

ORDINANCE NO. 33722

AN ORDINANCE to approve a Mixed Use Development Agreement for property located Northeast of 180th and Pacific Streets (Pacific Springs) between the City of Omaha and Lanoha-Pacific Development, Inc., providing site development and use standards; and to provide for an effective date.

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

Section 1. That the City of Omaha, in the interest of maintaining public health, safety, and welfare, desires to assure that the property located Northeast of 180th and Pacific Streets (Pacific Springs) is developed in accordance with the provisions of this Mixed Use Development Agreement attached hereto and made a part hereof by reference.

Section 2. That if this Ordinance, Mixed Use Development Agreement, or portion thereof, is found to be invalid, any zoning ordinance applicable to such site shall not be invalidated for such reason.

Section. That this Mixed Use Development Agreement is hereby approved.

Section 4. That this Ordinance shall be in force and take effect fifteen (15) days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

PASSED 4/9/96

MAYOR OF THE CITY OF OMAHA

ATTEST:

CITY CLERK OF THE CITY OF OMAHA

APPROVED AS TO FORM:

Ken Brungo
ASSISTANT CITY ATTORNEY



NEIGHBORHOOD MIXED-USE DISTRICT DEVELOPMENT AGREEMENT

THIS MIXED-USE DISTRICT DEVELOPMENT AGREEMENT is made and entered into as of the dates indicated below pursuant to Chapter 55, Omaha Municipal Code, by and between the CITY OF OMAHA, a Municipal corporation of the State of Nebraska, hereinafter referred to as "City," SANITARY AND IMPROVEMENT DISTRICT NO. 398 OF DOUGLAS COUNTY, NEBRASKA, hereinafter referred to as "District," LANOHA-PACIFIC DEVELOPMENT, INC., a Nebraska corporation, hereinafter referred to as "Lanoha-Pacific."

WITNESSETH:

WHEREAS, Lanoha-Pacific is the legal owner of the real estate described in the plat of the Pacific Springs Subdivision Neighborhood Mixed-Use Center, hereinafter referred to as "Mixed-Use Area," a copy of which is attached hereto Exhibit "A-1" and is incorporated herein by this reference; and

WHEREAS, Lanoha-Pacific desires to establish and develop the portion of the Mixed-Use Area described in Exhibit "A-2" attached hereto according to the provisions of Chapter 55 of the Omaha Municipal Code for the construction of a shopping center, grocery store, retail stores, offices, restaurants, fast food restaurants, gas stations, convenience stores, and commercial uses as set forth in this Agreement; and

WHEREAS, in accord with the requirements of Article XX, Sections 55-561 and 55-884, of the Omaha Municipal Code, Lanoha-Pacific has presented a development plan to the City; and

WHEREAS, City, in the interest of maintaining the public health, safety and welfare, desires to insure that such project is developed substantially in accordance with the development plan, therefore, considers this Agreement to be in the best interest of the City; and

WHEREAS, Lanoha-Pacific, as the Developer, is willing to commit to the development of a project substantially in accord with the development plan and desires to have a reasonable amount of flexibility to carry out the development and consider this Agreement to be in its best interest; and

WHEREAS, the District shall install or contract for the installation of the public improvements to and within the Mixed-Use Area; and

WHEREAS, the City, District, and Lanoha-Pacific desire to set forth in this Agreement their respective understandings and agreements with regard to the Mixed-Use Area; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:



I. DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

A. The "Cost" or "Entire Cost" of a public improvement shall be deemed to include all right-of-way or easement acquisition, construction costs, engineering costs, attorneys' fees, testing expenses, publication costs, financing costs and any other miscellaneous costs.

B. "Site Improvement" shall mean any building, parking, landscaping, signage, fencing or other regulated structures or appurtenances constructed on or as part of the development of the Mixed-Use Area.

II. DEVELOPMENT PLAN

A. Except as otherwise permitted in this Agreement, the Mixed-Use Area shall be developed in accordance with the terms of this Agreement, the Development Plan a/k/a the Site Plan, which is attached hereto as Exhibit "A-2" and the Omaha Master Plan.

B. The right-of-way as shown on Exhibit "A-2" attached hereto shall be dedicated at the time that Lanoha-Pacific makes a request or application to the City to dedicate such right-of-way. Such dedicated right-of-way may be at the location as shown in Exhibit "A-2" attached hereto or may be modified or changed to be located differently than that shown on Exhibit "A-2" attached hereto so long as the access points with the existing adjoining public right-of-ways are located at approximately the same location as shown in Exhibit "A-2" attached hereto, and so long as such relocated or modified right-of-way conforms to all applicable City requirements relative to public right-of-ways. At the time of dedicating such right-of-way, Lanoha-Pacific, if it deems necessary, may also replat, realign, increase or decrease the lots or parcels as set forth in Exhibit "A-2" attached hereto, and in such case, Lanoha-Pacific shall be permitted by the City to present the preliminary and final plat in one application to the City Planning Department, City Planning Board and Omaha City Council for approval as long as there is not a substantial change to the over-all site plan as set forth in Exhibit "A-2" attached hereto. Upon dedication of the right-of-way, the public improvements for the area set forth in Exhibit "A-2" shall be installed pursuant to the Subdivision Agreement referred to in Paragraph III of this Agreement and the Subdivision Regulations of the City of Omaha.

