

FILED SARPY CO. NE.
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Glenn J. Dowling
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[Above Space For Recording Purposes] After recording return to: Slusky Real Estate Group, PO Box 1567, Council Bluffs, IA 51502

DECLARATION OF EASEMENTS WITH COVENANTS AND RESTRICTIONS
FOR LOTS 1 THROUGH 9 INCLUSIVE AND OUTLOTS A THROUGH C, INCLUSIVE,
SUGAR CREEK NEIGHBORHOOD CENTER

THIS DECLARATION OF EASEMENTS WITH COVENANTS AND RESTRICTIONS ("Declaration") is made as of this 26th day of April, 2006, by Hoich 192nd LLC, a Nebraska limited liability company, ("Declarant").

RECITALS:

WHEREAS, Declarant is the sole owner of certain real property situated in the County of Sarpy, State of Nebraska, legally described as follows:

Tax Lot Seven (7), Northwest Quarter of Section 17, Township 14 North, Range 11 East of the 6th P.M. Sarpy County, Nebraska more particularly described in Exhibit "A" attached hereto; to be known as Lots 1 through 9 Inclusive and Outlots A through C Inclusive, Sugar Creek Neighborhood Center, a subdivision in Sarpy County, Nebraska.

WHEREAS, Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners and Occupants (as defined below) of the Lots, or any part thereof, certain mutually beneficial restrictions and obligations with respect to the use, operation and maintenance thereof consistent with a first class retail, commercial, and office development.

WHEREAS, by virtue of the recording of this Declaration, the Lots (as defined herein) shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in any Lot or any portion thereof, by acceptance of a deed or other conveyance of such interest, and every Owner of a Lot or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof; and

WHEREAS, Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Lots and shall be binding on the present owners of the Lots and all its successors and assigns and all subsequent owners of the Lots and Improvements (as defined below), together with their grantees successors, heirs, executors,

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administrators, devisees and assigns.

NOW, THEREFORE, Declarant hereby imposes the following covenants, conditions and restrictions on the Lot which shall run with the equitable and legal title to the land and shall be for the benefit or burden, as the case may be, of the Owners and Occupants of the Lots or any portion thereof within the Development, their respective heirs, legal representatives, successors and assigns, and any mortgagees.

ARTICLE 1

Definitions

Definitions: The following words and phrases shall have the following meanings:

1.1 "Architectural Design Committee" means the Architectural Design Committee established pursuant to the provisions of Section 4.1 hereof.

1.2 "Declarant" means Hoich 192nd. LLC, a Nebraska limited liability company, its successors and assigns, and unless the context otherwise requires, shall mean and include its members, managers, board of directors, officers and other authorized agents.

1.3 "Common Areas" means those portions of the Lots, and any Improvements thereon, designated from time to time by Declarant, its successors or assigns, to be used for the common benefit of all or certain Owners and/or Occupants of the Lots, which shall apply only if Declarant chooses to exercise the right to organize an Association as provided for in Article 8 herein. Initially, the Common Areas are depicted on the site plan shown on Exhibit "*" attached hereto and incorporated herein by this reference.

1.4 "Development" means, in the aggregate, all of the Lots, including all of the improved areas, and all Common Areas (as defined herein), which area may be expanded or contracted at Declarant's option.

1.5 "Improvement(s)" means any building, structure, tunnel, drainage way, driveway, walkway, fence, wall, trellis, lake, water feature, landscaping, sprinkler system, sign, and any other building, structure or improvement of every kind and nature whatsoever now or hereafter located on any Lot.

1.6 "Lot" or "Lots" means the real estate lots described above or any subsequent administrative subdivision, replat, revision or amendment thereof, all of which are part of the Development. If any Lot is hereafter lawfully subdivided, by administrative lot split, lot line adjustment, lot combination, or otherwise, the Owner of the effected Lot shall record an instrument, which shall serve as an amendment to this Declaration, with copies attached thereto of the Land Surveyor's Certificates or Replat recorded in the records of Sarpy County, Nebraska, showing such subdivision.

1.7 "Mortgage" means any instrument recorded or filed in the records encumbering a Lot or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, including, without limitation, a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in a Lot (such as leasehold mortgage).

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1.8 "Occupant" means any person or legal entity, other than the owner of record, who is entitled to the exclusive use or occupancy of any building or portion thereof, or in rightful possession of, any Lot, building, or portion thereof located within the Development under rights contained in any deed, lease or similar agreement, including, but not limited to, tenants of an Owner and the agents, employees, customers, contractors, licensees, or invitees of an Owner or its tenant(s).

1.9 "Owner" means the owner of record, whether one or more, of the fee simple title, whether or not subject to any Mortgage, to any Lot, any purchaser of fee simple title under a land contract of record, and any tenant or Occupant of a Lot pursuant to a ground lease for the Lot for a continuous period of no less than twenty (20) years; but does not mean those having such interest merely as security for the performance of an obligation or a seller under a land contract or record.

1.10 "Permittees" means the Declarant, any Owner, any Occupant and any officer, director, employee, agent, contractor, customer, invitee, licensee, vendor, subtenant, mortgagees or concessionaire of Declarant or any Owner or Occupant insofar as their activities relate to the intended use or enjoyment of the Development.

1.11 "Association" – In the event Declarant chooses to organize an Owner's Association of the Lots, the Association of Sugar Creek Neighborhood Center, a Nebraska corporation, or a similar name shall be established for the purpose of enforcing and maintaining compliance of these Covenants and maintaining and regulating the Common Areas.

ARTICLE 2

Use Restrictions

No Owner or Occupant shall permit any use or condition of any Lot that is inconsistent with a comparable first class commercial, business and retail center. Without limiting the generality of the foregoing, the following requirements shall apply to all Lots; and the following uses or services shall not be inconsistent with the concept of a first class retail, commercial, and office development:

2.1 Zoning Compliance. All uses must conform to all applicable zoning regulations of any municipal body or agency with jurisdiction over the Lots.

2.2 No Interference. No Owner or Occupant shall keep or maintain anything or shall permit any condition to exist upon such Owner's or Occupant's Lot or cause any other condition on any Lot which materially impairs or interferes with any easement or right of the Association, the Declarant, of any other Owner or Occupant, or otherwise materially impairs or interferes with the use and enjoyment of the Association, the Declarant or the other Owners or Occupants of the Common Areas. No Owner or Occupant shall engage in or permit any activity which interferes with the reasonable enjoyment of any other Owner or Occupant within the Development.

