



BK 1352 PG 192-200



MISC 2000 12646

Nebr Doc
Stamp Tax

Date

\$

By

RICHARD W TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

00 SEP 20 PM 3: 25

RECEIVED
FEE 46 FB 63-08645
BKP _____ C/O _____ COMP EW
DEL _____ SCAN ds FV _____

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (the "Declaration") is made this 19th day of September, 2000, by VILLAGE DEVELOPMENT - 108TH STREET, L.L.C., a Nebraska limited liability company ("Village Development").

RECITALS

WHEREAS, Village Development is the owner of that certain parcel of land described on Exhibit "A" attached hereto and incorporated herein by this reference ("Lot 1"), as shown on the site plan attached hereto as Exhibit "B" and incorporated herein by this reference (the "Site Plan"); and

WHEREAS, Village Development is the owner of that certain parcel of land described on Exhibit "C" attached hereto and incorporated herein by this reference ("Lot 2"), as shown on the Site Plan; and

WHEREAS, Village Development has entered into a Lease (the "Lease") with Walgreen Co., an Illinois corporation ("Walgreens"), with respect to Lot 1; and

WHEREAS, Village Development desires to grant certain non-exclusive and perpetual easements and certain restrictions with respect to the use of Lot 1 and Lot 2, as covenants running with the land, subject to the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, Village Development agrees as follows:

1. Lot 1 Access Easement. Village Development hereby declares, grants and conveys to the owner of Lot 2, for the use and benefit of the owner of Lot 2 and its tenants, and their respective subtenants, employees, agents, contractors, licensees, permittees and invitees, a perpetual, non-exclusive easement over and across those portions of Lot 1 as are designated as drive areas or access driveways on the Site Plan, to provide pedestrian and vehicular passage over and across Lot 1 to and from 108th Street and Fort Street. There shall be no cross easement rights for parking created by this Declaration.

Jennifer Strand
301 South 13th St #500
Lincoln, NE 68508
#16

2. Lot 2 Access Easement. Village Development hereby declares, grants and conveys to the owner of Lot 1, for the use and benefit of the owner of Lot 1 and its tenants, and their respective subtenants, employees, agents, contractors, licensees, permittees and invitees, a perpetual, non-exclusive easement over and across those portions of Lot 2 as are designated as drive areas or access driveways on the Site Plan, to provide pedestrian and vehicular passage over and across Lot 2 to and from 106th Street and Fort Street. There shall be no cross easement rights for parking created by this Declaration.

3. Lot 2 Building Restrictions. A building envelope is hereby created which prohibits the construction of any building improvements on Lot 2 within eighty (80) feet of the north property line of Lot 2. Notwithstanding the foregoing building envelope restriction, Lot 2 is not prohibited from the use of such areas of the envelope for parking, signage, green space, and/or access improvements.

4. Signage Easement. Village Development hereby declares, grants and conveys to the owner of Lot 1, for the use and benefit of the owner of Lot 1, its tenants, and their respective subtenants, a perpetual, exclusive easement over and across those portions of Lot 2 as are designated on the Site Plan for the purpose of installing and maintaining a free-standing pylon sign or monument sign, as authorized by the appropriate governmental authorities.

5. Restrictions on Use. During the continuance of the Lease, no portion of Lot 2 shall be used, directly or indirectly, for purposes of a cocktail lounge, bar or disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, children's play or party facility, adult book store, adult theatre, adult amusement facility, or any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, educational or training facility, blood bank, sleeping quarters or lodging, the outdoor housing or raising of animals, the sale or leasing of automobiles, boats or other vehicles, any industrial use, a theater, car wash, assembly hall, off-track betting facility, bingo parlor, or the storage, handling or disposal of hazardous materials or underground storage tanks, or any other use which creates a nuisance. In addition, during the continuance of the Lease, no portion of Lot 2 shall be used for: (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a medical diagnostic lab and/or the provision of treatment services; (iii) the sale of so-called health and/or beauty aids and/or drug sundries (iv) the operation of a business in which photofinishing services and/or photographic film are offered for sale; (v) the operation of a business which sells or offers greeting cards and/or gift wrap; and/or (vi) the operation of a business in which prepackaged food items are sold for consumption off the premises; provided, however, that the exclusive use restrictions contained in subparagraphs (iii), (v) and (vi) shall not prohibit such uses to the extent that the sales area with respect to such use does not exceed fifty (50) square feet.

6. Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having

any fee, leasehold or other interest therein, and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

7. Maintenance. The owners of Lot 1 and Lot 2 shall maintain the lot owned by each such party in good condition, including all paving and landscaping, and shall make all necessary repairs thereto at each such party's sole cost and expense.

8. Indemnification. Each owner shall indemnify and hold the other owner, and its tenants, and their respective subtenants, employees, agents, contractors, licensees, permittees and invitees, harmless from and against all claims, liabilities, and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage to any person or property arising from or in any manner relating to the use by the indemnifying party or its tenants, and their respective subtenants, employees, agents, contractors, licensees, permittees and invitees, of any easement granted hereunder except as may result from the negligence or intentional misconduct of the other party.

9. Prescriptive Rights. Nothing herein shall create a gift or dedication of any portion of Lot 1 or Lot 2 to the general public.

10. Non-Interference. The owners of Lot 1 and Lot 2 shall not do anything so as to interfere with the reasonable use of the easements herein granted. No barricade, fence or other like obstruction or improvement shall be erected or maintained on the drive areas or access driveways on Lot 1 or Lot 2 so as to substantially impair the free flow of vehicular or pedestrian traffic thereon (except this restriction shall not apply to temporary construction barricades). Neither owner shall relinquish or substantially modify, move or alter any point of ingress to or egress from Lot 1 or Lot 2 onto 106th Street, 108th Street or Fort Street, as shown on the Site Plan, without the other owner's prior written consent thereto. The owner of Lot 2 shall not allow any automobiles driving upon or near Lot 2 to interfere with the use of the drive-through lanes on Lot 1.

The owners of Lot 1 and Lot 2, and their respective tenants and subtenants hereby reserve the right to alter, modify, reconfigure, relocate and/or remove the easement areas or building areas on Lot 1 and Lot 2 as shown on the Site Plan, subject to the following conditions: (i) as to Lot 1, the express written consent of Walgreens shall be required (during the continuance of the Lease); (ii) the reciprocal easements between Lot 1 and Lot 2 pursuant to Sections 1 and 2 hereof shall not be closed or materially impaired; (iii) the ingress and egress to and from Lot 1 and Lot 2 and adjacent streets and roads shall not be altered, modified, relocated, blocked and/or removed without the express written consent of the owners of Lot 1 and Lot 2 and Walgreens (during the continuance of the Lease); (iv) the same shall not violate any of the provisions and easements granted in Sections 1 and 2 hereof; and (v) as to Lot 2, the restrictions set forth in Section 3 hereof shall be complied with.

11. Governing Law. This Declaration is declared to have been made under the laws of the State of Nebraska.

12. Time of the Essence. The parties agree that time is essential to the performance by the parties of their obligations hereunder.

13. Amendment.

13.1 The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of the owners of Lot 1 and Lot 2, evidenced by a document that has been fully executed and acknowledged by all such parties and recorded in the office of the Register of Deeds of Douglas County, Nebraska.

13.2 Notwithstanding anything in Section 10.1 above to the contrary, no termination of this Declaration, and no modification or amendment of this Declaration which directly or indirectly has or may reasonably have the effect of terminating, impairing, diminishing or otherwise adversely affecting the rights, benefits and/or protections accruing to Walgreens under this Declaration as originally recorded, or which has or may reasonably have an adverse effect on Walgreens' business operations, if any, shall be effective as against Walgreens unless expressly consented to in writing by Walgreens.