C. It is intended that this development plan for the area described in Exhibit "A-2" be a general schematic of the development. All parties recognize that from time to time for good and sufficient reasons it may be necessary for Lanoha-Pacific to alter the size, location, use or type of the respective building(s), lot(s) or other Site Improvements set forth in Exhibit "A-2" attached hereto. Lanoha-Pacific reserves the right to modify the development plan provided such modification conforms to the provisions of the Omaha Municipal Code and the Omaha Master Plan and obtains approval from the City, when necessary, for such modifications. This provision shall not abrogate any legal remedies available to City. If any provision of this Agreement is held invalid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained therein.



III. PUBLIC IMPROVEMENTS

The parties agree that the public improvements for the Mixed-Use Area shall be installed or contracted for by the District pursuant to a Subdivision Agreement entered into by and between the District, City and Lanoha-Pacific dated _____, 1995 (the "Subdivision Agreement"), however, the provisions of the Subdivision Agreement which relate to the installation of the interior public improvements within the area described in Exhibit "A-2" attached hereto shall not commence until the dedication of the right-of-way (excluding the area to be dedicated in the northwest area of Exhibit "A-2") under Paragraph No. II(B) of this Agreement. The Entire Cost of such public improvement shall be defrayed pursuant to the terms of the Subdivision Agreement.

IV. PEDESTRIAN PLAN

The pedestrian plan for the project shall be installed in accordance with the "Pedestrian Plan" set forth in Exhibit "A-3" attached hereto and made a part hereof. The Pedestrian Plan shall at all times meet the minimum requirements of the provisions of the Omaha Municipal Code.

V. PARKING

Parking for the project shall be provided in accordance with the "Parking Plan" set forth in Exhibit "A-4" attached hereto and made a part hereof. The Parking Plan shall meet the minimum requirements of the provisions of the Omaha Municipal Code, Chapter 55, Article XIV, "Off Street Parking and Loading" and the Omaha Master Plan.

VI. LANDSCAPING

Landscaping for the project shall be installed in accordance with the "Landscape Plan" set forth in Exhibit "A-5" attached hereto and made a part hereof. The Landscape Plan shall at all times meet the minimum requirements of the provisions of the Omaha Municipal Code, Chapter 55, Article XIII "Landscaping and Screening."

VII. SIGNAGE

Signage for the Mixed-Use Area shall be installed in accordance with the "Signage Plan" included on Exhibit "A-6" attached hereto and by reference made a part hereof. Signage shall at all times meet the minimum requirements of the provisions of the Omaha Municipal Code, Chapter 55, Article XVIII, "Signs and Street Graphics" and the Omaha Master Plan. Easements, if necessary, for entry signage shall be granted by the property owners.



VIII. SITE DEVELOPMENT REGULATIONS

Site development regulations mean those gross building areas, floor area ratios, building coverage percentages and impervious coverage percentages applicable to particular lots in the Mixed-Use Area, all defined in this Agreement. Definitions of these terms are as follows:

A. "Building coverage" means the area of the site covered by buildings or roofed areas excluding allowed projecting eaves, balconies and similar features.

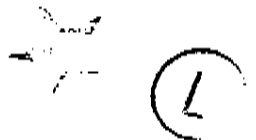
B. "Gross floor area" means the total enclosed area of all floors of a building, measured to the outside surfaces of the exterior walls. This definition includes the areas of basements, elevator shafts, airspaces above atriums and enclosed off-street parking and loading areas serving a principal use and areas covered by permanent canopies.

C. "Floor area ratio" means the quotient of gross floor area divided by gross site area.

D. "Impervious coverage" means the total horizontal area of all buildings, roofed or covered spaces, paved surface areas, walkways and driveways, and any other site improvements that decrease the ability of the surface of the site to absorb water, expressed as a percentage of the site area. The surface water area of pools is excluded from this definition.

E. Except as otherwise permitted in this Agreement or the zoning ordinances of City, the project shall be developed in accordance with the site plan (as shown herein or as modified pursuant to this Agreement) as detailed in this Agreement, with the permissible uses limited to those set forth in Section 55-363, Omaha Municipal Code.

Except as otherwise provided herein and as long as the site development regulations are not violated: Lanoha-Pacific may alter the location, physical shape, use designation or exterior dimensions of any structure shown on Exhibit "A-2" attached hereto within the boundaries of any platted lot, may increase or reduce the number of structures within the boundaries of any platted lot, and may reduce or increase the number of buildings or lots as shown on the Site Plan by eliminating, adding or adjusting lot lines, and/or combining or replatting lots (City, may, by administrative subdivision, grant any such lot replats, adjustments or combinations as are necessary to carry out the plan. If, because of the requirements of law, it is necessary to replat all or any portion of the Mixed-Use Area, City agrees to accommodate such replatting as expeditiously as possible). Lanoha-Pacific may alter, subject to approval of Planning Director, the location and design of any off-street parking areas within the site plan so long as such alteration does not increase or decrease the impervious coverage requirement as set forth in the site development regulations set forth herein.