2.3 Parking Restrictions. Each Owner or Occupant shall use reasonable efforts to ensure that its Permittees do not park or block the Common Area or public streets.

2.4 Uses. Except as otherwise provided for in this Declaration, as may be amended from time to time, no Lot within the Development shall (i) be used in violation of any applicable federal, state or local laws, ordinances, rules or regulations; (ii) be used, operated or maintained in a dangerous or hazardous condition; (iii) constitute a nuisance or be used, operated or maintained in an obnoxious manner by reason of unsightliness or excess emission or odors, dust, fumes, smoke, liquid waste, noise,

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glare, vibration or radiation, (iv) be used for the operation and maintenance of as a circus, carnival, auction house, flea market, unemployment office, bingo or other game room, teen club, gambling enterprise, warehouse operating or manufacturing or assembling operation, storage (except incidental to the primary commercial use), or auction sales are conducted, establishment selling or exhibiting pornographic materials, striptease clubs, ballroom; or (v) be used for any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operations, provided that any Owner or Occupant that goes out of business shall be entitled to hold one going out of business sale not exceeding four (4) weeks in duration.

2.5 Storage and Loading Areas. No materials, supplies or equipment shall be stored in or allowed to remain in any area on any Lot except inside a closed building. Notwithstanding the foregoing, during the construction of any building on a Lot, construction materials may be stored on such Lot provided such storage is lawful and accomplished in a manner reasonably designed to minimize any interference with the use and enjoyment of any existing building and Common Areas by any Owner(s) and Occupant(s) thereof.

2.6 Water Flow. Each Owner shall be responsible for the flow of surface water over, across and off its Lot. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of improvements (including without limitation building and building expansion, curbs, drives and paving) shall be permitted. At all times, Owners and Occupants shall take reasonable steps to control the surface water drainage and prevent damage resulting from surface water flowing from Owner's Lot onto any Common Area or adjoining Lot.

2.7 Private Use Restrictions. Declarant and/or its successors and assigns may, from time to time, enter into purchase agreements and/or deed restrictions, and/or leases, which may contain certain use or occupancy restrictions. Prior to any Owner or Occupant changing any prior use of any Lot or a portion thereof from one use to another, such Owner or Occupant shall advise Declarant of such event and obtain Declarant's prior written approval of such change.

Article 3

Design Regulations and Performance Standards

3.1. All Improvements will be designed and built so as to present an appearance on all sides consistent with that of a first class retail, commercial, and office development and shall be designed so that the exterior elevations of Improvements shall be architecturally and aesthetically compatible with Improvements to be constructed on other Lots in the Development, as determined at the sole and absolute discretion of Declarant and the Architectural Design Committee.

3.2. Height limits, required minimum building setbacks, and other basic development standards may be established by the Declarant and the Architectural Design Committee from time to time.

3.3. The Owner or Occupant of each Lot will make provisions for adequate parking to serve the Lot. All Lots shall provide at least the minimum number of parking areas or spaces for private passenger vehicles required by the applicable zoning ordinance of the applicable local governing body, or as determined by the Architectural Design Committee.

3.4. All loading areas, docks, antennae, and exterior mechanical equipment, including rooftop equipment, must be screened when viewed from adjacent streets, and at ground level along an adjacent Owner's Lot lines. Such screening will consist of permitted building materials or landscaping. No radio,

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television, satellite reception dish or any other device for the reception or transmission of television, radio, microwave or any other form of electromagnetic radiation shall be placed or maintained upon any Lot, building or other improvement which are visible from any other Lot, building or Common Areas, except as expressly permitted in writing by the Declarant or the Architectural Design Committee.

3.5. Immediately upon completion of building construction, or at the next available planting season, the Owner shall install and maintain permanent landscaping. Such landscaping will consist of plant materials, paving materials, ground cover, and other landscaped features consistent with the overall development theme of the Development. All permanent landscaping will include automatic underground irrigation systems sufficient to support the living plant materials used.

3.6. All exterior signs or graphics of any kind or nature on the Lots or in the Development shall contribute to the overall cohesiveness and attractiveness of the Development. To this end, all signs, permanent or temporary, and all graphics of any kind or nature which are visible from the exterior of any building or are located on any Lot shall in all respects be in conformity with the Development and shall require the written approval the Declarant or the Architectural Design Committee as to design, color, size and location before erection or placement. Any sign or graphic erected without such written approval shall be removed by the Declarant, the Association, or its designee at the Owner's expenses if the violator fails to do so within fifteen (15) days after written notification that the Owner or Occupant is in violation of the Declaration. No outdoor advertising signs or billboards, and no signs incorporating flashing, pulsating, or rotating lights will be permitted in the Development.

3.7. No Owner shall place or permit any materials, supplies, equipment, garbage, debris or refuse in any kind or nature to be placed on or to accumulate in any areas on, in or adjacent to any Lot or building that are visible from any other Lot within the Development. All garbage, debris and refuse shall be placed in a dumpster or similar receptacle on or about the loading dock servicing such building, or if no loading dock is in existence, shall be screened behind from the view of all adjoining Lots and streets and removed at regular intervals. All dumpsters or garbage containers shall be approved by Declarant and the Architectural Design Committee; shall be designed to preclude public view; and shall consist of steel-gated concrete block enclosures. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. Each Owner, at its expense, shall cause the windows and exterior surfaces of any building on the Owner's Lot to be washed or cleaned regularly.

3.8. During any building construction or renovation on a Lot, the Owner of such Lot shall insure that such construction is carried out in a good and workman like manner and completed in a timely fashion. Owner's agents, contractors, and employees shall insure that the construction site is maintained in an orderly appearance, trash and debris is contained on-site, building materials are stored in an orderly manner, and that no debris, soil erosion, or building materials are permitted to leave the Lot or adversely affect other Lots, Common Areas, public streets or Common Facilities. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual construction operations.

3.9. Landscaping shall not materially obstruct, in the sole judgment of the Declarant and the Architectural Design Committee, (either through original planting or through untrimmed growth) the view of the buildings constructed from time to time on any Lot. All landscaping shall be consistent with the development theme of the Development and subject to approval by the Architectural Design Committee.

3.10. Until such time as a Lot is developed and improved by its Owner, such Owner shall keep the same planted with grass, mowed and in a clean and sightly condition. This provision may be waived

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by Declarant at Declarant's sole and absolute discretion.

3.11. Lots may not be subdivided in any manner without the prior written consent of the Declarant which may be withheld in its sole and absolute discretion.