14. Remedies and Enforcement.

14.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by the owner of Lot 1 or Lot 2 or such owner's tenants or their employees, agents, contractors, customers, invitees, or licensees, of any of the terms, covenants, restrictions or conditions hereof, the other party shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. Walgreens shall have the right, but not the obligation, to enforce this Declaration and/or to cure a breach or default hereunder by the owner of Lot 2 which enforcement or cure shall be accepted by the owner of Lot 1. The parties hereto covenant and agree that in the event of a breach of this Declaration, Walgreens shall suffer irreparable harm and Walgreens shall have no adequate remedy at law. In the event of a breach, Walgreens shall be entitled to injunctive or other equitable relief to enjoin the breach or threat of this Declaration.

14.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of either party to cure a breach of this Declaration within thirty (30) days following written notice thereof by the other party or Walgreens (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting party commences such cure within such 30-day period, and thereafter diligently prosecutes such cure to completion), Walgreens or the non-defaulting party shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting party and be reimbursed by such defaulting party upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by First National Bank/NBD, plus two percent (2%) (not to exceed the maximum rate of interest allowed by law).

14.3 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

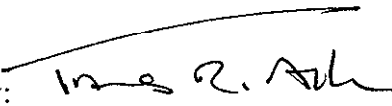
14.4 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon Lot 1 or Lot 2 made in good faith for value. The easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any owner of Lot 1 or Lot 2 whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

15. No Waiver. No waiver of any default of any obligation by any party shall be implied from any omission by the other party to take any action with respect to such default.

16. Severability. Each provision of this Declaration and the application thereof are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration.

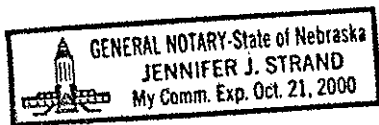
IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year first above written.

VILLAGE DEVELOPMENT - 108TH STREET, L.L.C.,
a Nebraska limited liability company

By: 
Tamas R. Allan, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 18th day of September, 2000, by Tamas R. Allan, Manager of Village Development - 108th Street, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.



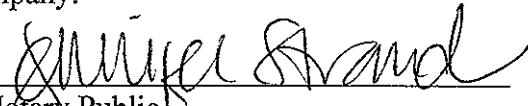
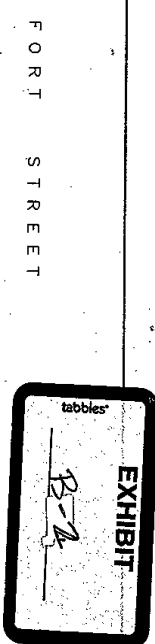