The site development shall be subject to the following regulations:

<u>Regulator</u>	<u>Requirement</u>
Lot Area:	5,000 square ft. minimum
Lot Width:	50 ft. minimum
Floor Area Ratio:	No specific requirement per lot, however, the Mixed-Use Area in its entirety cannot be less than a minimum FAR of .3.
Front Yard:	The greater of 15 feet from the front property line or 50 feet from the centerline of the fronting street.
Street Side Yard:	The greater of 15 feet from the side property line or 50 feet from the centerline of the duly dedicated public fronting street.
Interior Side Yard:	No requirement.
Rear Yard:	15 feet minimum
Height:	75 feet maximum or three stories, whichever is greater.
Building Coverage:	70% maximum
Impervious Coverage:	No specific requirement per lot, however, the Mixed-Use Area in its entirety cannot exceed an Impervious Coverage of 90%.

Preliminary building elevations shall be submitted for each structure on or before the time the building permit for each such structure is applied for.

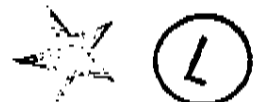
IX. RESTRICTIONS

Lanoha-Pacific agrees to the following additional restrictions to the Mixed-Use Area:

A. The lighting for the commercial portion of the Mixed-Use Area which is described in Exhibit "A-2" attached hereto shall be engineered to be directed onto the commercial area portion of the Mixed-Use Area in accordance with the information provided by the lighting engineer as set forth in Exhibit "A-7" attached hereto.

B. Signage within the commercial portion of the Mixed-Use Area (Exhibit "A-2") pursuant to the signage plan attached hereto as Exhibit "A-6".

C. The exposed facing of any structure shall consist of one or more of the following materials: brick, stone, dryvit, stucco, decorative concrete masonry units, decorative precast concrete units or wood. In the event concrete block is utilized, then the facing of



occupancy permits on the project on a building by building or unit basis, but no such permit shall be issued unless work on portions of such buildings has advanced to a point that the individuals using the portions of the buildings for which their certificate of occupancy is to be issued will not be endangered by construction in progress and the building is safe for those to be occupied.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by the parties as of the dates indicated below.

Executed by LANOHA-PACIFIC DEVELOPMENT, INC., a Nebraska corporation, on this 16th day of August, 1995.

LANOHA-PACIFIC DEVELOPMENT, INC., a Nebraska corporation.

Attest:

By [Signature]
Secretary

By [Signature]
President

Executed by SANITARY AND IMPROVEMENT DISTRICT NO. 398 OF DOUGLAS COUNTY, NEBRASKA on the 16th day of August, 1995.

SANITARY AND IMPROVEMENT DISTRICT NO. 398 OF DOUGLAS COUNTY, NEBRASKA

Attest:

By [Signature]
Clerk

By [Signature]
Chairman

Executed by the CITY OF OMAHA, NEBRASKA, on this _____ day of _____, 1995.

CITY OF OMAHA, NEBRASKA

Attest:

By _____
City Clerk

By _____
Mayor



such concrete block shall be covered with one or more of the previously described materials. However, the foregoing shall not apply to the rear of the structures.

X. MISCELLANEOUS PROVISIONS

A. The Planning Director of the City of Omaha shall have the authority to administer this Agreement on behalf of City and to exercise discretion with respect to those matters contained herein so long as the development proceeds in general accord with the development plan and with regard to those matters not fully determined at the date of this Agreement. Where this Agreement requires an approval, authorization or action by the City, the Planning Director of the City of Omaha is hereby authorized, on behalf of the City, to provide such approval or authorization or take such action as is necessary to the full extent provided by law, so long as such action complies with the terms of this Agreement, the Omaha Municipal Code and the Omaha Master Plan. The Planning Director shall have no authority to otherwise amend this Agreement unless requested by Lanoha-Pacific as to the matters that relate to Exhibit "A-2" attached hereto or as to matters that relate to Exhibit "A-3" attached hereto only. The provisions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the City, Lanoha-Pacific and all successor owners of the real estate described in Exhibit "A-1."

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

C. Parties to this Agreement shall conform with all existing and applicable ordinances, resolutions, state or federal laws and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance of this Agreement.

D. Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of City shall have a financial interest, direct or indirect, in any City agreement. A violation of that Section with the knowledge of Lanoha-Pacific, in addition to constituting employee malfeasance, shall render the agreement voidable by City and unilaterally terminated.

E. No changes may be made to this Agreement, or any attachments thereto except in writing and agreed to by Lanoha-Pacific as to the matters which relate to Exhibit "A-2" attached hereto and Lanoha-Pacific as to the matters which relate to Exhibit "A-3" attached hereto.

F. City and Lanoha-Pacific agree to do all things necessary or appropriate to carry out the terms of this Agreement and to aid and assist each other in carrying out its terms including, but not limited to enactment, by City of such resolutions or ordinances in taking of such action as may be necessary to enable City and Lanoha-Pacific to comply with the terms thereof.

G. City agrees that no revised site plan, plat, revised development plan or related documents shall be arbitrarily or unreasonably rejected or disapproved by City staff. City agrees to issue each building permit as expeditiously as possible and to grant individual



occupancy permits on the project on a building by building or unit basis, but no such permit shall be issued unless work on portions of such buildings has advanced to a point that the individuals using the portions of the buildings for which their certificate of occupancy is to be issued will not be endangered by construction in progress and the building is safe for those to be occupied.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by the parties as of the dates indicated below.

