maintained regularly and removed immediately when their use is no longer required.

5. Signage at the construction site shall be limited to the necessary hazard, warning and directional information. A development sign may be allowed but must conform to the criteria for temporary signs.
6. Construction materials, equipment, temporary shelters, signs and operations are to be confined to the project site for the sole purpose of the project's construction and shall not present a hazard or infringe on any adjoining property, operations, easements or rights-of-way.
7. Maintain the on-site construction in a commercially reasonable manner on a daily basis either removing trash or disposing of it in an on-site dumpster. Construction dirt and debris are not allowed to accumulate on any adjoining roads, parking areas, walks or other property and shall be broom cleaned immediately.
8. Once Out Parcel development has begun, construction should be diligently pursued to its finish. No structure, facility or Out Parcel improvement is to be left incomplete. All construction shall be completed within a reasonable construction time period.
9. All required permits must be clearly posted.
10. Intentionally omitted.
11. Developer must be notified of any planned interruption to any utility service (water, gas, electric, etc.) 7 days in advance. Developer must be notified immediately of any accidental interruption to any utility service.

E. **MAINTENANCE**

1. Each Out Parcel owner shall, at all times, at its sole cost and expense, keep its Out Parcel, including all improvements thereon, in a well-maintained, safe, clean and attractive condition. Such maintenance includes, but is not limited to, the following:
 - a. Prompt removal of all litter, trash, refuse, wastes, snow and ice; provided, however, that removal of snow and ice shall be coordinated with the removal of same on the Shopping Center.
 - b. Keeping all landscaping alive, weed-free and attractive.
 - c. Keeping exterior lighting, signage and mechanical facilities in good working order and condition.
 - d. Complying with all government health and safety requirements.
 - e. Striping of parking areas and repainting of improvements.
 - f. Repair of exterior damage to improvements.

- g. Maintenance of utility lines.

2. **Enforcement:**

If any Out Parcel owner fails to maintain its Out Parcel in accordance with the foregoing in such manner as may be deemed necessary by Developer to preserve and protect the value and attractive appearance of the Out Parcel, then Developer may give such Out Parcel owner written notice of the work or repair required to be carried out or undertaken and diligently pursued within 30 days from the date of such notice. Should Out Parcel owner fail to carry out maintenance and repair, then Developer, through its authorized agent or agents or the Benefited Parties as set forth in Paragraph H after written notice to the Out Parcel owner, shall have the right and power to enter onto such Out Parcel and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to Out Parcel owner. The Out Parcel owners of any part of the property on which such work is performed shall be jointly and severally liable for the cost of such work and shall promptly reimburse Developer for such cost.

F. **OPERATION OF THE OUT PARCELS**

1. The Out Parcels shall be used only for retail sales, offices, Restaurants or other commercial purposes that are permitted by applicable governmental requirements and by the terms of this Agreement.
2. No use shall be permitted on the Out Parcels that are inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:
 - a. Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building on any Out Parcel.
 - b. An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
 - c. Any "second hand" store, "surplus" store, or pawn shop.
 - d. Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
 - e. Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.
 - f. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

g. Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

h. Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.

i. Any bowling alley or skating rink.

j. Any movie theater or live performance theater.

k. Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.

l. Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop.

m. Any mortuary or funeral home.

n. Any establishment selling or exhibiting "obscene" material.

o. Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.

p. Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty-five percent (35%) of the gross revenues of such business.

q. Any massage parlor or similar establishment.

r. Any health spa, fitness center or workout facility exceeding 3,500 square feet of Floor Area and in no event shall any such operation be located within two hundred fifty (250) feet of the Target Tract.

s. Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall (except that this prohibition shall not prohibit the operation

of video-machines incidental or ancillary to the operation of another permitted use provided such incidental or ancillary operation of video machines shall not exceed three percent (3%) of the floor area of the permitted business..

t. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business on the Out Parcel.

u. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the occupant.

3. No owner or occupant of an Out Parcel shall use, or permit the use of, Hazardous Materials on, about, under or in its tract, or the balance of the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each owner or occupant agrees to defend, protect, indemnify and hold harmless each other owner or occupant of an Out Parcel or any part of the Shopping Center from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such owner or occupant, whether or not in the ordinary course of business.