Notary Public

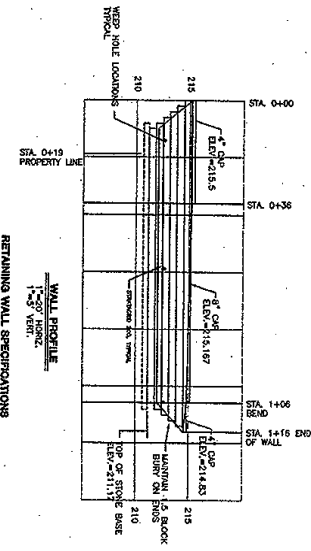
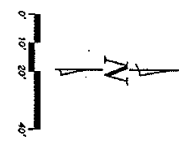
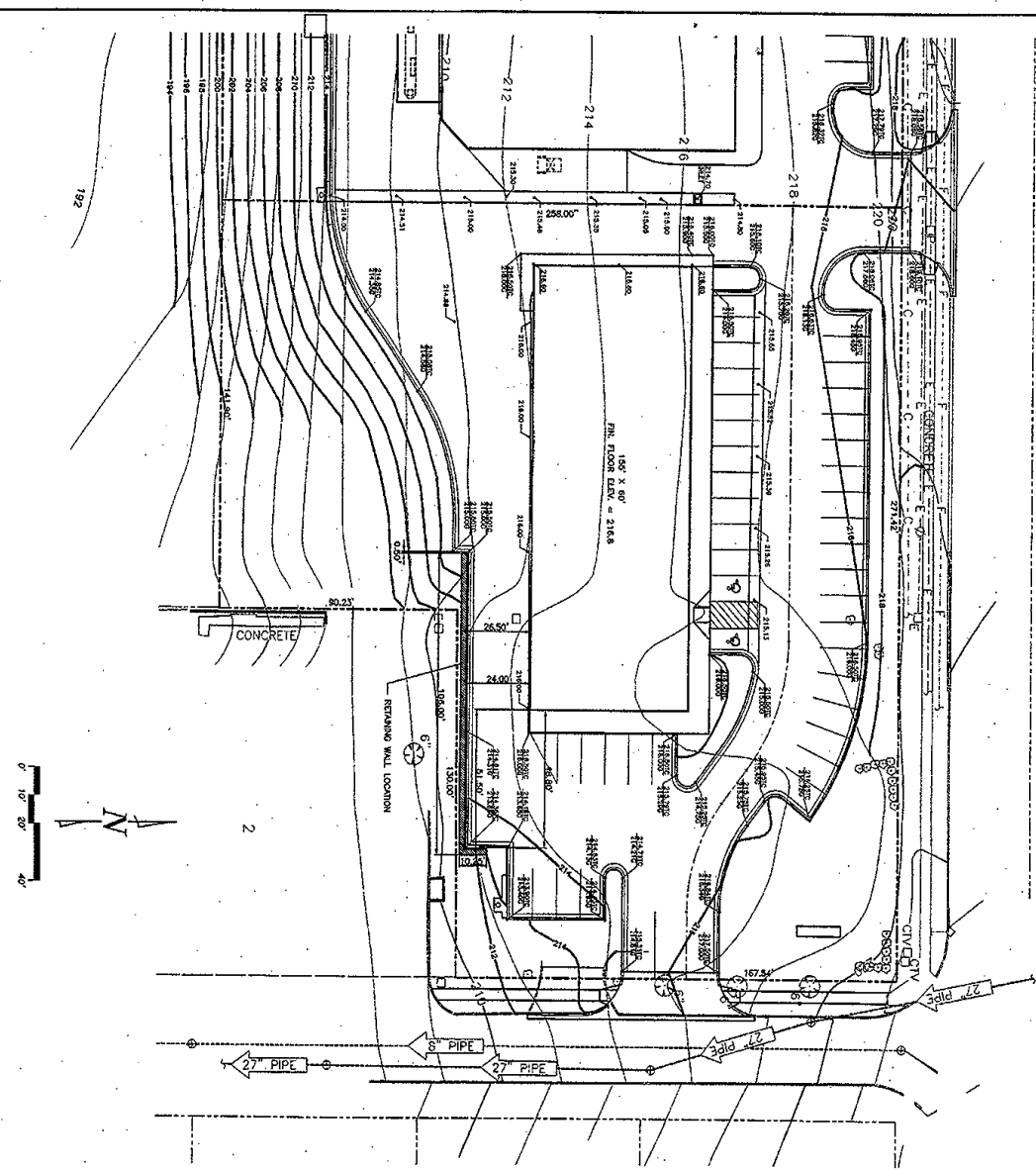
EXHIBIT "A"

Legal Description of Lot 1

Lot 1, Dana ^{FIVE} Addition, a subdivision, as surveyed, platted and recorded in Omaha,
Douglas County, Nebraska.