Executed by LANOHA-PACIFIC DEVELOPMENT, INC., a Nebraska corporation, on this 16th day of August, 1995.

LANOHA-PACIFIC DEVELOPMENT, INC., a Nebraska corporation.

Attest:

By [Signature]
Secretary

By [Signature]
President

Executed by SANITARY AND IMPROVEMENT DISTRICT NO. 398 OF DOUGLAS COUNTY, NEBRASKA on the 16th day of August, 1995.

SANITARY AND IMPROVEMENT DISTRICT NO. 398 OF DOUGLAS COUNTY, NEBRASKA

Attest:

By [Signature]
Clerk

By [Signature]
Chairman

Executed by the CITY OF OMAHA, NEBRASKA, on this _____ day of _____, 1995.

CITY OF OMAHA, NEBRASKA

Attest:

By _____
City Clerk

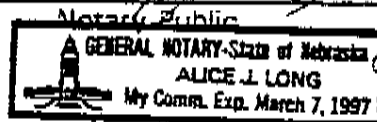
By _____
Mayor



STATE OF NEBRASKA)
) ss.:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 16th day of August, 1995, by David F. Lanoha, President and Secretary of LANOHA-PACIFIC DEVELOPMENT, INC., a Nebraska corporation, on behalf of said corporation.

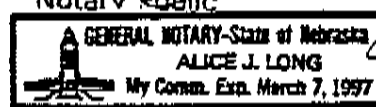
Alice J. Long



STATE OF NEBRASKA)
) ss.:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 16th day of August, 1995, by David F. Lanoha, Chairman, and Patricia Sorensen, Clerk, of SANITARY AND IMPROVEMENT DISTRICT NO. 398 OF DOUGLAS COUNTY, NEBRASKA.

Alice J. Long



STATE OF NEBRASKA)
) ss.:
COUNTY OF DOUGLAS)

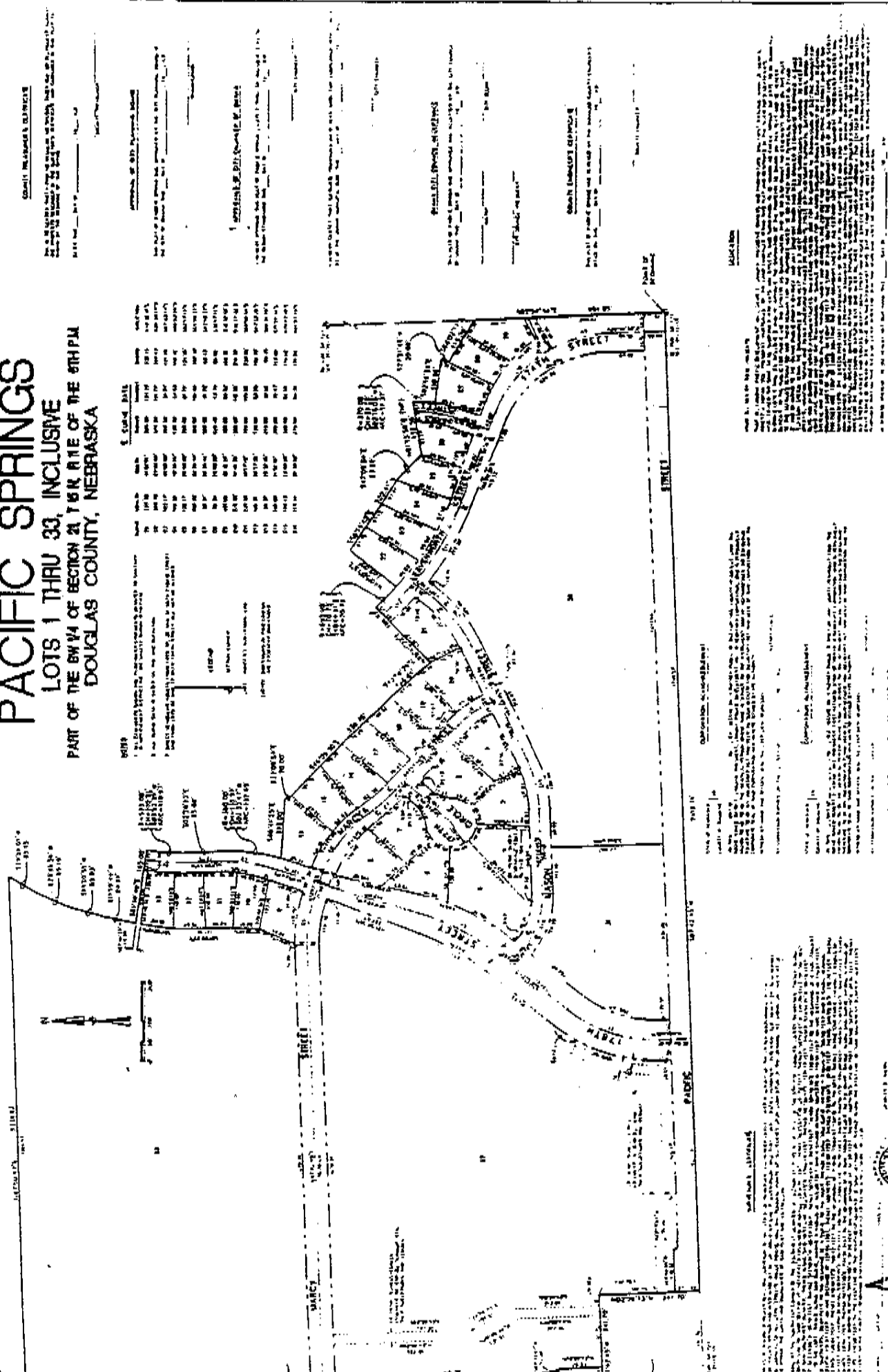
The foregoing instrument was acknowledged before me this _____ day of _____, 199____, by _____, Mayor, and _____, City Clerk, of the CITY OF OMAHA.

