

**STATE OF Nebraska  
COUNTY OF Douglas  
Project #OPW 52470  
File No. 21630-16**

**TITLE CERTIFICATE**

EFFECTIVE DATE: January 11, 2017, at 8:00 AM

The undersigned, a Registered Nebraska Abstracter, operating under the Certificate of Authority granted it by the Abstracters Board of Examiners, presents this Title Certificate, hereafter "Certificate", relative only to the following described real estate in the County referenced, hereafter "property":

**Lot 3, Shopko Acres Replat 2, an Addition to the City of Omaha, Douglas County, Nebraska.**

ADDRESS: **7410 North 30 Street, Omaha, NE**

This Certificate is a contract between TitleCore National, LLC as an Abstracter and City of Omaha Public Works Department. The consideration for this contract is the information set forth below and furnished by the Abstracter together with the fee charged by the undersigned for the service performed by the Abstracter. The scope of this contract is outlined as follows:

- (a) This Certificate is not an abstract of title, nor a complete chain of title search, nor an attorney's Title Opinion, nor is it a title insurance policy or title insurance binder.
  - (b) This Certificate does provide limited title facts relative to the property only as specifically set out in the following numbered paragraphs. Each numbered paragraph identifies the particular information provided in this certificate.
  - (c) This Certificate reports limited information of record to the effective date above.
- 1.) The Grantee(s) in the last deed of record:
- Weber Place Baceline, LLC, a Colorado limited liability company, by virtue of that certain Special Warranty Deed dated June 17, 2015 and recorded June 22, 2015 at Instrument No. 2015-050011, of the Records of Douglas County, NE.**
- 2.) Unreleased mortgages and liens of record:
- Deed of Trust , Assignment of Leases and Rents and Security Agreement dated June 17, 2015, Recorded June 22, 2015 at Instrument Number. 2015-050013 of the Records of Douglas County, NE, executed by Weber Place Baceline, LLC, a Colorado limited liability company, in favor of First American Title Insurance Company, as Trustee and BOKF, NA, a national banking association d/b/a Colorado State Bank and Trust, as Beneficiary, securing the principal amount of \$24,276,500.00.**
- Assignment of Leases and Rents dated June 17, 2015, recorded June 22, 2015 at Instrument No. 2015-050014, of the Records of Douglas County, NE, executed by Weber Place Baceline, LLC, a Colorado limited liability company in favor of BOKF, NA d/b/a Colorado State Bank and Trust.
- Subordination, Non-Disturbance and Attornment Agreement dated June 17, 2015, recorded December 21, 2015 at Instrument No. 2015-106858 between BOKF, NA d/b/a Colorado State Bank and Trust and Renal Treatment Centers - Illinois, Inc., a Delaware corporation.

3.) Financing Statements filed in the County Register of Deeds Office and indexed against the property:

**None.**

4.) Judgments and pending law suits in District Court:

(a) Judgments of record in the County District Court filed on the property, or indexed against the Grantee(s):

**None.**

(b) Pending Law Suits of record in the County District Court on the property, or indexed against the Grantee(s):

**None.**

5.) Tax Liens, State and Federal:

(a) Unreleased state tax liens of record filed against the Grantee(s):

**None.**

(b) Unreleased federal tax liens of record filed against the Grantee(s):

**None.**

6.) Other Liens of Record: Liens of record in the office of the Register of Deeds or Recorder and indexed against the property, (other than those liens previously set forth):

**None.**

7.) Guardianships, Estates, and Conservatorships filed in the County Court and indexed against the Grantee(s):

**None.**

8.) Easements, Covenants and Restrictions of Record:

Easements granted by Plat and Dedication of Shopko Acres recorded March 27, 1987 at Book 1800, Page 239 of the Records of Douglas County, NE, in favor of Omaha Public Power District and U.S. West Communications, Inc., for installation and maintenance of utility facilities on, over, through, under and across a 5 foot strip of land adjoining all front and side boundary lines; an 8 foot strip of land adjoining all rear boundary lines of interior lots; and a 16 foot strip of land adjoining the rear boundary lines of all exterior lots.

Plat also reveals sewer and drainage easements across the Northerly and Westerly portion of said lot; and Utility Easement across the Southerly portion of said Lot.

Easements granted by Plat and Dedication of Shopko Acres Replat recorded August 7, 1997 at Book 1218, Page 486 of the Records of Douglas County, NE, Easements as shown on Plat Book 1800 at Page 239

Easements granted by Plat and Dedication of Shopko Acres Replat 2 recorded February 8, 2005 at Book 2217, Page 486 of the Records of Douglas County, NE, in favor of Omaha Public Power District, Qwest Corporation and any company which has been given a franchise to provide cable television in the area., for installation and maintenance of utility facilities on, over, through, under and across a 5 foot strip of land adjoining all front and side boundary lines; an 8 foot strip of land adjoining all rear boundary lines. Easements as shown on plat.

Plat also reveals sewer and drainage easements across the Northerly and Westerly portion of said lot; and Utility Easement across the Southerly portion of said Lot.

Easements for utilities as reserved in Ordinance No. 22946, recorded April 16, 1964 at Book 411, Page 109, of the Records of Douglas County, NE, above, on and below the surface of the vacated alley which comprises a portion of the subject property.

Release of Easement recorded November 19, 1986 in Book 795 at Page 431 of the Records of Douglas County, NE, over a portion of property described therein filed by Omaha Public Power District, RE:411-109

Release of Easement recorded May 11, 1987 in Book 814 at Page 256 of the Records of Douglas County, NE, over a portion of property described therein filed by Metropolitan Utilities District RE:411-109

Release of Easement recorded May 11, 1987 in Book 814 at Page 257 of the Records of Douglas County, NE, over a portion of property described therein filed by Cox Cable of Omaha, RE:411-109

Release of Easement recorded May 11, 1987 in Book 814 at Page 258 of the Records of Douglas County, NE, over a portion of property described therein filed by Cox Cable of Omaha, RE:411-109

Terms and provisions of the covenants, conditions and restrictions contained within the Warranty Deed and recorded August 5, 1986 at Book 1784, Page 542 of the Records of Douglas County, Nebraska.

Cross-Easement Agreement recorded August 5, 1986 in Book 784 at Page 237 of the Records of Douglas County, NE, over a portion of property described therein.

First Amendment to Cross-Easement Agreement recorded February 24, 1998 in Book 1239 at Page 172 of the Records of Douglas County, NE, over a portion of property described therein.

Second Amendment to Cross-Easement Agreement recorded June 9, 2008 at Instrument No. 2008056891 of the Records of Douglas County, NE, affecting a portion of subject property as described therein.

Third Amendment to Cross-Easement Agreement recorded September 15, 2009 at Instrument No. 2009100704 of the Records of Douglas County, NE, affecting a portion of subject property as described therein.

Cross Easement Agreement recorded April 23, 1987 in Book 812 at Page 208 of the Records of Douglas County, NE, over a portion of property described therein.

First Amendment to Cross Easement Agreement recorded May 2, 2016 at Instrument No. 2016031925 of the Records of Douglas County, NE, affecting a portion of subject property as described therein. RE:

812-208

Right of Way Easement recorded August 26, 1987 in Book 824 at Page 709 of the Records of Douglas County, NE, granted to Omaha Public Power District, over a portion of property described therein.

Ordinance No. 30888 approving a Redevelopment and Loan Agreement, recorded February 9, 1990 at Book 913, Page 109, of the Records of Douglas County, NE, above, on and below the surface which comprises a portion of the subject property.

Terms, provisions and conditions set forth in the Declaration of Covenants, Conditions and Restrictions, recorded September 15, 2009 at Instrument No. 2009100706 of the Records of Douglas County, NE

Access Easement recorded October 15, 2010 at Instrument No. 2010095723 of the Records of Douglas County, NE, affecting a portion of subject property as described therein.

- 9.) Real Estate Taxes and Special Assessments: Unpaid real estate taxes and unpaid special assessments certified for collection in the tax offices of Douglas County and indexed against the property:

General taxes assessed under Tax Key No. 1415-5154-22 for 2016 due and payable in 2017, levied in the amount of \$53,563.48, first installment is due and will become delinquent April 1, 2017, second installment is due and will become delinquent August 1, 2017.

Special Assessments:  
None

This Title Certificate certifies that TitleCore National, LLC has examined the records of Douglas County, Nebraska, and has set out, as displayed above, filings of instruments, judgments and real estate tax information of the records of the District Court, County Court, U.S. Bankruptcy Court for the District of Nebraska and Register of Deeds, that may affect the title or Grantee(s), within the defined scope and parameters of this Title Certificate.

Issued: January 19, 2017

TitleCore National, LLC



Registered Abstractor  
Under Certificate of Authority No. 662





BK 1800 PG 239



DEED 1987 03321

THIS PAGE INCLUDED FOR  
INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT



RECEIVED

AUG 7 9 05 AM '97

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE



CITY OF OMAHA, NEBRAS  
ADMINISTRATIVE SUBDIVIS  
SHOPKO ACRES REPL  
LOT 1 AND LOT 2

LEGAL DESCRIPTION:

BEING A REPLAT OF LOT 1, SHOPKO ACRES, AN ADDITION  
TO THE CITY OF OMAHA, IN DOUGLAS COUNTY, NEBRASKA.

LEGEND:

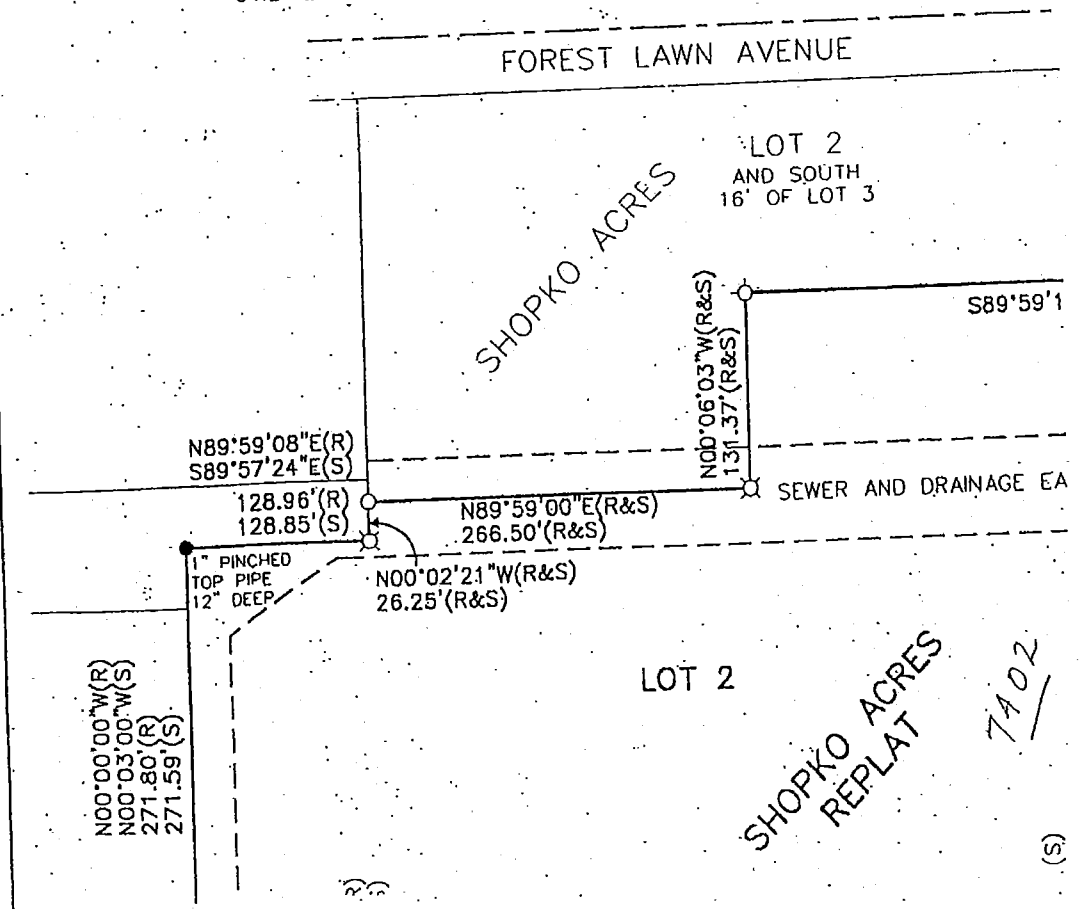
- - PIN FOUND - AS NOTED
- - SET PIN - 5/8" REBAR  
W/ CAP MARKED RLS 459
- ✕ - FOUND "X"
- ⊗ - SET CHISELED "X" IN CONCRETE
- ⊙ - SET CONCRETE NAIL IN ASPHALT
- (S) - SURVEYED AS
- (R) - RECORDED AS

SCA  
50'

NOTE: UTILITY AND SEWER AND DRAINAGE EASEMENTS AS SHOWN ON  
OF SHOPKO ACRES AS FILED MARCH 27, 1987 IN BOOK 1800, PAGE 23

NOTE: THIS REPLAT IS SUBJECT TO UTILITY EASEMENTS ALONG THE OF  
LOT 1, SHOPKO ACRES AS SET FORTH IN THE DEDICATION OF PLAT OF  
AS FILED MARCH 27, 1987 IN BOOK 1800, PAGE 239.

NOTE: THIS REPLAT IS SUBJECT TO TERMS AND PROVISIONS OF THE C  
AGREEMENT FILED AUGUST 5, 1986 IN MISC. BOOK 784, PAGE 237, BY  
SHOPKO STORES, INC. AND L.C. DEVELOPMENT CO. PROVIDING RECIPROC  
PEDESTRIAN AND VEHICULAR INGRESS, EGRESS, PARKING, PASSAGE, AND  
UTILITIES.





30TH ST.  
30TH ST

ESE PRESENTS:  
INC., A MINNESOTA CORPORATION, THE UNDERSIGNED  
DESCRIBED HEREON AND EMBRACED WITHIN THIS PLAT  
TO BE SUBDIVDED INTO LOTS AS SHOWN ON THIS PLAT.

SHOPKO STORES, INC.,

BY: Dale P. Kramer ST  
DALE P. KRAMER, PRESIDENT

ATTEST: [Signature]  
RICHARD D. SCHEPP, SECRETARY.

ARY:

BEFORE ME THIS 1st DAY OF July, 1997, DALE P. KRAMER,  
PRESIDENT AND SECRETARY, RESPECTIVELY, OF SHOPKO STORES, INC., A  
CORPORATION EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF  
MINNESOTA, AND THE PERSONS WHO EXECUTED THE FOREGOING INSTRUMENT, AND  
I, [Signature] AND SECRETARY OF SAID CORPORATION, AND ACKNOWLEDGED THAT  
THEY ARE THE PERSONS AS SUCH OFFICERS AS THE ACT OF SAID CORPORATION, BY

STEVEN J. THOMAS  
NOTARY PUBLIC, STATE OF WISCONSIN  
MY COMMISSION IS PERMANENT.

CERTIFICATION:  
I FIND NO REGULAR OR SPECIAL TAXES DUE OR DELINQUENT  
DESCRIBED IN THE LEGAL DESCRIPTION AND AS SHOWN BY THE

[Signature]  
COUNTY TREASURER  
[Signature]  
Julie M. Haney

APPROVAL:  
IN CONNECTION WITH THE DIVISION OF NOT MORE THAN TWO (2) LOTS, PARCELS OR TRACTS,  
WAIVED PER SECTION 7.08 HOME RULE CHARTER OF THE CITY  
OF MINNEAPOLIS, MINNESOTA, AND DIVISION APPROVAL IS VOID UNLESS THIS PLAT IS FILED AND  
RECORDED IN THE CITY REGISTER OF DEEDS WITHIN THIRTY (30) DAYS OF THIS DATE.

[Signature]  
PLANNING DIRECTOR

I HAVE SURVEYED THE PROPERTY DESCRIBED HEREON  
AND THE CORNERS HAVE BEEN FOUND OR SET AT ALL CORNERS OF  
THE PROPERTY AND THAT THIS PLAT WAS MADE BY ME OR UNDER MY  
SUPERVISION AND THAT I AM A DULY REGISTERED LAND  
SURVEYOR.

IMPRINTED SEAL  
REGISTER OF DEEDS

IMPRINTED SEAL  
REGISTER OF DEEDS

MINNEAPOLIS

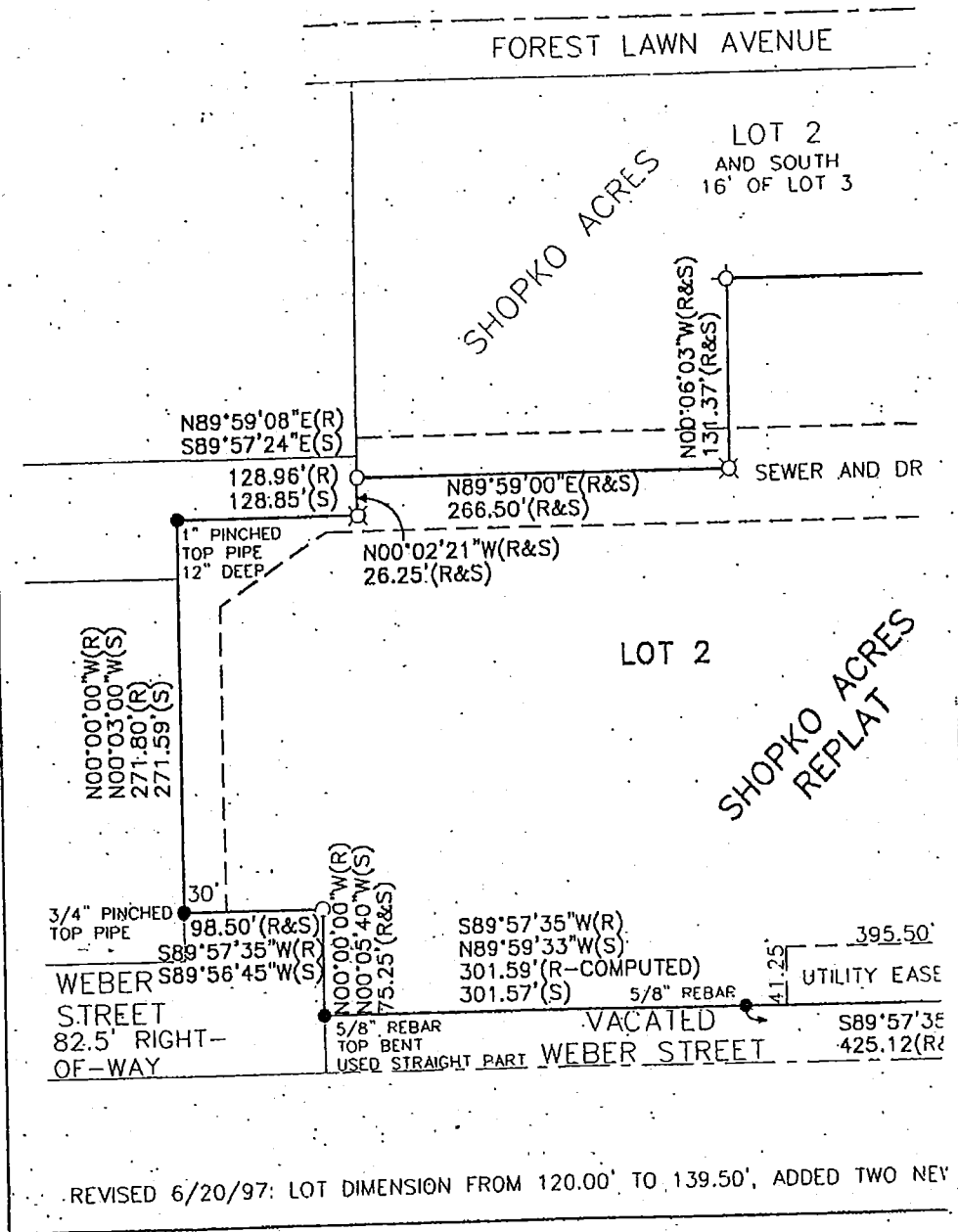
**LEGEND:**

- - PIN FOUND - AS NOTED
- - SET PIN - 5/8" REBAR  
W/ CAP MARKED PLS 459
- X - FOUND "X"
- ⊗ - SET CHISELED "X" IN CONCRETE
- ⊙ - SET CONCRETE NAIL IN ASPHALT
- (S) - SURVEYED AS
- (R) - RECORDED AS

NOTE: UTILITY AND SEWER AND DRAINAGE EASEMENTS AS S OF SHOPKO ACRES AS FILED MARCH 27, 1987 IN BOOK 180

NOTE: THIS REPLAT IS SUBJECT TO UTILITY EASEMENTS ALG LOT 1, SHOPKO ACRES AS SET FORTH IN THE DEDICATION O AS FILED MARCH 27, 1987 IN BOOK 1800, PAGE 239.

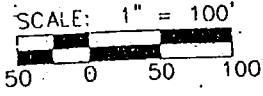
NOTE: THIS REPLAT IS SUBJECT TO TERMS AND PROVISIONS AGREEMENT, FILED AUGUST 5, 1986 IN MISC. BOOK 784, PAG SHOPKO STORES, INC. AND L.C. DEVELOPMENT CO. PROVIDING PEDESTRIAN AND VEHICULAR INGRESS, EGRESS, PARKING, PAS UTILITIES.



REVISED 6/20/97: LOT DIMENSION FROM 120.00' TO 139.50', ADDED TWO NEV

Lot 2 7402 N 3.

OWNER'S CERTIFICATION:  
KNOW ALL PERSONS BY THESE NAMES THAT WE, SHOPKO STORES, INC. AS OWNERS OF THE PROPERTY DESCRIBED, HAVE CAUSED SAID LAND TO BE



ENTRIES AS SHOWN ON THE FINAL PLAT BOOK 1800, PAGE 239.

REVISIONS ALONG THE ORIGINAL LINES OF LOCATION OF PLAT OF SHOPKO ACRES 239.

PROVISIONS OF THE CROSS-EASEMENT 784, PAGE 237, BY AND BETWEEN PROVIDING RECIPROCAL EASEMENTS FOR TRAVEL, PASSAGE, AND TRAFFIC AND FOR

9650  
FEE 31.50 R  
DEL. PA C/O COMP 7/1/97  
LEGAL PG SCANDL FV  
View # 44-3565  
FB 44-35650

ACKNOWLEDGEMENT OF NOTAR  
STATE OF WISCONSIN )  
)ss  
COUNTY OF BROWN )  
PERSONALLY CAME BEFORE  
AND RICHARD D. SCHEPP, PRE  
CORPORATION DULY ORGANIZED  
MINNESOTA, AND TO ME  
TO ME KNOWN TO BE THE  
THEY EXECUTED THE SAME  
IN HIS OWN  
ITS AUTHORITY.

NOTARIAL SEAL AFFIX  
REGISTER OF DEEDS

COUNTY TREASURER'S CERTIFICATE  
THIS IS TO CERTIFY THAT I  
AGAINST THE PROPERTY DESCRIPTIONS  
RECORDS OF THIS OFFICE.

7-2-1997  
DATE:

PLANNING DIRECTOR'S APPROVAL  
APPROVED AS A SUBDIVISION  
WITH PLAT REQUIREMENTS W.  
OF OMAHA, 1956. THIS SURVEY  
RECORDED WITH THE COUNTY

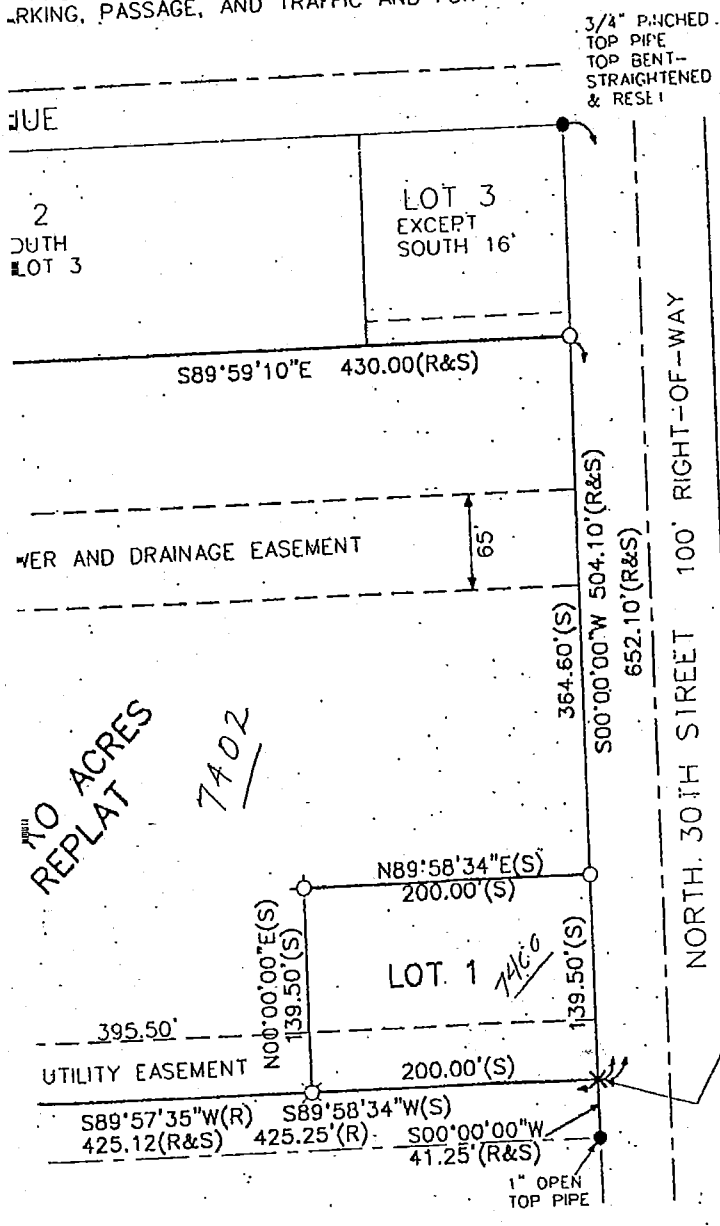
7/9/97  
DATE:

SURVEYOR'S CERTIFICATE:  
I HEREBY CERTIFY THAT I HAVE  
AND THAT PERMANENT MARKS  
THE LOTS BEING PLATTED AND  
DIRECT PERSONAL SUPERVISORY  
SURVEYOR UNDER THE LAWS

MICHAEL G. SIZER L.S. REG.