FORT STREET



- RETAINING WALL SPECIFICATIONS**
1. WALL SHALL BE CONSTRUCTED OF 18\"/>
 2. WALL SHALL BE CONSTRUCTED OF 18\"/>
 3. WALL SHALL BE CONSTRUCTED OF 18\"/>
 4. WALL SHALL BE CONSTRUCTED OF 18\"/>
 5. WALL SHALL BE CONSTRUCTED OF 18\"/>
 6. WALL SHALL BE CONSTRUCTED OF 18\"/>
 7. WALL SHALL BE CONSTRUCTED OF 18\"/>
 8. WALL SHALL BE CONSTRUCTED OF 18\"/>
 9. WALL SHALL BE CONSTRUCTED OF 18\"/>
 10. WALL SHALL BE CONSTRUCTED OF 18\"/>
 11. WALL SHALL BE CONSTRUCTED OF 18\"/>
 12. WALL SHALL BE CONSTRUCTED OF 18\"/>
 13. WALL SHALL BE CONSTRUCTED OF 18\"/>
 14. WALL SHALL BE CONSTRUCTED OF 18\"/>
 15. WALL SHALL BE CONSTRUCTED OF 18\"/>
 16. WALL SHALL BE CONSTRUCTED OF 18\"/>
 17. WALL SHALL BE CONSTRUCTED OF 18\"/>
 18. WALL SHALL BE CONSTRUCTED OF 18\"/>
 19. WALL SHALL BE CONSTRUCTED OF 18\"/>
 20. WALL SHALL BE CONSTRUCTED OF 18\"/>
 21. WALL SHALL BE CONSTRUCTED OF 18\"/>
 22. WALL SHALL BE CONSTRUCTED OF 18\"/>
 23. WALL SHALL BE CONSTRUCTED OF 18\"/>
 24. WALL SHALL BE CONSTRUCTED OF 18\"/>
 25. WALL SHALL BE CONSTRUCTED OF 18\"/>
 26. WALL SHALL BE CONSTRUCTED OF 18\"/>
 27. WALL SHALL BE CONSTRUCTED OF 18\"/>
 28. WALL SHALL BE CONSTRUCTED OF 18\"/>
 29. WALL SHALL BE CONSTRUCTED OF 18\"/>
 30. WALL SHALL BE CONSTRUCTED OF 18\"/>
 31. WALL SHALL BE CONSTRUCTED OF 18\"/>
 32. WALL SHALL BE CONSTRUCTED OF 18\"/>
 33. WALL SHALL BE CONSTRUCTED OF 18\"/>
 34. WALL SHALL BE CONSTRUCTED OF 18\"/>
 35. WALL SHALL BE CONSTRUCTED OF 18\"/>
 36. WALL SHALL BE CONSTRUCTED OF 18\"/>
 37. WALL SHALL BE CONSTRUCTED OF 18\"/>
 38. WALL SHALL BE CONSTRUCTED OF 18\"/>
 39. WALL SHALL BE CONSTRUCTED OF 18\"/>
 40. WALL SHALL BE CONSTRUCTED OF 18\"/>
 41. WALL SHALL BE CONSTRUCTED OF 18\"/>
 42. WALL SHALL BE CONSTRUCTED OF 18\"/>
 43. WALL SHALL BE CONSTRUCTED OF 18\"/>
 44. WALL SHALL BE CONSTRUCTED OF 18\"/>
 45. WALL SHALL BE CONSTRUCTED OF 18\"/>
 46. WALL SHALL BE CONSTRUCTED OF 18\"/>
 47. WALL SHALL BE CONSTRUCTED OF 18\"/>
 48. WALL SHALL BE CONSTRUCTED OF 18\"/>
 49. WALL SHALL BE CONSTRUCTED OF 18\"/>
 50. WALL SHALL BE CONSTRUCTED OF 18\"/>
 51. WALL SHALL BE CONSTRUCTED OF 18\"/>
 52. WALL SHALL BE CONSTRUCTED OF 18\"/>