3.12. Without the prior written consent of the Declarant, no barricades, fences or other dividers will be constructed at or near the property lines of a Lot and nothing shall be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic within a Lot in the areas designated for such purpose by the Owner of such Lot except for curbing reasonably designed and installed to assist traffic control; provided that each Owner will have the right to erect barriers, once each year for a period not exceeding 24 hours, to avoid the possibility of dedicating such areas for public use or creating prescriptive rights thereon.

3.13. No camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot. No motor vehicle may be parked or stored outside on any Lot for more than 36 hours. No grading or excavating equipment, tractors or semi tractors/trailers shall be stored, parked, kept or maintained on any Lot, and in any yards, driveways or streets. However, this section shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of a building during the period of construction. This section may be waived by Declarant at its sole and absolute discretion.

3.14. Except as installed by the Declarant or as subsequently approved by the Architectural Design Committee, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any building which in any manner will allow light to be directed or reflected on the Common Areas, any adjoining Lot or any part thereof. All exterior lighting to be installed in the Development, including all street lighting, shall conform to the standards set forth in requirements adopted by the Architectural Design Committee.

3.15. Construction of any Improvement shall be completed within eighteen months from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot without the prior express written consent of the Declarant, to be granted in its sole and absolute discretion. As much as possible during the construction process, root zone areas will be barricaded to prevent contractors from compacting the soil by driving vehicles beneath trees or by piling dirt or other construction material on top of roots. If retaining walls prove necessary, underground aeration systems will be installed to maintain a reasonable amount of oxygen to the affected roots.

3.16. All electrical lines, communication lines, and other utility service lines servicing a Lot or any improvement thereon shall be buried underground except temporary above-ground service shall be permitted when necessary, but only during construction of any improvement on a Lot.

3.17. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

Article 4 Architectural and Landscape controls

4.1. Architectural Design Committee. The Declarant shall maintain an Architectural Design

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Committee consisting of the Declarant and an additional individual selected by the Declarant, at its sole discretion. The Declarant shall have the power to remove this individual with or without cause at any time and appoint a new member in the event of such removal or resignation from the Architectural Design Committee.

4.2. The Architectural Design Committee shall be authorized to employ architects, engineers, and other consultants to assist it in performing any of its review functions herein. The approval by the Architectural Design Committee of any plans and specifications submitted for approval in accordance with this Declaration shall not constitute any representation or warranty as to the adequacy, sufficiency, performance, compliance with laws and regulations, or desirability of such plans and specifications or any improvements constructed in accordance therewith. The review, approval or disapproval by the Architectural Design Committee of any plans and specifications hereunder shall not impose on the Architectural Design Committee, the members thereof, or the architects, engineers and other consultants employed by the Architectural Design Committee, the Association, or the Declarant, any liability for any defect or inadequacy in any improvements constructed in accordance with such plans and specifications. Neither the Declarant, the Architectural Design Committee, any member of the Architectural Design Committee, any member of the Association nor any officer, director, agent or representative thereof, shall be personally liable to any Owner or other person for any action or inaction taken with respect to any matter submitted for approval or reconsideration, or for the adoption of any rules, regulations or restrictions or covenants contained in this Declaration. By accepting a deed for a Lot, each Owner hereby knowingly and expressly waives and releases any and all causes of action for any matters referenced herein.

4.3. Before commencing any work regulated by the Design Regulations and Performance Standards contained in Article 3, including but not limited to excavation, fill, grading or other alteration of the topography or drainage of any Lot, or the construction, installation or alteration of any building, enclosure, landscaping, fence, parking facility, parking garage, sign, light pole, fence, bench or fixture of any nature or kind, or any other structure or temporary or permanent improvements on or to any Lot or portion thereof, the Owner of such Lot shall first submit site plans, grading and utility plans, landscaping plans, sign and sign allocation plans, floor plans, and building elevations and materials plans, together with applicable specifications, to the Architectural Design Committee for its written approval. The Architectural Design Committee will have the right to establish procedures for submission and review of plans and to charge reasonable fees for its review including, but not limited to, the fees charged by architects and engineers employed by the Architectural Design Committee to review such plans and specifications. The address for giving notices to the Architectural Design Committee shall be the place for the submittal of plans and specifications.

4.4. The Architectural Design Committee will be guided by the standards set forth herein and such reasonable rules, regulations, restrictions, architectural standards and design guidelines as are established from time to time pursuant hereto. Except as set forth below, any site plans, grading and utility plans, landscaping plans, sign and sign allocation plans, floor plans and building elevations, materials plans, or specifications submitted to the Architectural Design Committee shall not be deemed approved unless approval is granted in writing by the Architectural Design Committee.

4.5. The Architectural Design Committee may delegate its responsibility to review plans and specifications to one or more of its members or consultants retained by the Architectural Design Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be deemed to be the approval or disapproval by the Architectural Design Committee.

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4.6. The approval by the Architectural Design Committee of any plans or specifications submitted for approval in accordance with this Declaration shall not constitute any representation or warranty as to the adequacy, efficiency, performance, or desirability of such plans or specifications or any improvements constructed in accordance therewith. The review by the Architectural Design Committee of any plans or specifications hereunder shall not impose on the Architectural Design Committee or the members thereof any liability for any defect or inadequacy in any improvements constructed in accordance with such plans or specifications, or compliance with any municipal code, regulation or law.

4.7. The Declarant or the Architectural Design Committee may, from time to time, establish reasonable rules, regulations, restrictions, architectural standards and design guidelines with respect to the exterior (but not the interior) of any Improvements, which it may from time to time, in its sole discretion, amend, repeal or augment, including, without limitation, regulations in conjunction with the construction of a building on a Lot, the regulation of all landscaping (including, without limitation, absolute prohibition of certain types of landscaping, trees and plants) and regulation of all construction, reconstruction, exterior additions, changes or alterations to or maintenance of any building or improvement, including, without limitation, the exterior nature, kind, shape, height, material, color, surface texture and location thereof.

4.8. The Declarant may from time to time enter into agreements, by lease, purchase agreement, deed restrictions or other agreements, with Owners or Occupants regarding design restrictions, sign restrictions, site planning, or other architectural standards affecting the Development or any portion thereof.