Notary Public

(L)

PACIFIC SPRINGS

LOTS 1 THRU 33, INCLUSIVE
PART OF THE SW 1/4 OF SECTION 24, T 6 N, R 1 E OF THE 6TH PM
DOUGLAS COUNTY, NEBRASKA



LOT	ACRES	AREA	PERCENTAGE
1	0.00	0.00	0.00
2	0.00	0.00	0.00
3	0.00	0.00	0.00
4	0.00	0.00	0.00
5	0.00	0.00	0.00
6	0.00	0.00	0.00
7	0.00	0.00	0.00
8	0.00	0.00	0.00
9	0.00	0.00	0.00
10	0.00	0.00	0.00
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30	0.00	0.00	0.00
31	0.00	0.00	0.00
32	0.00	0.00	0.00
33	0.00	0.00	0.00

COMMIT RECORDS OFFICE
RECORDS SECTION
1111 N. G ST.
LINCOLN, NE 68509

RECORDS SECTION
1111 N. G ST.
LINCOLN, NE 68509

RECORDS SECTION
1111 N. G ST.
LINCOLN, NE 68509

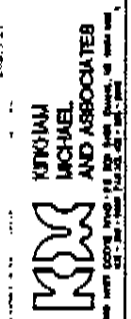
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LINCOLN, NE 68509