TO THE OFFICE OF DO  
CLIENT MCDONALD'S CC  
11880 COLLEGE  
OVERLAND PARK  
LOCATION LOT 1, SHOP

FIELD BOOK NO. 11  
NORTHSTAR LAND SURVEY



7402  
REPLAT  
7402

ADDED TWO NEW NOTES, REVISED PIN DESCRIPTION AT SE COR. LOT 1.

N 30TH ST

CERTIFICATION:  
PERSONS BY THESE PRESENTS:  
SHOPKO STORES, INC., A MINNESOTA CORPORATION, THE UNDERSIGNED  
THE PROPERTY DESCRIBED HEREON AND EMBRACED WITHIN THIS PLAT  
AND SAID LAND TO BE SUBDIVIDED INTO LOTS AS SHOWN ON THIS PLAT.

44-35652  
-35650 (iid)  
11/2

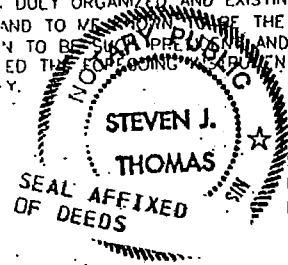
SHOPKO STORES, INC.,

BY: Dale P. Kramer DT  
DALE P. KRAMER, PRESIDENT

ATTEST: [Signature]  
RICHARD D. SCHEPP, SECRETARY

STATEMENT OF NOTARY:  
WISCONSIN )  
) ss

BROWN )  
I FULLY CAME BEFORE ME THIS 1st DAY OF July, 1997, DALE P. KRAMER  
& RICHARD D. SCHEPP, PRESIDENT AND SECRETARY, RESPECTIVELY, OF SHOPKO STORES, INC., A  
CORPORATION DULY ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF  
WISCONSIN AND TO ME TO BE THE PERSONS WHO EXECUTED THE FOREGOING INSTRUMENT, AND  
THEY REQUESTED THAT I BE A NOTARY PUBLIC AND SECRETARY OF SAID CORPORATION AND ACKNOWLEDGED THAT  
THEY WERE EXECUTING THE FOREGOING INSTRUMENT AS SUCH OFFICERS AS THE ACT OF SAID CORPORATION, BY  
THEIR ACTS.

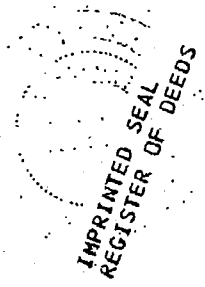


[Signature]  
STEVEN J. THOMAS  
NOTARY PUBLIC, STATE OF WISCONSIN  
MY COMMISSION IS PERMANENT.

TAXASURER'S CERTIFICATION:  
I CERTIFY THAT I FIND NO REGULAR OR SPECIAL TAXES DUE OR DELINQUENT  
ON THE PROPERTY DESCRIBED IN THE LEGAL DESCRIPTION AND AS SHOWN BY THE  
RECORDS OF THIS OFFICE.

1997

[Signature]  
COUNTY TREASURER  
Eric M. Haney



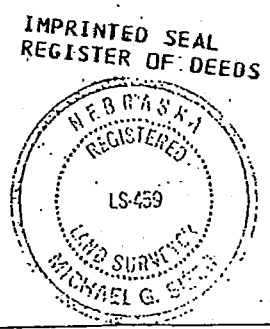
DIRECTOR'S APPROVAL:  
AS A SUBDIVISION OF NOT MORE THAN TWO (2) LOTS, PARCELS OR TRACTS,  
THE REQUIREMENTS WAIVED PER SECTION 7.08 HOME RULE CHARTER OF THE CITY  
OF OMAHA, IBERDARE, IBERDARE, IBERDARE, IBERDARE, IBERDARE, IBERDARE,  
1956. THIS SUBDIVISION APPROVAL IS VOID UNLESS THIS PLAT IS FILED AND  
RECORDED WITH THE COUNTY REGISTER OF DEEDS WITHIN THIRTY (30) DAYS OF THIS DATE.

2

[Signature]  
PLANNING DIRECTOR

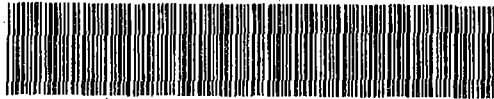
CERTIFICATE:  
I CERTIFY THAT I HAVE SURVEYED THE PROPERTY DESCRIBED HEREON  
AND PERMANENT MARKERS HAVE BEEN FOUND OR SET AT ALL CORNERS OF  
THE PROPERTY PLATTED AND THAT THIS PLAT WAS MADE BY ME OR UNDER MY  
PERSONAL SUPERVISION AND THAT I AM A DULY REGISTERED LAND  
SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA.

Dale D. [Signature] 6/20/97  
REGISTER SIZER L.S. REG. NO. 459 NEBRASKA. DATE



OFFICE OF DOUGLAS COUNTY SURVEYOR'S OFFICE, OMAHA, NE.  
DONALD'S CORPORATION DRAWN BY DAS/MGS  
880 COLLEGE BOULEVARD, SUITE 500 PROJECT 197-30  
BERNARD PARK, KANSAS 66210 (19730B)  
LOT 1, SHOPKO ACRES, OMAHA, DOUGLAS COUNTY, NE.





BK 2217) PG 486-492



DEED 2002 10955

RICHARD A. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

02 AUG .5 AM 9:48

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PAGE DOWN FOR BALANCE OF INSTRUMENT

A  
Deed  
7  
6

New - 44 - 35653  
44-35652 (REPLAT)

REE 38 FB 44-35650 (SIMPLE ACRES)  
BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP CRD  
DEL MD SCAN CR FV \_\_\_\_\_  
bkpg-11

tho



8

AN ORDINANCE vacating alley between 30th Street and 31st Street from Hanover Street to Forest Lawn Avenue in the SW 1/4 of Section 28, Township 16 North, Range 13 # East of the 6th P.M. in the City of Omaha and providing the effective date hereof.

WHEREAS, petition representing owners of more than 75 percent of the property abutting on alley between 30th Street and 31st Street from Hanover Street to Forest Lawn Avenue in the SW 1/4 of Section 28, Township 16 North, Range 13 East of the 6th P.M.

has been filed with the City of Omaha; and

WHEREAS, said property owners have in and by said petition waived any and all damages that may be occasioned by said vacation;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That alley between 30th Street and 31st Street from Hanover Street to Forest Lawn Avenue in the SW 1/4 of Section 28, Township 16 North, Range 13 East of the 6th P.M.

in the City of Omaha be, and is hereby, vacated; the vacating of the property herein described, and the reversion thereof, pursuant to applicable law, shall be subject to the conditions and limitations that there is reserved to the City of Omaha the right to maintain, operate, repair, and renew sewers now existing therein and in the future to construct, maintain, repair and renew additional or other sewers; also the right to authorize the Metropolitan Utilities District of the City of Omaha or any other public utility to construct, maintain, repair or renew and operate now existing or hereafter installed water mains, pole lines, conduits and other similar services or equipment above, on and below the surface of the ground for the purpose of serving the general public or abutting property; and the right so reserved shall also include such lateral connections or branch lines as may be ordered, desired or permitted by the City and to enter upon the premises to accomplish the above purpose at any and all times.

Section 2. That this ordinance shall take effect and be in force after 15 days from and after its passage.

INTRODUCED BY COUNCILMAN

Harry Trustin

APPROVED BY:

James J. Dwonak 4/1/64  
MAYOR OF THE CITY OF OMAHA DATE

PASSED

March 31, 1964

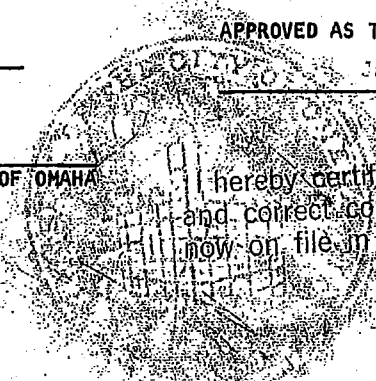
APPROVED AS TO FORM:

John Herbert M. Fitle  
CITY ATTORNEY

ATTEST

Fannie Sherman  
CITY CLERK OF THE CITY OF OMAHA

Deputy



hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

Mary J. Gelling  
CITY CLERK  
BY

*So near*

RECEIVED

1934 APR 16 PM 1 17

THOMAS J. O'CONNOR  
REGISTER OF DEEDS  
COUNTY OF MICHIGAN

A

Enter in this book and index of  
for Book in the year of 1934  
Deeds of said County and indexed in  
Book 411 of Real  
Page 109

*Thomas J. O'Connor*  
Register of Deeds

BY Co. A. A. A. Copy  
MAIL Co. A. A. A.  
N Co. A. A. A. \$1.00  
CORRECTION 632 Fee 4.75  
34 - 633  
634

24





BK 0814 PG 256



MISC 1987 08549

THIS PAGE INCLUDED FOR

INDEXING

PAGE DOWN FOR BALANCE OF INSTRUMENT

WHEREAS, request has been made that the Metropolitan Utilities District of Omaha release easement rights it possesses in the vacated north-to-south alley located between Forest Lawn Avenue and Hanover Street between 30th and 31st Streets in Omaha, Douglas County, Nebraska, as hereinafter further described; and

WHEREAS, the District has determined it has no facilities in the alley and no need to retain easement rights for future utilities' use,

NOW, THEREFORE, the Metropolitan Utilities District of Omaha hereby releases any and all easement rights it possesses, including but not limited to those reserved in City of Omaha Ordinance No. 22946, passed in 1964 and recorded at Book 411, Page 109, of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, in the vacated north-to-south alley located between Forest Lawn Avenue and Hanover Street between 30th and 31st Street, in Omaha, the same abutting Lots One (1) through and including Eight (8), all in Block 222, in the Florence Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

IN WITNESS WHEREOF, this Release is executed this 6th day of November, 1986.

METROPOLITAN UTILITIES DISTRICT  
OF OMAHA

RECEIVED

1987 MAY 11 PM 4:1

By: [Signature]  
Robert W. Bell, General Manager

GEORGE J. BUNLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEB.

BK 814 N 91-495 C/O        FEE 6.50

STATE OF NEBRASKA ) PG 256 N 911495 DEL ra MC BC  
                          ) ss OF Mead COMP OR FIB 44-35-65-1/2  
COUNTY OF DOUGLAS )

On this 6th day of November, 1986, before me, a Notary Public in and for said State of Nebraska, personally came the above-named ROBERT W. BELL, personally known to be the identical person who executed the foregoing instrument on behalf of the Metropolitan Utilities District of Omaha and he acknowledged said execution to be his voluntary act and deed and the voluntary act and deed of said municipal corporation pursuant to a resolution of its Board of Directors in the premises.

WITNESS my hand and Notary Seal on the date last above written.



[Signature]  
Notary Public

*New Being parts of Shopsy Acres, Lots 12 & 3*

8549 M Jac H



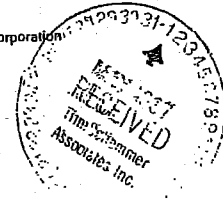
BK 0814 PG 257



MISC 1987 08550

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PAGE DOWN FOR BALANCE OF INSTRUMENT





Cox Cable  
Omaha

BOOK 814 PAGE 257

DATE: 4-29-87

THE SCHEMMER ASSOCIATES INC.  
ARCHITECTS-ENGINEERS-PLANNERS  
GARY D. TINKHAM, R.L.S.  
MGR., LAND DEVELOPMENT SERVICES

SUBJECT: EASEMENT RELINQUISHMENT

COX CABLE OMAHA, HEREBY RELEASES AND FOREVER DISCLAIMS  
ANY AND ALL RIGHTS, INTERESTS, AND EASEMENTS WHICH IT  
MAY HAVE OVER, UNDER OR UPON THE FOLLOWING DESCRIBED  
LAND:

RELEASE OF EASEMENTS OF THE NORHT SOUTH RIGHT-OF-WAY  
IN THE ALLEY WEST OF 30TH STREET, EAST OF 31ST STREET,  
SOUTH OF FOREST LAWN AVEUNE, NORTH OF HANOVER STREET.  
NOW BEING PARTS OF LOTS 1,2,3, SHOPKO ACRES.

BY REASON OF ANY SPECIFIC OR GENERAL EASEMENTS ON FILE AND  
OF RECORD IN THE OFFICE OF THE REGISTER OF DEEDS OF SAID  
DOUGLAS COUNTY.

BY: David A. Roman  
TITLE: FIELD ENGINEER

COX CABLE OMAHA

BK 814 N 91-495/496 FEE 6.50  
PG 257 N 91/495 DEL ML MC B.S.  
OF Missouri COMP CP 44-3565002

1987 MAY 11 PM 4: 10  
GEORGE J. BURELEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEBR.

RECEIVED

8550 Mac. H



BK 0814 PG 258



MISC 1987 08551

THIS PAGE INCLUDED FOR  
INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT



Northwestern Bell

Omaha, Nebraska  
October 29, 1986

The Schemmer Associates, Inc.  
10830 Old Mill Road  
Omaha, Nebraska 68154

Attention: Mr. A. E. Petersen

RE: Shopko Acres, 30th and Weber

Dear Sir:

Northwestern Bell Telephone Company hereby disclaims, abandons, and forfeits any rights it may have or may have had in the following described parcel of land in Omaha, Nebraska:

That North-South Right-of-Way in the alley West of 30th Street, East of 31st Street, South of Forest Lawn Avenue and North of Hanover Street.  
Now being parts of Lots 1,2,3, Shopko Acres.

Sincerely,

R. L. Messin  
Engineer Right-of-Way

1987 MAY 11 PM 4: 10  
RECEIVED  
GEORGE J. DUGLEWICZ  
REGISTER OF DEEDS  
DUNBAR COUNTY, NEBR.

8551 Misc H

BK 814 N 91-495 C/O 2726 FEE 6.50  
PG 258 N 91/495 DEL 171 MC B.S.  
OF Mason COMP 10 F/B 44-3565000

101 to 108 Ave.  
One Old Mill

This indenture, Made this 18th day of July, A. D., 1986  
between Shopko Stores, Inc.

a Corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Green Bay Wisconsin, party of the first part, and L. C. Development Co., a Nebraska Corporation

Witnesseth, That the said party of the first part, for and in consideration of the sum of One dollar (\$1.00) and other good and valuable consideration

to it paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey and confirm unto the said party of the second part, its heirs and assigns forever, the following described real estate, situated in the County of Douglas and State of Nebraska, to wit:

The North 148.0 feet of Block 222 together with the North 148.0 of the vacated alley in said Block 222, the North 148.0 feet of the East 63.50 feet of Block 221 and the West 266.5 feet of the East 330.0 feet of Block 221, all in Florence Addition to the City of Omaha, Douglas County, Nebraska together with the North 148.0 feet of vacated 31st Street adjoining said Blocks 222 and 221 and the North 15.0 feet of vacated Hanover Street adjoining the West 266.5 feet of the East 330.0 feet of said Block 221.

Subject to municipal and zoning ordinances and covenants, conditions, easements restrictions and reservations of record.

Grantee, by acceptance hereof, agrees to join with Grantor in executing the Plat of "Shopko Acres", which Plat includes the parcel herein conveyed. This conveyance shall be binding upon the Grantee herein and its successors and assigns.

Together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, either in possession or expectancy of, in and to the above bargained premises, and their hereditaments and appurtenances.

To have and to hold the said premises as above described with the hereditaments and appurtenances, unto the said party of the second part, and to its heirs and assigns FOREVER.

And the said Shopko Stores, Inc. party of the first part, for itself and its successors, does covenant, grant, bargain and agree to and with the said party of the second part, its heirs and assigns, that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, its heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, by, through or under said Shopko Stores, Inc.

party of the first part, and none other, it will forever WARRANT and DEFEND.

In Witness Whereof, the said Shopko Stores, Inc. party of the first part, has caused these presents to be signed by William J. Tyrrell its President, and countersigned by William C. Hunt its Secretary, at Green Bay Wisconsin, and its corporate seal to be hereunto affixed, this 18th day of July, A. D., 1986.

SIGNED AND SEALED IN PRESENCE OF

[Signature]

Shopko Stores, Inc.  
[Signature] William J. Tyrrell President  
[Signature] William C. Hunt Secretary

STATE OF WISCONSIN,  
BROWN County, } ss.  
Personally came before me, this 18th day of July, A. D., 1986,  
William J. Tyrrell, President, of

of the above named Corporation, to me known to be the person who executed the foregoing instrument, and to me known to be such President and Secretary of said Corporation, and acknowledged that they executed the foregoing instrument as such officer of said Corporation, by its authority.

THIS INSTRUMENT WAS DRAFTED BY  
Colin D. Pietz  
Attorney at Law  
Wausau, Wisconsin



Patricia J. Mann  
Notary Public, BROWN County, Wis.  
My commission (expires) 1/21/90

(Section 19.31 (1) of the Wisconsin Statutes providing that all instruments to be recorded shall have plainly printed or typewritten thereon the names of the grantors, grantees, witnesses and notary. Section 19.313 similarly requires that the name of the person who, or govern- ment agency which, drafted such instrument shall be printed.)

9204 Reed 15

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DOUGLAS COUNTY, NEBR.

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Page 542  
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## CROSS-EASEMENT AGREEMENT

(30th &amp; Weber, Omaha, Nebraska)

THIS AGREEMENT made this 4<sup>TH</sup> day of AUGUST, 1986, by and between SHOPKO STORES, INC., a Minnesota corporation, ("Shopko") and L C DEVELOPMENT CO., a Nebraska corporation, ("Developer").

WHEREAS, Shopko is the owner of a certain parcel of real estate located in Douglas County, Nebraska, described on Exhibit "1" appended hereto (the "Shopko Site"); and

WHEREAS, the Developer is the owner of a certain parcel of real estate located in Douglas County, Nebraska, described on Exhibit "2" attached hereto (the "Developer's Site"); and

WHEREAS, the parties hereto desire to develop and utilize the Shopko Site and the Developer's Site (hereinafter sometimes referred to as "Site" and collectively referred to as the "Entire Parcel") as an integrated and unified shopping center; and

WHEREAS, the parties hereto desire to provide reciprocal easements for pedestrian and vehicular ingress, egress, parking, passage and traffic and for utilities in, over, upon, across and through the Entire Parcel, the Common Areas and such other areas as are hereinafter provided as though the Entire Parcel were developed and utilized as a single integrated shopping center.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt, value and

01/31/86:2

sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

ARTICLE I

Definitions

1.01. Occupant. The term "Occupant" shall mean and include each of the parties hereto, their respective heirs, successors and assigns (including mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Entire Parcel under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.02. Common Areas. The term "Common Areas" shall mean and include all parts of the Entire Parcel which are such areas as are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads, loading areas and other similar areas.

1.03. Permittees. The term "Permittees" shall mean and refer to all Occupants and all customers, employees, licensees and other business invitees of Occupants.

ARTICLE II

Easements

2.01. Grant of Easements. The Developer and Shopko hereby grant each to the other and to each individual, partnership, joint venture, corporation, trust, unincorporated association, governmental agency or other business entity now or hereafter holding an ownership interest in fee in any part of the

Entire Parcel (which persons are herein sometimes singularly called an "Owner" and collectively called the "Owners") the following easements for use by the Owners and their respective Permittees, without payment of any fee or charge, except as otherwise agreed in writing between the Owners:

2.01.1. Pedestrian Easements. Nonexclusive easements for the purpose of pedestrian traffic between each Site and (i) each other Site which is contiguous thereto; (ii) the public streets and alleys now or hereafter abutting or located on any portion of the Entire Parcel; (iii) the parking areas now and hereafter located on the Entire Parcel and (iv) over, upon, across and through the Common Areas; limited, however, to those portions of each Site which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner in conformity with the Site Plan attached hereto as Exhibit "3" (the "Site Plan").

2.01.2. Vehicular Easements. Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Site and the public streets and alleys now and hereafter abutting or located on any portion of the Entire Parcel; limited, however, to those portions of the Entire Parcel which are improved by the Owner thereof from time to time for vehicular accessways as such portions may be relocated from time to time by such Owner in accordance with the Site Plan.



2.01.3. Common Component Easements. Nonexclusive easements for the purpose of furnishing connection, support and attachment to walls, footings, foundations, slabs, roofs and other structural systems of any improvement now and hereafter constructed on each Site, the encroachment of common components of improvements and the maintenance, repair and replacement of the same; limited, however, to those portions of each Development Tract on which an improvement is contiguous to an improvement constructed on another Site. Any Owner of a Site (the "Benefited Site") which desires to claim the benefit of the foregoing easement for common components and encroachments will be entitled to exercise such right on the following conditions:

(a) The Owner of the Benefited Site will submit plans and specifications showing the improvements proposed to be constructed on the Benefited Site to the Owner of the Site (the "Burdened Site") which will be burdened by the easements hereby created for approval of such plans and specifications by the Owner of the Burdened Site.

(b) Approval of such plans and specifications by the Owner of the Burdened Site will constitute a designation of the portion(s) of the Burdened Site to be used for the purposes therein described. Any approval requested shall not be unreasonably delayed, denied or withheld.

(c) The construction of the improvements on the Benefited Site will be diligently prosecuted by the Owner thereof with due care and in accordance with sound design, engineering and construction practices in a manner which is customary for such improvements and which will not unreasonably interfere with the use of the Burdened Site or the improvements thereon or impose an unreasonable load on such improvements.

(d) The Owner of the Benefited Site will indemnify and hold the Owner of the Burdened Site harmless from all loss, cost and expense arising from the construction use, maintenance, repair, replacement and removal of the improvements on the Benefited Site and the exercise of the rights of the Owner of the Benefited Site hereunder. When the exercise of the rights hereby granted to the Owner of the Benefited Site requires entry upon the Burdened Site or the improvements thereon, the Owner of the Benefited Site will give due regard to the use of the Burdened Site and the improvements thereon in the exercise of such rights and will promptly repair, replace or restore any and all

improvements on the Burdened Site which are damaged or destroyed in the exercise of such rights.

(e) Absent a definitive agreement to the contrary, subsequent to the completion of the improvements to the Benefited Site, the Owner of the Burdened Site and the Owner of the Benefited Site will share proportionately the cost of maintenance, repair and replacement of any common component constructed by either of them which provides vertical or lateral support to contiguous improvements, in accordance with that ratio which the load contributed by the improvements of each Owner bears to the total load on such common components; the cost of maintenance, insurance, property taxes, repair and replacement of any common wall, roof or structural joinder constructed by the owner of the Benefited Site (other than components providing support) will be paid solely by the Owner of the Benefited Site (except that each Owner shall bear the costs of routine maintenance, repair and decoration of its side of any common wall).

(f) The Owner of the Burdened Site agrees on the written request of the Owner of

the Benefited Site, to execute and deliver an instrument in recordable form legally sufficient to evidence the grant of the easements herein described, the location thereof and such other conditions affecting the grant of such easements, as might have been approved by such Owners.

2.01.4. Utility Easements. Nonexclusive easements for the installation, use, operation, maintenance, repair, replacement and removal of: water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems; and other utility lines or systems hereafter developed to serve one or more of the Sites; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment (hereafter called "Utility Facilities") will be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use or unreasonably detract from the appearance of the Entire Parcel or the improvements thereon when such Utility Facilities are located. The Owner of any Burdened Site affected by any of such utility easements will have the right, at any time, and from time to time, to relocate any Utility Facilities then located on the Burdened Site 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

Utility Facilities to be relocated; (ii) such relocation will not unreasonably interrupt any utility service to the improvements then located on the Benefited Site(s); (iii) such relocation will not reduce or unreasonably impair the usefulness or function of the Utility Facilities to be relocated; and (iv) all costs of such relocation will be borne by the Owner relocating the Utility Facilities.

2.01.5. Access Easements. Nonexclusive easements in accordance with the Site Plan between each Site and the public streets and ways abutting or crossing any portion of the Entire Parcel for the purpose of providing ingress, egress and access to the easements hereby created and to the Common Areas.

2.01.6. Construction Easements. Nonexclusive easements for the purpose of constructing the improvements on the Entire Parcel, including reconstruction, installation, replacement, modification, care and maintenance, provided such use of a Burdened Site is reasonably necessary, will be diligently prosecuted in accordance with sound construction practices and will not unreasonably interfere with the use of the Burdened Site or the improvements thereon.

2.01.7. Parking Easements. Nonexclusive easements in and to the parking lot for access to and to use for vehicular parking purposes. Such parking easements shall consist of at least 5.0 parking spaces for each 1,000 square feet of Net Building Floor Area in the Entire Parcel. "Net Building Floor Area" is gross building area less (i) penthouse and mezzanine areas used for mechanical, electrical, telephone and other

operating equipment, (ii) patio or outside sales areas, (iii) loading docks, or (iv) upper levels of multi-deck areas used for office space and storage. The easements for parking spaces and access shall be provided in accordance with the Site Plan.

2.01.8. Lighting Facilities Easement. Nonexclusive easements for access to and use by the Owners and Occupants of either Site to the public light poles located adjacent to the perimeters of either Site for installation, repair, replacement, maintenance and removal of electrical wires, conduit, lighting fixtures and related apparatus to share the use of such poles for lighting the Common Area on either Site.

2.01.9. Fire and Emergency Access. A nonexclusive easement for fire protection and emergency access for pedestrian and vehicular access, ingress and egress over, across, on and through the Common Areas for the benefit of the Shopko Site in common with such other parcels to which Developer might grant similar nonexclusive easements consistent with providing the Shopko Site and Developer's Site with such fire and emergency access as is required by law.

2.01.10. Self-Help Easements. Nonexclusive rights of reasonable entry and easements over, across and under each Site for all purposes to the extent reasonably necessary to enable any other Owner of a Site to perform any of the provisions of this Agreement which a defaulting Owner has failed to perform.

