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**AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS (the "**Agreement**") is made and entered into as of this 4th day of November, 2005, by and between 168th and Dodge L.P., a Nebraska limited partnership ("**Developer**"), having a mailing address of c/o RED Development of West Dodge, LLC, 4717 Central, Kansas City, MO 64112, Quantum Properties, L.L.C., a Nebraska limited liability company ("**QP**"), and Quantum Properties II, L.L.C., a Nebraska limited liability company ("**QPII**"), QP and QPII are collectively referred to as "**Owner**", and both have a mailing address of 1925 North 120th Street, Omaha, Nebraska 68154.

R E C I T A L S:

WHEREAS, Developer is the owner in fee of that certain real property (the "**Developer Property**") located in Douglas County, Nebraska, more particularly described in **Exhibit A** attached hereto. Developer has subdivided, and anticipates further subdividing, the Developer Property into separate legal parcels (the "**Developer Parcels**").

WHEREAS, Owner is the owner in fee of that certain real property located in Douglas County, Nebraska, more particularly described in **Exhibit B** attached hereto (the "**Adjacent Parcel**"). The Adjacent Parcel and Developer Parcels may sometimes be referred to collectively herein as the "**Parcels**")

WHEREAS, Developer and Owner desire to construct or have constructed on their respective Parcels such buildings and other improvements as are consistent with the Site Plan attached hereto as **Exhibit C** and this Agreement.

WHEREAS, the Parties hereto recognize that for the optimum development and operation of the Parcels as a unified and coordinated project, it is necessary that they agree respecting certain matters, including, but not limited to, matters relating to the design and layout of facilities on, and the operation, use and restrictions on the use of, their respective Parcels, and that in the absence of such agreements neither Party hereto would be willing to undertake the development or operation of their respective Parcels, and the Parties desire that all persons or entities who acquire portions of either of the Parcels shall take subject to this Agreement in order that all development on the Parcels will be in conformity herewith.

WHEREAS, the parties hereto acknowledge and agree that substantial conflicts could develop in the future leasing and development of the Parcels and, thus, intend to reasonably resolve those conflicts by this Agreement, and further desire that the Adjacent Parcel be subject to the covenants, conditions, and restrictions hereinafter set forth;

WHEREAS, Developer has chosen RED Design Services, LLC, as the architect for the project (hereinafter, the "**Project Architect**").

WHEREAS, Developer, QP and QPII previously executed and recorded that certain Declaration of Covenants and Restrictions dated May 5, 2003 and filed July 2, 2003 as Document No. 2003128562 (the "**Original DRC**"); and

WHEREAS, this Agreement is intended to and upon execution hereof shall replace and supersede in its entirety the Original DRC, which after the execution hereof shall be of no further force or effect.

NOW, THEREFORE, in consideration of the foregoing promises and for the purpose of establishing certain covenants and restrictions, Developer and Owner, declare that the Adjacent Parcel shall be held and/or sold and conveyed subject to the covenants and restrictions stated herein.

1. **Design and Plan Approval.** No improvements shall be constructed, erected, expanded, or altered on the Adjacent Parcel until the design and layout of any structure shall be reasonably approved by Developer and is aesthetically compatible with the improvement of the Developer Parcels. In order to produce an aesthetically compatible development contemplated by this Agreement, Owner agrees to consult with the Project Architect and Developer for a reasonable period of time concerning the exterior design, color treatment and exterior materials to be used in the construction, alteration and reconstruction of all buildings and structures on its respective Parcel(s) and to consider the views of the Developer with respect thereto prior to selecting the specific materials and colors for its improvements. Owner agrees to cause its architect to work in good faith with the Project Architect or any subsequent architect, and Developer so that the buildings to be erected and constructed will be aesthetically compatible with the balance of the Developer Parcels improvements. Developer's approval of the elevation, site plan and materials shall be conclusive as to Owner's compliance with this section.

2. **Restrictions and Competition.** The parties agree that the following restrictions and covenants shall be and are binding upon the Adjacent Parcel and same shall hereafter run with the land, thus, passing to each successor in interest thereto:

2.1 For a period of ten (10) years from January 4, 2002, Parcel 1 and Parcel 2 of the Adjacent Parcel (as shown on **Exhibit C** attached hereto and made a part hereof) shall be restricted as follows.