For the purpose of this Section F3, the term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

4. No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored on any Out Parcel, however, the foregoing prohibition shall not be applicable to:

- a. the installation of an "ATM" banking facility within an exterior wall of any Building;

- b. the placement of bicycle racks and landscaping planters on the sidewalk in front of any Building;
 - c. outdoor seating as approved by Developer, which approval shall not be unreasonably withheld; or
 - d. temporary Shopping Center promotions as approved by the Developer.
5. The following use and occupancy restrictions shall be applicable to the Out Parcels:
- a. Intentionally omitted.
 - b. No toy store exceeding seven thousand (7,000) square feet of Floor Area shall be permitted.
 - c. No store, department or operation of any size selling or offering for sale any pharmaceutical drugs requiring the services of a licensed pharmacist shall be permitted.
 - d. No pet shop shall be located thereon within five hundred (500) feet of the Building Area located on the Target Tract.
 - e. No gas station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel shall be permitted.
 - f. No facility shall be permitted within three hundred feet (300') of the Building Area located on the Target Tract that both sells and installs any lubricants, tires, batteries, transmissions, brake shoes or any other similar vehicle accessories.
 - g. No liquor store offering the sale of alcoholic beverages solely for off-premises consumption within two hundred fifty (250) feet of the Building Area on the Target Tract shall be permitted, nor shall any liquor store offering the sale of alcoholic beverages for off-premises consumption exceeding five thousand (5,000) square feet of Floor Area be permitted, provided, however, these restrictions shall not apply to the incidental sale of alcoholic beverages with respect to a Restaurant.
 - h. No freestanding convenience store.
6. The names "Target," "Greatland," "SuperTarget," or any variation using the name "Target" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Tract.

G. SUBDIVISION/RE-ASSEMBLY

Declarant reserves the right to subdivide the Out Parcels into two (2) or more Out Parcels. Each of such reconfigured Out Parcels shall constitute a separate Out Parcel hereunder and shall be subject to all of the terms and restrictions of this Agreement.

H. BENEFITS OF RESTRICTIONS

1. The restrictions contained herein shall be effective as of the date hereof, shall run with the land burdened thereby, shall be binding upon all owners and occupants thereof, or any part thereof and improvements thereon, and their respective successors and assigns, shall constitute encumbrances on the Out Parcels, and shall insure to the benefit of Declarant, Developer and the Benefited Parties, as hereinafter defined, and their respective tracts.
2. The restrictions created herein shall terminate and expire on April 30, 2066, unless sooner terminated pursuant to that certain Operation and Easement Agreement dated as of September 6, 2006, by and among Developer and the Benefited Parties.
3. The "Benefited Parties" are Target and any wholly owned direct or indirect subsidiary of Target and their respective successors and assigns.

I. NO THIRD PARTY BENEFICIARIES

The restrictions created herein are for the sole benefit of Declarant, Developer and the Benefited Parties, and are not intended and shall not be construed to dedicate any easements to or create any rights in favor of any other person, entity or the general public. No act of Declarant, Developer or any of the Benefited Parties with respect to the Out Parcels shall be deemed or construed to create the relationship of principal and agent or of partnership, joint venture or other association between such parties.

J. AMENDMENT

1. This Agreement may be amended by the written agreement of Declarant, Developer and the Benefited Parties without the joinder of any other person or entity, notwithstanding the fact that Declarant may sell the Out Parcels to third parties; provided, however, such amendments shall be effective only as to such of the Out Parcels as are owned by Declarant at the time of recording of such amendment and as to such Out Parcels where the third party owners join in any such amendment.
2. Developer reserves the right to grant variances in writing with respect to this Agreement or any amendment hereto as to a particular Out Parcel without the joinder of any other person or entity, except that the written consent of the Benefited Parties shall be required.

K. SEVERABILITY AND APPLICABLE LAW

If any term, covenant or restriction herein shall be invalid or unenforceable, the remainder shall not be affected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed under the law of the State of Nebraska.