2.02. Unimpeded Access. The Owners agree that no barricade or other divider will be constructed between the Sites and the Owners will do nothing to prohibit or discourage the free

and uninterrupted flow of vehicular or pedestrian traffic throughout the Site in the areas designated for such purpose by the Owner of each Site; provided that each Owner will have the right to temporarily erect barriers to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein. Nothing contained herein shall prohibit either party from maintaining an outdoor lawn and garden area or sales area in the Common Area as designated on the Site Plan.

ARTICLE III

Nature of Easements and Rights Granted

3.01. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Entire Parcel and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the parcels which are benefited shall constitute the dominant estate, and the particular areas of the Entire Parcel which respectively are burdened by such easements and rights shall constitute the servient estate.

3.02. Each and all of the easements, covenants, restrictions and provisions contained in this Agreement:

(a) Are made for the direct, mutual and reciprocal benefit of the Occupants and Permittees of the respective Sites;

(b) Create mutual equitable servitudes upon each parcel in favor of the other Sites;

(c) Constitute covenants running with the land; and

(d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Entire Parcel at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

3.03. The acceptance of any transfer or conveyance of title from any party hereto or its respective heirs, representatives, successors or assigns of all or any part of its interest in its Site shall be deemed to:

(a) Require the prospective grantee to agree not to use, occupy or allow any lessee or occupant of such Site to use or occupy the Site in any manner which would constitute a violation or breach of any of the easements and covenants contained herein; and

(b) Require the prospective grantee to assume and agree to perform each and all of the obligations of the conveying party under this Agreement with respect to any such Site which will be conveyed to each grantee, in each case by a written instrument executed,



acknowledged and recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

Notice of each such conveyance and agreement shall be served by the conveying party upon each party or entity then owning fee title to any part of the Entire Parcel within ten (10) days after such conveyance. The notice shall be accompanied by a copy of the conveyance and agreement. Upon such assumption by the new grantee and the service of proper notice, the conveying party shall thereupon be released from any future obligation under this Agreement with respect to the parcel so conveyed to the prospective grantee in compliance with this document, but shall not be relieved from past obligations. The parties hereto agree to execute and deliver any and all documents or assurances necessary or desirable to evidence such release for the purpose of recording or otherwise. When a grantee is a mortgagee, no personal liability or responsibility shall be deemed to be assumed by such mortgagee until and unless such mortgagee actually takes possession of a Site in connection with a mortgage foreclosure action.

#### ARTICLE IV

##### Maintenance of Common Areas

4.01. Each party shall maintain the Common Areas from time to time located on its Site. Such maintenance shall include, but shall not be limited to:

- (a) Maintenance, repair and replacement of the surface and subsurface of the Parking

Area to maintain it level, smooth and evenly covered with the type of materials originally constructed thereon or such substitutes as will in all respects be equal to such materials in quality, appearance and durability;

(b) Maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, watering, mowing and trimming thereof;

(c) Removal from the Common Areas and Parking Area of papers, debris, ice, snow, refuse and other hazards to persons using the said Areas, and washing or thoroughly sweeping paved areas as required;

(d) Maintenance of such appropriate Parking Area entrance, exit and directional signs, markers and lights as will be reasonably required from time to time; and

(e) Such painting and repainting as may be required to maintain the Parking Area and equipment installed thereon in high quality condition.

4.02. In the event that any party shall fail to properly maintain that portion of the Common Area which is from time to time located on its parcel (such party being herein referred to as the "Defaulting Party"), any other party

(hereinafter referred to as the "Nondefaulting Party") may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "Deficiencies") in the Defaulting Party's performance of the Common Areas maintenance to be performed by it. The Defaulting Party shall have ten (10) days after receipt of the said notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten (10) day period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. In the event that the Defaulting Party shall unreasonably fail or refuse to timely correct or to begin to correct the Deficiencies, as the case may be, the Nondefaulting Party may, at its option, correct the Deficiencies. In the event that the Nondefaulting Party shall exercise the said option and shall correct the Deficiencies, the Defaulting Party shall, promptly upon receipt from the Nondefaulting Party of an itemized invoice for the costs incurred by the Nondefaulting Party in correcting the Deficiencies, pay all costs to the Nondefaulting Party.

4.03. Maintenance of Easement Areas. Except to the extent that such areas might be operated and maintained by public authorities or utilities, the Owner of each Burdened Site will operate and maintain all of the areas of the Burdened Site which are subject to the pedestrian and vehicular easements created by Sections 2.01.1 and 2.01.2 of this Agreement in sound structural and operating condition at the sole expense of the Owner of the

Burdened Site. The operation and maintenance of the common component and encroachment easements created by Section 2.01.3 of this Agreement and the payment of the expenses associated therewith will be governed by the terms of Section 2.01.3 in the absence of specific agreement between the Owners of the Benefited Site(s) and the Burdened Site(s). The Owner of each Burdened Site pursuant to Section 2.01.4 will operate and maintain all Utility Facilities located within the boundaries of such Burdened Site 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 relating to Utility Facilities serving more than one Site occasioned thereby will be borne by the Owners of the Benefited Site(s) which are serviced by such Utility Facilities in the ratio which the gross floor area of the improvements located on each Benefited Site bears to the total gross floor area of the improvements located on all Benefited Sites; provided, however, that each Owner will pay all costs associated with the operation and maintenance of Utility Facilities and the consumption of utility services which relate solely to the improvements located on a single Site and no other Owner will have any liability with respect thereto. No costs of operation and maintenance are associated with the easements provided by Section 2.01.5. The costs of operation and maintenance of the easements provided by Section 2.01.6 shall be borne by the Owner of the Benefited Site.

The costs of operation and maintenance of the easements provided by Section 2.01.7 shall be borne by the Owner of the Burdened Site (the Parking Site).

The cost of operation and maintenance of the easements provided by Section 2.01.8 shall be borne by the Owners of the Benefitted Site.

The cost of operation and maintenance of the easements provided by Section 2.01.9 shall be borne by Shopko so long as Developer does not grant any other nonexclusive easement of this nature to a third party. If such easement is granted, the cost of the easement shall be shared equally by all parties benefitting therefrom.

#### ARTICLE V

##### Enforcement - Injunctive Relief

5.01. In the event of any violation by any party hereto or by any Permittee or Occupant of any part of the Entire Parcel of any of the terms, restrictions, covenants and conditions provided herein, any of the parties, or their respective successors or assigns, as the case may be, shall have in addition to the right to collect damages, 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 all other parties to this Agreement and to the persons or entity guilty of such violation or threatened violation.

5.02. A party will not be in default under this Agreement unless such party shall have been served with a written

notice specifying the default and shall fail to cure such default within thirty (30) days after receipt of such notice, or shall fail to commence to cure the default within such period of time if the default cannot be cured within the said thirty (30) day period, and thereafter, to proceed diligently to complete the curing of the default.

5.03. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but this limitation shall not affect, in any manner, any other rights or remedies which the parties may have by reason of any breach of this Agreement.

#### ARTICLE VI

##### Restriction on Development

6.01. It is agreed that the Entire Parcel shall be developed and utilized substantially/<sup>in accordance</sup>with the Site Plans attached hereto as ExhibitS "3" or "3a".

6.02. It is agreed that for so long as the Shopko Site is being used for the operation of a general merchandise discount department store, no portion of the Entire Parcel other than the Shopko Site may be used for a general merchandise discount department store, pharmacy, drugstore, dental clinic, or optical center. This restriction shall not be deemed to prevent or prohibit any sale of health and beauty aid items which are customarily sold from other types of retail stores, nor shall it be deemed to prevent Developer's Site from being leased, occupied or used for the sale of merchandise items similar to those which may be sold by Shopko. For purposes of the foregoing, the Shopko

Site shall be deemed to be "used" if occupied by a party or entity using the building and not closed to the public for the conduct of business for more than 365 days unless such closure is for repair, restoration or remodeling. This restriction may be waived solely by Shopko in writing by an instrument recorded in the Office of the Register of Deeds in which the Cross-Easement Agreement is recorded. The foregoing restriction shall not affect uses in existence on the Entire Parcel on the date of the recording of this Cross-Easement Agreement in the office of the Register of Deeds for Douglas County, Nebraska.

6.03. It is agreed that a parking ratio of not less than 5.0 spaces per 1,000 square feet of Net Building Floor Area will be maintained on the Entire Parcel unless condemnation makes maintenance of this parking ratio of ground level parking impossible with the amount of then-existing development on the Entire Parcel.

6.04. No curbcuts or public highway access points shown on the Site Plan shall be altered, modified, vacated or discontinued in any manner whatsoever without the written approval of Shopko and the Developer.

#### ARTICLE VII

#### Sign Criteria

7.01. Each Party will adhere to such of the sign criteria for their respective Site set forth in Exhibit "4" hereto as is permitted by law.

ARTICLE VIIIMutual Indemnification

8.01. Each Party, with respect to its portion of the Entire Parcel, shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify, defend and hold each other Party harmless from and against any and all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and reasonable attorneys' fees) arising out of or in any way related to the failure by such Party to maintain its portion of the Entire Parcel in a safe and proper condition. Each Party shall give each other Party prompt and timely notice of any claim made or suit or action commenced which, in any way, could result in indemnification hereunder.

ARTICLE IXInsurance and Subrogation

9.01. Shopko and the Developer shall obtain and maintain all risk insurance covering all of the buildings and improvements now or hereafter located on its Site, in an amount equal to ninety percent (90%) of the full replacement cost thereof. Shopko and the Developer shall also obtain and maintain comprehensive public liability insurance covering injuries to persons and property on, in or about its Site, with a single limit of not less than Five Million Dollars (\$5,000,000.00) with a deductible not in excess of One Hundred Thousand Dollars (\$100,000.00). All such policies of insurance shall be issued by solvent and responsible insurance companies authorized to do



business in the State of Nebraska, and all such policies shall contain a waiver of the right of subrogation. In addition, whenever (a) any loss, cost, damage or expense resulting, directly or indirectly, from fire, explosion or any other casualty, accident or occurrence is incurred by any Party, and (b) such Party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then such Party hereby releases each other Party from any liability it may have on account of loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and hereby waives any right of subrogation in excess of a deductible under such insurance not in excess of \$100,000.00 per occurrence which might otherwise exist in or accrue to any person on account thereof.

#### ARTICLE X

##### Condemnation

10.01. If all or any part of the Entire Parcel is condemned or taken by any duly constituted authority for a public or quasi-public use, then that portion of the resulting award attributable to the value of any land within the Common Areas so taken shall be payable only to the owner thereof and no claim thereto shall be made by the other owner; provided, however, that all other owners may file collateral claims with the condemning authority, over and above the value of the land within the Common Areas so taken, to the extent of any damage suffered by the Sites of such other owners resulting from the severance of the appurtenant Common Areas so condemned or taken. The owner of the Common Areas so condemned or taken shall promptly repair and

restore the remaining portion of the Common Areas owned by such owner as near as practicable to the condition of same immediately prior to such condemnation or taking and without contribution from any other owner. Nothing contained herein shall require any owner to construct other than a ground-level parking lot. If any buildings or other improvements on a Site are condemned or taken, then the resulting award shall be made available and used for repair and reconstruction of such buildings or other improvements, and the same shall promptly be repaired and reconstructed as near as practicable to the condition of same immediately prior to such condemnation or taking.

#### ARTICLE XI

##### Duration and Termination

11.01. The easements, covenants, restrictions and other provisions of this Agreement shall be of perpetual duration.

11.02. This Agreement, or any easement, covenant, restriction or undertaking contained herein, may be terminated, extended or amended as to each of the portions of the Entire Parcel only by the recording of the appropriate document in the Office of the Register of Deeds of Douglas County, Nebraska, which document must be executed by all of the owners and mortgagees, and other holders of recorded interests affected thereby, as of the date of such document, of the Entire Parcel.

ARTICLE XIINot a Public Dedication

12.01. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication or any portion of the Entire Parcel to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

ARTICLE XIIIRecording

13.01. A fully executed counterpart of this Cross-Easement Agreement shall be recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

ARTICLE XVBenefit

14.01. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, representatives, successors and assigns.

ARTICLE XVWaiver

15.01. No waiver of any breach of any of the easements, covenants and/or agreements herein contained shall be construed, as, or constitute a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other covenant and/or agreement.

ARTICLE XVISeparability

16.01. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

ARTICLE XVIIApplicable Law

17.01. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

ARTICLE XVIIICounterparts

18.01. This Agreement shall be executed in several counterparts, each of which shall be deemed an original.

ARTICLE XIXNotice

19.01. All notices under this Agreement shall be effective if mailed certified mail, return receipt requested, as follows (unless notice of a change of address is given pursuant hereto):

A. If to SHOPKO:

Shopko Stores, Inc.  
P.O. Box 19060  
Green Bay, Wisconsin 54307-9060  
Attn.: Director of Real Estate

Copy by ordinary mail to:

Super Valu Stores, Inc.  
P.O. Box 990

Minneapolis MN 55440  
Attn.: Legal Department

and

Kelley, Weber, Pietz & Slater, S.C.  
530 Jackson Street  
Wausau, Wisconsin 54401  
Attn.: Colin D. Pietz

B. If to DEVELOPER:

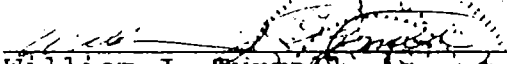
L C Development Co.  
One Old Mill  
101 South 108th Avenue  
Omaha, NE 68154  
Attn: Jay Lerner


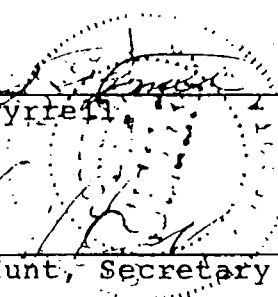
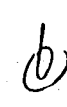
Copy by ordinary mail to:

Gaines, Otis, Mullen & Carta  
Regency One  
10050 Regency Circle  
Omaha, NE 68114  
Attn: Sal Carta

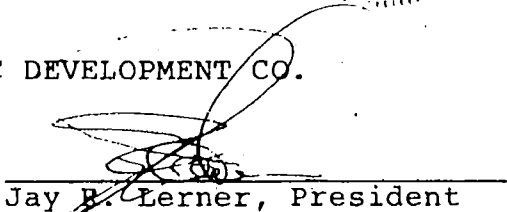
IN WITNESS WHEREOF, the parties hereto have executed  
this Cross-Easement Agreement as of the day and year first above  
written.

SHOPKO STORES, INC., a  
Minnesota corporation

By:   
William J. Tyrrell  
President

By:     
William C. Hunt, Secretary

L C DEVELOPMENT CO.

By:   
Jay B. Lerner, President



STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

Personally came before me this 4 day of August, 1986, the above named Jay R. Lerner, President, of L C Development Co., a corporation duly organized and existing under and by virtue of the laws of the State of Nebraska, and to me known to be such person who executed the foregoing instrument, and to me known to be such President of said corporation and acknowledged that he executed the foregoing instrument as such officer as the act of said corporation, by its authority.

Diane M Brock

Notary Public, Nebraska  
My Commission expires: 8-5-87



THIS INSTRUMENT DRAFTED BY:

Colin D. Pietz  
Kelley, Weber Pietz & Slater, S. C.  
530 Jackson Street  
Wausau, Wisconsin 54401

EXHIBIT "1"

to

CROSS-EASEMENT AGREEMENT  
(30th & Weber, Omaha, Nebraska)

Lots 1 through 8 inclusive and Lot 13, Block 220; the East 380.00 feet of Block 221; all of Block 222; all of Block 223; including all of 31st Street right-of-way adjacent to said Blocks 220, 221, 222 and 223; the North one-half of Weber Street right-of-way, adjacent to Blocks 220, and 223; all of Hanover Street right-of-way, West of 30th Street for 746.5 feet; and the South one-half thereof, adjacent to the West 30 feet of Lot 7, and all of Lot 8, Block 220, Florence Addition, Douglas County, Nebraska,

Except that part thereof described as follows:

The North 148.0 feet of Block 222 together with the North 148.0 feet of the vacated alley in said Block 222, the North 148.0 feet to the East 63.50 feet of Block 221 and the West 266.5 feet of the East 330.0 feet of Block 221, all in Florence Addition to the City of Omaha, Douglas County, Nebraska together with the North 148.0 feet of vacated 31st Street adjoining said Blocks 222 and 221 and the North 15.0 feet of vacated Hanover Street adjoining the West 266.5 feet of the East 330.0 feet of said Block 221.



EXHIBIT "2"

to

CROSS-EASEMENT AGREEMENT  
(30th & Weber, Omaha, Nebraska)

The North 148.0 feet of Block 222 together with the North 148.0 feet of the vacated alley in said Block 222, the North 148.0 feet to the East 63.50 feet of Block 221 and the West 266.5 feet of the East 330.0 feet of Block 221, all in Florence Addition to the City of Omaha, Douglas County, Nebraska together with the North 148.0 feet of vacated 31st Street adjoining said Blocks 222 and 221 and the North 15.0 feet of vacated Hanover Street adjoining the West 266.5 feet of the East 330.0 feet of said Block 221.

BOOK 784 PAGE 265

LEBER STREET

305.35'

82'

76.5'

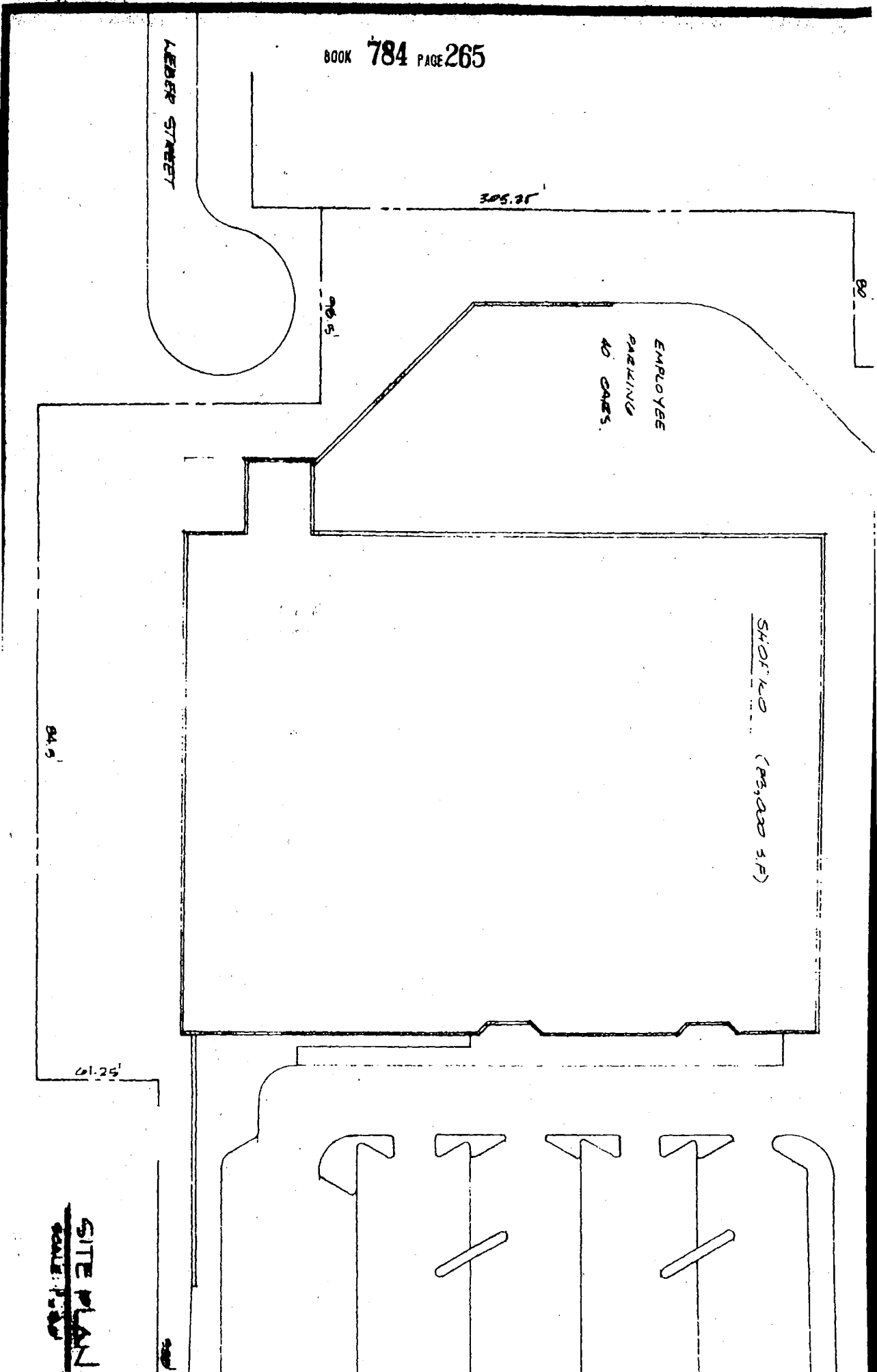
EMPLOYEE  
PARKING  
40 CARS.

540' x 20' (10,800 SF)

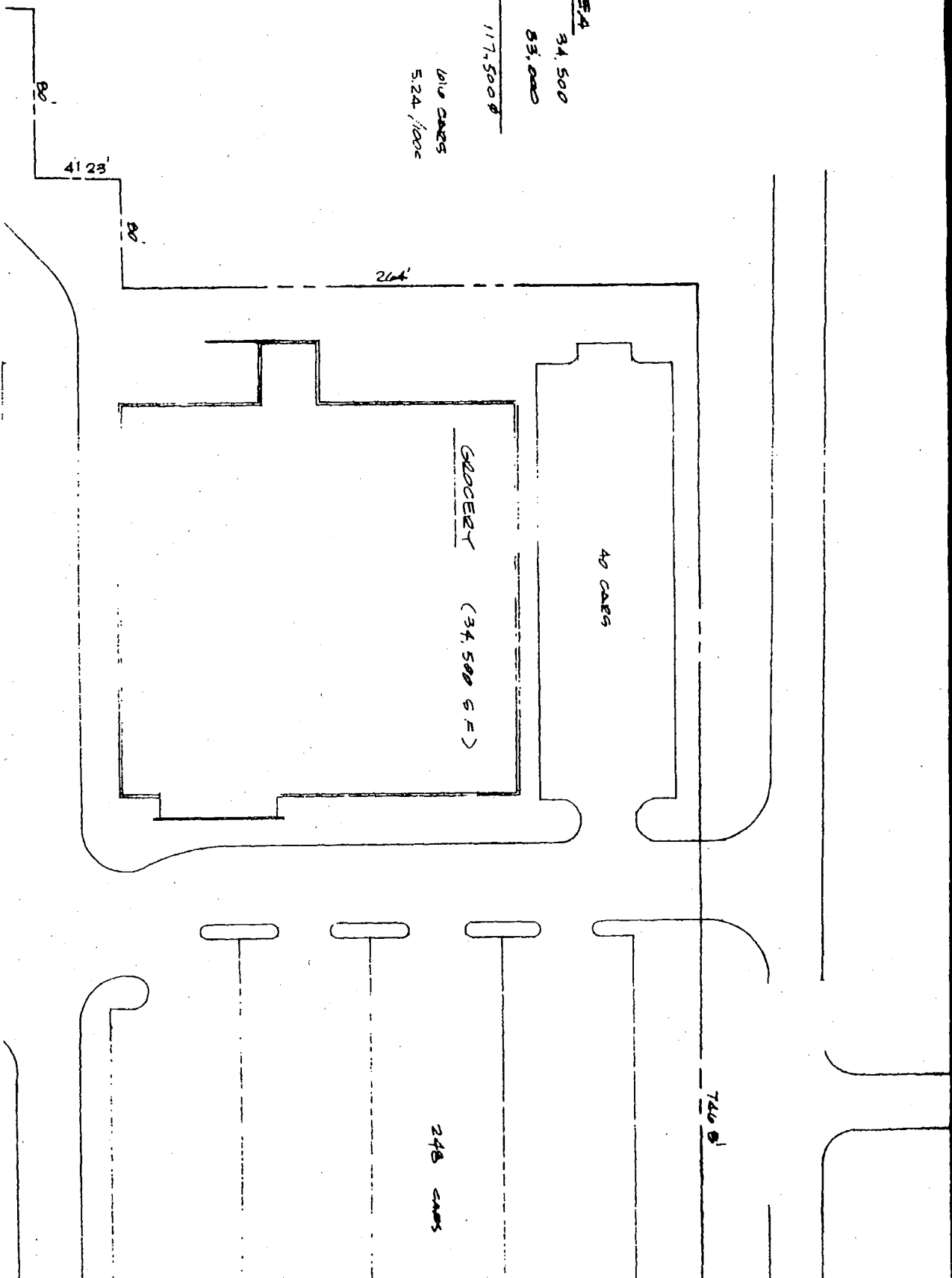
84.5'

61.25'

SITE PLAN  
SCALE: 1" = 20'