2.1.1 During the time periods set forth above, neither Parcel 1 or Parcel 2 of the Adjacent Parcel may be used for: (i) national brand retail typically located in a lifestyle shopping center, or (ii) a use that is substantially similar to a use then existing within the Developer Parcel (eg. a sit-down full service restaurant serving Mexican food, if same exists within the Developer Parcel), nor shall Owner approach, solicit, or otherwise encourage or assist any of the tenants listed on **Exhibit D** attached hereto and made a part hereof, or any tenant who occupies space within the Developer Parcels, with respect to locating at the Adjacent Property without the express written consent of Developer, which consent may be arbitrarily withheld. Said **Exhibit D** lists tenants typically in a lifestyle shopping center for the purpose of demonstration only and other such similar lifestyle tenants may exist that are not on said list but shall be equally prohibited.

2.1.2 Provided that Owner, its successors and assigns, is fully in compliance with Section 2.1.1, Parcel 2 of the Adjacent Property may be used for the following: convenience stores, gas stations, fast food

used for no more than one (1) of each of the following use types without the prior written consent of Developer: (i) bookstore, (ii) office product or supply store, (iii) off-price department store (such as TJ Maxx or Steinmart), (iv) bank and other financial institutions, (v) wireless communications, (vi) optical/eyewear, (vii) dry cleaning/laundry delivery and pickup, (viii) furniture, (ix) beer/wine/liquor, hardware/home improvement, (x) wall coverings/paint store, (xi) health club/gym, (xii) musical instruments/supplies, (xiii) video rental/sales, (xiv) paper/party goods, (xv) pets/animal supplies, (xvi) drug stores and (xvii) beauty supply store, (xviii) fast food restaurant, (xix) free standing sit down restaurant. In addition, provided that Owner, its successors and assigns, is fully in compliance with Section 2.1.1, Parcel 1 of the Adjacent Property may be used for non lifestyle businesses and unlimited in line restaurants under 3,500 square feet (e.g. Tex Mex since Pancheros and Tin Star on Developer Property) and other health/medical related uses (hereinafter, each an "Approved Use").

2.2 Scheels Exclusive. For a period of ten (10) years from January 4, 2004, provided a retail business primarily engaged in the sale of sporting goods and sports apparel is operating on the Developer Property, Owner will not lease, rent or permit any premises on the Adjacent Parcel to be occupied, whether by a tenant, sublessee, assignee, licensee or any other occupant, (hereinafter "User") for a purpose which includes the sale of branded athletic specific apparel and/or sporting goods or equipment (hereafter, the "Scheels Exclusive"); provided, however, the foregoing restrictions shall in no event restrict (i) a department store (as defined herein) from containing a shoe department that sells athletic shoes and (ii) one premises not to exceed (5,000) square feet which may be devoted primarily to athletic shoes such as Athletes Foot or Footlocker or (iii) any User who sells branded athletic specific apparel and/or sporting goods or equipment, provided that such User does not utilize in excess of 10% of gross leasable area of its space (including adjacent aisle space) for the sale or display of branded athletic specific apparel and/or sporting goods or equipment (considering all of such items in the aggregate). Owner agrees that provided it has the right to do so, it shall not approve a change in use which conflicts with or is in violation of the Scheels Exclusive. The foregoing restriction is intended to be for the benefit of and appurtenant to the Scheels parcel and may be directly enforced by Scheels All Sports, Inc. and/or the owner of the Scheels parcel. For purposes hereof, "department store" shall be defined as a traditional general merchandise store occupying at least 75,000 square feet such as Sears, May Company, Marshall Fields, or Nordstrom.

2.3 Bed, Bath & Beyond Exclusive. The following exclusive use is hereby declared on behalf of Bed, Bath & Beyond Inc. for a period of ten (10) years from January 4, 2002: Provided Bed, Bath & Beyond is open and operating a retail business located in the Developer Parcels, Owner shall not lease, rent or occupy or permit any premises in the Adjacent Parcel to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, by a "Primary Competitor" (hereinafter defined) or a "Secondary Competitor" (hereinafter defined). For purposes hereof, a "Primary Competitor" shall mean a home store (such as, by way of illustration only, Linens 'n Things) whose primary use is the sale, rental or

