



MISC Inst. # 2018084832, Pg: 1 of 16 Rec Date: 10/24/2018 13:37:23.183

Fee Received: \$100.00 Electronically Recorded By: CC

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HEARTWOOD PRESERVE
OMAHA, DOUGLAS COUNTY, NEBRASKA**

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HEARTWOOD PRESERVE
OMAHA, DOUGLAS COUNTY, NEBRASKA**

NEW WEST FARM HOLDINGS, LLC, a Nebraska limited liability company, and **SOUTH FARM, LLC**, a Nebraska limited liability company (collectively “Declarant”) hereby execute this **FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this “First Amendment”) as of the date set forth below.

RECITALS

WHEREAS, Declarant has made that certain Declaration of Covenants, Conditions and Restrictions for Heartwood Preserve, which was recorded on August 15, 2018, as instrument # 2018064540 of the Deed Records of Douglas County, Nebraska (the “Declaration”).

WHEREAS, the description of the Heartwood Property which is subject to the covenants, conditions and restrictions set forth in the Declaration erroneously omitted certain parcels described on Schedule 1 hereto (the “Additional Property”), and certain property owned by West Farm RE, LLC (“WFRE”), which were intended to be subjected to the Declaration.

WHEREAS, one parcel of the property intended to be subjected to the Declaration was sold to WFRE subsequent to the recording of the Declaration, and it is intended that such property owned by WFRE will be subjected to the Declaration in the future.

WHEREAS, Declarant and WFRE are now the record owners of all of the land intended to be included within the Heartwood Property and Declarant wishes to modify the Declaration according to the terms and conditions set forth in this First Amendment in order to modify certain provisions thereof and to bind all such land owned by Declarant to the terms and conditions set forth in the Declaration and this First Amendment.

NOW, THEREFORE, in consideration of the foregoing promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Terms. All terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Declaration.

2. Heartwood Property. The Additional Property shall be subject to the Declaration and all the terms and conditions of the Declaration shall apply to the Additional Property as if it had originally been included in the definition of the Heartwood Property. In furtherance thereof, Exhibits A and B to the Declaration are hereby deleted in their entirety and replaced with Exhibits A and B attached hereto.

3. References. Declarant acknowledges that other references to the Heartwood Property, including the allocation of Authorized Votes among the Zones in Section 4(b), already include and account for all of

the Heartwood Property, including the Additional Property and the parcel owned by WFRE, as set forth in the revised Exhibit A attached hereto.

4. Appearance. The following shall be added to the end of the existing Section 3(d) of the Declaration: “All items or furniture located on residential balconies shall be screened from view from any adjacent street or trail, the underside of such balconies shall be finished with materials and in a manner consistent with the rest of the building, and no items may be attached to the walls above the railing height (or to the balcony above) such that those items are visible from any adjacent street or trail.”

5. Lighting Design Guidelines. Page 60 of the “West Farm/South Farm Design Guidelines,” attached to the Declaration as Exhibit C, is hereby deleted and replaced with a new page and new Appendices thereto, as set forth in Schedule 2, attached hereto.

6. Full Force and Effect. Except as expressly provided in this Amendment, the Declaration remains unmodified and in full force and effect.

7. Counterpart Execution. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto.

IN WITNESS WHEREOF, the undersigned parties have hereto executed this First Amendment to Declaration of Covenants, Conditions and Restriction on the date set forth beneath their respective signatures.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

NEW WEST FARM HOLDINGS, LLC,
a Nebraska limited liability company

By: North American Casualty, Co., manager

By: [Signature]

Name: Jeffrey Silver

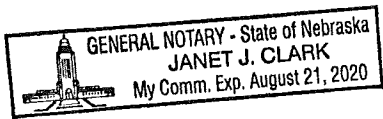
Title: Vice President

Date: 10/24/18

STATE OF NEBRASKA

COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me on October 24, 2018, by JEFFREY SILVER the VICE PRESIDENT of North American Casualty, Co., manager of NEW WEST FARM HOLDINGS, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.