BUILDING AREA	34,500
GROCERY	83,000
SHEDS	
TOTAL	117,500
AREA/AC	110 CARS
RATIO	5.24 / 1000

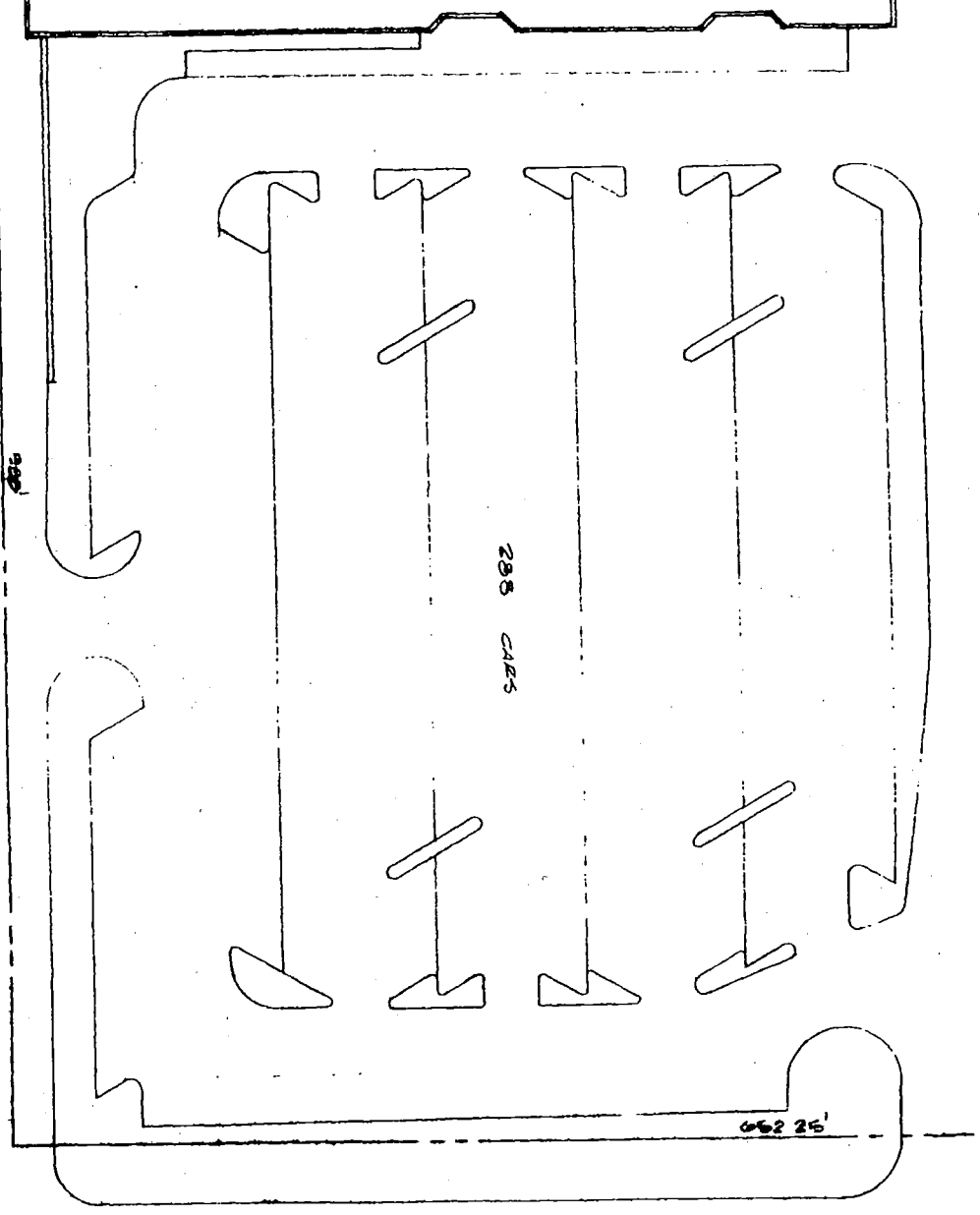


3.12

01.25'

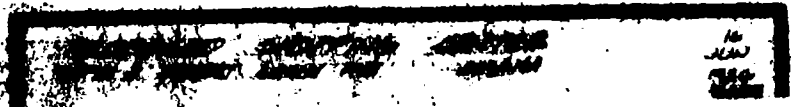
BOOK 784 PAGE 267

SITE PLAN  
SCALE: 1"=20'

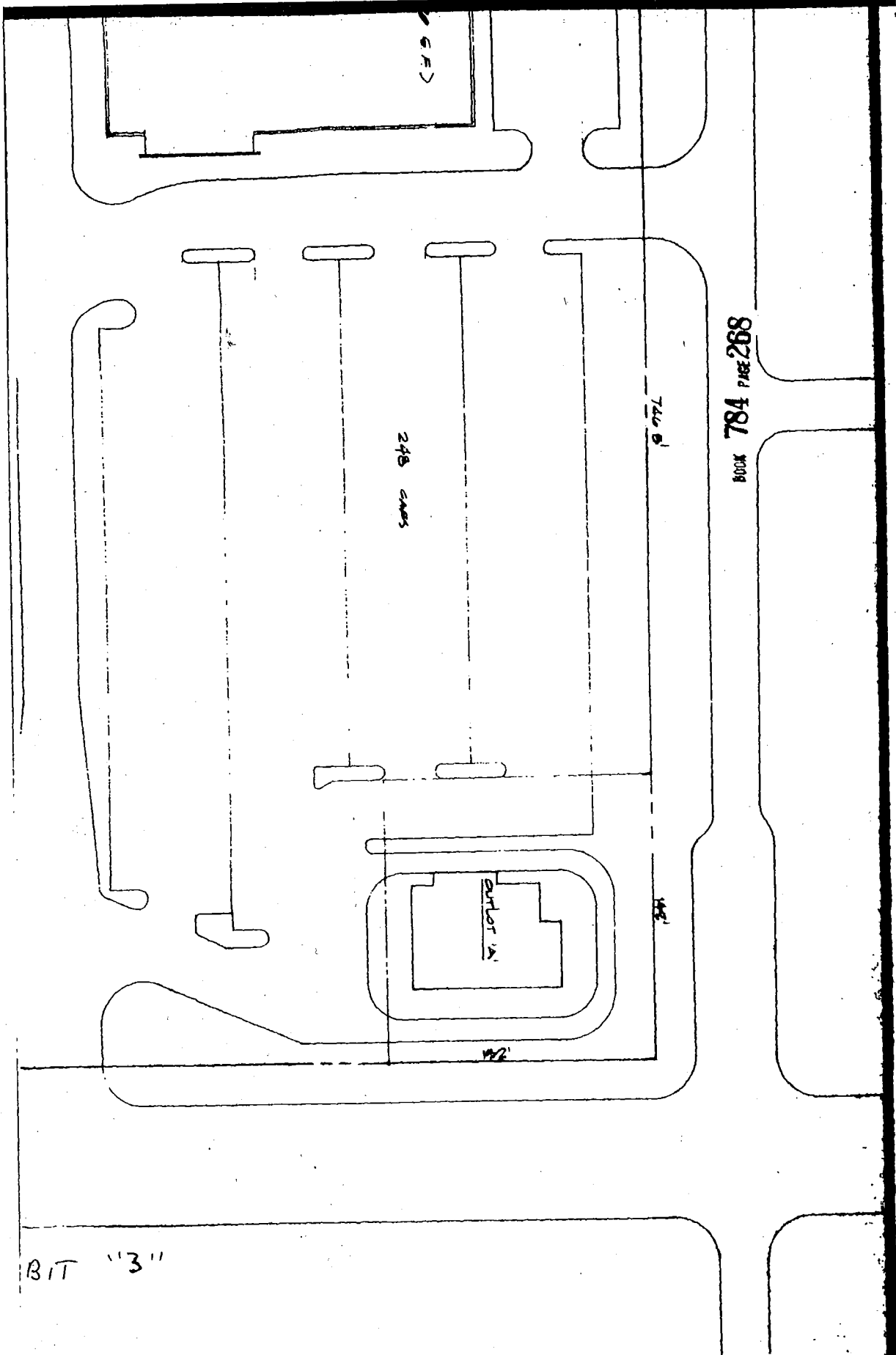


90th STREET

EXHIBIT



**Howe**  
 ASSOCIATES, INC.  
 184 SOUTH 180 TH AVE.



BOOK 784 PAGE 268

BIT "3"

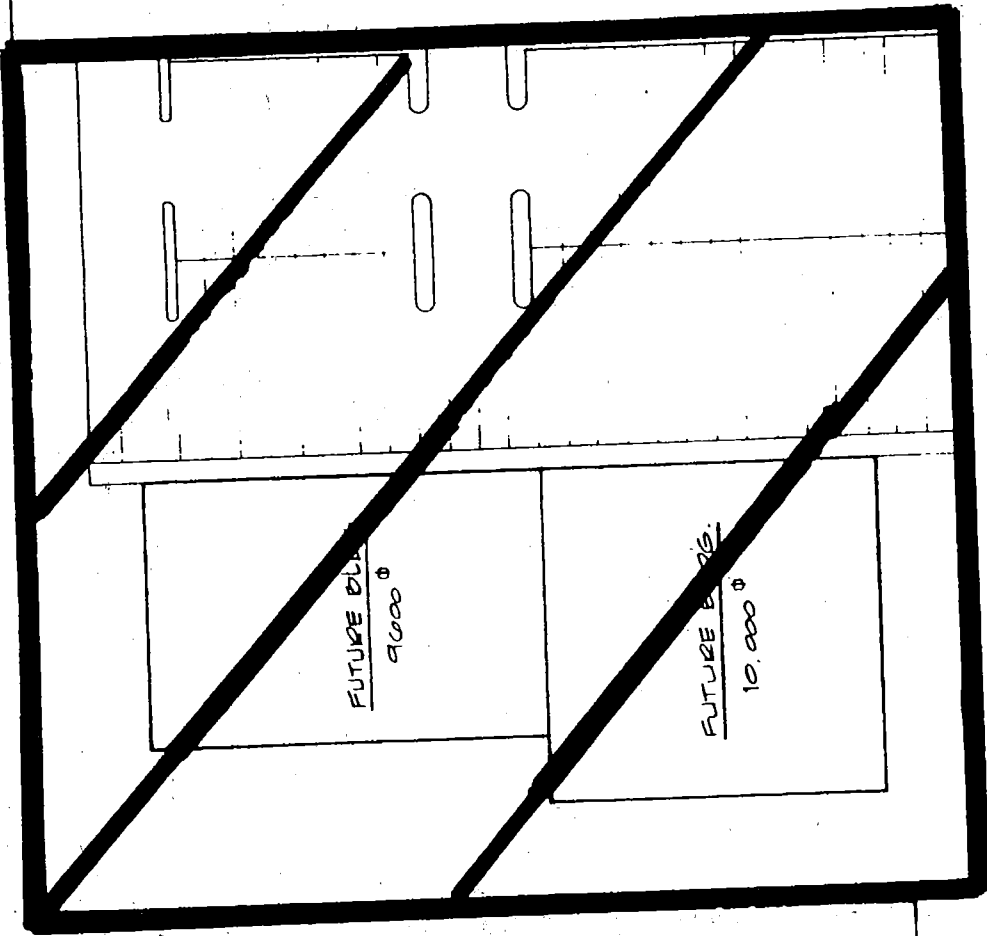
**velan**  
 NO. ARCHITECTS  
 BHANA, MUMBAI



**THE LARNIE COMPANY**  
 ONE OLD HILL  
 MUMBAI

BOOK 784 PAGE 269

DEVELOPER MAY CONSTRUCT ONE  
OR MORE BUILDINGS WITHIN  
CROSS HATCHED AREA →



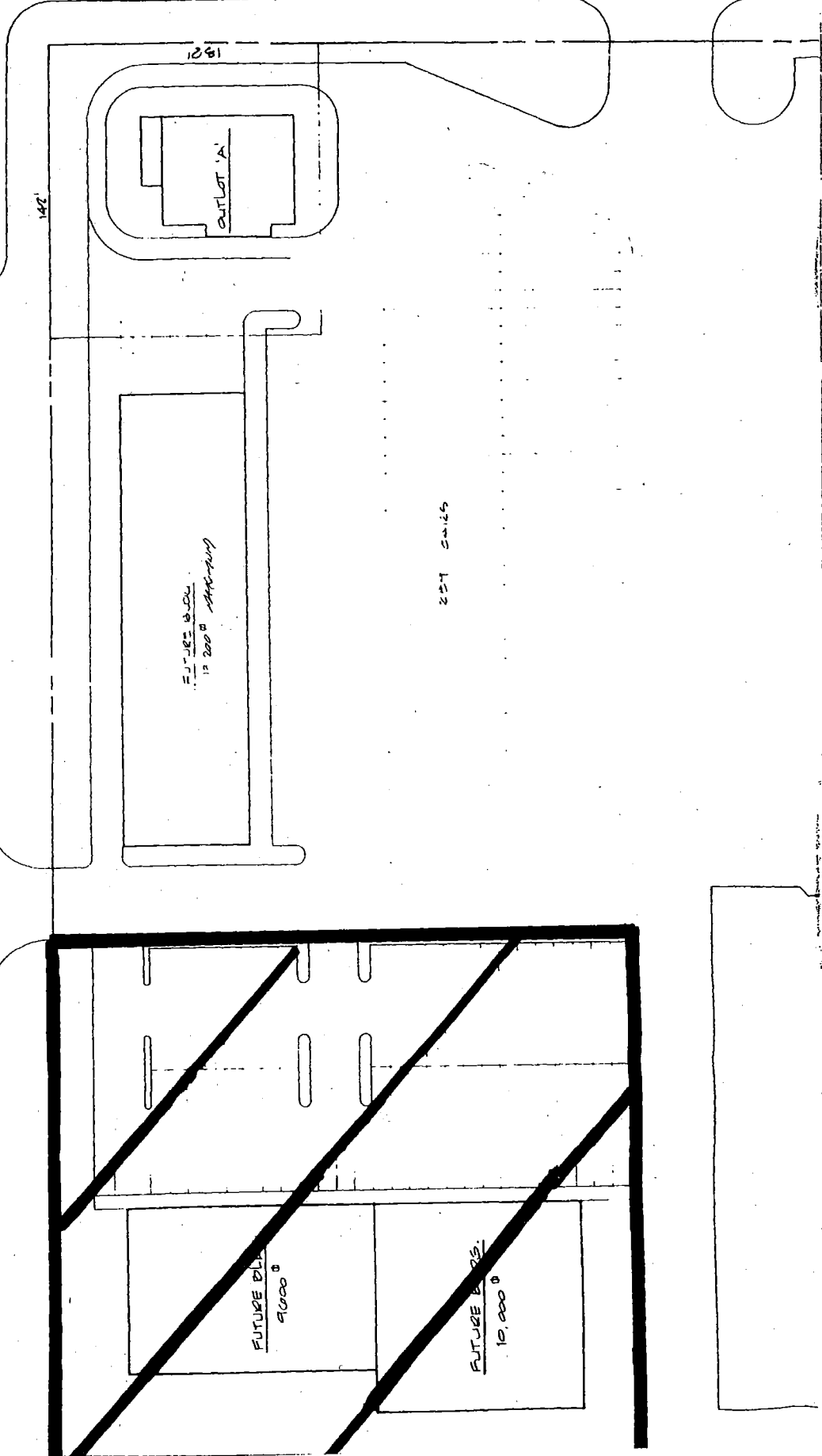
FUTURE BLDG  
9,000 sq

FUTURE BLDG  
10,000 sq

FOREST LAWN AVE

BOOK 784 PAGE 270

30 TH STREET



SITE PLAN  
SCALE: 1"=50.0'

BUILDING	SUMMARY
SHOPS	• 83,000 sq
SHOPS	• 32,800 sq
TOTAL	• 115,800 sq
PARKING	• 617 CARS
RATIO	• 5.33 cars/1000 sq

EMPLOYEE  
PARKING  
60 CARS

50000  
83000 sq

SITE PLAN  
SCALE: 1"=500.0'



BOOK 784 PAGE 272

258 6585

5-20-09  
03 000 #

WEBER STREET

Exhibit "3a"

SITE PLAN  
SCALE: 1"=50.0'

EXHIBIT "4"

TO

SHOPKO STORES, INC.

CROSS-EASEMENT AGREEMENT  
(30th and Weber, Omaha, Nebraska)

SIGN CRITERIA

1. There shall be no flashing, rotating or moving signs or markers of any type.
2. There shall be no signs painted on the exterior surface of any building or on roof tops.
3. There shall be no freestanding or pylon signs other than pylon signs to be maintained by Shopko, Developer, and the owner of outlot shown on Exhibits "3," on their respective parcels which may have an attraction panel with ~~changeable~~ <sup>and 3a</sup> copy.
4. Signs may be attached to the facing surfaces of the buildings and any canopies, but shall not be suspended underneath any canopies.
5. There shall be no rooftop signs.
6. No advertising signs will be permitted at the rear of any buildings, except in the case of stores with customer entrances opening directly onto the parking areas.
7. There shall be permitted delivery and access signs in the rear of the buildings.

BK 784 Del VK N 632/633/704/707 24-683/684/685/699 687/634 JV 194.50  
 PG 237-273 Indx mt pr 24-26 MC  
 OF Miscellaneous Comp JV

RECEIVED  
 1986 AUG -5 AM 11:42  
 CLERK  
 READING ROOM  
 DOUGLAS COUNTY, NEBR.

147717  
 MISC  
 1986



RECEIVED  
FEB 24 1 38 PM '98

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

2407 H  
FEE 415 FB  
BKP 24-1 C/O COMP  
DEP SCAN

**FIRST AMENDMENT TO CROSS-EASEMENT AGREEMENT**

THIS FIRST AMENDMENT TO CROSS-EASEMENT AGREEMENT (the "Agreement") dated February 23, 1998, is between SHOPKO STORES, INC., a Minnesota corporation ("ShopKo"), and Lerner Omaha Partnership, a Nebraska general partnership, successor in interest to L. C DEVELOPMENT CO., a Nebraska corporation. The following statements are a material part of this First Amendment.

A. ShopKo and L C Development Co., a Nebraska corporation, entered into that certain Cross-Easement Agreement dated August 4, 1986 (the "Cross-Easement Agreement") and recorded in Book 784, Page 237, covering the property described on Exhibit A and Exhibit B attached hereto and incorporated herein. The property described on Exhibit A was replatted into Lot 1 ShopKo Acres, Douglas County, Nebraska and the property described on Exhibit B was replatted into Lot 2 ShopKo Acres, Douglas County, 44-35650 Nebraska.

B. The property described on Exhibit A attached to the Cross-Easement Agreement or Lot 1 ShopKo Acres is being re-subdivided and will become and be known as Lots 1 and 2, ShopKo Acres Replat (the "Re-Subdivision") and sometimes referred to in this First Amendment individually as Lot 1 Replat and Lot 2 Replat, respectively. 44-35652

C. The Parties desire to amend the Cross-Easement Agreement.

THEREFORE, in consideration of the foregoing preambles which are repeated in their entirety in this portion of this First Amendment, the covenants contained in this Agreement and other good and valuable consideration, the receipt of which is acknowledged, the Cross-Easement Agreement is amended as follows:

9601905

41

1. REVISION OF THE SITE PLAN

The Parties agree to revise the Site Plan, attached to the Cross-Easement Agreement as Exhibits "3" or "3a", to permit the Re-Subdivision, and the Site Plan shall be revised and replaced with the Revised Site Plans attached hereto and incorporated herein as Exhibits C-1 and C-2.

2. SURFACE DRAINAGE EASEMENT

The parties grant to the owner of Lot 1 Replat a perpetual, non-exclusive easement, appurtenant to Lot 1 Replat, for the purpose of surface draining any and all surface water runoff from Lot 1 Replat and the improvements which may, from time to time, be constructed, altered, modified and maintained thereon, over, upon and across the common areas of Lot 2 Replat, to the storm sewer easements granted in Article 2.01.4 of the Cross-Easement Agreement.

3. MAINTENANCE OF ACCESS DRIVEWAY

ShopKo and System Capital Real Property Corporation, a Delaware corporation, the contract purchaser of Lot 1 Replat, agree that notwithstanding anything contained in the Cross-Easement Agreement, ShopKo and its successors, transferees, and assigns shall maintain, at its sole cost and expense, that portion of the common access driveway providing access to the Entire Parcel (as that term is defined in the Cross-Easement Agreement) from North 30th Street and located at the southern portion of Lot 2 Replat as shown and cross-hatched on Exhibit C-1.

4. RESTRICTION ON DEVELOPMENT

Article 6.02 of the Cross-Easement Agreement is deleted in its entirety and replaced as follows:

6.02. It is agreed that for so long as the ShopKo Site is being used for the operation of a general merchandise discount department store, no portion of the Entire Parcel other than the ShopKo Site may be used (i) for a general merchandise discount department store similar in size and operation to Target, K-Mart, or Wal-Mart, provided, however, that a general merchandise discount department store not similar in size and operation to a Target, K-Mart, or Wal-Mart may be operated within the Developer's Site (as defined in the Cross-Easement Agreement) so long as it does not exceed 20,000 square feet in gross leaseable area, or (ii) a pharmacy, drugstore or optical store, except an optical store less than 2,400 square feet in total which is not affiliated with a national chain is permitted within the Developer's Site (as defined in the Cross-Easement Agreement). This restriction shall not be deemed to prevent or prohibit any sale of health and beauty aid items which are customarily sold from other types of retail stores, nor shall it be deemed to prevent Developer's Site from being leased, occupied or used for the sale of merchandise

items similar to those which may be sold by ShopKo. For purposes of the foregoing, the ShopKo Site shall be deemed to be "used" if occupied by a party or entity using the building and not closed to the public for the conduct of business for more than 365 days unless such closure is for repair, restoration or remodeling. This restriction may be waived solely by ShopKo in writing by an instrument recorded in the Office of the Register of Deeds in which the Cross-Easement Agreement is recorded. The foregoing restriction shall not affect uses in existence on the Entire Parcel on the date of the recording of this Cross-Easement Agreement in the office of the Register of Deeds for Douglas County, Nebraska.

5. The Parties (i) agree that any building constructed within Lot 1 ShopKo Acres Replat shall not exceed eighteen (18) feet above grade nor exceed four thousand (4,000) square feet in gross building area and shall be architecturally compatible with the improvements now situated on Lot 2 ShopKo Acres Replat and shall be constructed in the location shown on Exhibit C-2 attached, and (ii) acknowledge that any reduction in the parking ratios required under Sections 2.01.7 and 6.03 of the Cross-Easement as a necessary consequence of the construction of the building and site improvements depicted on Exhibit C-2 attached is expressly permitted.


To indicate their consent to this Agreement, the Parties, or their authorized officers or representatives, have signed this document. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and the signature of any party to any counterpart shall be deemed a signature to and may be appended to any other counterpart.

Attest: 

Name: RICHARD D. SCHEPP

Title: SECRETARY

SHOPKO STORES, INC., a  
Minnesota corporation

By:  ST

Name: Dale P. Kramer

Title: President

LERNER OMAHA PARTNERSHIP

By: 

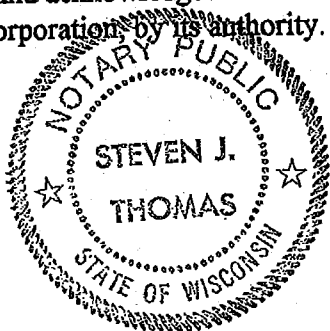
Name: \_\_\_\_\_

Title: Partner

Prepared by and Return to:  
ShopKo Stores, Inc.  
Steven J. Thomas  
700 Pilgrim Way  
Green Bay, WI 54307

STATE OF WISCONSIN )  
 ) SS  
COUNTY OF BROWN )

Personally came before me this 18th day of February, 1998, Dale P. Komer, Richard D. Scheff of ShopKo Stores, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and to me known to be the person who executed the foregoing instrument, and to me know to be such President & Secretary of said corporation and acknowledged that he executed foregoing instrument as such officer as the act of said corporation by its authority.



Steven J. Thomas  
Notary Public, Wisconsin  
My Commission Expires: is permanent

STATE OF NEBRASKA )  
 ) SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 4th day of February, 1998, by Jay R. Lerner, Partner of Lerner Omaha Partnership, a Nebraska General Partnership, on behalf of such Partnership.

Barbara Widman  
Notary Public

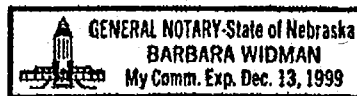


EXHIBIT A

CROSS-EASEMENT AGREEMENT  
(30th & Weber, Omaha, Nebraska)

Lots 1 through 8 inclusive and Lot 13, Block 220; the East 380.00 feet of Block 221; all of Block 222; all of Block 223; including all of 31st Street right-of-way adjacent to said Blocks 220, 221, 222 and 223; the North one-half of Weber Street right-of-way, adjacent to Blocks 220, and 223; all of Hanover Street right-of-way, West of 30th Street for 746.5 feet; and the South one-half thereof, adjacent to the West 30 feet of Lot 7, and all of Lot 8, Block 220, Florence Addition, Douglas County, Nebraska,

Except that part thereof described as follows:

The North 148.0 feet of Block 222 together with the North 148.0 feet of the vacated alley in said Block 222, the North 148.0 feet to the East 63.50 feet of Block 221 and the West 266.5 feet of the East 330.0 feet of Block 221, all in Florence Addition to the City of Omaha, Douglas County, Nebraska together with the North 148.0 feet of vacated 31st Street adjoining said Blocks 222 and 221 and the North 15.0 feet of vacated Hanover Street adjoining the West 266.5 feet of the East 330.0 feet of said Block 221.