L. ENFORCEMENT

In the event of a violation or an attempted violation of the foregoing restrictions, Declarant or Developer may prosecute any proceedings at law or in equity to enjoin such violation and to recover damages for such violation, including reasonable attorneys' fees. If Declarant and Developer elect not to prosecute any violation or attempted violation, then any of the Benefited Parties may do so following fifteen (15) days prior written notice to Declarant of said intention to prosecute the violation or attempted violation.

M. APPROVAL

Whenever Developer or its designee shall have the right to consent to, approve, review, consider, or otherwise address any matter under this Declaration (collectively or individually, a "Request"), Developer shall provide prompt written notice thereof, identifying with specificity the matter to be so approved, to the Benefited Parties who shall have the right to consent to, approve, review, consider or otherwise address the matter identified in such Request, in their sole and absolute discretion, within thirty (30) days after receipt of Developer's written notice. The decision of the Benefited Parties shall be binding upon and control Developer's decision with respect to the matter which is the subject of the Request; provided, however, in the event the Benefited Parties fail to deliver written notice to Developer of the approval or objection by the Benefited Parties to such Request within such thirty (30) day period, the Benefited Parties shall be deemed to have approved the matter address therein.

N. OUTLOT/OUTPARCEL CONTRIBUTIONS

Lot 297 and Lots 301 through 309, inclusive and Outlots B, C, D and E, Whispering Ridge; Lot 3, Whispering Ridge Replat 2; and Lots 1 and 2, Whispering Ridge Replat 3 are governed by the terms and conditions of that certain ECR Declaration dated as of December 8, 2003, recorded December 9, 2003, as Doc. No. 2003245123 with the Register of Deeds, Douglas County, Nebraska, executed by M.J.A., LLC, a Nebraska limited liability company ("MJA") as "ECR Declarant," as amended by First Amendment to ECR Declaration, dated September 13, 2004, recorded September 17, 2004, as Doc. No. 2004123715 with the Register of Deeds, Douglas County, Nebraska (as amended, the "ECR Declaration"). Pursuant to that certain Assignment of Declarant Rights dated September 6, 2006 by and between Developer and MJA, MJA has assigned all of its rights and obligations under the ECR Declaration to Developer.

1. **Improved Outparcel Contributions.** As of the date of this Agreement, there are improvements which have been completed on Lots 297, Whispering Ridge; Lot 1, Whispering Ridge Replat No. 3; and Lot 3, Whispering Ridge Replat No. 2 (collectively "Improved Outparcels"). Under the terms and conditions of

Paragraph 2.9 of the ECR Declaration, Improved Outparcels are to make certain annual contributions towards the maintenance of Outlot E as shown on the Site Plan and other items all as provided in the ECR Declaration (“Improved Outparcel Contributions”).

2. **Assignment of Maintenance and other Obligations of ECR Declaration.**

Developer and MJA, as owner of the Outparcels have agreed that Developer as holder of the ECR Declarant rights shall assign all of its rights and obligations for maintenance under the ECR Declaration and its obligation to collect all Improved Outparcel Contributions and contributions received from the Outparcels as defined in paragraph D herein for maintenance under the terms and conditions of the ECR to the Operator under that certain Operation and Easement Agreement by and between Target and Developer dated the 6th of September, 2006 (“OEA”), which governs the operation and maintenance of the Shopping Center. Declarant shall direct the Operator as defined in the OEA to complete all maintenance and other obligations under the ECR Declaration, including, but not limited to, the maintenance of Outlot E, payment of all real estate taxes for Outlot E, all other maintenance required under the ECR Declaration, and the collection of all Improved Outparcel Contributions.