[Signature]
Notary Public

My Commission expires: 8-21-2020

SOUTH FARM, LLC,
a Nebraska limited liability company

By: North American Casualty, Co., manager

By: _____

Name: Jeffrey Silver

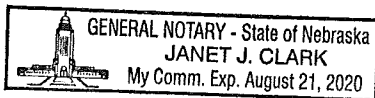
Title: Vice President

Date: 10/24/18

STATE OF NEBRASKA

COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me on October 24, 2018, by JEFFREY SILVER the VICE PRESIDENT of North American Casualty, Co., manager of SOUTH FARM, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.



Janet J. Clark
Notary Public

My Commission expires: 8-21-2020

EXHIBIT A

HEARTWOOD PROPERTY LEGAL DESCRIPTION

Lot 3 and Lots 5-9, inclusive, West Farm, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

Lots 1-4, inclusive, West Farm Replat 1, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

Lots 1 and 3, West Farm Replat 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

Lots 1-2, inclusive, West Farm Replat 3, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

Lots 2-11, inclusive, South Farm, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

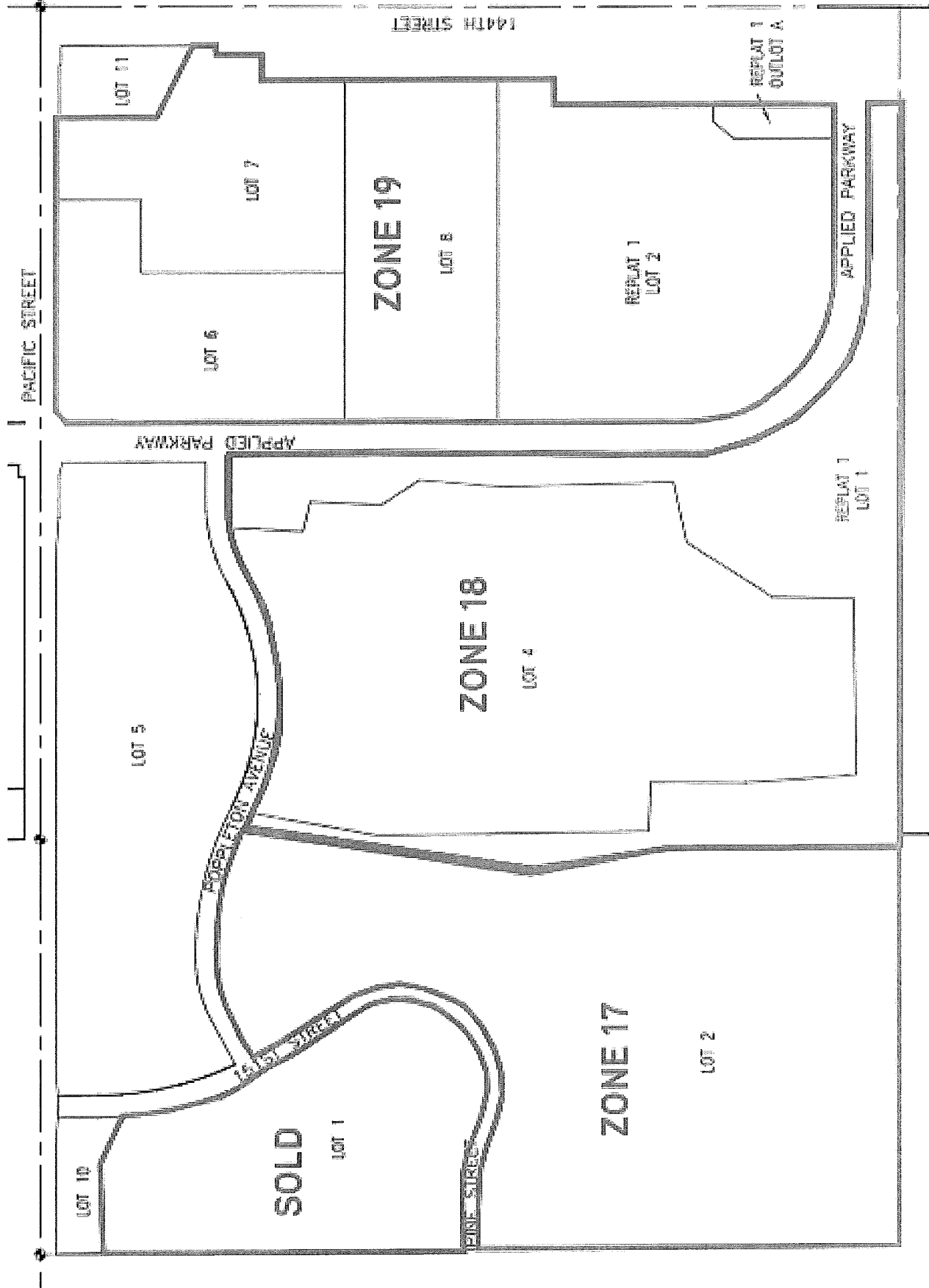
EXHIBIT B

HEARTWOOD PROPERTY DEVELOPMENT PROGRAM AND ZONES

“Zone 1”	West Farm Replat 2 Lot 1
“Zone 2”	West Farm Replat 2 Lot 2
“Zone 3”	West Farm Replat 3 Lot 1 and Replat 4 Lots 1, 2, 3, 4
“Zone 4”	West Farm Replat 4 Lot 5
“Zone 5”	West Farm Lot 3
“Zone 6”	West Farm Replat 4 Lots 6, 7, 8
“Zone 7”	West Farm Replat 4 Lots 9, 10, 11, 12
“Zone 8”	West Farm Replat 4 Lots 31-39
“Zone 9”	West Farm Replat 4 Lots 13, 14, 15
“Zone 10”	West Farm Replat 4 Lots 16, 17, 18
“Zone 11”	West Farm Replat 4 Lots 19, 21
“Zone 12”	West Farm Replat 4 Lot 22
“Zone 13”	West Farm Lot 9
“Zone 14”	West Farm Replat 4 Lot 25
“Zone 15”	West Farm Replat 1 Lot 2
“Zone 16”	West Farm Replat 4 Lots 26, 27, 28
“Zone 17”	South Farm Lot 2
“Zone 18”	South Farm Lot 4 and Replat 1 Lot 1
“Zone 19”	South Farm Lots 6, 7, 8 and Replat 1 Lot 2