Article 5

Owner Duties and Obligations

5.1 Maintenance and Taxes. Each Owner and Occupant shall maintain its Lot in good and clean condition and repair, such maintenance to include, but not be limited to, the following:

- (a) maintaining the surface of the roadways, parking areas and sidewalks in a level, smooth and evenly covered condition with the type of surface material originally installed or such substitutes as shall in all respects be equal or superior in quality, use and durability;
- (b) removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition;
- (c) placing, keeping in repair and replacing any necessary or appropriate directional signs, marker and lines;
- (d) repairing and replacing when necessary such artificial lighting facilities as shall be reasonable required;
- (e) maintaining all landscaped areas and making replacement of shrubs and other landscaping as is necessary;
- (f) maintaining all signage in proper working order and appearance;
- (g) maintaining all perimeter walls and retaining walls in good condition and state of repair;

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(h) each Owner shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authority all real property taxes and assessments which are levied against its Lot and that part of the Common Areas owned by it.

5.2 Indemnification/Insurance.

(a) Indemnification. Each Owner and/or Occupant shall indemnify and hold the other Owners and/or Occupants harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act of negligence of the Owner and/or Occupant of another Lot.

(b) Insurance.

(i) Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration, general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Lot, Owner's insurance to afford protection to the limit of not less than \$1,000,000 for any one occurrence, and to the limit of not less than \$3,000,000 for property damage. Each Owner shall provide the Declarant or the Association with a certificate of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the Lot covered by this Declaration. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the Declarant or the Association.

(ii) At all times during the term of this Declaration, each Owner shall keep Improvements on its Lot insured against loss or damage by fire and other perils and events as may be insured against under the "all-risk" policy broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Nebraska, with such insurance to be for the full replacement value of the insured Improvements.

5.3 Obligation To Rebuild or Restore. In the event that any Improvement on a Lot shall be damaged or destroyed (whether partially or totally) by fire, the elements or any other casualty, the Owner of such Improvement shall, at its expense, within a reasonable time after such destruction, and with due diligence, repair, rebuild or restore the same as nearly as practical to the condition existing just prior to such damage or destruction, or, alternatively, if such building is totally destroyed, the Owner of such building shall be required to clear, clean and rebuild and/or restore the damaged building and either landscape or pave the damaged area. The Owner of such damaged or destroyed Improvement shall have the right to make reasonable alterations as part of the reconstruction. Any rebuilding or restoration shall comply with this Declaration.

5.4 Enforcement and Remedies. In addition to all other remedies available at law or in equity, if any Owner defaults in any of its obligations or covenants hereunder, the Declarant, the Association, or its authorized agents or representatives shall have the right, but not the obligation, to

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enforce this Declaration and perform such defaulting Owner's obligations hereunder by entering any Lot upon which a violation of such rules and regulations or the restrictions set forth in this Declaration exists and may summarily correct, abate or remove such violation at the expenses of the Owner of such Lot, if such Owner does not correct such violation within fifteen (15) days after notice to such Owner specifying the nature of such violation. Any such entry and abatement, correction or removal shall not be deemed a trespass. The costs and expenses of such abatement, removal or correction, together with a service charge of 20% of the cost and expenses of the same, attorneys' fees and expenses and interest at the rate of 1.5% per month thereon, shall be a charge and continuing lien upon such Owner's Lot and may be foreclosed by the Declarant or the Association in its sole discretion.

5.5 Eminent Domain.

(a) Owner's Right to Award. Nothing herein shall be construed to give an Owner of any Lot in the Development any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting another Lot or granting the public or any government any rights in such Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas, the award attributable to the land and improvement of such portion of the Common Areas shall be payable only to the Owner thereof.

(b) Tenant's Claim. Nothing in this Article shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and such Owner for all or a portion of any such award or payment.

(c) Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer and without contribution from any other Owner.

5.6 Fire Protection. Any Improvements constructed on any Lot shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other Improvements in the Development.

ARTICLE 6 Grant of Easements

6.1 Easements. Declarant and Owners hereby grant and create the following described perpetual easements, the benefits of which shall be appurtenant to and run with title to the Lot(s) benefited thereby and the burdens of which shall run with title as an encumbrance against the Lot(s) burdened thereby:

(a) Pedestrian Access. A nonexclusive easement for pedestrian passage, ingress and egress, over and across all sidewalks, paths and bridges, and those Common Areas and portions of the Lots located on any Lot that are designated from time to time by the Association or Declarant for the use and enjoyment of pedestrians, including all Permittees. This easement shall be appurtenant to every Lot, and shall be for the benefit of every Lot Owner and Occupant. This easement shall also be for the purpose of providing pedestrian ingress to and egress from each Lot to other portions of the Development, and for the use and enjoyment by each Lot Owner and Occupant of those Common Areas and portions of the Lots located on each Lot designated by the

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Association or Declarant from time to time for the use and enjoyment of pedestrians in the manner and at the times prescribed by the reasonable rules and regulations of the Association or Declarant. Notwithstanding the foregoing, the Association or Declarant shall have the right at all times to designate, construct, install and maintain sufficient Common Area improvements available for the use by pedestrians and Permittees under the foregoing easement to provide pedestrian access twenty-four (24) hours per day between each building or Improvement, all other buildings or Improvements constructed in the Development from time to time, and between each building or Improvement and a public right of way.

(b) **Vehicular Access.** A nonexclusive easement over and across those Common Areas or portions of the Lots located on any Lot that are designated from time to time by the Association or Declarant for use by motor vehicles. This easement shall be appurtenant to every Lot, shall be for the benefit of every Owner and Occupant, and shall be for the purpose of providing vehicular access over and across those Common Areas located on any Lot designated by the Association or Declarant from time to time for such purpose and in the manner and at the times prescribed by the reasonable rules and regulations of the Association or Declarant. Notwithstanding the foregoing, the Association or Declarant shall have the right at all times to designate sufficient Common Area improvements available for use under the foregoing easement to provide twenty-four (24) hour per day vehicular ingress to and egress from the Development.

(c) **Parking.** A nonexclusive easement for access to and use of parking spaces on all Common Areas or portions of the Lots, including those parking areas on any Lot or Lots that are designated by the Declarant or Association from time to time as subject to this easement, whether or not identified specifically as a Common Area. Parking shall be restricted to non-commercial vehicles, except in those areas specifically designated for loading, unloading, and deliveries. This easement is for temporary parking only by Permittees. Any vehicle occupying space for more than thirty-six (36) hours may be towed and impounded at the vehicle owner's expense.

(d) **Utilities.** A nonexclusive easement over, upon and across the Common Areas for the installation, use, testing, connection to, operation, maintenance, repair, replacement and removal of: water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; storm sewers, drainage lines and systems; electrical lines and systems; and other utility lines or systems developed to serve one or more of the Lots; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment 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 of any other Lot or Improvements.