3. **ECR Declaration Budget.**

The Operator under the OEA shall collect all Improved Outparcel Contributions pursuant to Paragraph A above and all Outparcel Contributions as provided in Paragraph D below. Operator shall prepare a budget (“ECR Budget”) on an annual basis consistent with the provisions of Section 4.2.3 of the OEA, and shall comply with all terms and conditions regarding presentation of the budget, budget review as provided in Section 4.2.3. The budget shall include, in addition to general maintenance obligations under the ECR Declaration, a line item for collection of a structural reserve for the future reconstruction of the Outlot E road. The Operator shall collect all Improved Outparcel Contributions and shall deposit the same in the general ECR Budget as a credit to the same and as provided below. The ECR Budget as estimated by the Operator shall be paid by each Outparcel, the Target Tract, the Inline Tract, and Outparcel 1 as the same are identified and defined in the OEA and as provided below on an annual basis in the amounts and percentages as provided below (Contributions). The total of the Contributions shall represent, when collected, 100% of the total estimated ECR Budget less any amounts received by the Operator from Outparcel 1 and the Improved Outparcel Contributions. The Contributions shall commence on the date of this Agreement and shall be paid as follows:

| | |
|------------------------------------|------------------------------|
| Outparcel 1 as defined in the OEA | 6.868% of the budget |
| Inline Tract as defined in the OEA | 18.987% of the budget |
| Target Tract as defined in the OEA | 44.051% of the budget |
| Outparcels | <u>30.095%</u> of the budget |
| | 100.000% |

Outparcel budget (30.095% of the budget) identified above shall further broken down after "Improved Outparcel Contributions" are deducted from the Outparcel share of the budget. The remainder shall be allocated as follows:

| | |
|---------------|---|
| Lot 2, Plat 3 | 14.709% of the remaining outparcel budget |
| 301 | 27.538% of the remaining outparcel budget |
| 302 | 18.505% of the remaining outparcel budget |
| 303 | 18.539% of the remaining outparcel budget |
| 304 | 20.708% of the remaining outparcel budget |

4. **Real Estate Taxes – Outlot E.** Outlot E real estate taxes shall be included in the ECR budget and contributions for the same shall be handled in accordance with Item C above. Inline Tract shall be responsible for Target’s portion of the taxes in the ECR budget.

5. **Accounting.** Within ninety (90) days from the end of each calendar year, Operator shall furnish to the Outparcel owners a statement of costs for the operation and maintenance of Outlot E and an adjustment shall be made between the Operator and the Outparcel owners. Within fifteen (15) days thereafter, each Outparcel owner shall pay to Operator or Operator shall credit against the Outparcel owner's next payment to Operator, as the case may be, the difference between the estimated amounts paid pursuant to the ECR Budget and the actual amount of expenses for such calendar year as shown by such statement. An Outparcel owner shall have the right to review Operator's books and records with respect to the costs and expenses on or before April 1 of each calendar year upon ten (10) days written notice to Operator, provided such review is at Operator's business office where such records are kept and during Operator's regular business hours.

6. **Enforcement/Remedy.** Outlot Contributions shall be paid to Operator/Developer within thirty days after billing for said Contribution has been forwarded to the applicable Outparcel owner. In the event any Outparcel owner fails to pay any Contribution, as provided above, then in such event, the Operator, on behalf of the Developer, may pursue any and all remedies available under the ECR Declaration, this Agreement, or Nebraska law to collect payment of said Contribution. Provided, any amount outstanding which is not paid within 30 days after billing shall bear interest at the rate of sixteen percent (16%) per annum from the date of the billing and such amount shall constitute a lien against the Outparcel in respect of which such amount has not been paid from the date of filing notice in the public records on such Outparcel. Developer or Operator, on behalf of the Developer, may file notice of lien on the Outparcel in which the Outparcel owner has failed to pay the Contribution as provided above.

O. **NOTICES**

All notices and other communications (“Notice” or “Notices”) required or desired to be sent under this Agreement, shall be in writing and shall be given by personal delivery, by commercial overnight carrier or express mail service, by telecopy, or by registered or certified mail service, postage prepaid, return receipt requested. Notices which are telecopied shall be deemed to have been given on the date of telecopy, but only if (i) the telecopy is legibly received, (ii) the sender has received a transmission report, generated by sender’s facsimile machine, which confirms that the facsimile was successfully transmitted in its entirety and (iii) such Notice is concurrently sent by personal delivery, overnight carrier or express mail, as hereinabove provided. Notices which are otherwise mailed or delivered shall be deemed to have been given on the date established by the post office return receipt or the carrier’s proof of delivery, as the case may be. Notices shall be addressed as follows:

If to Declarant:

M.J.A., LLC
11205 South 150th Street, Suite 100
Omaha, Nebraska 68138
Attention: Gerald L. Torczon

with a copy to:

Pansing Hogan Ernst & Bachman LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114
Attention: John Q. Bachman

If to Developer:

Ryan Companies US, Inc.
50 South 10th Street, Suite 300
Minneapolis, MN 55403
Attention: Molly Carson

with a copy to:

Barna, Guzy & Steffen, Ltd.
400 Northtown Financial Plaza
200 Coon Rapids Boulevard
Minneapolis, Minnesota 55433
Attention: Michael F. Hurley

If to Benefited Parties:

Target: Target Corporation – TPN – 12th Floor
Property Development
1000 Nicollet Mall
Minneapolis, MN 55403
Attention: Real Estate – Existing Stores

with a copy to:

Fulbright & Jaworski L.L.P.
600 Congress, Suite 2400
Austin, Texas 78701
Attention: Jane S. Smith

Or to such other person and/or address as shall be specified by a party in a Notice given to the other pursuant to the provisions of this Paragraph.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

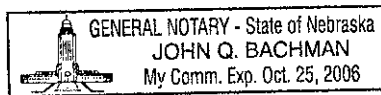
DECLARANT:

M.J.A., L.L.C.
a Nebraska limited liability company

By: *Gerald L. Torczon*
Name: Gerald L. Torczon
Title: Manager

STATE OF NEBRASKA §
 §
 §
COUNTY OF DOUGLAS §

The foregoing instrument was acknowledged before me this 5th day of September, 2006, by Gerald L. Torczon, the Manager of M.J.A., L.L.C., a Nebraska limited liability company, on behalf of the company.



John Q. Bachman
Notary Public

EXHIBIT "A"

SHOPPING CENTER

Lots 1, 2 and 3, Whispering Ridge Replat No. 7, Douglas County, Nebraska.

EXHIBIT "B"

OUTPARCELS

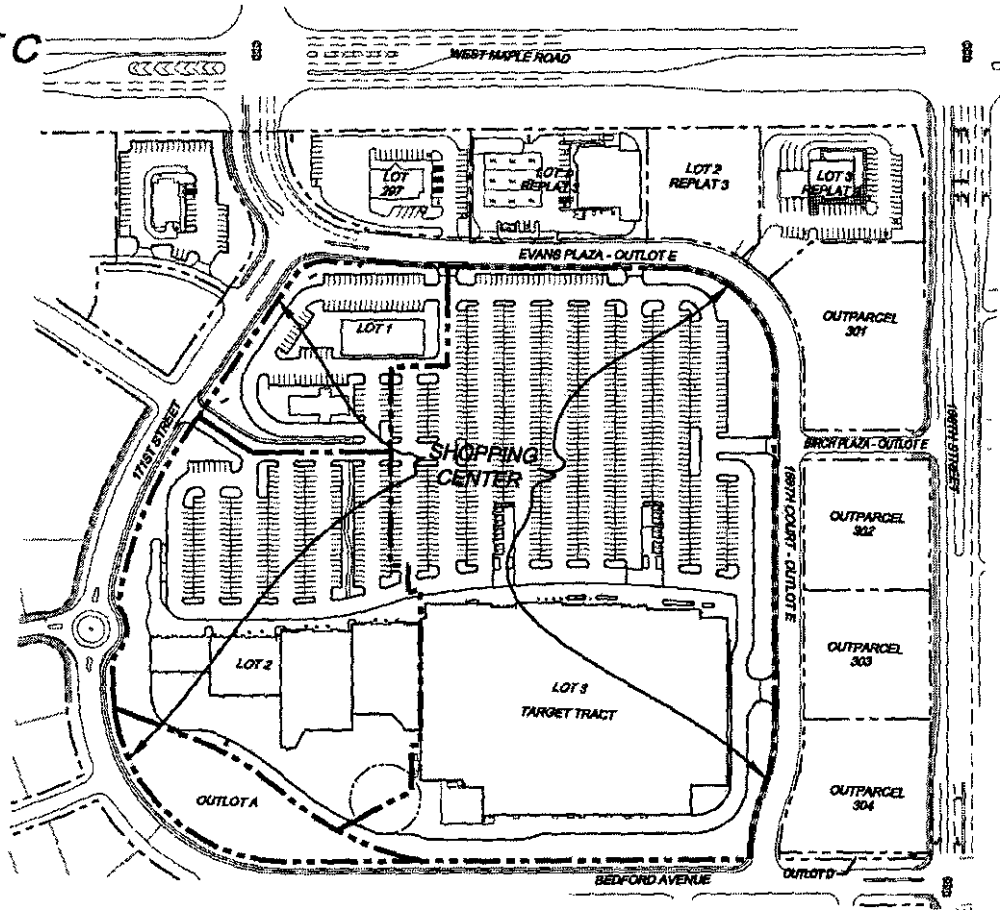
Lot 299 (Lot 2, Whispering Ridge Replat 3), and Lot 301, Lot 302, Lot 303, and Lot 304,
Whispering Ridge, Douglas County, Nebraska