WEST FARM PLAT						
Zone	Description	Platted Lots	Density		Value	
			Units	GSF		
1	Large Format Retail, Phase 1	Replat 2, Lot 1	-	133,020	\$ 29,422,410	
2	Luxury Auto Dealership	Replat 2, Lot 2	-	21,805	\$ 6,138,158	
3	Office Block	Replat 3, Lot 1 / Replat 4, Lot 1-4	-	458,692	\$ 137,895,405	
4	Large Format Retail, Later Phase	Replat 4, Lot 5	-	72,000	\$ 15,875,592	
5	Large Format Retail, Later Phase	West Farm Lot 3	-	30,150	\$ 7,310,114	
6	Mixed Use- Northwest	Replat 4, Lot 6-8	-	202,828	\$ 58,970,204	
7	Mixed Use- Northeast	Replat 4, Lot 9-12	171	423,286	\$ 96,782,438	
8	The Row	Replat 4, Lot 31-39	-	1,080	\$ 342,662	
9	Mixed Use- Southwest	Replat 4, Lot 13-15	509	336,690	\$ 109,486,421	
10	Mixed Use- Southeast	Replat 4, Lot 16-18	395	472,410	\$ 77,634,254	
11	Food Hall	Replat 4, Lot 19, 21	-	63,630	\$ 13,739,024	
12	MFR- South	Replat 4, Lot 22	352	689,580	\$ 53,824,535	
13	Office- South	West Farm Lot 9	-	40,500	\$ 10,694,130	
14	TND	Replat 4, Lot 25	-	1,080	\$ 57,081,992	
15	Assisted Living	Replat 1, Lot 2	270	291,276	\$ 35,123,313	
16	Office- West	Replat 4, Lot 26-28	-	121,590	\$ 30,098,680	
		Sub-total	1,697	3,359,617	\$ 740,419,332	
NA	Open Space	Replat 4, Lot 20,23,24,30	-	-	\$ -	
		Sub-total (w/ Open Space)	1,697	3,359,617	\$ 740,419,332	
SOUTH FARM PLAT						
Zone	Description	Platted Lots	Density		Value	
			Units	GSF		
17	Estate Lots	South Farm Lot 2	-	230,400	\$ 55,908,199	
18	Corporate Campus	South Farm Lot 4 & Replat 1 Lot 1	-	364,500	\$ 103,772,976	
19	South Mixed Use	South Farm Lot 6,7,8, and Replat 1 Lot 2	289	751,393	\$ 117,707,935	
		Sub-total	289	1,346,293	\$ 277,389,110	
NA	Open Space	South Farm Lot 5,10, 11	-	-	\$ -	
		Sub-total (w/ Open Space)	289	1,346,293	\$ 277,389,110	
Total Development			1,985	4,705,910	\$ 1,017,808,442	

Note: Density is expressed as "units" for assisted living, multi-family, and hotel rooms. All other building type densities are expressed in gross building square feet.