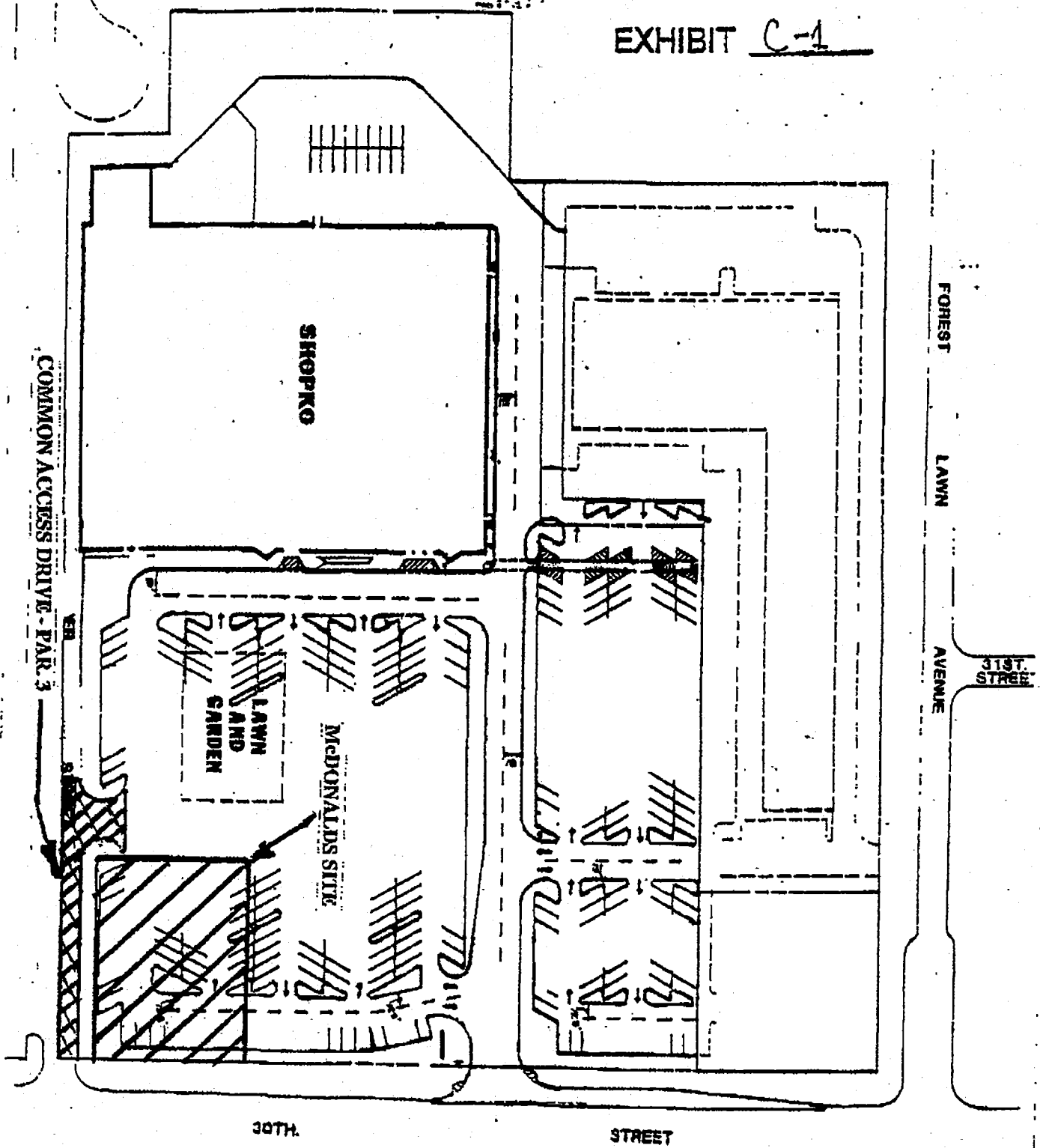
EXHIBIT B

CROSS-EASEMENT AGREEMENT  
(30th & Weber, Omaha, Nebraska)

The North 148.0 feet of Block 222 together with the North 148.0 feet of the vacated alley in said Block 222, the North 148.0 feet to the East 63.50 feet of Block 221 and the West 266.5 feet of the East 330.0 feet of Block 221, all in Florence Addition to the City of Omaha, Douglas County, Nebraska together with the North 148.0 feet of vacated 31st Street adjoining said Blocks 222 and 221 and the North 15.0 feet of vacated Hanover Street adjoining the West 266.5 feet of the East 330.0 feet of said Block 221.



EXHIBIT C-1



071 Omaha V. Ne

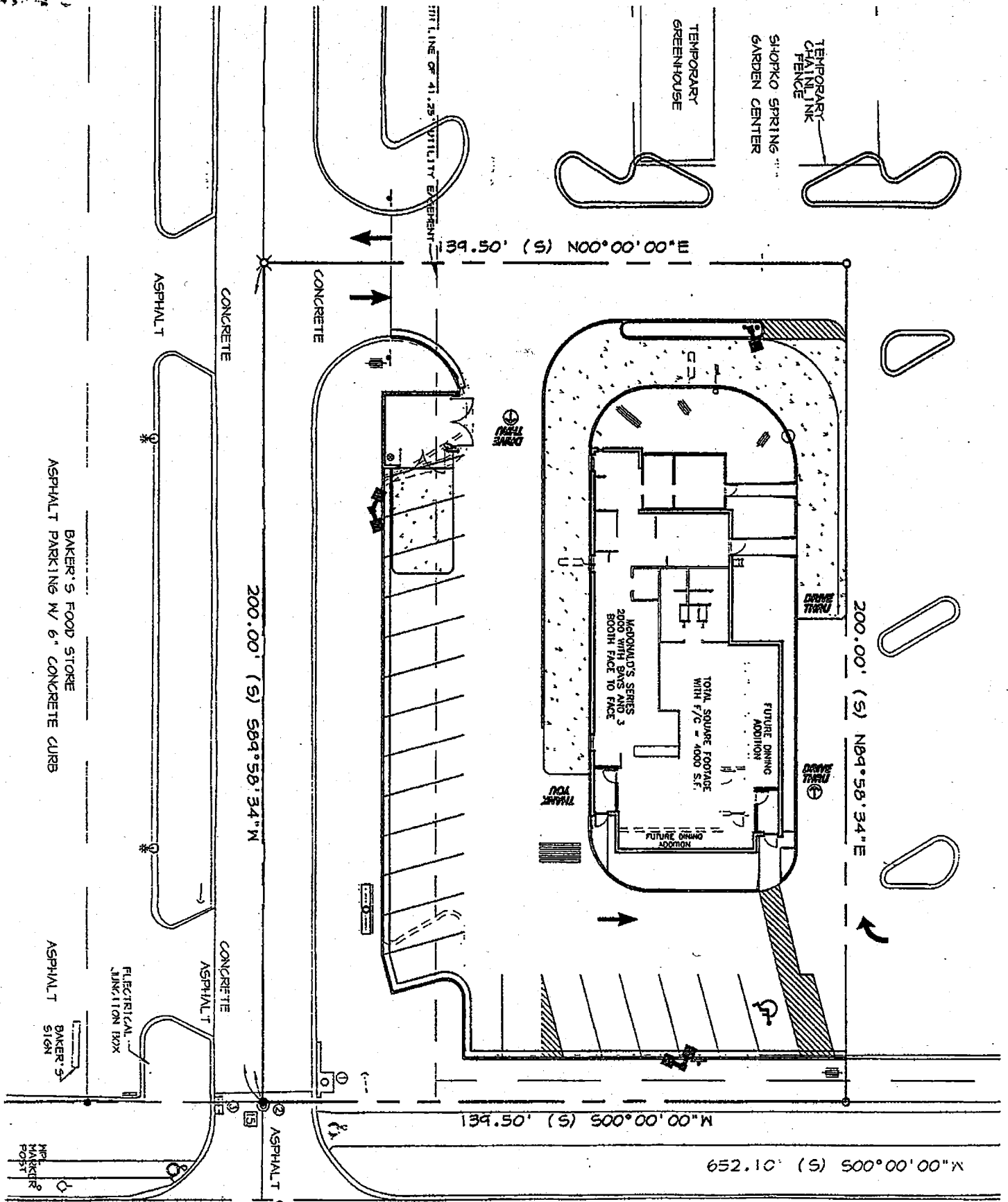


Exhibit C-2

NORTH 30TH STREET

USM  
MH



MISC 2008056891



JUN 09 2008 15:13 P 6

44-35650-Rep. 1.  
 6 FEE 32.00 FB 44-35653-Rep. 2.  
 4 BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP 80  
 DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 6/9/2008 15:13:42.28



2008056891

### SECOND AMENDMENT TO CROSS-EASEMENT AGREEMENT

THIS SECOND AMENDMENT TO CROSS-EASEMENT AGREEMENT (the "Second Amendment") dated May 17, 2008, is between NO FRILLS NORTH 30<sup>TH</sup> REALTY, L.L.C., a Nebraska limited liability company ("No Frills"), and WEBER PLACE LLC, a Nebraska limited liability company ("Weber Place"), successor in interest to LERNER OMAHA PARTNERSHIP, a Nebraska general partnership ("Lerner Omaha"). The following statements are a material part of this Second Amendment.

A. ShopKo Stores, Inc., a Minnesota corporation ("ShopKo"), and LC Development Co., a Nebraska corporation ("LC"), entered into that certain Cross-Easement Agreement dated August 4, 1986 (the "Cross-Easement Agreement") and recorded in Book 784, Page 237, covering the property described on Exhibit "1" and Exhibit "2" attached to the Cross-Easement Agreement and incorporated herein. The property described on Exhibit "1" was replatted into Lot 1 ShopKo Acres, Douglas County, Nebraska ("Lot 1 ShopKo Acres"), and the property described on Exhibit "2" was replatted into Lot 2 ShopKo Acres, Douglas County, Nebraska ("Lot 2 ShopKo Acres") and Lot 3 ShopKo Acres, Douglas County, Nebraska ("Lot 3 ShopKo Acres"). On February 23, 1998, ShopKo and Lerner Omaha, as successor in interest to LC, entered into a certain First Amendment to Cross-Easement Agreement ("First Amendment") recorded in Book 1239, Page 172.

B. The property described on Exhibit "1" attached to the Cross-Easement Agreement or Lot 1 ShopKo Acres was re-subdivided and became Lots 1 and 2, ShopKo Acres Replat (the "Re-Subdivision") and is referred to in the First Amendment individually as Lot 1 Replat and Lot 2 Replat, respectively.

C. Lot 2 Replat and the property described on Exhibit "2" attached to the Cross-Easement Agreement or Lot 2 ShopKo Acres, together with the South 16 feet of Lot 3 ShopKo Acres, have been subdivided into three (3) lots which are now known as Lots 1, 2 and 3, ShopKo Acres Replat 2 (the "Second Re-Subdivision"), and sometimes referred to in this Second Amendment individually as Lot 1 Replat 2, Lot 2 Replat 2 and Lot 3 Replat 2, respectively. No Frills is the record owner of Lot 1 Replat 2 and Lot 2 Replat 2, and Weber Place is the record owner of Lot 3 Replat 2.

After recording, please return to:  
 John Q. Bachman  
 PANSING HOGAN ERNST & BACHMAN LLP  
 10250 Regency Circle, Suite 300  
 Omaha, NE 68114

105057

D. The Parties being record owners of the Entire Parcel, as that term is defined in the Cross-Easement Agreement, desire to amend the Cross-Easement Agreement.

NOW, THEREFORE, in consideration of the foregoing preambles which are repeated in their entirety in this portion of this Second Amendment, the covenants contained in this Agreement and other good and valuable consideration, the receipt of which is acknowledged, the Cross-Easement Agreement is amended as follows:

1. REVISION OF THE SITE PLAN.

The Parties agree to revise the Revised Site Plans, attached to the First Amendment as Exhibits C-1 and C-2 (the "Revised Site Plans"), to permit the Second Re-Subdivision with respect to Lot 2 Replat, Lot 2 ShopKo Acres, and the South 16 feet of Lot 3 ShopKo Acres. The Revised Site Plans shall be revised and replaced with the Second Revised Site Plans attached hereto and incorporated herein as Exhibits R-1 and R-2.

2. PARKING EASEMENTS.

Article 2.01.7 of the Cross-Easement Agreement is hereby deleted in its entirety and replaced as follows:

2.01.7. Parking Easements. Non-exclusive easements in and to the respective parking lots of the Owners as constituted from time to time for (i) vehicular and pedestrian access to and from the various parcels comprising the Entire Parcel, and (ii) vehicular parking. The Parties acknowledge that the parking spaces currently existing on the Entire Parcel, subject to revision with the improvements and development of Lot 2, ShopKo Acres Replat 2, are adequate for the Parties' intended purposes.

3. DEVELOPMENT OF LOT 2 REPLAT 2.

The Parties (i) agree that any building constructed within Lot 2, ShopKo Acres Replat 2 shall not exceed eighteen (18) feet above grade nor exceed four thousand (4,000) square feet in gross building area, and shall be architecturally compatible with the improvements now situated on Lot 1, ShopKo Acres Replat 2; and (ii) acknowledge that any reduction in parking ratios required under Article 2.01.7 (as amended herein) and Article 6.03 of the Cross-Easement Agreement as a necessary consequence of the construction of a building and site improvements on Lot 2, ShopKo Acres Replat 2 is expressly permitted.

4. RATIFICATION.

Except as modified by this Second Amendment, the Cross-Easement Agreement and the First Amendment are hereby ratified and affirmed.

To indicate their consent to this Second Amendment, the Parties or their authorized officers or representatives, have signed this document. This Second Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and the signature of any party to any counterpart shall be deemed a signature to and may be appended to any other counterpart.

NO FRILLS NORTH 30<sup>TH</sup> REALTY, L.L.C.,  
a Nebraska limited liability company

By: *Richard Juro*  
Richard Juro, Manager

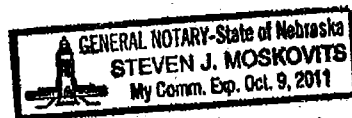
WEBER PLACE LLC, a Nebraska limited liability  
company

By: *[Signature]*  
Name: *Jay R. Lerner*  
Title: *Member*

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of May, 2008, by RICHARD JURO, Manager of NO FRILLS NORTH 30<sup>TH</sup> REALTY, L.L.C., a Nebraska limited liability company, on behalf of such limited liability company.

*[Signature]*  
Notary Public



STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of June,  
2008, by Jay R. Lerner, Member of WEBER PLACE  
LLC, a Nebraska limited liability company, on behalf of such limited liability company.

Barbara Widman  
Notary Public



EXHIBIT R-1

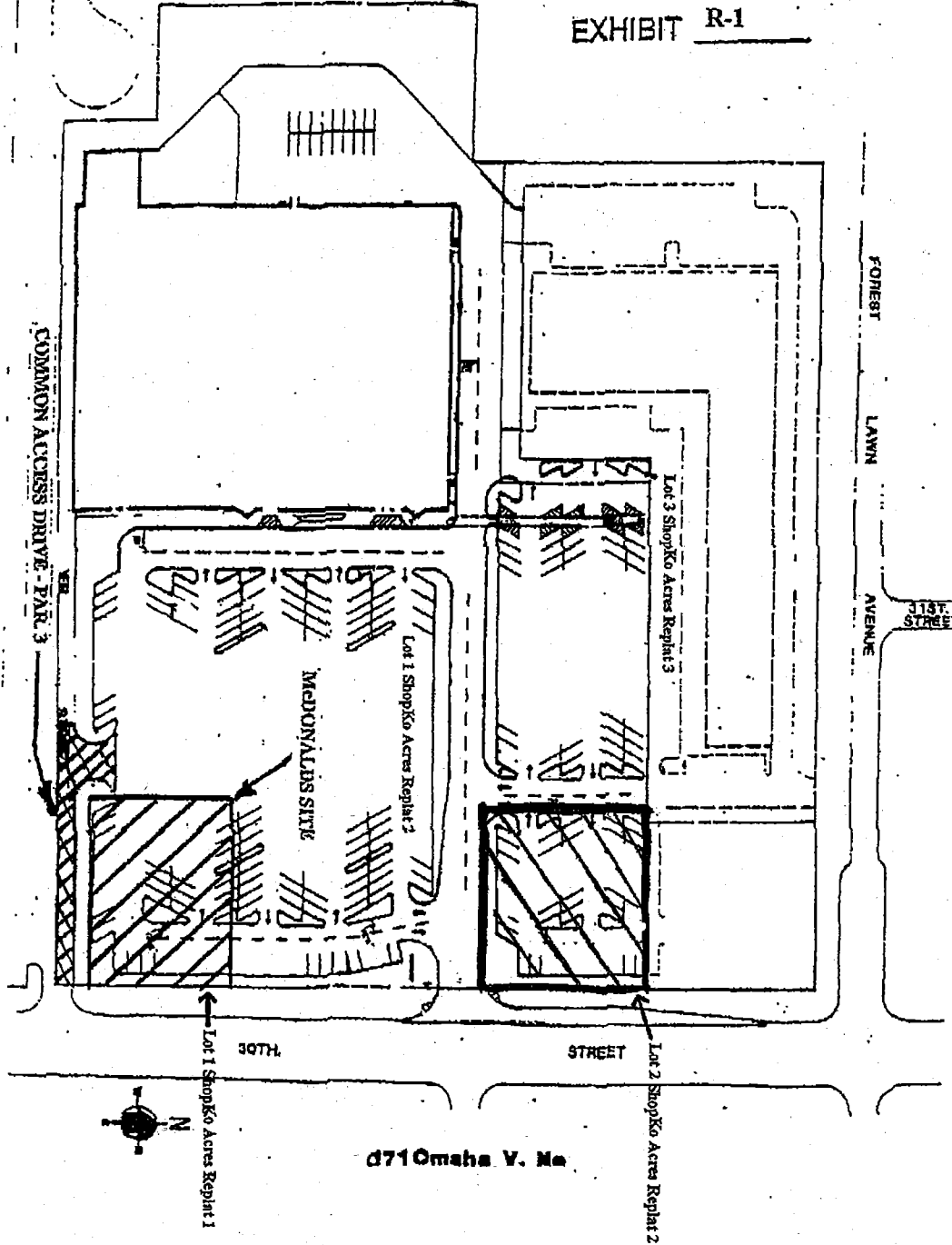
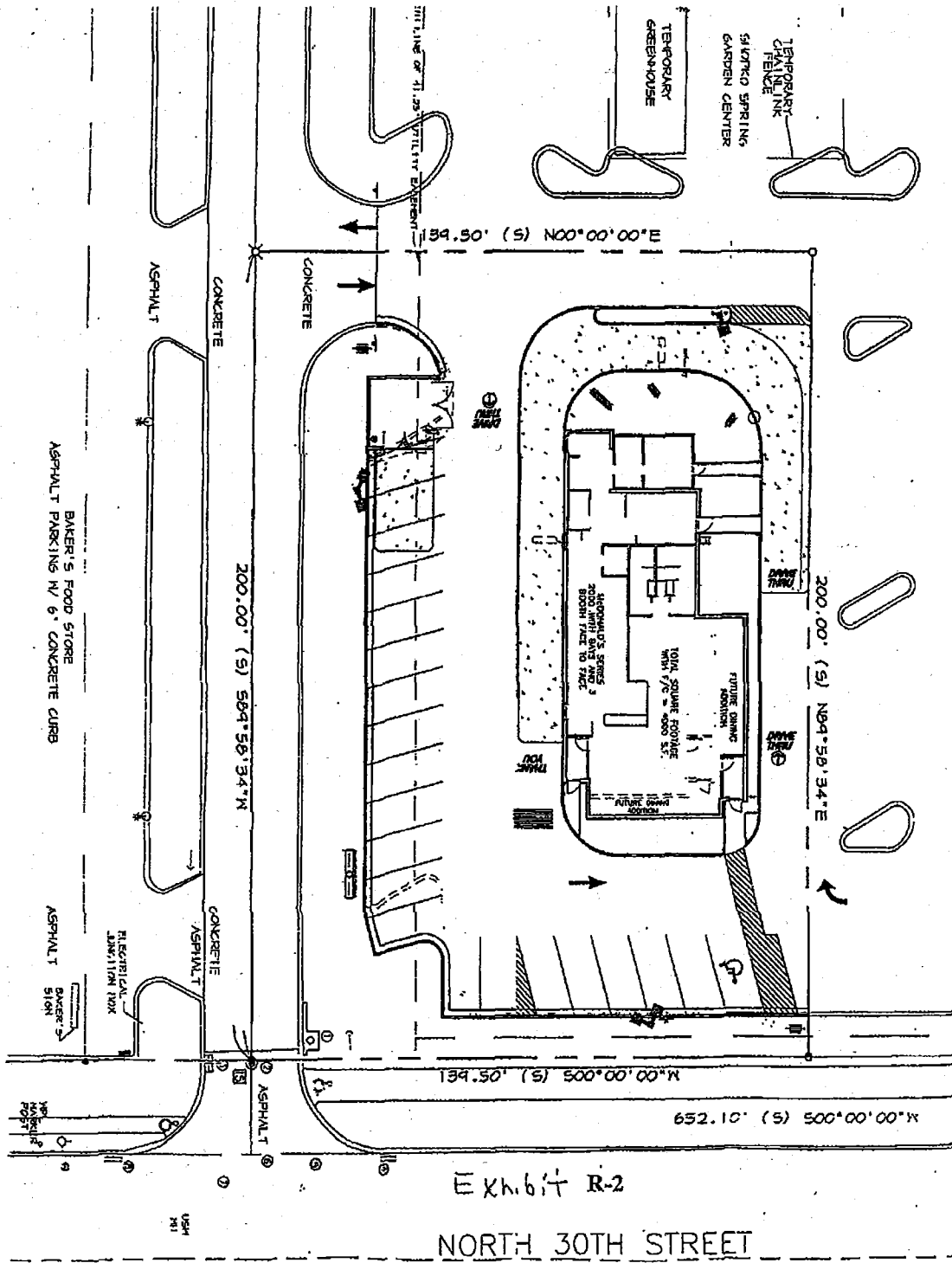


EXHIBIT R-2







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### THIRD AMENDMENT TO CROSS-EASEMENT AGREEMENT

THIS THIRD AMENDMENT TO CROSS-EASEMENT AGREEMENT (the "Third Amendment") dated June 12, 2009, is between NORTH 30<sup>TH</sup> REALTY, L.L.C., a Nebraska limited liability company ("North 30th"), and WEBER PLACE LLC, a Nebraska limited liability company ("Weber Place"), successor in interest to LERNER OMAHA PARTNERSHIP, a Nebraska general partnership ("Lerner Omaha"). The following statements are a material part of this Third Amendment.

A. ShopKO Stores, Inc., a Minnesota corporation ("ShopKo"), and LC Development Co., a Nebraska corporation ("LC"), entered into that certain Cross-Easement Agreement dated August 4, 1986 (the "Cross-Easement Agreement") and recorded in Book 784, Page 237, covering the property described on Exhibit "1" and Exhibit "2" attached to the Cross-Easement Agreement and incorporated herein. The property described on Exhibit "1" was replatted into Lot 1 ShopKo Acres, Douglas County, Nebraska ("Lot 1 ShopKo Acres"), and the property described on Exhibit "2" was replatted into Lot 2 ShopKo Acres, Douglas County, Nebraska ("Lot 2 ShopKo Acres") and Lot 3 ShopKo Acres, Douglas County, Nebraska ("Lot 3 ShopKo Acres"). On February 23, 1998, ShopKo and Lerner Omaha, as successor in interest to LC, entered into a certain First Amendment to Cross-Easement Agreement ("First Amendment") recorded in Book 1239, Page 172. On May 17, 2008, North 30<sup>th</sup> and Weber Place entered into a certain Second Amendment to Cross-Easement Agreement recorded as Instrument No. 2008056891 in the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska.

B. The property described on Exhibit "1" attached to the Cross-Easement Agreement or Lot 1 ShopKo Acres was resubdivided and became Lots 1 and 2, ShopKo Acres Replat (the "Re-Subdivision") and is referred to in the First Amendment and individually as Lot 1 Replat and Lot 2 Replat, respectively. 44-35650

C. Lot 2 Replat and the property described on Exhibit "2" attached to the Cross-Easement Agreement or Lot 2 ShopKo Acres, together with the South 16 feet of Lot 3 ShopKo Acres, have been subdivided into three (3) lots which are now known as Lots 1, 2 and 3, ShopKo Acres Replat 2 (the "Second Re-Subdivision"), and are sometimes referred to in the 44-35650 Second Amendment and this Third Amendment individually as Lot 1 Replat 2, Lot 2 Replat 2 and Lot 3 Replat 2, respectively. North 30<sup>th</sup> is the record owner of Lot 1 Replat 2 and Lot 2 Replat 2, and Weber Place is the record owner of Lot 3 Replat 2. 44-35650

D. The Parties being record owners of the Entire Parcel, as that term is defined in the Cross-Easement Agreement, desire to amend the Cross-Easement Agreement as it pertains solely to Lot 2 Replat 2 with respect to the height restriction set forth in Section 3 of the Second Amendment.

RETURN TO:  
SPENCE TITLE SERVICES  
BOX 16 -

TA-56220

NOW, THEREFORE, in consideration of the foregoing preambles which are repeated in their entirety in this portion of this Third Amendment, the covenants contained in this Agreement and other good and valuable consideration, the receipt of which is acknowledged, the Cross-Easement Agreement is amended as follows:

1. LOT 2 REPLAT 2 HEIGHT RESTRICTION.

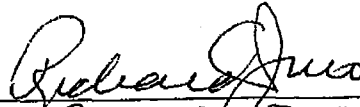
The height restriction of eighteen (18) feet as set forth in Section 3 of the Second Amendment is hereby amended to a height restriction not to exceed twenty (20) feet on Lot 2 Replat 2.

2. RATIFICATION.

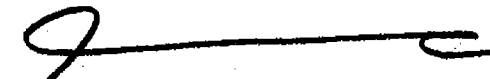
Except as modified by this Third Amendment, the Cross-Easement Agreement and the First Amendment and Second Amendment are hereby ratified and affirmed.

To indicate their consent to this Third Amendment, the Parties or their authorized officers or representatives, have signed this document. This Third Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and the signature of any party to any counterpart shall be deemed a signature to and may be appended to any other counterpart.

NORTH 30<sup>TH</sup> REALTY, L.L.C.,  
a Nebraska limited liability company

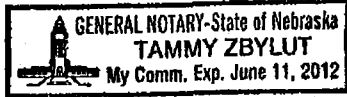
By:   
Name: RICHARD JURO  
Title: MANAGER

WEBER PLACE LLC, a Nebraska limited liability company

By:   
Name: SALVADOR CARTA  
Title: VICE President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 12 day of June, 2009, by Richard Juro, MANAGER of NORTH 30<sup>TH</sup> REALTY, L.L.C., a Nebraska limited liability company, on behalf of such limited liability company.



Tammy Zbylut  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 12 day of June, 2009, by Salvadore Carta, Vice President of WEBER PLACE LLC, a Nebraska limited liability company, on behalf of such limited liability company.

Tracy Thernka 6/26/2011  
Notary Public



101 So 108 Ave.  
One Old Mill

This indenture, Made this 18th day of July, A. D., 1986  
between Shopko Stores, Inc.