(e) **Temporary Encroachment for Construction.** Nonexclusive temporary easements to use and encroach over and across so much of the Common Areas as may be reasonably necessary at any time and from time to time for the purpose of constructing, repairing, replacing, or maintaining any Improvements on any Lot or Common Area. Any Owner or Occupant taking advantage of the construction easement granted herein shall pay all costs associated with such use, including without limitation, restoration of the utilized portion of the Common Areas to the condition in which it existed immediately prior to such exercise, and shall indemnify and hold Declarant and all other Owners and Occupants harmless from all loss, cost and expenses in connection with the use of such easement.

(f) **Fire, Emergency and Access.** Nonexclusive easements for the purpose of fire protection and emergency access over each Lot in the Development and for pedestrian and

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vehicular access, ingress and egress over, across, on and through the Common Areas and Common Facilities.

(g) Surface Water Drainage. Nonexclusive easements over, across and under the Common Areas for the flow of a reasonable volume of surface water to the nearest storm sewer or surface water inlet, drainage catch basins, or waterway; provided all surface water drainage from any Lot shall be consistent with an overall surface water drainage plan for the Development.

(h) Self Help Easements. Nonexclusive rights of entry and easements in favor of the Declarant over, across and under each Lot for all purposes reasonably necessary to enable the Declarant to perform any of the provisions of this Declaration which a defaulting Owner has failed to perform.

(i) Use of Easements. Subject to the reasonable rules and regulations adopted for the use of each Lot, the use of all easements created by this Declaration will, in each instance, be nonexclusive and for the use and benefit of Permittees.

(j) Maintenance of Easement Areas and Common Areas. Except to the extent that such areas might be operated and maintained by public authorities or utilities and except as otherwise specifically provided in this Declaration the Owner of each Lot will operate, maintain and replace all of the areas of the Lot which are subject to the easements created in this Declaration in sound structural and operating condition at the sole expense of the Owner of the Lot. Additionally, the Owner of any Lot, at its own expense, shall repair, maintain and replace the Common Areas and all Improvements located within or upon on such Owner's Lot. 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 installed or used thereon or such substitutes as will in all material respects be equal to such materials in quality, appearance, use and durability;

(ii) maintenance, repair and replacement of all Improvements;

(iii) maintenance and care of all grass, shrubs and landscaping, including, but no limited to, the fertilizing, weeding, watering, mowing and trimming thereof and the making of such replacements of shrubs, trees and other landscaping as it necessary to maintain the same in first-class condition;

(iv) removal from the Common Areas of papers, debris, ice, snow, refuse, filth and any hazards to persons using such areas, and washing or thoroughly sweeping paved areas as required to keep such areas in a clean and orderly condition;

(v) maintenance of such appropriate parking area entrance, exit and directional signs, markers and lights as may be reasonable required from time to time;

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(vi) such painting and repainting as may be required to maintain the parking areas and equipment installed thereon in good condition and repair; and

(vii) maintenance and replacement of all lighting equipment, facilities and identification signs.

The standard of care applicable to repairs and maintenance required under this Declaration shall be that of a first class retail, commercial, and office development.

(k) **Maintenance of Sewers and Utilities.** The Owner of each Lot will operate, maintain, repair and replace all sewers and utilities located within the boundaries of such Lot in sound structural and operating condition (except to the extent that such operating and maintenance is performed by public authorities or utilities) and will pay all costs associated with the sewer hook up and consumption of utility services which relate to the Improvements located on such Owner's Lot and no other Owner will have any liability with respect thereto. Such sewers and utilities improvements will be installed and maintained so as to conform to all applicable governmental codes and so as to not interfere or impede the subdivision sanitary sewers. The Owner of each Lot shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Development.

(l) **Impositions Prohibited.** Nothing in this Declaration shall be interpreted to permit, nor shall the Owner of any Lot impose, any charge or cost for the use of any of the Common Areas, excepting to the extent such Owner may legally include such charges in a lease agreement with a tenant relating to such Owner's Lot.

6.2 Nature of Easements and Rights Granted.

(a) **Easements Appurtenant.** Each and all of the easements and rights granted or created herein are appurtenances to the Lots and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such Lots.

(b) **Nature and Effect.** Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (i) Are made for the direct, mutual and reciprocal benefit of the Declarant, the Owners, Occupants and Permittees of the Lots;
- (ii) Create mutual equitable servitudes upon each Lot in favor of the other Lots;
- (iii) Constitute covenants running with the land; and
- (iv) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Development 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.

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(c) **Transfer of Title:** The acceptance of any transfer or conveyance of title from the Declarant, any Owner or Occupant or their respective heirs, representatives, successors or assigns of all or any part of its interest in its Lot, or ground lease, or in any portion thereof, shall be deemed to:

- (i) Require the prospective grantee to agree not to use or occupy, or any other party to use or occupy, its Lot or Improvements in any manner which would constitute a violation or breach of any of the easements, covenants or restrictions contained herein; and
- (ii) Require any prospective ground lease assignee to assume and agree to perform each and all of the obligations of the conveying party under this Declaration with respect to the Lot, Improvements or interest to be conveyed.

ARTICLE 7

Owner's Association

7.1 **Creation of Association.** Declarant shall have the right at its option, in its full and absolute discretion for a period of ten (10) years from the date hereof, to create an Owner's Association of the Lots entitled Sugar Creek Neighborhood Center or a similar name established for the purpose of enforcing and maintaining compliance of these Covenants and maintaining and regulating the Common Areas. If after the period of ten (10) years expires an Association has not been created, the Owners of not less than sixty-six percent of the land area covered by this Declaration may create the Association.

7.2 **The Association.** After Declarant or the Owners have caused the incorporation of Sugar Creek Neighborhood Center, a Nebraska not-for-profit corporation, or a similar name, (the "Association"), which shall administer, insure, operate, manage, control, maintain, repair, rebuild and restore all of the Common Areas, including all common surface improvements constructed by the Association on the common areas for the benefit of the Association and the benefit of the Owners, so that the Common Areas stay clean, safe, in good repair and operating order, and consistent with the overall quality of the Development. The Association shall have the authority to provide special services affecting portions of the common Areas consistent with the overall character and use of the Development, or to grant licenses or concessions for the provision of such services, and to charge reasonable fees for such services, licenses or concessions. Any amounts received by the Association from fees, licenses, concessions and other sources shall be held and used by the Association for the benefit of the Owners pursuant to such rules, resolutions or regulations as the Association may adopt.