either singly or in any combination, of the Exclusive Items; provided, however, that any "Upscale Tenant" (hereinafter defined) shall not be deemed to be a Secondary Competitor. The term "Upscale Tenant" shall mean any first-class specialty retail tenant normally found in regional malls and primarily selling their respective merchandise under private labels (such as, by way of illustration only, Eddie Bauer, Williams Sonoma, Talbots and Victoria's Secret). Notwithstanding the foregoing, any tenant or subtenant of the Adjacent Parcel shall have the right to utilize its respective premises for the sale, rental or distribution of the Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed ten percent (10%) of the floor area of such tenant's or subtenant's premises. The restrictions set forth above shall not apply to a full-line national or regional: (i) department store [for example, Wal-Mart, Macy's, Target, the Jones Store or Dillards], (ii) discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], or (iii) home improvement center [for example, Home Depot or Lowe's], commonly located in first-class shopping centers in the state in which the Parcels are located, each occupying at least 80,000 square feet of floor area within the Parcels, as such stores are currently operated (as of the Effective Date of the Bed Bath & Beyond lease on the Developer Property, hereafter the "BBB Lease"). In addition, the restrictions set forth above shall not apply to the tenants operating under the tradenames "Organized Living", "Pier One Imports", "Cost Plus", "Wild Oats", as such stores are currently operated (as of the Effective Date of the BBB Lease) or to Lot 3 of the Developer Property.

2.4 Prohibited Uses. The Adjacent Parcel shall not be used for any of the "Prohibited Uses" detailed in Exhibit E attached hereto.

3 Developer Requested Exclusives. Developer may propose at any time that an exclusive favoring Developer's particular lifestyle tenant be placed of record on the Adjacent Property.

3.1 Owner Approval or Disapproval. Owner shall, by giving notice to Developer within thirty (30) days of receipt of a written request for approval of any such proposed exclusive use, either approve or disapprove the same and specify in detail the reason for such disapproval. In the event Owner neither approves or disapproves such requested exclusive within such period, Owner shall be deemed to have approved such proposed exclusive use.

3.2 Criteria for Approval of Exclusive Use. Provided that (i) the proposed exclusive use does not affect or otherwise exclude any Approved Use set forth in Section 2.1 and any existing permitted use on the Adjacent Property, (ii) that the proposed exclusive use does not apply to stores occupying less than three thousand (3,000) square feet of floor area or stores that do not utilize in excess of ten percent (10%) of its floor area for the proposed exclusive use; (iii) that the exclusive use continues only for a period of ten (10) years from January 4, 2002; (iv) that the prospective tenant of Developer requires such exclusive use language; and (v) that the prospective use is a lifestyle use, Owner shall not refuse to approve any such exclusive use.

4 Default and Remedies

put Developer or Owner into a default of another Agreement, shall remain uncured for a period of thirty (30) days after the other party (the "**Non-Defaulting Party**") shall have served upon the Defaulting Party written notice of such failure.

4.2 **Entry.** Each party hereto hereby grants to the other a non-exclusive right of entry as herein after defined, in and over their respective real property (including the right to enter any buildings thereon) for the purposes reasonably necessary, to enable the other to determine that any of the terms, provisions, covenants or conditions of this Agreement are not being fully performed.

4.3 **Relief.** In the event of a breach, or attempted or threatened breach, of any terms, provisions, covenants or conditions of this Agreement, the Non-Defaulting Party shall be entitled forthwith to full and adequate relief including but not limited to any equitable relief, such as injunction and damages, and all other available legal and equitable remedies from the consequences of such breach.

4.4 **Attorney Fees.** The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, court costs and any other related expenses which shall be deemed to have accrued on the date such action was filed.

5 **Notices.** All notices, approvals, consents, or requests given or made pursuant to this Agreement shall be in writing and either (i) sent by a nationally recognized overnight courier, (ii) personally delivered, or (iii) sent by registered or certified mail with the postage prepaid. Notices personally delivered shall be deemed delivered on the date of delivery. Notices via overnight courier shall be deemed delivered on the date following deposit with such courier and certified or registered mail shall be deemed delivered three (3) business days after deposit with the U.S. Mail, as applicable. Any notice from counsel for either party shall be deemed an official notice from such party. Notices to Owner shall be addressed to the address listed above. Notices to Developer shall be addressed to the address listed above with copies to: Mr. Michael L. Ebert, Ebert & Rehorn, 6263 N. Scottsdale Road, Suite 330, Scottsdale, AZ 85250, and to Richard B. Katz, Esq., 435 Nichols Road, Second Floor, Kansas City, Missouri 64112. Such addresses may be changed from time to time by either party hereto by serving notice as herein provided. The parties hereto agree that if, at the time of the sending of any notice required or permitted to be given hereunder, the interests of any Party hereto in its respective property shall be encumbered by a first mortgage and the other Party hereto has been notified in writing thereof and of the name and address of the mortgagee a copy of said notice shall also be sent to such mortgagee by registered or certified mail at the address so given.