BOOK 1784 PAGE 542

a Corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Green Bay Wisconsin, party of the first part, and L.C. Development Co., a Nebraska Corporation

NEBRASKA COUNTY CLERK  
STAMP TAX  
Date 8-5-86  
\$ 377.00 By [Signature]

party of the second part.  
Witnesseth, That the said party of the first part, for and in consideration of the sum of One dollar (\$1.00) and other good and valuable consideration

to it paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, affirmed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey and confirm unto the said party of the second part, its heirs and assigns forever, the following described real estate, situated in the County of Douglas and State of Nebraska, to wit:

The North 148.0 feet of Block 222 together with the North 148.0 of the vacated alley in said Block 222, the North 148.0 feet of the East 63.50 feet of Block 221 and the West 266.5 feet of the East 330.0 feet of Block 221, all in Florence Addition to the City of Omaha, Douglas County, Nebraska together with the North 148.0 feet of vacated 31st Street adjoining said Blocks 222 and 221 and the North 15.0 feet of vacated Hanover Street adjoining the West 266.5 feet of the East 330.0 feet of said Block 221.

Subject to municipal and zoning ordinances and covenants, conditions, easements restrictions and reservations of record.  
Grantee, by acceptance hereof, agrees to join with Grantor in executing the Plat of "Shopko Acres", which Plat includes the parcel herein conveyed. This conveyance shall be binding upon the Grantee herein and its successors and assigns.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, either in possession or expectancy of, in and to the above bargained premises, and their hereditaments and appurtenances.

To have and to hold the said premises as above described with the hereditaments and appurtenances, unto the said party of the second part, and to its heirs and assigns FOREVER.

And the said Shopko Stores, Inc. party of the first part, for itself and its successors, does covenant, grant, bargain and agree to and with the said party of the second part, its heirs and assigns, that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, its heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, by, through or under said Shopko Stores, Inc.

party of the first part, and none other, it will forever WARRANT and DEFEND.  
In Witness Whereof, the said Shopko Stores, Inc. party of the first part, has caused these presents to be signed by William J. Tyrrell its President, and countersigned by William C. Hunt its Secretary, at Green Bay Wisconsin, and its corporate seal to be hereunto affixed, this 18th day of July, A. D., 1986.

SIGNED AND SEALED IN PRESENCE OF  
[Signature]

Shopko Stores, Inc.  
William J. Tyrrell, President  
William C. Hunt, Secretary

STATE OF WISCONSIN,  
Brown County, ss.  
Personally came before me, this 12th day of July, A. D., 1986, William J. Tyrrell President, of the above named Corporation, to me known to be the person who executed the foregoing instrument, and to me known to be such President and Secretary of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said Corporation, by its authority.

THIS INSTRUMENT WAS DRAFTED BY  
Colin D. Pietz  
Attorney at Law  
Wausau, Wisconsin

NOTARY PUBLIC  
PATRICK J. MANOR  
Brown County, Wis.  
My commission (expires) (th) 1/21/90

Patricia J. Manor  
Notary Public

(Section 29.31 (1) of the Wisconsin Statutes provides that all instruments to be recorded shall have plainly printed or typewritten thereon the names of the grantor, grantee, witness and notary. Section 29.513 similarly requires that the name of the person who, or govern-

9204 Deed B

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REG. CLERK OF DEEDS  
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Taco Bell 3481  
29

BOOK 812 PAGE 208

CROSS EASEMENT AGREEMENT

This is a Cross Easement Agreement dated as of April 23, 1987, between Lerner Omaha Partnership, a Nebraska General Partnership (the "Partnership") and Taco Bell Corp., a California Corporation (the "Purchaser").

PRELIMINARY STATEMENT

The Partnership is the record owner of the Parcel of Real Estate described on Exhibit "A" annexed (the "Shopping Center").

The Partnership's predecessor in interest, L C Development Co., a Nebraska Corporation, and ShopKo Stores, Inc., a Minnesota Corporation ("ShopKo") entered into a Cross-Easement Agreement dated August 4, 1986 and recorded on August 5, 1986 in Book 784 Page 237 of Miscellaneous Records of the Register of Deeds of Douglas County Nebraska (the "ShopKo Cross-Easement Agreement") with respect to the parcels of Real Estate more particularly described in the ShopKo Cross-Easement Agreement.

Contemporaneously with the execution of this Agreement the Partnership conveyed to the Purchaser the Parcel of Real Estate described on Exhibit "A" annexed (the "Outlot").

As part of the Purchaser's acquisition of the Outlot, the Partnership and the Purchaser have created mutual Cross Easements affecting their parcels and have imposed certain restrictions regarding the use of the Outlot and the Shopping Center.

For the purpose of (i) providing reciprocal easements for pedestrian and vehicular ingress and egress, (ii) establishing certain use restrictions governing the Outlot and the Shopping Center, and (iii) evidencing other agreements designed to create a unified shopping center complex, the Partnership and Purchaser have executed and exchanged this Agreement.

17300 Taco Bell

BR 812 N 91-495794610 FEE 51.00  
PO 208-217 N 91-495 DEL MC 508.0  
TERMS AND CONDITIONS comp F/B 44-35655

In consideration of the foregoing Preliminary Statement and other valuable consideration, the receipt and adequacy of which is acknowledged, the Partnership and Purchaser agree as follows:

I. Definitions

A. The term "Occupant" shall mean and include each of the parties signatory to this Agreement (the "Parties"), their respective heirs, personal representatives, transferees, grantees, successors, assigns, mortgagees, and any person who from time to time shall be entitled to the use and occupancy of space located within the Shopping Center or the Outlot or any portion of either under any lease, sublease, easement, license, concession agreement, or other instrument or arrangement under which such rights are acquired.



B. The term "Building Area" means and includes all areas of the Shopping Center and the Outlot upon which Buildings or structures are erected.

C. The term "Common Areas" shall mean and include such areas of the Shopping Center and the Outlot which are from time to time devoted primarily for parking, approaches, exits, entrances, sidewalks, incidental and interior roadways, and service roads.

D. The term "Permittees" shall mean all Occupants and all customers, employees, agents, licensees, and business invitees of the Occupants.

E. The term "Shopping Center" shall mean the parcel of real estate more particularly described on Exhibit "A" annexed to this Agreement.

F. The term the "Outlot" shall mean the parcel of real estate more particularly described on Exhibit "A" annexed to this Agreement.

## II. Transfer of Easement Rights

To the extent necessary to confirm to the Purchaser the Easement rights and benefits conveyed and granted to the Purchaser under this Cross-Easement Agreement which are intended to be appurtenant to the Outlot, the Partnership hereby assigns and transfers to the Purchaser the easements, rights, and benefits created under the ShopKo Cross Easement Agreement as they relate and are appurtenant to the Outlot, expressly reserving to the Partnership and its transferees, successors and assigns all rights, benefits and easements under the ShopKo Cross Easement Agreement.

## III. Access Easements

A. Each of the Parties hereby grants to the Occupants and Permittees a nonexclusive easement over and upon those portions of their respective parcel which constitute, from time to time, Common Areas, for the purposes of pedestrian and vehicular ingress, egress, passage and traffic upon, over, across and through such Common Areas.

B. The Parties agree that free and unimpeded access between the Shopping Center and the Outlot shall be maintained at all times. No hedge, fence, wall or similar barrier will be constructed between the respective parcels, except for (i) curbing installed and designed to assist with traffic direction and control, and (ii) temporary barriers as may be reasonably necessary from a legal standpoint to prevent a public dedication of the Common Areas.

C. The Partnership agrees that the Outlot is the only outparcel that shall be operated or developed in the Shopping Center.

IV. Maintenance of Common Areas and Improvements

Each Party shall at its sole cost and expense repair, replace, and maintain the Common Areas and all buildings and structures within Building Areas (the "Improvements") from time to time located on their respective parcels. Such repairs, replacements and maintenance shall include, but shall not be limited to:

(i) 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 used or such substitutes as will in all material respects be equal to such materials in quality, appearance and durability;

(ii) Maintenance, repair and replacement of all Improvements so that the same shall appear in good condition and repair at all times. Nothing in this paragraph shall be construed to preclude the demolition of an Improvement or to obligate either party to restore any Improvement destroyed by fire or other casualty; however, if such Improvement is not replaced then it shall be razed within a reasonable time and all debris removed and the areas seeded;

(iii) Maintenance and care of all grass, shrubs and landscaping, including but not limited to, the fertilizing, watering, mowing and trimming thereof;

(iv) Removal from the Common Areas of papers, debris, ice, snow, refuse and other hazards to persons using such areas;

(v) Maintenance and replacement of parking area entrances and exits, and all parking areas as may be reasonably required from time to time.

(vi) Maintenance of all lighting equipment and facilities, and identification signs.

In the event that either Party shall fail to comply with the provisions of this Article IV, such Party being referred to as the "Defaulting Party", the other Party, referred to as the "Nondefaulting Party," may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies, referred to as the "Deficiencies," in the Defaulting Party's performance. The Defaulting Party shall have thirty (30) days after receipt of such notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within such thirty (30) day period, and thereafter to proceed diligently to complete the correction of the Deficiencies. In the event the Defaulting Party shall unreasonably fail or refuse to timely correct or to begin to correct the Deficiencies, as the case may be, the Nondefaulting Party may, at its option, correct the Deficiencies. In the event the

Nondefaulting Party shall exercise such option and shall correct the Deficiencies, the Defaulting Party, promptly upon receipt from the Nondefaulting Party of an itemized invoice for the reasonable costs and expenses (including reasonable attorneys fees) incurred by the Nondefaulting Party in correcting the Deficiencies, shall pay all such costs together with interest thereon at the rate of fourteen percent (14%) from the date of such invoice to the date of payment to the Nondefaulting Party.

The record owner of the Outlot shall pay to the record owner of the Shopping Center or its agent within thirty (30) days of receipt of invoice from the record owner of the Shopping Center or its agent, a sum equal to thirteen and five - tenths percent (13.5%) of all reasonable costs and expenses incurred by the record owner of the Shopping Center in connection with items (iv) and (v) of this Article IV. In the event such invoice is not paid when due, the amount of such invoice shall accrue interest at the rate of twelve (12%)/from the date of such invoice to the date of payment. per year

#### V. Use Restrictions

A. The Occupant of the Outlot agrees to conduct its business from the Outlot at all times in a reputable manner. The Occupant of the Outlot shall promptly comply with all laws and ordinances and lawful orders and regulations affecting the Outlot and its use and occupancy.

The Occupants and Permittees of the Outlot shall at all times comply with Article VI of the ShopKo Cross Easement Agreement and shall not permit any use of the Outlot which will violate the provisions of such Article VI.

B. The Partnership agrees for a period of twenty (20) years from the date of this Agreement not to lease any space within the Shopping Center or within any property presently owned or hereafter acquired by the Partnership within 1500 feet of the Shopping Center for a fast food Mexican Restaurant.

The Parties agree that the Improvements to be constructed on the Outlot (i) shall be limited to a single building, one (1) story in height not exceeding seventeen (17) feet from ground level; (ii) shall contain no more than 3,500 square feet of gross building area; and (iii) shall not include signs attached to the building which extend beyond the roof line of such building.

#### VI. Nature of Easements

A. Each and all of the easements and rights granted or created in this Agreement are appurtenances to the Shopping Center and the Outlot and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such parcels or portion thereof. For the purposes of such easements and rights, the

Shopping Center and the Outlot shall constitute the dominant estates, and the specific areas of portions of the Shopping Center and the Outlot which are burdened by such easements and rights shall constitute the servient estates.

B. Each and all of the easements, covenants, restrictions and provisions contained in this Agreement:

(i) are made for the direct, mutual and reciprocal benefit of the Occupants and Permittees of the Shopping Center and the Outlot;

(ii) create mutual equitable servitudes upon each of the respective parcels in favor of the other parcel;

(iii) shall bind every person, association or entity having any fee, land contract, leasehold or other interest of any kind in either of the Parcels, or any portion thereof, at any time or from time to time to the extent that such parcel or portion thereof is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on or executed as to such Parcel or portion thereof.

C. The acceptance of any transfer or conveyance of title from any Party to this Agreement or its respective heirs, personal representatives, successors or assigns of all or any part of its interest in its respective Parcel shall be deemed to:

(i) require the prospective grantee to agree not to use, occupy or allow any Occupant or Permittee of such parcel or portion thereof to use or occupy such parcel or portion thereof in any manner which would constitute a violation or breach of any of the easements, restrictions, provisions, and covenants contained in this Agreement or in the ShopKo Cross Easement Agreement; and

(ii) require the prospective grantee to assume and agree to perform each and all of the obligations of the conveying party under this Agreement with respect to any such Parcel or portion thereof which will be conveyed to such prospective grantee, in each instance by a written instrument executed, acknowledged and recorded in the office of the recorder of deeds of the county in which the Shopping Center is located. Written notice of each such conveyance and agreement shall be served by the conveying party upon each party or entity then owning record fee title to any portion of the Shopping Center. Such notice shall be accompanied by a copy of the conveyance and assumption agreement. Upon such assumption by the new grantee and the service of proper notice, the conveying party shall thereupon be released from any future obligation under this Agreement with respect to the parcel or portion thereof so conveyed to such grantee in compliance

with the Agreement, but shall not be relieved from past obligations. The Parties agree to execute and deliver any and all documents or assurances necessary or desirable to evidence such release for the purpose of recording or otherwise. A grantee of a parcel or portion thereof comprising the Shopping Center or of the Outlot or portion thereof who is mortgagee or beneficiary under a deed of trust having a lien interest in such parcel or portion thereof shall have no personal liability or responsibility under this Agreement until and unless such mortgagee or beneficiary acquires record ownership or actually takes possession of such parcel or portion thereof.

#### VII. Enforcement

A. In the event of any violation by any Party, Permittee, or Occupant of any of the terms, restrictions, covenants and conditions of this Agreement, the other Party, or its respective heirs, personal representatives, successors or assigns, as the case may be, shall have in addition to the right to collect damages, 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 all record owners of the parcels or portions thereof comprising the Shopping Center and the Outlot and to the persons or entity guilty of such violation or threatened violation.

B. A Party will not be in default under this Agreement unless such Party shall have been served with a written notice specifying the default and shall fail to cure such default within such notice period, or shall fail to commence to cure the default within such notice period, and thereafter, to proceed diligently to complete the curing of such default.

C. It is expressly agreed that a breach of this Agreement shall not entitle any Party to cancel, rescind or otherwise terminate this Agreement, but this limitation shall not, in any manner, emit or affect any other rights or remedies which the Parties may have by reason of any breach of this Agreement, including the recovery of reasonable attorneys' fees to the extent permitted by law.

#### VIII. Duration and Termination

The easements, covenants, conditions, restrictions and other provisions of this Agreement shall be perpetual. This Agreement, or any easement, covenant, restriction or undertaking contained herein, may be terminated, extended, modified, supplemented or amended as to any or all of the parcels or portions thereof comprising the Shopping Center and the Outlot only by the recordation of the appropriate document in the office of the recorder of deeds of the county in which the Shopping Center is located, executed by all of the record owners, as of the date of such document, of the parcels comprising the Shopping Center and the Outlot.

Nothing contained in the Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Shopping Center to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes expressed herein.

IX: Miscellaneous

A. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, personal representatives, successors and assigns.

B. No waiver of any breach of any of the easements, covenants or agreements contained in this Agreement shall be construed as or constitute a waiver of any other breach, or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other covenant or agreement.

C. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

D. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for the other Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

E. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

F. All notices under this Agreement shall be deemed effective on the date mailed by U. S. mail, certified, return receipt requested, as follows (unless notice of a change of address is similarly served upon the other Party):

(i) If to the Partnership:

Lerner Omaha Partnership  
One Old Mill  
101 South 108th Avenue  
Omaha, NE 68154

(ii) If to the Purchaser:

Taco Bell Corp.  
17901 Von Karman Avenue  
Irvine, CA 92714  
Attention: Real Estate Dept.

Executed and dated as of the year and day first above written.

Lerner Omaha Partnership,

By Jay R. Lerner, Partner

By Salvadore Carta, Partner

Taco Bell Corporation,  
a California Corporation

By JAMES A. CHRONLEY  
Title SENIOR VICE PRESIDENT

APPROVED AS TO  
FORM & CONTENT  
*[Signature]*

STATE OF NEBRASKA )  
                          ) ss.  
COUNTY OF DOUGLAS)

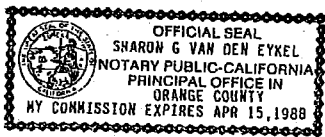
The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of April, 1987 by Jay R. Lerner and Salvadore Carta, Partners of Lerner Omaha Partnership, a Nebraska general partnership, on behalf of the partnership.



Bobbi Thompson  
Notary Public

STATE OF CALIFORNIA )  
                          ) ss.  
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of APRIL, 1987 by JAMES A. CHRONLEY, SE. VICE PRESIDENT of Taco Bell Corporation, a California corporation, on behalf of the corporation.



Sharon G. Van Den Eykel  
Notary Public  
SHARON G. VANDENEYKEL

EXHIBIT A

Shopping Center Legal Description

The North 148.0 feet of Block 222 together with the North 148.0 feet of the vacated alley in said Block 222, the North 148.0 feet to the East 63.50 feet of Block 221 and the West 266.5 feet of the East 330.0 feet of Block 221, all in Florence Addition to the City of Omaha, Douglas County, Nebraska together with the North 148.0 feet of vacated 31st Street adjoining said Blocks 222 and 221 and the North 15.0 feet of vacated Hanover Street adjoining the West 266.5 feet of the East 330.0 feet of said Block 221, except the following parcel:

Lots 1 and 4 and one half of the vacated alley adjoining on the West, all in Block 222, Florence Addition to the City of Omaha, Douglas County, Nebraska as surveyed, platted and recorded.

The Shopping Center Parcel designated as Parcel A on the survey annexed to this Exhibit A is also described as :

Lot 2 and the Southerly 16 feet of Lot 3 in ShopKo Acres, a Subdivision in the City of Omaha, Douglas County, Nebraska.

Outlot Legal Description

Lots 1 and 4 and one half of the vacated alley adjoining on the West, all in Block 222, Florence Addition to the City of Omaha, Douglas County, Nebraska as surveyed, platted and recorded.

The Outlot designated on Parcel B on the survey annexed to this Exhibit A is also described as:

All of Lot 3 except the Southerly 16 feet thereof in ShopKo Acres, as platted and recorded in Douglas County, Nebraska.

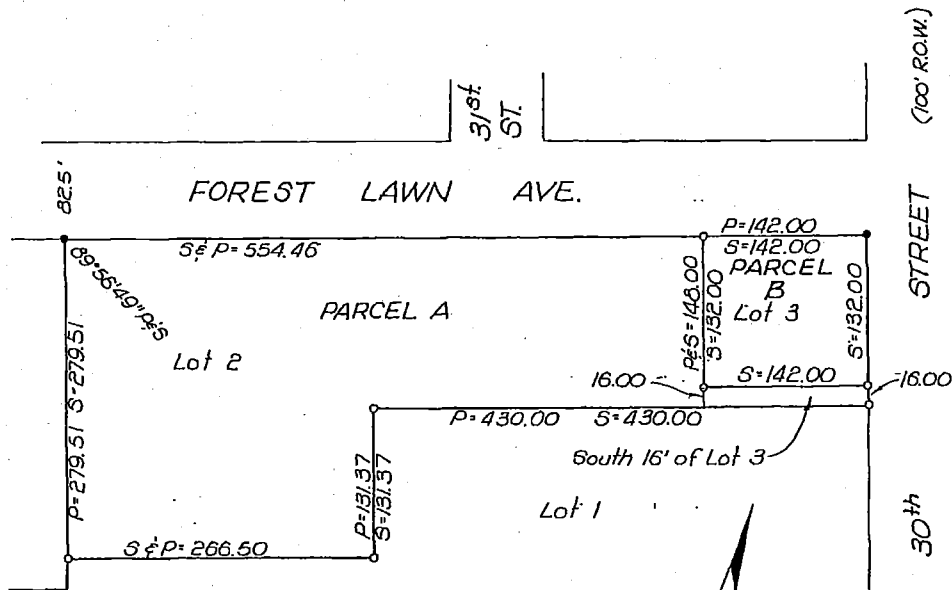


To The Office of  
County Surveyor and Engineer  
Douglas County

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description  
PARCEL A: LOT 2 TOGETHER WITH THE SOUTH 16.00 FEET OF LOT 3, SHOPKO ACRES, AS PLATTED AND RECORDED, DOUGLAS COUNTY, NEBRASKA.  
PARCEL B: LOT 3 EXCEPT THE SOUTH 16.00 FEET OF LOT 3, SHOPKO ACRES, AS PLATTED AND RECORDED, DOUGLAS COUNTY, NEBRASKA.



● = Corners Found (3/4" Pinch Top Pipe)  
○ = Corners Set (3/4" Pinch Top Pipe)  
P = Plat Dimension  
S = Survey Dimension

Scale: 1" = 100'

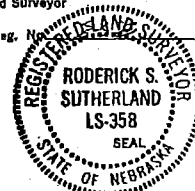
*Roderick S. Sutherland*  
Signature of Land Surveyor

DATE RECEIVED: \_\_\_\_\_ Date: 4-2-87 Reg. No. \_\_\_\_\_

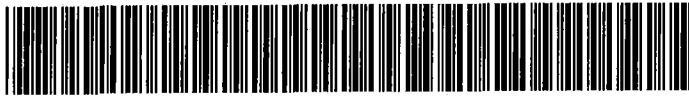
THE SCHEMMER ASSOCIATES INC.  
ARCHITECTS - ENGINEERS - PLANNERS

OFFICIAL ADDRESS: \_\_\_\_\_

BLDG. PERMIT NO. \_\_\_\_\_



"Attachment to Exhibit A"



MISC 2016031925



MAY 02 2016 12:44 P 9

Fee amount: 58.00  
FB: 44-35653  
COMP: SB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
05/02/2016 12:44:29.00



2016031925

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Space above reserved for Recorder of Deeds certification :

Title of Document: First Amendment to Cross Easement Agreement

Date of Document: April 14, 2016

Grantor(s): Weber Place Baceline, LLC, a Colorado limited liability company

Grantee(s): Taco Bell Corp., a California corporation

Grantee's Mailing Address: 1 Glen Bell Way, Irvine, CA 92618

Legal Description: See Attached "Exhibit A"

Reference Document: Book 812 Page 208

L20154764 Chicago Title NS

(FOR INDEXING PURPOSES ONLY)

FIRST AMENDMENT TO  
CROSS EASEMENT AGREEMENT

TB 3481

THIS FIRST AMENDMENT TO CROSS EASEMENT AGREEMENT ("Amendment") is dated as of April 14, 2016 ("Effective Date") by and between WEBER PLACE BACELINE, LLC, a Colorado limited liability company ("Weber Place"), successor in interest to Lerner Omaha Partnership, and TACO BELL CORP., a California corporation ("Taco Bell").

RECITALS

- A. Weber Place is the record owner of the Parcel of Real Estate described on Exhibit "A" attached hereto (the "Shopping Center").
- B. Taco Bell is the record owner of the Parcel of Real Estate described on Exhibit "B" attached hereto (the "Outlot").
- C. Weber Place and Taco Bell entered into a Cross Easement Agreement dated April 23, 1987 recorded in Book 812, Page 208 (the "Cross Easement").
- D. Weber Place and Taco Bell desire to modify the Cross Easement.

AMENDMENT

- 1. This Amendment is effective as of the Effective Date.
- 2. The words used in this Amendment have the same meaning as in the Cross Easement.
- 3. Section V. B. is deleted in its entirety and replaced with the following:

"B. The Parties agree that the Improvements constructed on the Outlot (i) shall be limited to a single building, one (1) story in height not exceeding seventeen (17) feet from ground level; (ii) shall contain no more than 3,500 square feet of gross building area; and (iii) shall not include signs attached to the building which extend beyond the roof line of such building.

Notwithstanding the foregoing, if the Occupant of the Outlot elects to construct the Improvements located thereon substantially in accordance with the site plan depicted on Exhibit "C" attached hereto, then the height restriction set forth in clause (i) above shall be increased to a maximum of twenty-two (22) feet from ground level, with the Bell tower not to exceed twenty-four (24) feet from ground level, provided that (a) the building is consistent with the current design standards for a Taco Bell quick service restaurant, (b) the trees marked "Remove" on Exhibit C are removed in connection with

such construction, and the location of such trees remains free of any objects obstructing the view of the Shopping Center, and (c) such construction is commenced on or prior to December 31, 2016.”

4. The following is hereby added as Section V.C immediately following Section V.B:

“C. Taco Bell agrees that construction on the Outlot shall comply with the following:

(i) Taco Bell shall comply with all laws, rules and regulations, orders and ordinances of the City, County, State and Federal governments or any department thereof, and the provisions of this Agreement as the same may pertain to such construction.

(ii) All such work shall be completed with due diligence, so as to minimize interference with the operations of the Shopping Center and the occupants thereof.

(iii) Such work shall not obstruct the free flow of pedestrian or vehicular traffic within and to and from the Shopping Center, except for any reasonably necessary construction barriers that are used for the safety of the public.

(iv) If Taco Bell obtains "as-built" surveys with respect to the location of constructed buildings and other Improvements on the Outlot, Taco Bell shall provide copies of same to Weber Place promptly upon request.”

5. Section IX.F.(i) is deleted in its entirety and replaced with the following:

(i) If to Weber Place:

Weber Place Baceline, LLC  
1391 Speer Blvd., Suite 800  
Denver, CO 80204

(ii) If to Taco Bell:

Taco Bell Corp. (#3481)  
Attn: Property Management  
1 Glen Bell Way  
Irvine, CA 92618

6. Except as otherwise modified herein, the Cross Easement shall remain unchanged and in full force and effect.

**[The remainder of this page has been intentionally left blank]**



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California

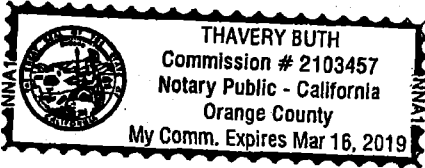
County of Orange

On April 6, 2016 before me, Thavery Buth, Notary Public, personally appeared Laurence Gerich, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal

*Thavery Buth*  
SIGNATURE OF NOTARY



**EXHIBIT "A"**

**Shopping Center**

**(44-35653)**

Lot 3, Shopko Acres Replat 2, an Addition to the City of Omaha, Douglas County, Nebraska.