7.3 The Association has as its purpose the promotion of the maintenance of the Common Facilities (as defined herein) and the health, safety, recreation, welfare and enjoyment of the Owners and Occupants of the Lots, including, but not limited to:

- (a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include, but are not limited to, recreational facilities, dedicated and nondedicated roads, paths, ways and green areas, and signs and entrances for the Development (collectively the "Common Facilities"). Common Facilities may be situated on property owned or leased by the Association or its Members, on public property, or on private property subject to an easement in favor of the Association.

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(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict the use of the Common Facilities by Members, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facilities, and the use and enjoyment of Permittees.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the Owners and Occupants of the Development; and the protection and maintenance of the character of the Development.

(d) All promotional and advertising activities, special events, celebrations, dedications, and other opportunities of the Development as a whole.

(e) All of the duties, obligations and rights of the Association shall be subject to the maintenance standards and the other duties, obligations and rights contained in this Declaration.

7.4 Membership and Voting. Declarant and each Lot Owner shall be a Member of this Association, (a "Member"). The Association may, at Declarant's discretion, include further phases of the Sugar Creek development as may be developed by Declarant. Membership shall be appurtenant to ownership of any Lot, and may not be separated from ownership of each Lot.

Each Member, whether one or more persons and entities, shall have a number of votes equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, as adjusted from time to time (i.e., the Owner of 5% of the land area of the Development shall be entitled to 5 votes), on each matter properly coming before the Members of the Association. So long as Declarant is an Owner, in addition to any votes Declarant shall be entitled to as an Owner, Declarant shall also be entitled to 75 additional votes.

7.5 Selection of Board. The Declarant shall serve as the initial Board of the Association until such time as all of the Lots have been developed. At such time, the Owners and the Declarant shall elect the Board of the Association pursuant to the by-laws of the Association.

7.6 Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and administration of the Common Areas and Common Facilities, and the enforcement of the rules and regulations relating to the Common Areas and the Common Facilities.

(b) The landscaping, mowing, watering, repair and replacement of parks and other public property and Improvements on parks or public property, all within the Common Areas and Common Facilities, or within or near the Development.

(c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

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(d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment and purchase of insurance covering any Common Areas or Common Facilities against property damage and casualty, and purchase of liability insurance coverages for the Association, the directors or officers of the Association, if any, and the Members.

(e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(h) The employment of professionals and consultants to advise and assist the officers and directors of the Association in the performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association, execution of such documents, and doing and performance of such acts as may be necessary or appropriate to accomplish such administration, management, or purposes of the Association.

7.7 Mandatory Duties of Association. The Association shall operate, maintain and repair the Common Areas and Common Facilities as well as any boundary fence, entrance monuments, and signs which have been installed by Declarant, all in generally good and neat condition. The Association shall also provide those services to Members as set forth in the bylaws of the Association as it may be amended from time to time.

7.8 Common Fees and Expenses. Each Lot shall be subject to an assessment for, and each Owner shall be obligated to pay its pro rata share of all expenses incurred by the Association in administrating, operating, managing, maintaining, repairing, rebuilding, replacing, restoring and insuring the Common Areas and Common Facilities as provided herein (including a service charge of no more than 20% of said expenses) ("Common Facilities Charge"). Each Lot Owner's proportionate share of Common Facilities Charge for each calendar year (or portion thereof) shall be reasonably estimated in advance by Association, and such estimate shall be paid in equal quarterly installments on or before the first day of each quarter. Each Owner shall pay to the Association, on demand the amount, if any, equal to the amount by which the Owner's proportionate share of the actual expenses in any particular month exceeds the Owner's proportionate share of the estimated expenses. Any excess amounts paid during a calendar year shall be credited towards the amounts payable in the following year. After all Lots are sold or developed by Declarant, the proportionate share of the total Common Facilities' expenses to be borne by each Owner for any year shall be that percentage equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, as adjusted from time to time.

Prior to the sale or development of all Lots, the pro rata share of fees and expenses shall be the

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percentage determined by taking the land area of an Owner's Lot or Lots divided by the total land area of all Lots within the Development which have been sold or upon which Improvements have been completed.

7.9 Accounting. The Owner of a Lot may, upon not less than twenty (20) days prior written notice to the Association, inspect the Association's records for all Common Area and Common Facilities' maintenance and insurance expenses incurred during the preceding calendar year at the Association's offices or at such other location reasonably designated by the Association at any time during reasonably business hours within six (6) months after the end of said calendar year. The Association's expenses for any calendar year shall be deemed correct if the Owner of a Lot does not give the Association written notice of any such overpayment or underpayment within the six (6) month period provided.

7.10 Abatement of Assessments. Notwithstanding any other provision of this Declaration, the Board may abate all or part of the Common Facilities Charge due in respect to any Lot, and shall abate all dues and assessments due in respect to any Lot during the period such Lot is owned by Declarant. Lots owned by the Declarant shall not be subject to imposition of Common Facilities Charge or Association liens.

7.11 Liens. The Common Facilities Charge together with interest thereon, costs and reasonable attorneys' fees shall be the personal obligation of each Member at the time when the Common Facilities Charge first becomes due and payable. The Common Facilities Charge, together with interest at the rate of 1.5% per month thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot against which the Common Facilities Charge are charged. The personal obligation for delinquent Common Facilities Charges shall not pass to the successor in title to the Member at the time the Common Facilities Charge becomes delinquent unless such Common Facilities Charge is expressly assumed by the successors, but all successors shall take title subject to the lien for such Common Facilities Charge, and shall be bound to inquire of the Association as to the amount of any unpaid Common Facilities Charge.

7.12 Assessments and Extraordinary Costs. In addition to the Common Facilities Charge, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any of the Common Areas or Common Facilities, including fixtures and personal property related thereto, and related facilities ("Assessments"). The aggregate assessments in calendar year shall be determined annually by the Board of Directors and shall be allocated among the Lots on a pro rata basis equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development.

7.13 Excess Common Facilities Charge. With the approval of seventy-five percent (75%) of the Members of the Association, the Board may establish dues and/or assessments in excess of the maximums established in the bylaws of the Association.

7.14 Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided herein.

7.15 Certificate as to Common Facilities Charge. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Common Facilities Charge on a specified Lot has been paid to the date of the request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or

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installment thereof. The Common Facilities Charge shall be and become a lien as of the date such amounts first become due and payable.

7.16 Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of Common Facilities Charge or Assessments which is not paid when due shall be delinquent. Delinquent Common Facilities Charges and Assessments shall bear interest from the due date at the rate of 1.5% per month. The Association may bring an action at law against any Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as part of the action, and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Member may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of its Lot. The mortgagee of any Lot shall have the right to cure any delinquency of a Member by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

7.17 Subordination of the Lien to Mortgagee. The lien of Common Facilities Charge or Assessment provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the Common Facilities Charge or Assessment lien.