6 **Expiration of Covenants.** The covenants contained in Section 2 herein shall expire on January 3, 2012, or terminate on such date that Developer sells the Developer Property, whichever is sooner. Notwithstanding the foregoing, the restrictions set forth in Section 2.2 and 2.3 above shall survive the expiration or termination of the covenants.

7 **Legal Representation of the Parties.** This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof or thereof. The Parties recognize that this

- 8 **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.
- 9 **Entire Agreement.** This Agreement constitutes the entire agreement by Developer and Owner with respect to the Adjacent Parcel. This Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document. This Agreement shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Agreement or a counterpart hereof shall be admissible into evidence in any proceeding as though the same were an original.
- 10 **Governing Law.** These covenants and restrictions shall be governed by and construed under the laws of Nebraska.
- 11 **Severability.** If any provision of this Declaration of Covenants and Restrictions or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable under applicable law, the remainder of this Declaration of Covenants and Restrictions, or the application of such provision to other persons or circumstances, shall not be affected thereby, and each provision of these covenants and restrictions shall be valid and enforceable to the fullest extent permitted by law.
- 12 **Further Assistance.** Developer and Owner agree to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Closing such other instruments, documents and other materials as Developer or Owner may reasonably request in order to further effectuate any of the terms and conditions, agreements, restrictions, or covenants of this Agreement.
- 13 **Time of Essence.** The parties agree that time is an essential element to the performance of their respective obligations hereunder.
- 14 **Existing DRC.** This Agreement supersedes in all respects the Original DRC.

Exhibits

- Exhibit A Legal Description of Developer Property
- Exhibit B Legal Description of Adjacent Parcel
- Exhibit C Site Plan
- Exhibit D Restricted Tenants
- Exhibit E Prohibited Uses

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

"DEVELOPER"

168TH AND DODGE L.P., a Nebraska limited partnership

By: RED DEVELOPMENT OF WEST DODGE, LLC, a Missouri limited liability company, its general partner

By: RED Village Pointe, LLC, a Managing Member
By: E&R Holdings, LLC, an Arizona limited liability company, Manager

By: 
Michael L. Ebert, Manager

"OWNER"

QUANTUM PROPERTIES, L.L.C., a Nebraska limited liability company

By: _____
Paul M. Brown, Manager

QUANTUM PROPERTIES II, L.L.C., a Nebraska limited liability company

By: _____
Paul M. Brown, Manager

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"DEVELOPER"

168TH AND DODGE L.P., a Nebraska limited partnership

By: RED DEVELOPMENT OF WEST DODGE, LLC, a Missouri limited liability company, its general partner

By: E&R Holdings, LLC, an Arizona limited liability company, Manager

By: _____

Michael L. Ebert, Manager

"OWNER"

QUANTUM PROPERTIES, L.L.C., a Nebraska limited liability company

By: _____

Paul M. Brown, Manager

QUANTUM PROPERTIES II, L.L.C., a Nebraska limited liability company

By: _____

Paul M. Brown, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On 11/3/05, before me, the undersigned, a Notary Public in and for said state, personally appeared Michael L. Ebert, personally known to me (or 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/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]
Notary Public in and for said State

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On _____, before me, the undersigned, a Notary Public in and for said state, personally appeared Paul M. Brown, personally known to me (or 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.

WITNESS my hand and official seal.

Notary Public in and for said State

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On _____, before me, the undersigned, a Notary Public in and for said state, personally appeared Paul M. Brown, personally known to me (or 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.

WITNESS my hand and official seal.

Notary Public in and for said State

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, before me, the undersigned, a Notary Public in and for said state, personally appeared Michael L. Ebert, personally known to me (or 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/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.


WITNESS my hand and official seal.

Notary Public in and for said State

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On November 4, 2005, before me, the undersigned, a Notary Public in and for said state, personally appeared Paul M. Brown, personally known to me (or 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.

WITNESS my hand and official seal.



Notary Public in and for said State

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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WITNESS my hand and official seal.