OC-43919

EXHIBIT "C"

SITE PLAN

EXHIBIT C



WHISPERING RIDGE
OMAHA, NE
DATE 10/21/08
DRAWN BY JLB
RYAN
LANDSCAPE ARCHITECTS

EXHIBIT "D"

SIGN CRITERIA

General Requirements and Prohibitions:

b. The following criteria shall apply to all exterior signs or insignia placed or installed on the buildings or improvements thereon. Where these criteria are more stringent or restrictive than the applicable governmental regulations, then those criteria shall be controlling. Where these criteria are less stringent or restrictive than the applicable governmental regulations, then the latter shall control.

c. Painted lettering, painted symbols or painted identification of any nature shall not be permitted, except as expressly permitted in the Agreement.

d. No exposed wiring, conduits, tubing, lamps, ballast boxes or raceways will be permitted, except that with the prior written consent of Developer, exposed neon lighting or other lighting tubes may be used in an aesthetically desirable manner as hereinafter specifically provided.

e. All penetrations of the building structure required for sign installation shall be neatly sealed in a watertight condition.

f. No labels will be permitted on the exposed surface of signs, except those required by applicable governmental regulations and, if required, shall be in an inconspicuous location.

g. All electrical signs shall bear the U.L. label and shall be connected to the electrical service for the Out Parcel on which such sign is located.

h. All cabinets, conductors, transformers, ballasts, attachment devices and other equipment shall be concealed.

i. No flags or banners shall be installed or permitted on the Out Parcels or on any improvements constructed thereon, unless approved in writing by Developer in connection with a grand opening or other special event. In no event shall the period for the display of said flags or banners exceed two (2) weeks for any single occasion. No paper, cloth or cardboard signs shall be permitted. This provision shall not prohibit the erection of flagpoles to display national or state flags on the Out Parcels.

j. No portable signs shall be permitted.

2. Freestanding Signs:

a. All freestanding signs shall be of a monument type in a planter setting, uniform in design and setback.

b. A planter area of 5 square feet for each 6 square feet of sign area, including both sides, shall be required at the base of the sign. Landscaping and planter shall not be measured as a part of the sign for the purpose of meeting horizontal and vertical size requirements. All landscaped areas shall be maintained to at least minimum standards set forth in the Agreement.

c. Only one freestanding sign shall be allowed per Out Parcel. Said sign may be double-faced. The display area shall not exceed 60 square feet per face.

d. All signs shall be of permanent construction and shall be subject to the provisions of the building code of the locale in which it is located.

e. Signs may be internally illuminated or backlighted. Illumination shall be turned off within one hour of closing and turned on within one hour of opening.

f. The vertical dimensions of the sign display area shall be no greater than five feet (5') and the top of the said sign shall be no higher than 6 feet (6') from grade level.

g. The horizontal dimensions of the sign display shall be no greater than nine feet (9').