SCHEDULE 1

ADDITIONAL PROPERTY

Lots 5-8, inclusive, West Farm, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

Lots 1-4, inclusive, West Farm Replat 1, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

Lots 1 and 3, West Farm Replat 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

Lots 1-2, inclusive, West Farm Replat 3, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

Lots 10-11, inclusive, South Farm, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

SCHEDULE 2

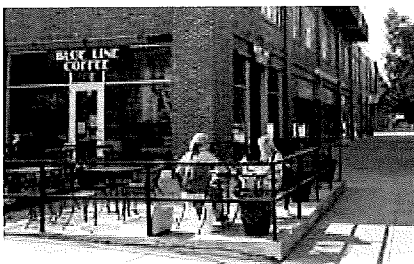
REPLACEMENT PAGES FOR WEST FARM/SOUTH FARM DESIGN GUIDELINES

[see attached pages]

6. ADDITIONAL ELEMENTS

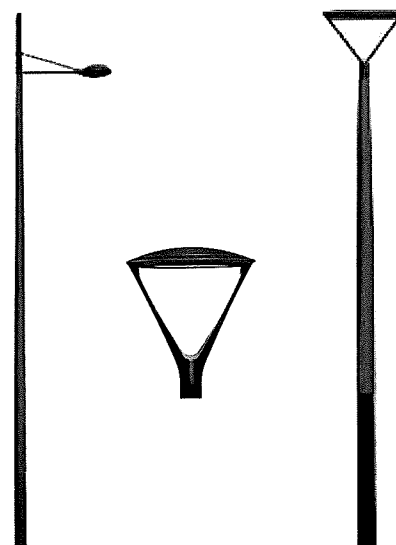
OUTDOOR DINING

- » Terraces provide elevated outdoor space to look out over a street, public space, or natural vista
- » Frontages should offer a variety of seating opportunities, optimizing them on primary streets
- » Garden seat walls, planting, and transparent screens or fences can be used to create separation without comprising visibility and interaction
- » Outdoor Dining areas must not impede the accessible path and must themselves be accessible



LIGHTING

- » All exterior and parking garage luminaires shall have black finish and utilize LED light sources with a correlated color temperate of 3,000 Kelvin and a minimum color rendering index of 70
- » Pole-mounted lighting shall be from the approved luminaire and pole configurations shown in Appendix 1 or Appendix 2. All other exterior luminaires (including building-mounted, bollards, floodlights and parking garage lighting) shall be submitted to the ACC for approval
- » Design light levels for parking lots and outdoor automotive sales shall comply with the requirements in Appendix 3. Other areas should comply with the standards and recommendations of the Illuminating Engineering Society (i.e. IES RP-8 for Roadway Lighting)
- » Directed lighting should illuminate the building façade, signs, architectural elements, storefront displays, sidewalks and entrances to enhance visual interest, security, and the comfort of pedestrians at night
- » Light pollution and trespass shall comply with the Omaha Electrical Code – Chapter 44, Article 5, Division 5. In residential areas light should be directed away from windows
- » Lights shall be automatically controlled based on astronomical time-clock or photocell input. Twist lock photocells may be utilized if they have matching finish to luminaire. Outdoor automotive sales lighting shall automatically dim after 8:00 PM Central to approved parking lot lighting levels



Appendix 1. APPROVED ROADWAY LIGHTING CONFIGURATIONS

Approved Roadway Luminaires and Pole Configurations

1. Applied Parkway
 - a. Tehomet Ivalo 10-meter wood pole with Caramel wood stain finish
 - b. Metal 1600-millimeter base, 1200-milimeter finial, 1800-milimeter mast arm, and angled tie rod all with black finish
 - c. Overall pole height approximately 42'-0"
 - d. Direct screw ancor base or flush concrete
 - e. Ability to add banner arms, planters, and other accessories
 - f. Philips Lumec Medium Capella luminaire with button photocell, 3000K, flat lens, and black finish