Notary Public in and for said State

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

Lot 2, 4, 5, 8, Outlot A, Outlot B, Village Pointe, an addition to the City of Omaha, in Douglas County, Nebraska; AND 68-40328

Lot 1, 2, and 3, Village Pointe Replat One, an addition to the City of Omaha, in Douglas County, Nebraska; AND 68-40329

Lot 3 and Outlot A, Village Pointe Replat Two, and addition to the City of Omaha, in Douglas County, Nebraska. 68-40344

EXHIBIT B

LEGAL DESCRIPTION OF PARCEL 1 OF ADJACENT PROPERTY

Lots 11 and 12, Village Pointe, a subdivision in the City of Omaha, Douglas County,
Nebraska.

68-40328

LEGAL DESCRIPTION OF PARCEL 2 OF ADJACENT PROPERTY

Lots 1 through 5 and Outlot A, Town Center at Pacific Springs, a subdivision in Douglas
County, Nebraska. Now known as:

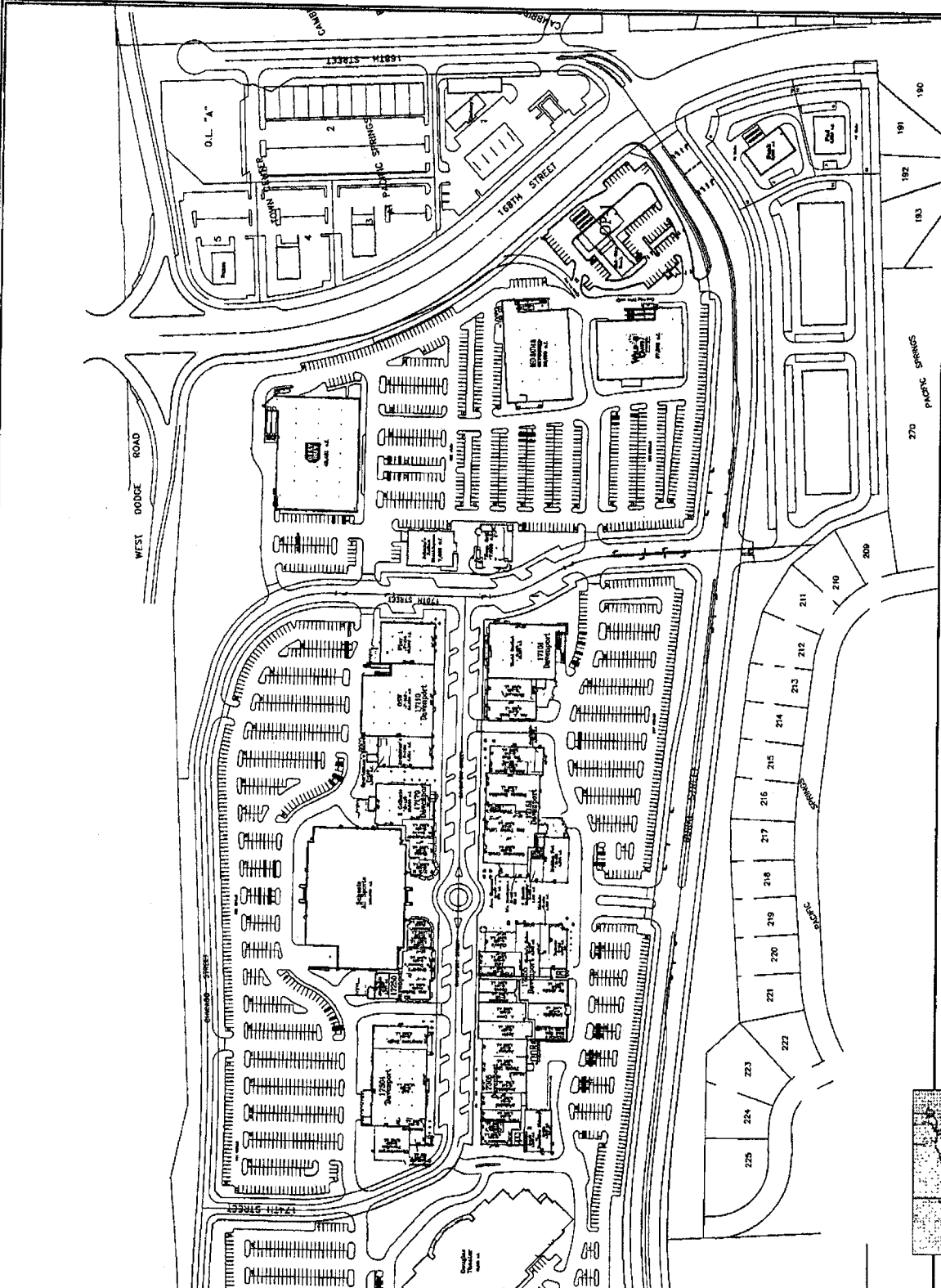
Lot 1, Town Center at Pacific Springs, a Subdivision in Douglas County,
Nebraska 68-38825