h. Such sign shall contain only the name or trademark of the business, building or building complex which it identifies and shall not contain change panels, advertising or names of individual tenants; provided, however, with the written consent of Developer, a bank may have an electronic reader strip as an element of its sign. No graphic logos will be allowed.

i. For multiple user facilities such as office buildings, site identification signage includes additional variables that will be considered by Developer. Conceptual designs for signs serving these types of facilities shall be submitted to Developer early in the project development stage to allow ample time for revisions and resubmittal.

j. Subject to the foregoing restrictions and such additional restrictions as Developer may impose, a theater may be permitted to have one pylon sign on its Out Parcel. The following basic criteria shall be followed when designing a theater pylon sign:

- (i) One copy strip per auditorium.
- (ii) Maximum dimension per copy strip; 12" high, 14'-0" wide, including auditorium designation (number or letter).

- (iii) Name of theater at top of pylon sign may be allowed along with the name of the Shopping Center; maximum letter height – 36".

3. Building-Mounted Wall Signs:

a. Wall signs shall identify the individual business, building or building complex by name or trademark only.

b. One (1) flat wall sign may be installed on each of two (2) separate facades of the building on each Out Parcel. With the consent of Developer, a third building mounted sign may be permitted.

c. The length of any building-mounted sign shall not exceed the lesser of (i) 40% of the length of the wall or façade upon which the sign is mounted, or (ii) 30'0"; nor shall the height of any such sign exceed 36"; provided, however, on a building containing 20,000 square feet or more of floor area, any building-mounted signs shall not exceed fifty percent (50%) of the length of the wall or façade upon which the sign is mounted, and the height of any sign shall not exceed sixty inches (60").

d. One wall sign per occupant will be allowed for buildings of multiple occupancy.

e. No panel signs will be permitted. Wall signs shall consist of three-dimensional individual characters mounted in relief upon the face of the building. Such signs shall be back-lighted so as to appear in silhouette or internally lighted.

f. Exposed neon shall be subject to Developer's prior written approval. Exposed neon letters may be allowed if the neon tubing is designed to highlight flat letters of the same in a broader stroke. The flat letters may be painted or some other appropriate material applied to the background field. Colors must be chosen with highlighting of the letters as the major consideration.

g. Wall signs for a theater on an Out Parcel shall have the theater name and show marquee integrated into one structure. The following basic criteria shall be included in the design process:

- (i) One copy strip per auditorium.
- (ii) Maximum dimension per copy strip: 12" high, 12' wide, including auditorium designation.
- (iii) Maximum letter height of theater name: 26".

The sign marquees shall be so designed and scaled as to be compatible with the architecture of the building. Theater wall signage is also subject to aesthetic approval by Developer.

h. No building-mounted sign, nor any portion thereof, may project above the parapet wall or top of the exterior wall or building façade upon which it is mounted.

i. There shall be no rooftop or penthouse signs of any kind.

j. No signs perpendicular to the face of the building or its façade will be permitted.

4. Traffic Directional Signs:

Out Parcel owners shall be permitted to install signs designed and located solely for the purpose of relieving traffic congestion and promoting the smooth flow of traffic. Such signs shall contain no advertising or identification copy of any sort and should conform to the design of the building and site signage.

5. Prohibited Signs / Pylon Signs:

a. No flashing, smoking, moving, audible signs or rooftop signs shall be permitted, except that with the written consent of Developer, a bank or other financial institution may install a time / temperature sign.

b. No freestanding pylon signs shall be permitted, except for theaters approved by Developer as set forth above and except for traffic and directional signs; provided, however, with the prior written consent of Developer a pylon sign may be substituted for the free standing monument sign under the following conditions: Pylon sign shall be two-faced identification sign and is limited to one hundred (100) square feet (10' X 10') in area on each side and thirty feet (30') in height.