 53. WALL SHALL BE CONSTRUCTED OF 18\"/>
 54. WALL SHALL BE CONSTRUCTED OF 18\"/>
 55. WALL SHALL BE CONSTRUCTED OF 18\"/>
 56. WALL SHALL BE CONSTRUCTED OF 18\"/>
 57. WALL SHALL BE CONSTRUCTED OF 18\"/>
 58. WALL SHALL BE CONSTRUCTED OF 18\"/>
 59. WALL SHALL BE CONSTRUCTED OF 18\"/>
 60. WALL SHALL BE CONSTRUCTED OF 18\"/>
 61. WALL SHALL BE CONSTRUCTED OF 18\"/>
 62. WALL SHALL BE CONSTRUCTED OF 18\"/>
 63. WALL SHALL BE CONSTRUCTED OF 18\"/>
 64. WALL SHALL BE CONSTRUCTED OF 18\"/>
 65. WALL SHALL BE CONSTRUCTED OF 18\"/>
 66. WALL SHALL BE CONSTRUCTED OF 18\"/>
 67. WALL SHALL BE CONSTRUCTED OF 18\"/>
 68. WALL SHALL BE CONSTRUCTED OF 18\"/>
 69. WALL SHALL BE CONSTRUCTED OF 18\"/>
 70. WALL SHALL BE CONSTRUCTED OF 18\"/>
 71. WALL SHALL BE CONSTRUCTED OF 18\"/>
 72. WALL SHALL BE CONSTRUCTED OF 18\"/>
 73. WALL SHALL BE CONSTRUCTED OF 18\"/>
 74. WALL SHALL BE CONSTRUCTED OF 18\"/>
 75. WALL SHALL BE CONSTRUCTED OF 18\"/>
 76. WALL SHALL BE CONSTRUCTED OF 18\"/>
 77. WALL SHALL BE CONSTRUCTED OF 18\"/>
 78. WALL SHALL BE CONSTRUCTED OF 18\"/>
 79. WALL SHALL BE CONSTRUCTED OF 18\"/>
 80. WALL SHALL BE CONSTRUCTED OF 18\"/>
 81. WALL SHALL BE CONSTRUCTED OF 18\"/>
 82. WALL SHALL BE CONSTRUCTED OF 18\"/>
 83. WALL SHALL BE CONSTRUCTED OF 18\"/>
 84. WALL SHALL BE CONSTRUCTED OF 18\"/>
 85. WALL SHALL BE CONSTRUCTED OF 18\"/>
 86. WALL SHALL BE CONSTRUCTED OF 18\"/>
 87. WALL SHALL BE CONSTRUCTED OF 18\"/>
 88. WALL SHALL BE CONSTRUCTED OF 18\"/>
 89. WALL SHALL BE CONSTRUCTED OF 18\"/>
 90. WALL SHALL BE CONSTRUCTED OF 18\"/>
 91. WALL SHALL BE CONSTRUCTED OF 18\"/>
 92. WALL SHALL BE CONSTRUCTED OF 18\"/>
 93. WALL SHALL BE CONSTRUCTED OF 18\"/>
 94. WALL SHALL BE CONSTRUCTED OF 18\"/>
 95. WALL SHALL BE CONSTRUCTED OF 18\"/>
 96. WALL SHALL BE CONSTRUCTED OF 18\"/>
 97. WALL SHALL BE CONSTRUCTED OF 18\"/>
 98. WALL SHALL BE CONSTRUCTED OF 18\"/>
 99. WALL SHALL BE CONSTRUCTED OF 18\"/>
 100. WALL SHALL BE CONSTRUCTED OF 18\"/>

Scale:	AS SHOWN
Date:	9-5-2000
Drawn by:	RAH
Checked by:	LAK
Revised:	

EXHIBIT "C"

Legal Description of Lot 2

Lot 2, Dana ^{11/21} Addition, a subdivision, as surveyed, platted and recorded in Omaha,
Douglas County, Nebraska.