Lots 1 and 5, Town Center at Pacific Springs Replat 1, a Subdivision, in
Douglas County, Nebraska 68-38826

Lots 1 and 2, Town Center at Pacific Springs Replat 2, a Subdivision, in
Douglas County, Nebraska 68-38827

EXHIBIT C

SITE PLAN



VILLAGE POINTE SHOPPING CENTER
 OMAHA, NE
 OCTOBER 18, 2005

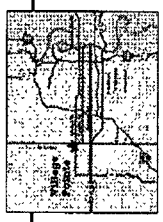
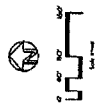


EXHIBIT D

TYPICAL LIFESTYLE CENTER TENANTS

The following list is a representation of typical lifestyle center tenants:

9 Months Maternity
Abercrombie
Abercrombie & Fitch
Acorn
Adreinne Vittadini
Aeropostale
Albertsons
AMC Theatres
American Eagle
Ann Taylor Loft
Anthropologie
Apple Computer
Archivers
Auntie Anne's Pretzels
Baja Fresh
Banana Republic
Bath & Body Works
Bebe
Bed, Bath & Beyond
Best Buy
Biaggi's
Blondies
Bombay Company
Bose
Bravo
Brighton's
Brooks Brothers
Brookstone
Buckle
Build A Bear
Cache
Candleman
Caribou Coffee
Carraba's
Casual Corner
Charlotte Russe
Cheeseburger in Paradise
Chico's
Children's Place
Chipotle
Christopher & Banks

Claddagh Irish Pub
Claire's
Coach
Coldstone Creamery
Coldwater Creek
Cosi
Cost Plus World Market
Crate & Barrel
Dave & Busters
DeBrand Fine Chocolates
Dick's Sporting Goods
Douglas Theatres
Draper's & Damons
Dress Barn
DSW
EB Games
Eddie Bauer / Home
Eddie Merlot's
Express
Finish It!
Finish Line
Firebirds Rocky Mountain Grill
Flemings
Francesca's
Funny Bone Comedy Club
Galyans
Gamestop
Gap / Gap Kids / Baby / Body
Hallmark
Harolds
Helzberg
Hollister Co.
J Crew
J Jill
Jeanne Marie
Johnny's Italian Steakhouse
Johnston Murphy
Jos A Banks
Justice
KB Toys
Kirkland's
Kona Grill
Krispy Kreme
Landmark Luggage
Lane Bryant
Learning Express
Lenscrafters

Macaroni Grill
Maggie Moo's
Maurice's
Melting Pot
Mikasa
Mimi's Café
Motherhood Maternity
My Abode
Nextel
Nine West
Nordic Track
Northface
Old Navy
Origins
Osh Kosh B'Gosh
Pacific Sunwear
Panchero's
Panda Express
Panera Bread
Paradise Bakery
Payless Shoe Source
Periwinkles
PF Changs
Pier 1
Pottery Barn / Pottery Barn Kids
Portrait Innovations
Rave Motion Pictures
Sam Goody
Scheel's
Scooter's Java Express
Sharper Image
Smokey Bones
Starbucks
Sunglass Hut
Talbot's
Timberland
Tin Star
Victoria's Secret
Von Maur
Walking Company
White House/Black Market
Whole Foods
Wild Oats
Williams-Sonoma
Wet Seal
Wild Oats
Yankee Candle

EXHIBIT E

PROHIBITED USES

As used in this Declaration of Covenants and Restrictions, the term "**Prohibited Uses**" shall mean any of the following uses:

1. Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used in whole or in part, as for warehousing or the dumping or disposing of garbage or refuse;
2. Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
3. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
4. Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building);
5. Any "Pornographic Use", which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; the parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a "pornographic use" hereunder; or massage parlor;
6. Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;
7. Any unlawful use;
8. Any pawn shop, gun shop, or tattoo parlor; and
9. Any carnival, amusement park or circus.