Together with easement for access as contained in the Access Easement by and between Weber Place LLC, a Nebraska limited liability company and Simmonds Properties, LTD, LLP, a Nebraska limited liability company dated September 30, 2010, recorded October 10, 2010, as Instrument No. 2010095723, Official Records, Douglas County, Nebraska.

**EXHIBIT "B"**

**Outlot**

All of Lot Three (3) except the Southerly 16 feet thereof in Shopko Acres, a Subdivision in the City of Omaha, Douglas County, Nebraska.

(44-35650)



**EXHIBIT "C"**

**Taco Bell Proposed New Site Plan and Tree Removal**

**[See Attached]**





BK 0824 PG 709



MISC 1987 15084

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INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

RIGHT-OF-WAY EASEMENT

I, Lerner Omaha Partnership, a Nebraska General Partnership Owner(s)  
of the real estate described as follows, and hereafter referred to as "Grantor",

Lot Two (2), Shpoko Acres as surveyed, platted and recorded in Douglas  
County, Nebraska.

In consideration of the sum of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby  
acknowledged, do hereby grant to the OMAHA PUBLIC POWER DISTRICT, a public corporation, its successors and assigns  
referred to as "Grantee", a permanent right of way easement with rights of ingress and egress thereto, to  
construct, operate, maintain, replace and remove its underground electric facilities, consisting of cables, wires,  
conduits, manholes, drains, splicing boxes and other appurtenances, upon, over, along and under the following  
described real estate, to wit:

*10007 11/22/87*

See sketch on the reverse side hereof for easement area.

BK 824 N 91-495 MA C/O \_\_\_\_\_ FEE 10.50  
PG 709-710 91/495 DEL VK MB Q  
OF Misc COMP SS F/B 44-35650 del

CONDITIONS: The Grantor hereby grants to the District, its successors and assigns, the right, privilege and  
authority to clear all trees, roots, brush, and other obstructions from the surface and subsurface of said strip  
and to temporarily open any fences crossing said strip. Grantor agrees that grade shall not be reduced more than  
One foot (1') in elevation without the prior approval of the District.

In granting this easement, it is understood that said cables shall be buried below plow depth in order to not  
interfere with the ordinary cultivation of the strip. Damages to fences and growing crops arising from the  
construction and maintenance of the aforesaid system shall be paid for by the District.

The Grantor covenants that he/they has/have lawful possession of said real estate, good, right and lawful  
authority to make such conveyance and that his/her/their heirs, executors, administrators, successors and assigns  
shall warrant and defend the same and will indemnify and hold harmless the District forever against the claims of  
all persons whomsoever in any way asserting any right, title or interest prior to or contrary to this conveyance.

IN WITNESS WHEREOF, the parties hereto have signed their names and caused the execution of this instrument  
this 20th day of July, 19 87.

Lerner Omaha Partnership

By Jay R. Lerner

By Salvadore Carta

RECEIVED

1987 AUG 26 AM 8 43

GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS

Distribution Engineer DOUGLAS COUNTY Date 8-17-87

Property Management PH Date 8-10-87

Section SW 28 Township 16 North, Range 13 East

Salesman Wilkins Engineer Wilkins Est. # 8700975 W.O. # 7267

COMPLETE APPROPRIATE ACKNOWLEDGEMENT ON REVERSE SIDE

CORPORATE ACKNOWLEDGEMENT

PARTNERSHIP  
~~INDIVIDUAL~~ ACKNOWLEDGEMENT

STATE OF

STATE OF Nebraska

COUNTY OF

COUNTY OF Douglas

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me the undersigned, a Notary Public in and  
for said County, personally came \_\_\_\_\_

On this 20th day of July, 1987,  
before me the undersigned, a Notary Public in and  
for said County and State, personally appeared

President of \_\_\_\_\_  
personally to me known to be the identical person(s)  
who signed the foregoing instrument as grantor(s)  
and who acknowledged the execution thereof to be  
\_\_\_\_\_ voluntary act and deed for  
the purpose therein expressed.

Jay R. Lerner and Salvadore Carta, the  
sole Partners of Lerner Omaha Partnership,

personally to me known to be the identical person(s)  
and who acknowledged the execution thereof to be  
their voluntary act and deed for  
the purpose therein expressed on behalf of the  
Partnership.

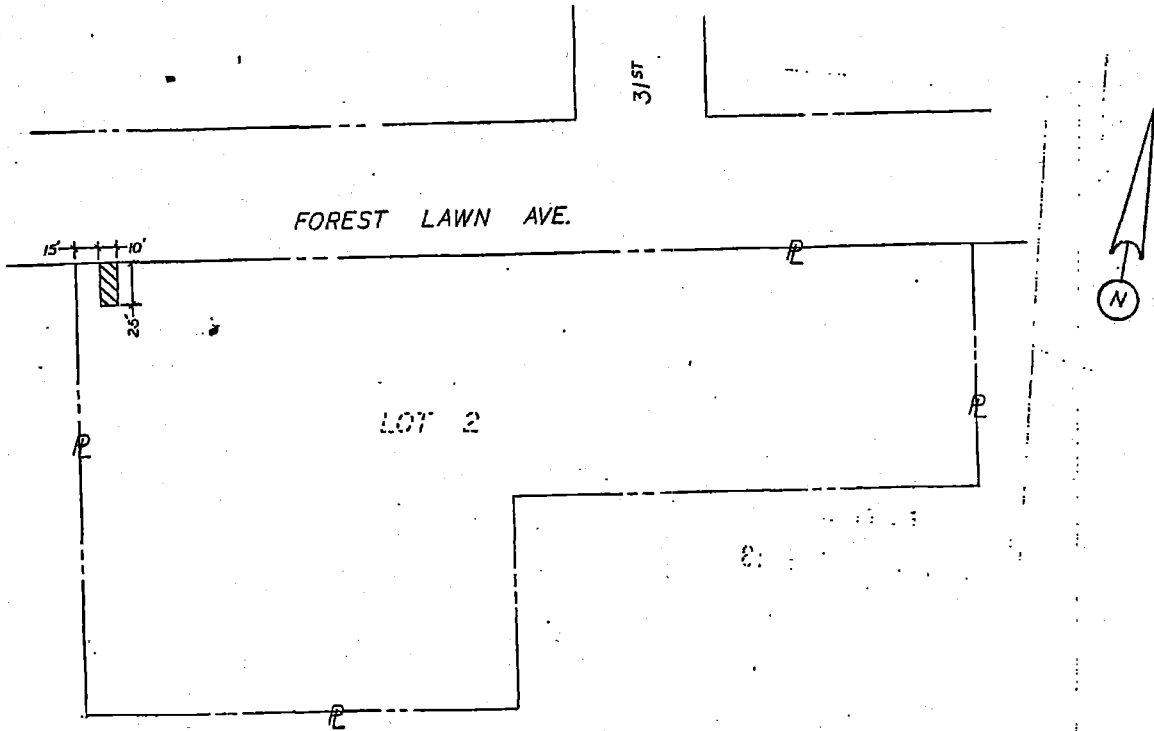
Witness my hand and Notarial Seal at \_\_\_\_\_  
in said County the day and year  
last above written.

Witness my hand and Notarial Seal the date above  
written.

\_\_\_\_\_  
NOTARY PUBLIC



*Bobbi Thompson*  
NOTARY PUBLIC



RETURN TO:  
OMAHA PUBLIC POWER DISTRICT  
1623 HARNEY ST. - RM. 401  
OMAHA, NE 68102



BK 0913 PG 109



MISC 1990 02336

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PAGE DOWN FOR BALANCE OF INSTRUMENT

AN ORDINANCE approving a Redevelopment and Loan Agreement with Shopko Stores, Inc., a Minnesota Corporation, and providing for an immediate effective date.

WHEREAS, the 30th and Forest Lawn Redevelopment Plan approved on April 30, 1985, provided for the development of a retail shopping center, construction of certain public improvements, replacement of a City fire station, property acquisition by the City, and the use of excess ad valorem taxes generated by such development; and,

WHEREAS, Shopko Stores, Inc. and the City of Omaha are desirous of entering into a Redevelopment Agreement which will allow for the construction of a community shopping center in conformance with the 30th and Forest Lawn Area Redevelopment Plan.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That the Mayor is hereby authorized to execute, and the City Clerk to attest, the Redevelopment Agreement with Shopko Stores, Inc., attached hereto as Exhibit 1.

Section 2. This Ordinance, not being legislative in character, shall be immediately effective upon passage and approval.

INTRODUCED BY COUNCILMEMBER

Steve N. Jomasek

APPROVED BY:

Michael Boyle 1/30/86  
MAYOR OF THE CITY OF OMAHA DATE

PASSED JAN 28 1986 as amended

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

ATTEST:

Mary Yankins Corbett  
CITY CLERK OF THE CITY OF OMAHA

APPROVED AS TO FORM: DEPT BY CITY CLERK  
BY

Jim Burgen  
CITY ATTORNEY

2336 MWC T

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FEB 9 3 40 PM '90

GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

BK 913 N \_\_\_\_\_ C/O \_\_\_\_\_ FEE 87.00  
PG 109-125 N \_\_\_\_\_ DEL M MC W  
OF Misc COMP \_\_\_\_\_ F/S \_\_\_\_\_

THIS AGREEMENT is entered into by and between the City of Omaha, a Nebraska municipal corporation, and Shopko Stores, Inc., a Minnesota corporation.

RECITALS:

WHEREAS, on April 30, 1985, the City Council of the City of Omaha approved the 30th and Forest Lawn Area Redevelopment Plan which provided for the development of a retail center, certain public improvements, replacement of a City fire station and the use of the excess ad valorem taxes generated by such development; and

WHEREAS, this Agreement is a redevelopment agreement done pursuant to the Nebraska Community Development Law to give effect to the above-referenced Redevelopment Plan.

IN CONSIDERATION OF THESE MUTUAL COVENANTS THE PARTIES AGREE AS FOLLOWS:

Section 1. Definitions.

The following terms, whether plural or singular, shall have the following meanings for purposes of this Agreement.

1.1 "City" shall mean the City of Omaha, Nebraska, a municipal corporation of the metropolitan class.

1.2 "Developer" shall mean Shopko Stores, Inc., a Minnesota corporation.

1.3 "Final Acquisition Cost" shall mean the final cost of purchase of and relocation from the Redevelopment Properties, established either through negotiation or through eminent domain proceedings, pursuant to all State and Federal laws governing public acquisition.

1.4 "Fire Station" shall mean Omaha Fire Station No. 23 located within the redevelopment site and described on Exhibit "A" attached hereto.

1.5 "Redevelopment Properties" shall mean those properties to be acquired by the City and conveyed to the Developer, described on Exhibit "B", attached hereto.

1.6 "Redevelopment Site" shall mean the area described on Exhibit "A", attached hereto.

*Amended By  
Ord. # 140 of 11-28-86  
(12)*



1.7 "Retail Center" shall mean a two-phased development, Phase I of which shall be a Shopko store, approximately 83,000 square feet in area; and Phase II of which shall be an accessory commercial building, with not less than 25,000 square feet in area; and parking lot and other improvements for both phases built in general accordance with the plans attached hereto as Exhibit "D".

1.8 "TIF Bonds" shall mean any obligation issued by the City secured by the excess ad valorem taxes generated within the redevelopment site.

Section 2. Obligations of the City.

The City shall:

2.1 Acquire the Redevelopment Properties, using funds provided by the Developer up to a maximum of \$1,050,000. Any Final Acquisition Costs in excess of \$1,050,000 shall be paid by the City.

2.2 Convey good and merchantable title to the Redevelopment Properties to the Developer.

2.2.1 The closing date shall be on or before June 1, 1986.

2.2.2 The Redevelopment Properties shall be conveyed in "as is" condition.

2.3 The City shall order and cause to be delivered to the Developer, c/o Colin D. Pietz, Kelley, Weber, Pietz & Slater, S.C., 530 Jackson Street, Wausau, Wisconsin 54401, at least fifteen (15) days prior to closing a commitment for an owner's policy of title insurance in the amount of the purchase price naming the Developer as the intended insured written by a responsible title insurance company licensed to conduct business in the State of Nebraska, with extended coverage endorsement, which commitment shall show the title to the Redevelopment Properties and the Fire Station to be marketable, subject only to taxes in the year of closing, municipal and zoning ordinances and recorded utility easements which do not adversely affect development of the proposed Retail Center. The cost of the title insurance search, if any, and the title insurance policy shall be borne by the City. The cost of any increases in the amount of coverage shall be borne by the Developer. If Developer gives City notice of any title defects within fifteen (15) days after receipt of the title policy commitment which are not acceptable, or if the commitment does not contain the extended coverage endorsement, the City shall cure such defects. If any such defects are not cured by the closing date, Developer may elect to accept such title as City is able to convey or terminate this Agreement. In the event of such termination, all parties shall be relieved of all obligations hereunder and Developer shall receive a full refund of all monies paid hereunder.

2.4 Vacate City rights of way within the Redevelopment Site as shown on Exhibit "A" within 30 days after acquisition of abutting properties, except that necessary utility and sewer easements shall be retained. Such rights of way shall be rededicated to the City without cost should construction of the Retail Center not begin within thirty-six (36) months of the date of execution of this Agreement.

2.5 Attempt to issue TIF Bonds on or before May 1, 1986 of at least \$375,000; to be used for the following purposes:

2.5.1 The design and construction of the public improvements described on Exhibit "C" attached hereto.

2.5.2 A grant of \$100,000 to the Developer toward the acquisition of the Redevelopment Site.

2.5.3 The establishment of a contingency fund to pay any Final Acquisition Costs on the Redevelopment Properties in excess of \$1,050,000.

2.6 In the event that TIF Bonds are not issued in a timely manner pursuant to 2.5 herein, the City shall design and construct the public improvements described on Exhibit "C" using other funds. TIF proceeds may later be used to refinance these costs.

2.7 Transfer title of said Fire Station site to the Developer at closing and vacate the Fire Station no later than January 1, 1987. The City reserves the right to use the Fire Station at no cost to itself other than utilities prior to the date of vacation.

Section 3. Obligations of the Developer.

The Developer shall:

3.1 Substantially complete construction of Phase I of the Retail Center within eighteen (18) months after closing and Phase II of the Retail Center within twenty-four (24) months after closing.

3.2 Provide funds to the City of the purpose of the acquisition of and relocation from the Redevelopment Properties, as follows:

3.2.1 The Developer shall deposit an amount not less than \$600,000.00 in an escrow account acceptable to the City and from which the City may draw funds from time to time as needed to pay Final Acquisition Costs.

3.2.2 Sums not used for such Final Acquisition Costs shall be refunded to the Developer. The Developer shall provide additional funds for acquisition in the event that the escrow account is not sufficient to complete such acquisitions. In no case shall such additional funds exceed \$450,000.

3.2.3 All interest earnings on escrow pursuant to this Agreement shall accrue to the Developer.

3.3 Pay the City \$400,000.00 for the Fire Station site in an "as is" condition, as follows:

3.3.1 Pay the City \$40,000.00 as a deposit within thirty days of the date of execution of this Agreement, which deposit shall be refunded if the City fails to provide marketable title, the title insurance coverage required hereunder, or defaults under this Agreement.

3.3.2 At time of closing, place the remainder of the purchase price in an escrow account so that the City may withdraw sums from time to time as necessary to construct a replacement for said Fire Station.

3.4 Provide the City with quarterly progress reports during the redevelopment and allow the City access to any relevant financial records pertaining to the redevelopment.

3.5 During the period that any TIF Bond is outstanding, (1) not protest a real estate and real estate improvement valuation on the redevelopment site of \$500,000 or less prior to construction; \$1,500,000 or less during construction; and \$3,500,000 or less after substantial completion or occupancy; (2) not convey the redevelopment site or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes; (3) not apply to the Douglas County Assessor for the structures, or any portion thereof, to be taxed separately from the underlying land of the redevelopment site; (4) maintain insurance for ninety percent (90%) of the full value of the structures on the redevelopment site; (5) in the event of casualty, apply such insurance proceeds to their reconstruction; and (6) cause all real estate taxes and assessments levied on the redevelopment site to be paid to the time such become delinquent during the term that the TIF Bonds are outstanding. In lieu of the above, the Developer may repay any outstanding TIF Bonds. Each of the foregoing covenants shall appear as restrictions in the deed of conveyance to Developer. The Developer agrees to include the same restrictions to be included in any subsequent sale, assignment, sale leaseback or other transfer of the property, but shall not be responsible otherwise for the actions of third parties if these covenants are breached by such third parties.

#### Section 4. Miscellaneous.

4.1 Equal Employment Opportunity Clause. Annexed hereto as Exhibit "E" and made a part hereof by reference are the equal employment provisions of this Agreement, wherein the "Developer" is referred to as "Contractor".

4.2 Non-discrimination. The Developer shall not in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations or national origin.

4.3 Captions. Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

4.4 Applicable Law. Parties to this Agreement shall conform with all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

4.5 Interest of the City. To the best of Developer's knowledge, pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the City shall have a financial interest, direct or indirect, in any City contract. Any violation of this section with the knowledge of the person or corporation contracting with the City shall render the Agreement voidable by the Mayor or City Council.

4.6 Merger. This Agreement shall not be merged into any other oral or written contract, lease or deed of any type.

4.7 Modification. This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereon unless done in writing and signed by an authorized officer of the respective parties.

4.8 Assignment. The Developer may not assign its rights under this Agreement without the express prior written consent of the City unless the Developer warrants performance of the terms and conditions of this Agreement by the assignee and their successors in interest.

4.9 Strict Compliance. All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representatives of the parties.

4.10 This Agreement shall be binding upon the Developer's successors and assigns, and shall run with the land described in Exhibit "A", attached hereto, to the benefit of the City.

4.11 Such sums advanced by the Developer to the City or in said escrow accounts which the City has committed shall be refunded to the Developer in the event the City is unable to convey such redevelopment properties to the Developer pursuant to this Agreement. The date for such conveyance shall be extended to the conclusion of any litigation concerning such acquisition at the option of the City.

4.12 This Agreement shall be null and void should the Developer be unable to obtain the zoning on the Redevelopment Site necessary to permit development of the Retail Center.

Section 5. Authorized Representative.

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this Agreement and for the period of any applicable statute or limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

(1) City of Omaha:

c/o Martin H. Shukert, AICP  
Director, Planning Department  
Omaha/Douglas Civic Center  
1819 Farnam Street  
Omaha, Nebraska 68183

Legal Service  
c/o City Clerk  
Omaha/Douglas Civic Center  
1819 Farnam Street  
Omaha, Nebraska 68183

(2) Developer:

Shopko Stores, Inc.  
P.O. Box 19060  
Green Bay, Wisconsin 54307-9060  
Attn: Director of Real Estate

With copies to:

- (1) Super Valu Stores, Inc.  
P.O. Box 990  
Minneapolis, Minnesota 55440  
Attn: Legal Department
- (2) Colin D. Pietz  
Kelley, Weber, Pietz &  
Slater, S.C.  
530 Jackson Street  
Wausau, Wisconsin 54401

Either party may designate additional representatives or substitute representatives by giving written notice thereof to the designated representative of the other party.

Executed this 14th day of February, 1986.

DEVELOPER:

SHOPKO STORES, INC.

By: William J. Tyrrell  
William J. Tyrrell, President

By: William C. Hunt  
William C. Hunt, Secretary

Executed this 14th day of February, 1986.

CITY OF OMAHA:

By: Michael Boyle  
Mayor of the City of Omaha

ATTEST:

Mary Sullivan Cornett  
City Clerk of the City of Omaha

APPROVED AS TO FORM:

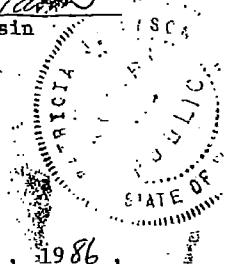
Ken Bray  
ASSISTANT CITY ATTORNEY

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF BROWN )

Personally came before me this 4th day of February, 1986, William J. Tyrrell, President of Shopko Stores, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and to be known to be the person who executed the foregoing instrument, and to me known to be such President of said corporation and acknowledged that he executed the foregoing instrument as such officer as the act of said corporation, by its authority.

Patricia J. Mann  
Notary Public, Wisconsin

My Commission Expires: Jan. 21, 1990

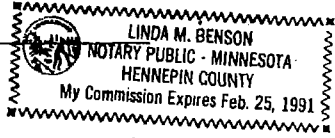


STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

Personally came before me this 7th day of February, 1986, William C. Hunt, Secretary of Shopko Stores, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and to me known to be such person who executed the foregoing instrument, and to me known to be such Secretary of said corporation and acknowledged that he executed the foregoing instrument as such officer as the act of said corporation, by its authority.

Linda M. Benson  
Notary Public, Minnesota

My Commission Expires: \_\_\_\_\_



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public qualified for said County, personally came Richard Boyle, Mayor, and Bob Buzza, known to me to be the Mayor of the City of Omaha, City Clerk of Omaha and Assistant City Attorney, respectively, and the identical persons who signed the foregoing Agreement and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal this 4 day of Feb, 1986.

Lawrence S. Primeau  
Notary Public

My Commission Expires: \_\_\_\_\_



## EXHIBIT "A"

30th and Forest Lawn Area  
Redevelopment Site

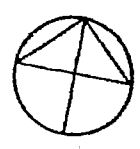
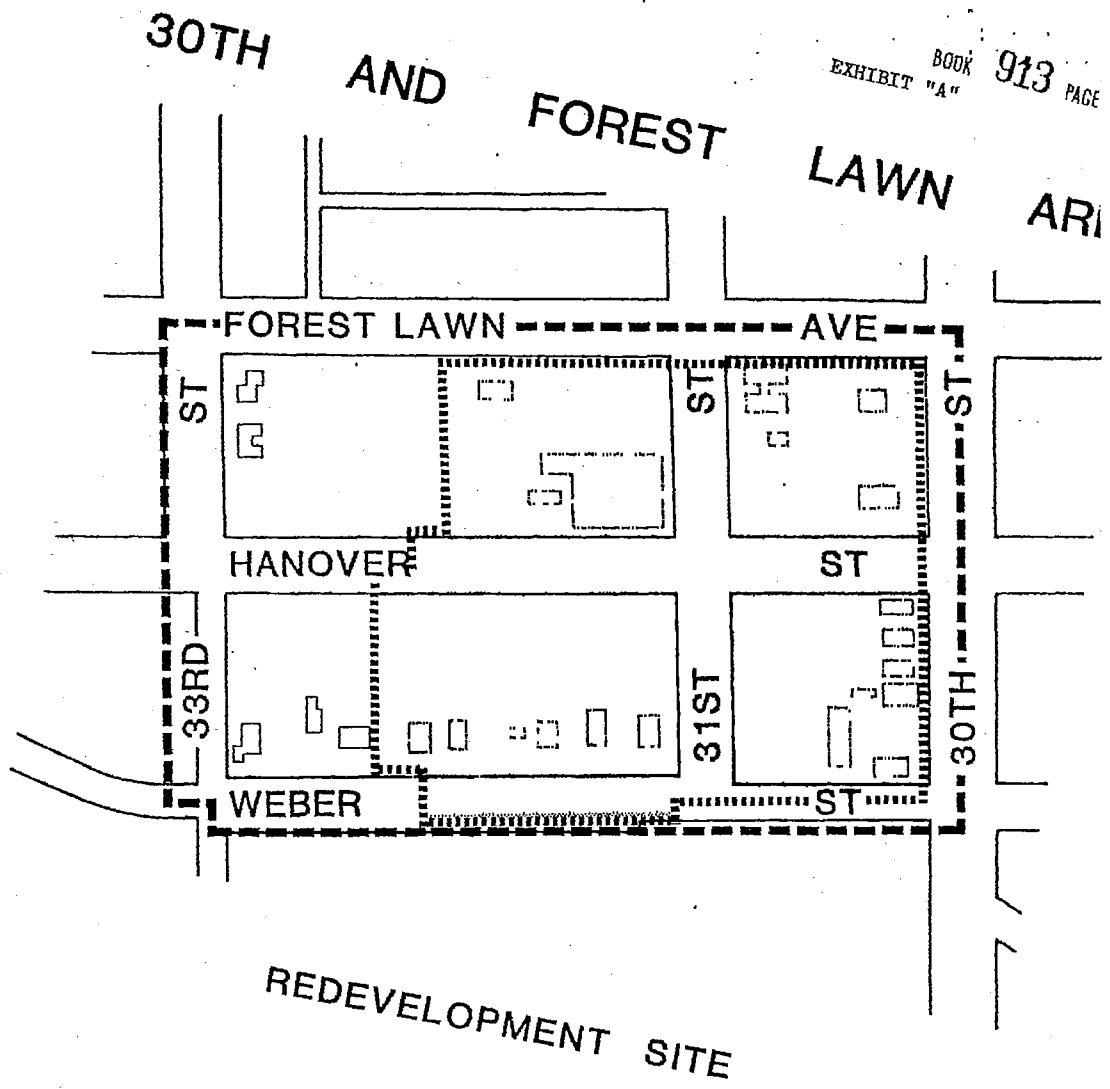
The 30th and Forest Lawn Redevelopment Site is located southwest of 30th Street and Forest Lawn Avenue, Omaha, Nebraska, and legally described as follows: Lots 1 through 8 inclusive and Lot 13, Block 220; the east 330.0 feet of Block 221; all of Block 222; all of Block 223; including all of 31st Street right-of-way adjacent to said Blocks 220, 221, 222 and 223; the north one-half of Weber Street right-of-way, west of 30th Street for 385.0 feet, and all of Weber Street right-of-way adjacent to Lots 1 through 6 and the east 33.5 feet of Lot 7, Block 222; all of Hanover Street right-of-way, west of 30th Street for 796.5; and the south one-half thereof, adjacent to the west 30 feet of Lot 7, and all of Lot 8, Block 220, Florence Addition, Douglas County, Nebraska. This approximately 12 acre site is in the eastern portion of the approximately 20 acre 30th and Forest Lawn Redevelopment Area, located between 30th Street and 33rd Street from Forest Lawn Avenue to Weber Street.