ARTICLE 8

Amendments, Duration and Termination

8.1 Amendment, Modification. This Declaration may be amended solely by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof, provided however, that such amendment shall not materially alter the rights, benefits or duties of any other Owner or Occupant in control of a Lot at that time. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than sixty-six percent of the land area covered by this Declaration. All such amendments or waivers must be in writing and recorded in the Register of Deeds of Sarpy County, Nebraska, as a modification to this Declaration.

8.2 Termination. The Declaration herein shall not be terminated except with the written acknowledgment and consent of the Owners of not less than sixty-six percent of the land area covered by this Declaration, and such termination shall be effective when duly recorded in the office of the Register of Deeds of Sarpy County, Nebraska. Notwithstanding the foregoing, this Declaration may only be terminated by the Declarant for a period seven (7) years from the date hereof.

8.3 Duration. Unless otherwise canceled or terminated, this Declaration and all of the easements, covenants, restrictions, rights, and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof or such earlier date as may be required in order that this Declaration shall be invalidated or be subject to invalidation by reason of a limitation imposed by law or the duration thereof.

ARTICLE 9

Miscellaneous

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9.1 Effective Covenants. Each grantee of the Declarant, its successors and assigns, by the acceptance of a deed of conveyance, accepts the same subject to all easements, covenants and restrictions granted or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any Owner or Occupant having at any time any interest on any Lot, and shall inure to the benefit of such Owners or Occupants in like manner as though the provisions, terms and restrictions of this Declaration were received and stipulated at length in each and every deed of conveyance.

9.2 Waiver. No easement, covenant or restriction of this Declaration shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

9.3 Dedication. Nothing contained in this Declaration shall not be deemed to create a gift of all or any portion of the Development to the general public or as a dedication for public use or public purpose it being the intention of each Owner that this Declaration shall be for the exclusive benefit of the Development, or any portion thereof, the Owner and its mortgagees; provided, however, that dedication shall be made by an Owner for any public rights of way, utilities or other public improvements deemed necessary by the municipal body or agency with jurisdiction over the Lots to serve the Lots.

9.4 Savings Clause. If any easement, covenant or restriction or any other provision of this Declaration or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Declaration and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

9.5 Successors and Assigns. Each and all of the easements, covenants or restrictions contained in this Declaration shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Declaration and by applicable law, their respective heirs, legal representatives, successors, and assigns.

9.6 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof.

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

9.8 Benefit. This Declaration shall inure to the benefit of, and be binding upon, the Declarant, the Owners and Occupants, and there respective heirs, executors, administrators, representatives, successors and assigns.

9.9 Notice. All notices and demands to be given by one party to another party under this Declaration shall be given in writing to the following:

If to Declarant: John L. Hoich
Hoich 192nd, LLC
4428 South 180th Street
Omaha, Nebraska 68135

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With copy to: Jerry M. Slusky Esq.
Slusky Law, LLC
17445 Arbor Street, Suite 300
Omaha, Nebraska 68130

If to Owner/Occupant: To the party at the street address of the Lot owned or occupied.

All notices and demands shall be delivered by United States mail, postage prepaid, certified or registered with return receipt requested; or by hand delivery; or by nationally recognized overnight courier service which provides evidence of delivery. Notices shall be considered to have been given upon the earlier to occur of actual receipt or two business days after posting in the United States mail, or one business day after deliver to a nationally recognized courier for overnight delivery. Notice sent by certified mail which is refused shall be effective upon the first date of attempted delivery. Any change of address shall be sent in accordance with this section, and shall not be effective until ten (10) days after receipt as provided herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on the day and year set forth above.

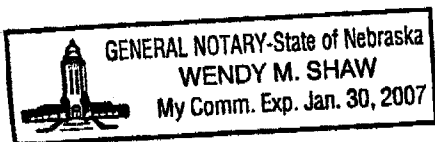
DECLARANT:

Hoich 192nd, LLC, a Nebraska limited
Liability Company

By John L. Hoich
John L. Hoich, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 26th day of April 2006, by John L. Hoich, Manager Member of Hoich 192nd LLC, a Nebraska limited liability company, on behalf of the company.



Wendy M. Shaw
Notary Public

2006-14188T

4. The land referred to in the Commitment is described as follows:

That part of land in the Northwest Quarter of Section 17, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska and more fully described by metes and bounds as follows:

Referring to the Northwest Corner of said Northwest Quarter; thence South 00 degrees 41 minutes 34 seconds West (an assumed bearing), on the West line of said Northwest Quarter, a distance of 50.00 feet; thence North 89 degrees 59 minutes 40 seconds East, a distance of 50.00 feet to a point on the South Right-of-Way line of Harrison Street and the point of beginning; thence continuing North 89 degrees 59 minutes 40 seconds East, on said line, a distance of 1,216.12 feet; thence South 00 degrees 41 minutes 41 seconds West, a distance of 149.44 feet to the point of curvature of a curve to the right, having a central angle of 10 degrees 28 minutes 30 seconds, a radius of 1,154.00 feet, an arc length of 210.98 feet, a chord length of 210.68 and a chord bearing South 05 degrees 55 minutes 56 seconds West; thence on said curve a distance of 210.98 feet to the point of tangency; thence South 11 degrees 10 minutes 11 seconds West, a distance of 79.33 feet to the point of curvature of a curve to the right, having a central angle of 04 degrees 48 minutes 47 seconds, a radius of 587.50 feet, an arc length of 49.35 feet, a chord length of 49.34 feet and a chord bearing South 13 degrees 34 minutes 34 seconds West; thence on said curve a distance of 49.35 feet to the point of tangency; thence South 15 degrees 58 minutes 57 seconds West, a distance of 34.98 feet; thence South 62 degrees 05 minutes 18 seconds West, a distance of 6.52 feet; thence North 71 degrees 48 minutes 22 seconds West, a distance of 8.28 feet; thence South 18 degrees 11 minutes 38 seconds West, a distance of 50.00 feet; thence South 71 degrees 48 minutes 22 seconds East, a distance of 21.31 feet; thence South 26 degrees 50 minutes 18 seconds East, a distance of 5.94 feet to the point of curvature of a curve to the left, having a central angle of 60 degrees 38 minutes 38 seconds, a radius of 425.00 feet, an arc length of 449.84 feet, a chord length of 429.13 feet and a chord bearing South 12 degrees 07 minutes 40 seconds East; thence on said curve a distance of 449.84 feet to the point of reverse curvature; said curve having a central angle of 15 degrees 42 minutes 56 seconds, a radius of 175.00 feet, an arc length of 48.00 feet, a chord length of 47.85 feet and a chord bearing South 34 degrees 35 minutes 29 seconds East; thence on said curve a distance of 48.00 feet to the point of tangency; thence South 63 degrees 16 minutes 00 seconds East, a distance of 76.39 feet; thence North 89 degrees 18 minutes 19 seconds West, a distance of 1,196.78 feet to a point on the East Right-of-Way line of 192nd Street; thence North 00 degrees 41 minutes 34 seconds East on said line, a distance of 1,110.30 feet to the point of beginning;

Also known as Tax Lot Seven (7).