6. Criteria for Temporary Signs:

a. Sign must meet with applicable governmental regulations and the Agreement. Developer reserves the right to accept or reject any sign proposals it deems unsuitable and incompatible with the image of the Shopping Center.

b. Total height from grade will not exceed 6'-0" and maximum horizontal dimension will not exceed 8'-0".

c. Sign will be two-sided only with each face parallel and opposite the other.

d. Reflective surfaces, letters, trim, buttons, etc. are not allowed.

e. All copy is to be black and background is to be white.

f. Sign must be maintained at regular and necessary times and shall not be allowed to fall into disrepair. Painted surfaces shall be repainted annually.

g. Location of sign will not infringe on visibility or present a hazard to vehicular or pedestrian traffic, infringe on Shopping Center view corridors, adjacent property, setbacks, and non-building areas.

h. Sign, if approved, will be for ninety (90) days or less, unless Developer shall otherwise approve in writing with such time beginning at completion of erection. Erection time not to exceed two weeks.

i. Sign is not to be moving, smoking, flashing action or audible type.

j. Illumination not allowed.

k. Sturdy, durable, non-corrosive materials and construction appropriate to exterior exposure are to be used. Treated wood is acceptable.

l. Drawing(s) of sign construction and location are to be submitted to Developer for review and approval before installation.

EXHIBIT "A"

LEGAL DESCRIPTION

M.J.A., L.L.C.
PARTNERSHIP WARRANTY DEED
DEED BOOK 2177, PAGE 187-188

A PERMANENT UTILITY EASEMENT LOCATED IN LOT 304, AND ALSO OUTLOT "D", WHISPERING RIDGE, A SUBDIVISION LOCATED IN THE NE 1/4 OF SECTION 9, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 304, WHISPERING RIDGE, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID OUTLOT "D", WHISPERING RIDGE, SAID POINT ALSO BEING ON THE EASTERLY LINE OF OUTLOT "E" (168TH COURT), SAID WHISPERING RIDGE; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID LOT 304, WHISPERING RIDGE, SAID LINE ALSO BEING SAID EASTERLY LINE OF OUTLOT "E" (168TH COURT), WHISPERING RIDGE ON A CURVE TO THE RIGHT WITH A RADIUS OF 275.00 FEET, A DISTANCE OF 10.01 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N00°56'43"E (ASSUMED BEARING), A DISTANCE OF 10.01 FEET; THENCE N87°56'34"E, A DISTANCE OF 39.33 FEET; THENCE S02°35'24"E, A DISTANCE OF 11.59 FEET; THENCE N87°24'36"E, A DISTANCE OF 177.30 FEET; THENCE S02°35'24"E, A DISTANCE OF 10.00 FEET TO A POINT ON THE SOUTH LINE OF SAID OUTLOT "D", WHISPERING RIDGE, SAID LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF BEDFORD AVENUE; THENCE S87°24'36"W ALONG SAID SOUTH LINE OF OUTLOT "D", WHISPERING RIDGE, SAID LINE ALSO BEING SAID NORTH RIGHT-OF-WAY LINE OF BEDFORD AVENUE, A DISTANCE OF 187.30 FEET; THENCE N02°35'24"W, A DISTANCE OF 11.68 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "D", WHISPERING RIDGE, SAID LINE ALSO BEING THE SOUTH LINE OF SAID LOT 304, WHISPERING RIDGE; THENCE S87°56'34"W ALONG SAID NORTH LINE OF OUTLOT "D", WHISPERING RIDGE, SAID LINE ALSO BEING SAID SOUTH LINE OF LOT 304, WHISPERING RIDGE, A DISTANCE OF 29.95 FEET TO THE POINT OF BEGINNING.

SAID PERMANENT UTILITY EASEMENT CONTAINS AN AREA OF 2,286 SQUARE FEET OR 0.053 ACRES MORE OR LESS.

SHEET 2 OF 2

FOR DRAWING SEE SHEET 1 OF 2



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
330 NORTH 117TH STREET OMAHA, NE 68154 PHONE: (402) 895-4700

Drawn by: BAS Chkd by: _____ Chkd by: _____

Job No.: 2000125.20 Date: 08/22/2006 Book No.: _____

LOT 304 AND OUTLOT "D",
WHISPERING RIDGE
PERMANENT UTILITY EASEMENT
DOUGLAS COUNTY, NEBRASKA