1111 N. G ST.
LINCOLN, NE 68509

KIRKHAM MICHAEL AND ASSOCIATES

PACIFIC SPRINGS

DEVELOPMENT PLAN

2

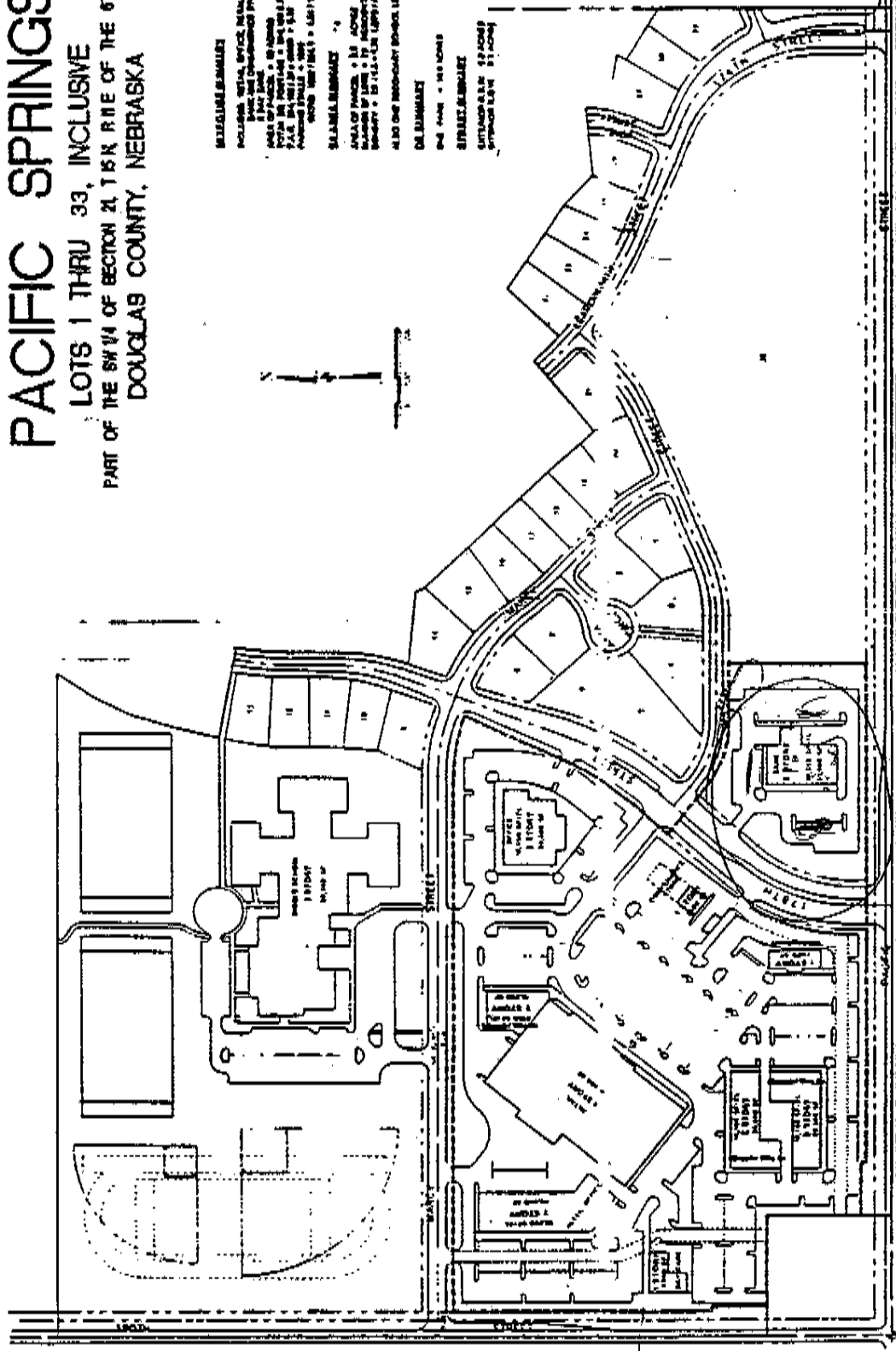
PACIFIC SPRINGS

LOTS 1 THRU 33, INCLUSIVE
PART OF THE SW 1/4 OF SECTION 21, T16N R16E OF THE 6TH PM
DOUGLAS COUNTY, NEBRASKA

EXCLUSIONS:
INCLUDES: UTILITIES, SERVICE BUILDINGS,
AND DEVELOPMENT FROM THE
2007 PLAN.
NOT TO SCALE.
DATE: 04/11/07
DRAWN BY: [Name]
CHECKED BY: [Name]