2. Street Lighting
 - a. Tehomet Ivalo 7-meter wood pole with Caramel wood stain finish
 - b. Metal 1400-millimeter base, 1000-milimeter finial, 1200-milimeter mast arm, and angled tie rod all with black finish
 - c. Overall pole height approximately 31'-0"
 - d. Direct screw ancor base or flush concrete
 - e. Ability to add banner arms, planters, and other accessories
 - f. Philips Lumec Medium Capella luminaire with button photocell, 3000K, flat lens, and black finish

3. Decorative Street Lighting
 - a. Tehomet Ivalo 6-meter wood pole with Caramel wood stain finish
 - b. Metal 1400-millimeter base, 1000-milimeter finial, 900-milimeter mast arm, and angled tie rod all with black finish
 - c. Overall pole height approximately 27'-6"
 - d. Direct screw ancor base or flush concrete
 - e. Ability to add banner arms, planters, and other accessories
 - f. Single or twin head configuration
 - g. Philips Lumec Small Capella luminaire with button photocell, 3000K, flat lens, and black finish

Appendix 2. APPROVED SITE LIGHTING CONFIGURATIONS

Approved Decorative Luminaires and Pole Configurations

1. Walkway Lighting
 - a. Tehomet Ivalo 5-meter wood pole with Caramel wood stain finish
 - b. Metal 1300-millimeter base, 900-milimeter finial, 750-milimeter mast arm, and angled tie rod all with black finish
 - c. Overall pole height approximately 23'-6"
 - d. Flush precast concrete base (2'-6" raised base allowed in parking lot areas)
 - e. No banner arms, planters, or other accessories
 - f. Single or twin head configuration
 - g. Philips Lumec Small Capella luminaire with button photocell, 3000K, flat lens, and black finish

2. Pedestrian Lighting
 - a. Tehomet Ivalo 3-meter wood pole with Caramel wood stain finish
 - b. Metal 1000-millimeter base with black finish
 - c. Overall pole height approximately 15'-0"
 - d. Flush precast concrete base
 - e. No banner arms, planters, or other accessories
 - f. Kim 20" Ouro luminaire with button photocell, 3000K, diffuse lens, and black finish

Approved Parking Luminaires and Pole Configurations

1. Parking Lot Lighting
 - a. Valmont 25'-0" round straight steel pole with base cover and black finish to match luminaire
 - b. Integral factory installed vibration dampers
 - c. Overall pole height approximately 27'-6"
 - d. Raised 2'-6" precast concrete base
 - e. No banner arms, planters, or other accessories
 - f. Single arm or twin arm configuration (no post top)
 - g. Kim 28" Ouro luminaire with button photocell, 3000K, no lens, and black finish

2. Parking Garage Lighting
 - a. Round shape with diffuse glare reducing lens
 - b. Black finish
 - c. Integral occupancy sensor
 - d. Similar to Kenall SenScape and McGraw-Edison TopTier

Appendix 3. DESIGN LIGHT LEVELS

Parking Lot Illuminance Criteria

Average:	1.0 fc
Maximum:	3.0 fc
Minimum:	0.5 fc
Average/Minimum:	3.0
Maximum/Minimum:	6.0

Assumptions:

- 1) Light levels are maintained with Light Loss Factor = 0.8
- 2) Horizontal calculations points at ground level
- 3) Grid point spacing at 1/3 pole height with points maximum of 1/2 grid spacing at perimeter

Outdoor Automotive Sales Illuminance Criteria

	Average	Maximum/Average	Average/Minimum
Front Row	20 fc	3.0	3.0
Sales	10 fc	3.0	3.0
Parking	2 fc	3.0	3.0

Assumptions:

- 1) Criteria derived from the IES Lighting Handbook 10th Edition for Lighting Zone 3 (LZ3)
- 2) Light levels are maintained with Light Loss Factor = 0.8
- 3) Front Row and Sales - horizontal calculation points at 4'-0" above ground
- 4) Parking - horizontal calculations points at ground level