5048z

NOW KNOWN AS LOTS 1,2,3, SHOPKO ACRES

91-445 44-35650 OS





1" : 200'





EXHIBIT "B"

30th and Forest Lawn Area  
Redevelopment Properties

The following is a list of properties to be acquired in connection with the 30th and Forest Lawn Redevelopment Plan:

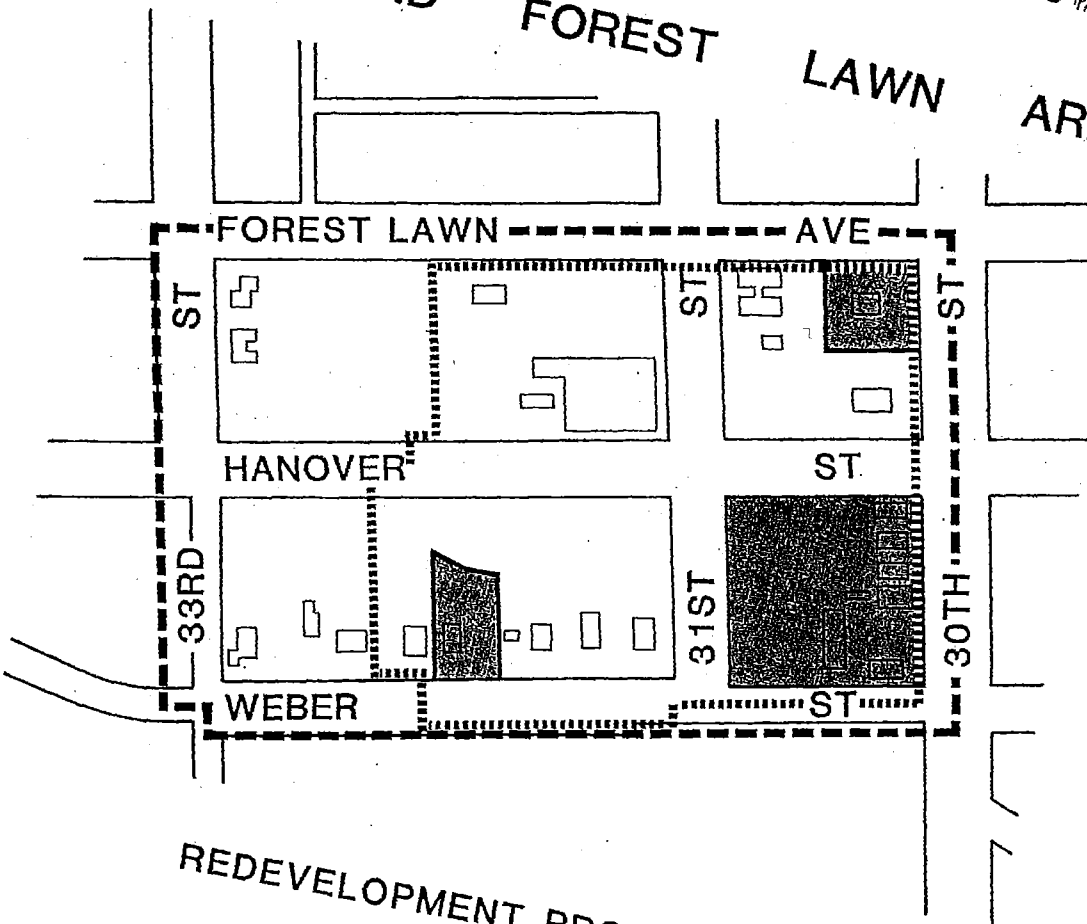
- . 3130 Weber: The irregular South 159.5 feet of Lot 5, and the irregular South 173.5 feet of Lot 6, Block 220, Florence Addition
- . 7406-08-12-16-20 North 30th Street and 3021 Hanover Street: All of Block 223, Florence Addition and 16.25 feet of vacated Weber Street adjacent.      24-1      44-12280 DS
- . 7516 North 30th Street: Lots 1 and 4, and one-half of vacated alley adjoining, Block 222, Florence Addition.

5049z

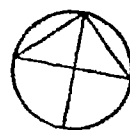


EXHIBIT "B" BOOK 913 P. 72

30TH AND FOREST LAWN AREA



REDEVELOPMENT PROPERTIES



1" : 200'



## EXHIBIT "C"

30th and Forest Lawn Area  
Public Improvements

The following public improvements will be provided in connection with the 30th and Forest Lawn Redevelopment Plan:

- . 33rd Street extension and paving from Weber Street, north to the end of existing pavement.
- . Weber Street paving and cul-de-sac from 33rd Street east approximately 300 feet.
- . 30th Street landscaping, sidewalks and street lighting from Forest Lawn Avenue to Weber Street.

5050z



## EXHIBIT "E"

## EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall not discriminate against any employee applicant for employment because of race, religion, color, sex or national origin. The contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: Recruited, whether advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.  
  
The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
- (2) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
- (3) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the contractor's commitments under the equal employment opportunity clause of the city and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor shall furnish to the contract compliance officer all federal forms containing the information and reports required by the federal government for federal contracts under federal rules and regulations, and including the information required by Sections 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the contract compliance officer shall be those which are related to Paragraphs (1) through (7) of this subsection and only after reasonable notice is given the contractor. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.

- (5) The contractor shall take such actions with respect to any subcontractor as the city may direct as a means of enforcing the provisions of Paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event the contractor becomes involved in or is threatened with litigation as the result of such directions by the city, the city will enter into such litigation as necessary to protect the interests of the city and to effectuate the provisions of this division; and in the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
- (6) The contractor shall file and shall cause his subcontractors, if any, to file compliance reports with the contractor in the same form and to the same extent as required by the federal government for federal contracts under federal rules and regulations. Such compliance reports shall be filed with the contract compliance officer. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.
- (7) The contractor shall include the provisions of Paragraphs (1) through (7) of this Section, "Equal Employment Opportunity Clause", and Section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

PUBLICATIONS

PUB. N. OF HEARING

11-15-85

PUB. N. OF ORDINANCE

2-7-86

ORDINANCE NO. 30888  
334-139-140-141  
Ordinance approving a Redevelopment and Loan Agreement with Shopko Stores, Inc., a Minnesota Corporation, and providing for an immediate, effective date, for the 30th and Forest Street Redevelopment Area.

PRESENTED TO COUNCIL

1st Reading NOV 12 1985 Motion Passed

2nd Reading on 11/19/85 a public hearing and 3rd Reading on 12/3/85 carried 6-0

Hearing NOV 19 1985 Motion to be carried to

Final Reading DEC 3 1985 Motion to be carried to

DEC 17 1985 Motion to be carried to

DEC 17 1985 Motion to be carried to

DEC 17 1985 Motion to be carried to

DEC 17 1985 Motion to be carried to

DEC 17 1985 Motion to be carried to

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DEC 17 1985 Motion to be carried to

DEC 17 1985 Motion to be carried to

DEC 17 1985 Motion to be carried to

DEC 31 1985 #3341 Motion to be carried to  
4 weeks to 1/28/86  
Carried 5-0  
JAN 28 1986 4/39 Motion to be carried to  
#40 Amendment - approved  
6-0 #1/41 Passed as  
Amended 6-0

SEE INSIDE

CITY CLERK



MISC 2009100706



SEP 15 2009 08:54 P 6

*misc*  
 6 31<sup>00</sup> FB 44-35653  
 2 BKP \_\_\_\_\_ C/D \_\_\_\_\_ COMP DA  
 A DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 9/15/2009 08:54:27.48



2009100706

### DECLARATION OF RESTRICTIONS

This Declaration of Restrictions is made as of September 4, 2009 by Weber Place LLC, a Nebraska limited liability company, with a mailing address c/o The Lerner Company, 10855 West Dodge Road, Suite 270, Omaha, NE 68154 ("Declarant"), for the benefit of Simmonds Properties, Ltd., LLP, a Nebraska limited liability partnership with a mailing address of 11404 West Dodge Road, Suite 650, Omaha, NE 68154 ("Owner").

### PRELIMINARY STATEMENT

Declarant is the record owner of Lot 3 Shopko Acres Replat 2 in Douglas County, Nebraska, as surveyed, platted, and recorded (the "Subject Property").

Owner has acquired or is about to acquire from Declarant Lot 2 Shopko Acres Replat 2 in Douglas County, Nebraska, as surveyed, platted and recorded (the "Owner's Parcel").

Declarant desires to establish certain restrictions upon the Subject Property for the benefit of Owner and its successors and assigns as owners from time to time of Owner's Parcel.

### TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement, which by this reference is repeated and incorporated in this portion of this Declaration in its entirety, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby agrees as follows:

1. So long as a "Jimmy John's" restaurant is being operated within the Owner's Parcel (excluding reasonable periods of closure for restoration or remodeling due to casualty), Declarant agrees that it will not lease, sell or use any part of the Subject Property as a restaurant, whose primary product( i.e. more than fifty (50%) percent of sales) is a sub-type sandwich, such as, but not limited to, Little King, Subway, Quiznos, Blimpies, Potbelly, Planet Sub, D'Angelo and Charley's. This Declaration shall terminate automatically at such time as a

RETURN TO:  
 SPENCE TITLE SERVICES  
 BOX 16

TA-56220



"Jimmy John's" restaurant is no longer being operated within the Owner's Parcel (excluding reasonable periods of closure for restoration or remodeling due to casualty).

2. In the event of a default hereunder by Declarant, Owner may institute an action against the Declarant for specific performance, declaratory or injunctive relief, or any other available equitable remedy. No remedy provided in this Declaration shall be exclusive, but each shall be cumulative with all other remedies specifically provided in this Declaration.

3. The prevailing party in any action to enforce any provision of this Declaration shall be entitled to receive from the other party the prevailing party's reasonable costs and expenses incurred in connection with such action including, without limitation, reasonable attorneys' fees and court costs.

4. No delay or omission of Owner in the exercise or enforcement of any right accruing upon any default by Declarant shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by Owner of a breach or a default of any of the provisions of this Declaration shall not be construed to be a waiver of any subsequent breach or default of the same or any other provisions of this Declaration.

5. Every notice, demand, consent, approval or other document or instrument required or permitted to be served upon or given to any party hereunder shall be in writing and shall be delivered in person or sent by nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

Declarant: Weber Place LLC  
c/o The Lerner Company  
10855 West Dodge Road, Suite 270  
Omaha, NE 68154-2666

Owner: Simmonds Properties, Ltd., LLP  
11404 West Dodge Road, Suite 650  
Omaha, NE 68154-9759

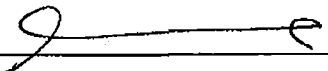
or to such other person or address as Declarant or Owner may direct from time to time by written notice forwarded in accordance herewith.

6. This Declaration shall not be modified or amended in any respect except by a writing executed, delivered and recorded against the Owner's Parcel and the Subject Property in the records of the Register of Deeds of Douglas County, Nebraska and signed by the then record owners of both the Subject Property and the Owner's Parcel.

7. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. The invalidity of any provision of this Agreement shall not in any way invalidate the remaining provisions of this Declaration.

8. This Declaration shall be binding against Declarant and its successors and assigns, as covenants running with the Subject Property, and shall inure to the benefit of Owner and its successors and assigns, as appurtenant to their respective interest in Owner's Parcel.

**Weber Place LLC,**  
a Nebraska limited liability company

By: 

Name: SALVADORE CARTA

Title: Vice President

**Simmonds Properties, Ltd., LLP,**  
a Nebraska limited liability partnership

By: Michael H. Simmonds, Trustee of the  
Michael H. Simmonds Revocable Trust,  
Managing Partner



6. This Declaration shall not be modified or amended in any respect except by a writing executed, delivered and recorded against the Owner's Parcel and the Subject Property in the records of the Register of Deeds of Douglas County, Nebraska and signed by the then record owners of both the Subject Property and the Owner's Parcel.

7. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. The invalidity of any provision of this Agreement shall not in any way invalidate the remaining provisions of this Declaration.

8. This Declaration shall be binding against Declarant and its successors and assigns, as covenants running with the Subject Property, and shall inure to the benefit of Owner and its successors and assigns, as appurtenant to their respective interest in Owner's Parcel.

**Weber Place LLC,**  
a Nebraska limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Simmonds Properties, Ltd., LLP,**  
a Nebraska limited liability partnership

By:   
\_\_\_\_\_  
Michael H. Simmonds, Trustee of the  
Michael H. Simmonds Revocable Trust,  
Managing Partner

**ACKNOWLEDGMENTS**

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

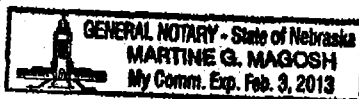
The foregoing instrument was acknowledged before me this \_\_\_\_ day August, 2009 by \_\_\_\_\_ of Weber Place LLC, a Nebraska limited liability company, on behalf of such limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day August, 2009 by Michael H. Simmonds, Trustee of the Michael H. Simmonds Revocable Trust, Managing Partner of Simmonds Properties, Ltd., LLP, a Nebraska limited liability partnership, on behalf of such limited liability partnership.

*Martine G. Magosh*  
\_\_\_\_\_  
Notary Public





MISC 2010095723



OCT 15 2010 11:47 P 7

Fee amount: 36.00  
FB: 44-35653  
COMP: MB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
10/15/2010 11:47:26.00



2010095723

After recording, return to: James B. Cavanagh, Lieben, Whitted, Houghton, Slowiaczek & Cavanagh, P.C., L.L.O., 2027 Dodge Street, Suite 100, Omaha, NE 68102

**EXECUTION DRAFT**

**ACCESS EASEMENT**

THIS ACCESS EASEMENT dated as of the 30<sup>th</sup> day of September, 2010, is made and entered into by and between WEBER PLACE LLC, a Nebraska limited liability company ("Weber"), and SIMMONDS PROPERTIES, LTD., LLP, a Nebraska limited liability partnership ("Simmonds").

PRELIMINARY STATEMENT

Weber is the record owner of Lot 3, Shopko Acres Replat 2, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (the "Weber Property"). Simmonds is the owner of Lot 2, Shopko Acres Replat 2, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (the "Simmonds Property"). Weber has requested Simmonds to provide a perpetual exclusive access easement over a portion of the Simmonds Property more particularly described on Exhibit "A" annexed hereto, for the purpose of providing vehicular and pedestrian ingress and egress between the Weber Property and the driveway to 30<sup>th</sup> Street as shown on Exhibit "A".

NOW, THEREFORE, in consideration of the foregoing Preliminary Statement, which is incorporated herein by this reference and other consideration, the receipt and sufficiency of which is hereby acknowledged, Weber and Simmonds agree as follows:

1. Access Easement. Simmonds hereby grants and conveys to Weber and the Permittees, an exclusive perpetual easement over and upon the property legally described and depicted on Exhibit "A" annexed hereto (the "Easement Area"), for the purpose of providing vehicular and pedestrian ingress, egress, passage and access upon, over, across and through the Easement Area to and from the Weber Property and the driveway access to 30<sup>th</sup> Street as shown on Exhibit "A", including, directional traffic signs at the exit of the Easement Area, in locations reasonably acceptable to Simmonds. Weber shall be solely responsible, at its sole expense, for the maintenance, snow removal, repair and replacement of the driveway and any directional traffic signs located on the Easement Area. All maintenance, snow removal, repair or replacement of the driveway shall be conducted in such a manner as to not impair or interfere with the business operations conducted on the Simmonds Property.

2. Permittees. The term "Permittees" shall mean: (i) Weber and its successors and assigns; and (ii) the agents, customers, invitees, licensees, lessees, sublessees, employees, servants, and contractors of Weber.

3. No Dedication. Nothing contained in this Easement shall be deemed to constitute a gift, grant or dedication of any portion of the Simmonds Property to the general public or for any public purpose whatsoever, it being the intention that this easement will be strictly limited in accordance with the terms hereof to the private use of Weber and to its Permittees.

4. Consideration. Simultaneously herewith, Weber has paid Simmonds Thirty-Five Thousand and No/100 Dollars (\$35,000.00) as consideration for Simmonds' grant of this Easement, receipt of which is hereby acknowledged by Simmonds. Weber shall also pay Overland Constructors, Inc. Six Thousand Five Hundred Seventy-one and No/100 Dollars (\$6,571.00) for additional construction costs incurred by Simmonds related to the construction and maintaining uninterrupted ingress and egress to the easement area by Simmonds, concurrently with the construction of the "Jimmy Johns" building within the Simmonds Property, of the driveway within the Easement Area which will be paved with asphalt, the installation of concrete curbs, and the curb cut leading to the property adjoining the drive leading to 30<sup>th</sup> Street, all pursuant to the plans and specifications approved by the City of Omaha, and identified on Exhibit "A" annexed.

5. Real Estate Taxes. Weber agrees to pay Simmonds on a calendar year basis beginning January 1, 2010, and for each subsequent calendar year during the term of this Easement an annual contribution toward the real estate taxes levied and assessed against the Simmonds Property. Weber's contribution with respect to each calendar year during the term shall equal Seven Hundred Seventy-Four and no/100 Dollars (\$774.00) per year, which shall be payable on July 1, 2010, and continue annually thereafter on July 1. Any installment not timely paid shall accrue interest at the rate of eight percent (8%) per annum from the due date to the date paid.

6. Amendment and Termination.

(a) Except as herein provided, this Easement and any provision herein contained may be amended solely with the written consent of the respective owners of the Simmonds Property and the Weber Property.

(b) In the event of breach or threatened breach of this Easement, any and all owners of the Simmonds Property or Weber Property adversely affected by such breach or threatened breach 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 fees and other reasonable costs and expenses incurred by the prevailing party. In the event of a breach of the obligations under this Access Easement by the owner of the Weber Property, the owner of the Simmonds Property shall give notice of such default to the owner of the Weber Property. In the event that default or breach of this Easement

Agreement is not timely cured within forty-five (45) days for monetary defaults and within sixty (60) days for non-monetary defaults, or in the case such non-monetary default is not curable within sixty (60) days, if Weber shall fail to commence to cure the same within sixty (60) days and thereafter proceed diligently to complete the cure thereof, from the date of Weber's receipt of written notice from the owner of the Simmonds Property, the owner of the Simmonds Property shall have the right to terminate this Access Agreement. The Easement shall be deemed terminated upon the filing of an affidavit by the owner of the Simmonds Property with the Register of Deeds of Douglas County, Nebraska and indexed against the Simmonds Property. Such affidavit may not be recorded until and after thirty (30) days prior written notice of the intended filing is provided to Weber accompanied by a copy of the affidavit stating the alleged uncured default. In lieu of such termination, the owner of the Simmonds Property shall have the right, but not the obligation, to cure any alleged breach or default of Weber. Upon the completion of such cure, the owner of the Weber Property shall reimburse the owner of the Simmonds Property within ten (10) days of receipt of the invoice from the owner of the Simmonds Property for the reasonable costs and expenses incurred in curing the alleged default. Unpaid invoices shall bear interest at the rate of sixteen percent (16%) per annum from the date of such invoice to the date paid.

(c) Unless otherwise modified, terminated or extended as permitted in this Easement, the easements, rights, obligations, covenants and restrictions contained in this Easement shall continue in perpetuity. Provided, however, if the Easement Area is not used by Weber or any Permittee for a continuous period of three (3) years, the owner of the Simmonds Property may terminate this Easement Agreement by providing the owner of the Weber Property thirty (30) days prior written notice of the intended termination of the Easement, and if Weber or any Permittee fails to resume use of the Easement Area during such thirty (30) day period, this Easement Agreement will terminate upon recordation of an affidavit by the owner of the Simmonds Property to that effect. Notwithstanding the foregoing, a copy of such affidavit shall be provided to the owner of the Weber Property at least thirty (30) days prior to such recordation as a pre-condition to the validity of such termination.

7. Insurance. Weber shall maintain comprehensive general liability insurance to cover any incidents or claims arising out of the use of the Easement Area. Simmonds shall be named as an additional insured under such policy. Insurance may be provided by a Permittee so long as Simmonds is a named additional insured.

8. Indemnification. Weber indemnifies and agrees to hold Simmonds harmless from any and all loss, liability, claim, damage or other rights, including any attorneys' fees or expenses, asserted against Simmonds arising out of or related to use of the Easement Area or related to any breach of this Easement by Weber. This indemnification shall not apply to any acts or omissions of Simmonds, or its agents, employees, customers, and contractors.

9. Restriction. Weber, any Permittees, or any subsequent owner of the Weber Property, shall not, at any time, place any building, structure or other obstruction on the



Easement Area except permitted directional traffic signs at the entrance/exits of the Easement Area.

10. Miscellaneous.

(a) All notices, statements, demands, approvals or other communications given pursuant to this Easement will be in writing and will be delivered in person, by certified mail or registered mail, postage prepaid, or by recognized courier service to the owner of the property affected at the address on file with the office of the Douglas County Assessor for delivery of ad valorem tax statements relating to the respective properties. All such notices which are mailed shall be deemed delivered on the third day after postmark, unless delivered sooner.

(b) Nothing contained in this Easement and no action by the owner of the Simmonds Property or the Weber Property will be deemed or construed by any owner or 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 the Simmonds Property or the Weber Property.

(c) This Easement will be construed in accordance with the laws of the State of Nebraska.

(d) The provisions of this Easement will inure to the benefit of and be binding upon Simmonds and Weber and their respective successors and assigns.

(e) This Easement, together with the rights related thereto and set forth herein, shall run with the land and shall be for the benefit of and appurtenant to the Weber Property and shall be binding upon, enforceable against and burden the Simmonds Property.

(f) The invalidity or unenforceability of any provision hereof shall in no way affect the validity of the remaining provisions of this Easement.

WEBER PLACE LLC, a Nebraska limited liability company

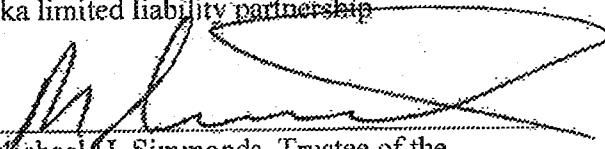
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Vice President

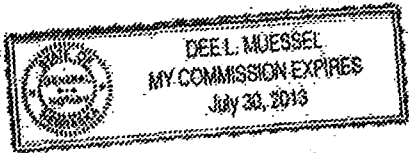
SIMMONDS PROPERTIES, LTD., LLP,  
a Nebraska limited liability partnership

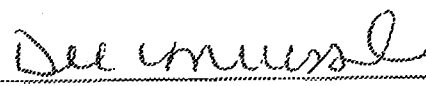
By:

  
Michael H. Simmonds, Trustee of the  
Michael H. Simmonds Revocable Trust,  
Managing Partner

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

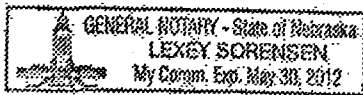
The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of September, 2010, by Salvadore Carta, Vice President of WEBER PLACE LLC, a Nebraska limited liability company, on behalf of such limited liability company.



  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of October, 2010, by MICHAEL H. SIMMONDS, Trustee of the MICHAEL H. SIMMONDS REVOCABLE TRUST, Managing Partner of SIMMONDS PROPERTIES, LTD., LLP, a Nebraska limited liability partnership, on behalf of such partnership.



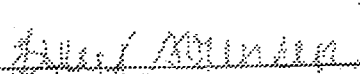
  
Notary Public

EXHIBIT A (THE EASEMENT)

A PART OF LOT 2, IN SHOPKO ACRES REPLAT 2, AN ADDITION TO THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 79°41'05" WEST ALONG THE SOUTH LINE OF LOT 2, A DISTANCE OF 24.98 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 79°41'05" WEST ALONG SAID SOUTH LINE, 13.36 FEET; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 15.00 FEET, WHOSE ARC LENGTH IS 6.32 FEET AND WHOSE CHORD BEARS NORTH 6°22'49" EAST, 6.27 FEET; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY WHOSE RADIUS IS 37.00 FEET, WHOSE ARC LENGTH IS 21.27 FEET AND WHOSE CORD BEARS NORTH 10°46'30" EAST, 20.98 FEET; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 32.80 FEET, WHOSE ARC LENGTH IS 19.14 FEET AND WHOSE CORD BEARS NORTH 9°02'13" EAST, 18.87 FEET; THENCE NORTH 10°19'54" WEST, 71.12 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS IS 15.00 FEET, WHOSE ARC LENGTH IS 12.16 FEET AND WHOSE CORD BEARS NORTH 35°33'36" WEST, 11.83 FEET; THENCE SOUTH 22°35'19" WEST, 3.49 FEET; THENCE NORTH 67°24'41" WEST, 4.00 FEET; THENCE NORTH 22°35'19" EAST, 3.69 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHERLY WHOSE RADIUS IS 15.00 FEET, WHOSE ARC LENGTH IS 7.38 FEET AND WHOSE CORD BEARS NORTH 86°13'32" WEST, 7.30 FEET; THENCE SOUTH 79°40'58" WEST, 0.40 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE NORTHERLY WHOSE RADIUS IS 45.00 FEET, WHOSE ARC LENGTH IS 17.75 FEET AND WHOSE CORD BEARS NORTH 89°01'28" WEST, 17.63 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHERLY WHOSE RADIUS IS 25.00 FEET, WHOSE ARC LENGTH IS 9.47 FEET AND WHOSE CORD BEARS NORTH 87°49'14" WEST, 9.41 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 2; THENCE NORTH 79°41'20" EAST ALONG SAID NORTH LINE, 53.87 FEET; THENCE SOUTH 10°19'54" EAST, 92.08 FEET; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 44.70 FEET, WHOSE ARC LENGTH IS 26.53 FEET AND WHOSE CORD BEARS SOUTH 9°13'01" WEST, 26.14 FEET; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY WHOSE RADIUS IS 25.75 FEET; WHOSE ARC LENGTH IS 15.88 FEET AND WHOSE CORD BEARS SOUTH 9°03'10" WEST, 16.58 FEET; THENCE SOUTH 10°18'15" EAST, 2.63 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 2, SAID POINT ALSO THE POINT OF BEGINNING AND CONTAINING 0.04 ACRES (1086 S.F.) MORE OR LESS