DEVELOPMENT:
APPROX. 120 UNITS
SUTLAND PARK 120 UNITS
SUTLAND PARK 120 UNITS

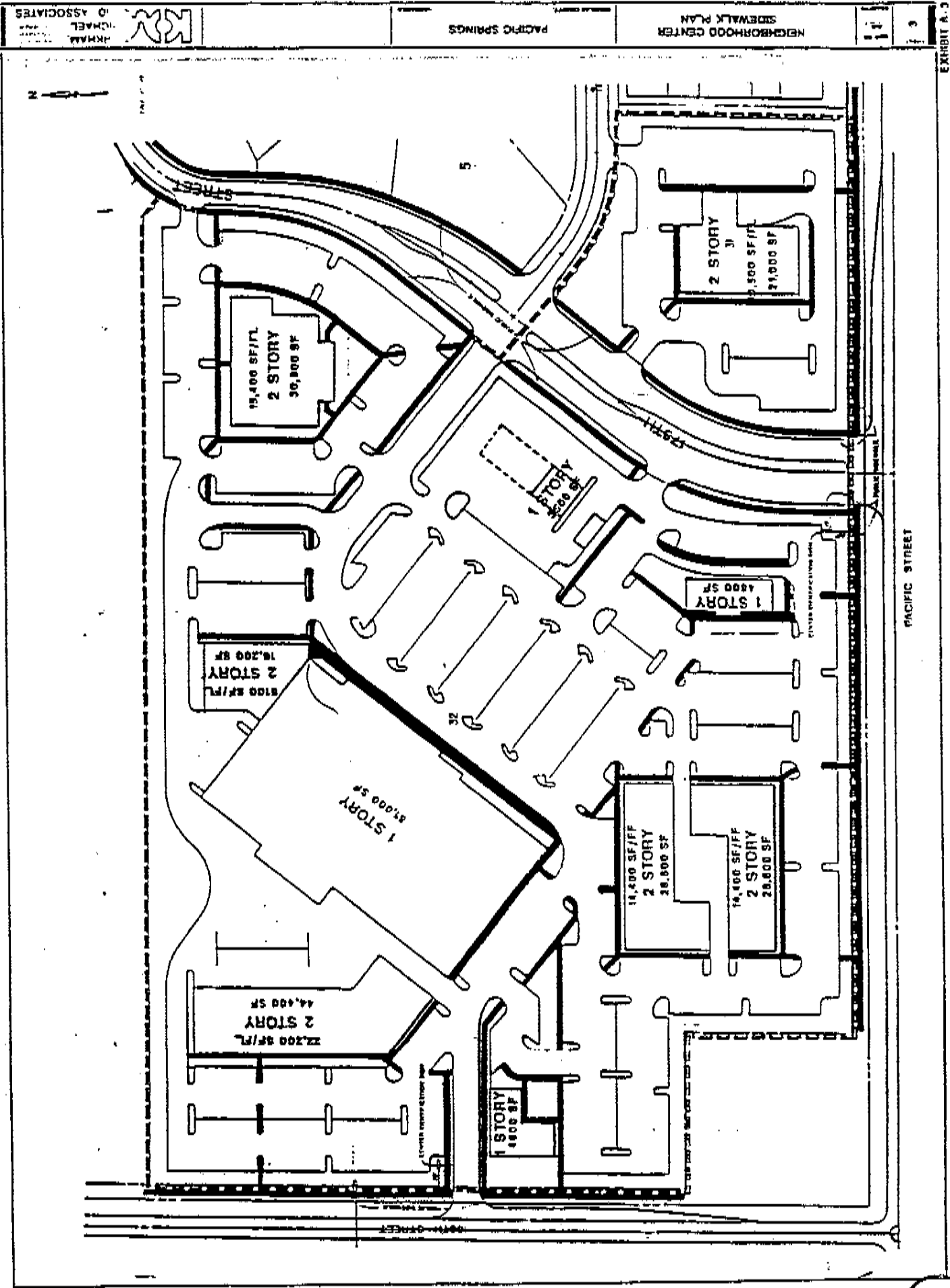
DEVELOPER:
KIRKHAM MICHAEL AND ASSOCIATES
1111 W. CENTRAL ROAD
OMAHA, NE 68102



OWNER: LAMONT, FACTORY MAN
DEVELOPMENT CO.
1111 W. CENTRAL ROAD
OMAHA, NE 68102

ENGINEER: KIRKHAM MICHAEL & ASSOC.
210 W. POOL ROAD
OMAHA, NE 68102

EXHIBIT A-2



ARMAN
MICHAEL
ASSOCIATES



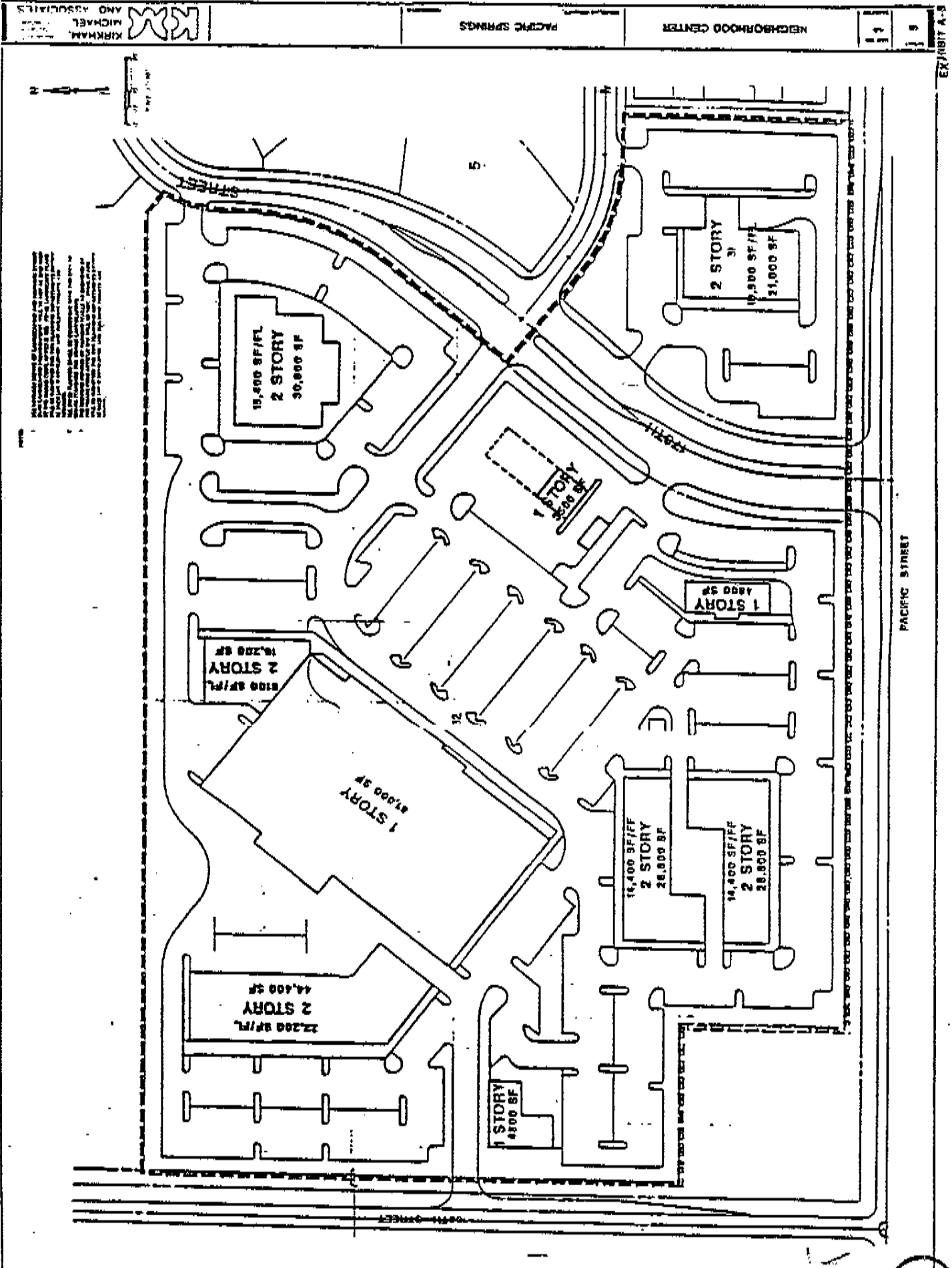
PACIFIC SPRINGS

NEIGHBORHOOD CENTER
SIDEWALK PLAN

EXHIBIT A.3

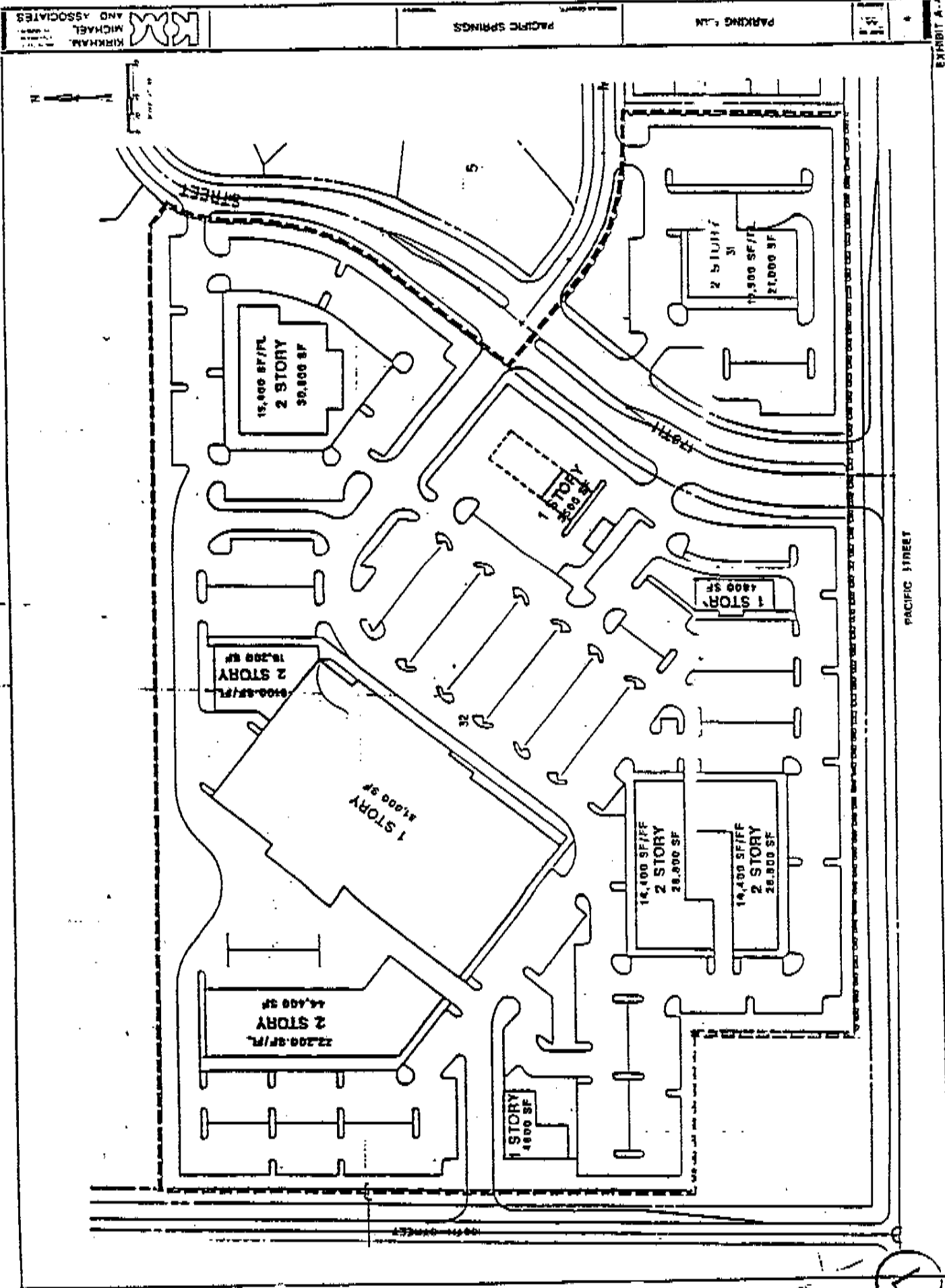
PACIFIC STREET

7



NOT TO SCALE
 ALL DIMENSIONS ARE APPROXIMATE
 ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE CALIFORNIA BUILDING CODE (CBC) UNLESS OTHERWISE SPECIFIED.
 THIS PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND IS NOT TO BE USED FOR CONSTRUCTION WITHOUT THE CONSULTATION OF THE ARCHITECT.
 THE ARCHITECT ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS PLAN.

17



KMK
 KIRKHAM,
 MICHAEL
 AND ASSOCIATES

PACIFIC SPRINGS

PARKING PLAN

10/10/10

I. Preliminary Sign Proposal for Mixed-Used Area:

- A. It is proposed that the signing for the mixed-use area within the site will utilize one or more of the following types of signage:
1. Center Identification Sign. It is anticipated that one center identification sign will be utilized for the site. It is anticipated that this sign would be located at the entrance of the center at approximately 186th & West Center Road. The sign would be installed pursuant to the applicable sign ordinance. It is possible the sign would include the names of tenants.
 2. Interior Signs. The signs located within the interior of the project for the individual buildings would be wall /facade signs on the building, a projecting sign on the building or a canopy sign attached to the building. Ground signs may also be used for the individual buildings on the site if the front wall of the building or structure which the sign serves is set back at least 15 feet from the right-of-way line of the street to which the sign is oriented. All such signs shall comply with the applicable sign ordinance.
 3. Prohibited Signs. Signs on the roof shall be prohibited. Further, pennants and pneumatic type signs shall also be prohibited.
- B. Illumination: Lighting, when installed, will be positioned in such a manner that light is not directed onto the adjoining property, or onto a public street or highway, but rather, any lighting shall be directed onto the sign. All sign lighting shall comply with the applicable sign ordinances.



L LIGHTING FOR THE SITE

- A. The lighting within the area described in Exhibit "A-2" attached hereto shall be controlled lighting which is directed onto the site.**

EXHIBIT A-7

FAWORDCENTER\EXHA7.DEV