Exhibit A

FILED SARPY CO. NE
INSTRUMENT NUMBER
2008-13284

2008 MAY -9 PM 1:55

Glenn J. Dowling
REGISTER OF DEEDS

COUNTER	<u>a</u>	C.E.	<u>ab</u>
VERIFY	<u>ab</u>	D.E.	<u>P</u>
PROOF	<u>LM</u>		
FEES \$	<u>21.00</u>		
CHECK #	<u>46568</u>		
CHG		CASH	
REFUND		CREDIT	
SHORT		NYR	

After recording, return to: Jennifer J. Taylor, Slusky Law, LLC, Suite 300, 17445 Arbor Street, Omaha, NE 68130

**FIRST AMENDMENT TO
DECLARATION OF EASEMENTS WITH COVENANTS AND RESTRICTIONS
FOR LOTS 1 THROUGH 9 INCLUSIVE AND OUTLOTS A THROUGH C, INCLUSIVE,
SUGAR CREEK NEIGHBORHOOD CENTER**

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS WITH COVENANTS AND RESTRICTIONS FOR LOTS 1 THROUGH 9 INCLUSIVE AND OUTLOTS A THROUGH C, INCLUSIVE, SUGAR CREEK NEIGHBORHOOD CENTER (herein "Amendment"), amends the above described Declaration of Easements, Covenants and Restrictions dated April 26, 2006 and recorded on May 1, 2006 in the office of the Register of Deeds, Sarpy County, Nebraska as Instrument Number 2006-14188 (the "Declaration") is made effective as of _____, 2008, by HOICH 192nd LLC, a Nebraska limited liability company ("Hoich"), SIXTH GENERATION PROPERTIES - LAND COMPANY, LLC, a Nebraska limited Liability company ("Sixth Generation"), and HARRISON 192, LLC, a Nebraska limited liability company ("Harrison"). Individually Hoich, Sixth Generation and Harrison as a Grantor or Declarant herein, and jointly or collectively as Grantors or Declarants.

RECITALS:

WHEREAS, Declarant Hoich conveyed to Harrison title to Lot 8, Sugar Creek Neighborhood Center, a Subdivision, in Sarpy county ("Lot 8"); and

WHEREAS, Harrison requested certain revisions to the Declaration be made as a condition of closing on the purchase of Lot 8; and

WHEREAS, Declarants are each willing to grant the revisions requested.

NOW, THEREFORE, in exchange for the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged be each party, the Declarants hereby amend the Declaration as follows:

1. Section 7.8, paragraph 2, is hereby deleted in its entirety, and the following inserted in its place: "Prior to the sale or development of all Lots, the pro rata share of fees and expenses shall be the percentage determined by taking the land area of an Owner's Lot or Lots divided by the total land area of all Lots within the Development."
2. The following sentence shall be added to end of Section 6.1(c), "Each Owner shall provide adequate employee parking on such Owner's Lot, and shall make reasonable efforts to ensure that employees of Owner or Owner's tenants do not park on other Lots."

RECORDED NOTE: INDEXED AGAINST LOTS 1 thru 9, and lots 8 and outlots A, B, C Sugar Creek Neighborhood Center and LOTS 1 & 2 SUGAR CREEK NEIGHBORHOOD CENTER REPEAT 1 LAL 5-9-08

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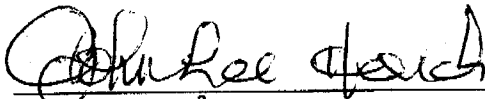
3. To the extent that this Amendment is inconsistent with a provision in the Declaration, the terms of this Amendment shall control. Except as amended herein, all other provisions of the Declaration are hereby ratified and confirmed and shall remain in full force and effect against all Lots and be and shall remain enforceable in accordance with its terms.

4. If any term, provision or covenant of this Amendment shall to any extent be deemed invalid and unenforceable by judgment or court order, the remainder of this Amendment shall not be affected thereby and such other terms, provisions and covenants of this Amendment shall be valid and shall be enforced to the extent permitted by law.

IN WITNESS WHEREOF, the undersigned has caused these presents to be effective on the day and year set forth above.

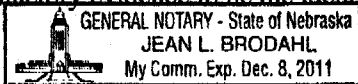
DECLARANTS:

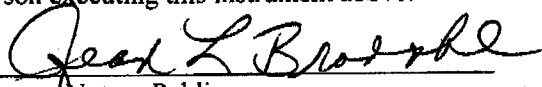
HOICH 192nd LLC, a Nebraska limited liability company

By: 
Its: John Lee Hoich

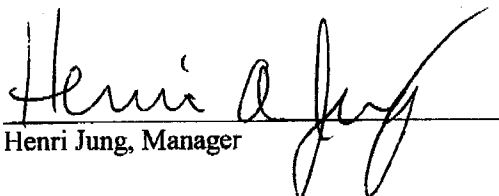
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 10 day of April 2008, by JOHN L. HOICH, the Manager of Hoich 192nd LLC, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing this instrument above.




Notary Public

SIXTH GENERATION PROPERTIES – LAND COMPANY,
LLC, a Nebraska limited liability company

By: 
Henri Jung, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

2008-13284 B

The foregoing instrument was acknowledged before me this 10th day of March 2008, by HENRI JUNG, the Manager of SIXTH GENERATION PROPERTIES – LAND COMPANY, LLC, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing this instrument above.



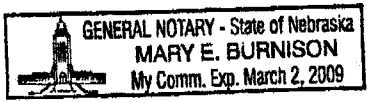
Cherlyn J. Humburg
Notary Public

HARRISON 192, LLC, a Nebraska limited liability company

By: *Marjorie Emma Sothman*
Its: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14th day of March 2008, by Marjorie Emma Sothman the Member of Harrison 192, LLC, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing this instrument above.



Mary E. Burnison
Notary Public