

Cuming County Zoning Regulations

Adopted: April 26, 2000

Effective: July 1, 2000

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Regulations May 28, 2008

Members May 2008

CUMING COUNTY, NEBRASKA

ZONING REGULATIONS

RESOLUTION

ZONING REGULATIONS RESTRICTING THE USE OF LAND AND THE USE AND LOCATION OF BUILDINGS AND STRUCTURES; REGULATING AND RESTRICTING THE HEIGHT AND BULK OF BUILDINGS AND STRUCTURES AND DETERMINING THE AREA OF YARD, COURTS AND OTHER PLACES SURROUNDING THEM; DIVIDING THE COUNTY INTO DISTRICTS FOR SUCH PURPOSES; ADOPTING A MAP OF THE COUNTY SHOWING BOUNDARIES OF DISTRICTS AND CLASSIFICATION OF SUCH DISTRICTS; DEFINING CERTAIN OF THE TERMS USED IN SAID REGULATIONS; ESTABLISHING AN APPEALS BOARD; PROVIDING FOR CHANGES AND AMENDMENTS TO SAID REGULATIONS; PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS AND REPEALING THE ORIGINAL ZONING RESOLUTION AND AMENDMENTS THERETO.

BE IT RESOLVED by the Governing Body that:

SECTION 1. These Regulations shall be known and may be cited as the Zoning Regulations of Cuming County, Nebraska.

INTERPRETATION AND SCOPE

SECTION 1. INTERPRETATION. In the interpretation and application, the provisions of these regulations shall be held to be the minimum requirements adopted for the promotion of the public health, safety and welfare. Where this regulation imposes a greater restriction upon land, buildings, or structures than is imposed or required by existing provisions of law, contract or deed, the provisions of this regulation shall control.

SECTION 2. SCOPE. These Regulations shall apply to existing uses of buildings and agricultural purposes in accordance with the following State Statutes.

23-173.01. The use of a building, structure, or land existing and lawful at the time of the enactment of a zoning regulation, or at the time of an amendment of regulation, may, except as provided in this section, be continued, although such use does not conform with the provisions of such regulation or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve (12) months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The county board may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution. The county board may, in any zoning regulation, provide for the termination of nonconforming uses, either by

specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula by which the compulsory termination of nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance.

The Governing Board may approve an extension of the said 12-month deadline upon application of the property owner.

RULES AND DEFINITIONS

SECTION 1. RULES. For the purpose of this Zoning Regulation, the following rules shall apply.

1. Words and numbers used singularly shall include the plural and the plural shall include the singular. Words used in the present tense shall include the future.
2. The word "persons" includes a corporation, members of a partnership or other business organization, a committee, board, trustee, receiver, agent or other representative.
3. The word "shall" is mandatory.
4. The word "use", "occupy" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged" or "designed to be used or occupied".

SECTION 2. DEFINITIONS. For the purpose of this Zoning Regulation, certain terms or words used herein will be interpreted or defined as follows, unless the context clearly indicates otherwise.

1. ACCESSORY USE OR BUILDING: A subordinate building, structure or use that customarily is incidental to and detached from that of the main building or use of the premises. Customary accessory uses include, but are not limited to, tennis courts, swimming pools, garages, garden houses, children's play houses, barbecue ovens or grills, covered patios and residential storage sheds.
2. AGRICULTURAL AND FARM BUILDINGS AND STRUCTURES. Agricultural and farm buildings and structures shall mean any building or structure that is necessary or incidental to the normal conduct of a farm including but not limited to residence of the operator, residence of hired men, barns, buildings and sheds for housing livestock, poultry and farm machinery, buildings for the storage or shelter of grain, hay and other crops, silos, windmills and water storage tanks.
3. AGRICULTURE: Agriculture shall mean the use of a tract of land for the growing of crops, pasturage, nursery, or the raising of poultry, including the structures necessary for carrying out farming operations, the residence or residences of those owning or operating the premises, a member of the family thereof or persons employed thereon, and the family thereof but such use shall not include feedlots. The raising and feeding of

livestock and poultry shall be an agricultural or farming venture if the area in which the livestock or poultry is kept is twenty (20) acres or more in area and if such raising of livestock and poultry is incidental or supplemental to the raising of crops and not a "feedlot" as defined herein. (Also see Farm).

4. AGRICULTURAL OPERATIONS: Farmsteads of forty acres or more or that produce one thousand dollars (\$1,000.00) or more of farm products each year.

5. ALTERATION: Alteration as applied to a building or structure, is a change or rearrangement in the structural parts of an existing building or structure. Enlargement, whether by extending a side, increasing in height, or the moving from one location or position to another, shall be considered as an alteration.

6. ANIMALS. FARM: Animals, farm shall mean livestock associated with agricultural operation, commonly kept or raised as a part of an agricultural operation including but not limited to horses, cattle, sheep, swine, goats, chickens and turkeys.

7. BOARD: The Board of Adjustment created by the governing body having jurisdiction that has the statutory authority to hear and determine appeals, exceptions and variances to the zoning regulations.

8. BASEMENT: That portion of a building having more than one-half (1/2) of its height below grade.

9. BEST POSSIBLE MANAGEMENT PRACTICES: Best possible management practices shall mean livestock management techniques and practices as set forth by various agencies, including the Nebraska Department of Environmental Quality, that encourage and protect the environment and public.

10. BUILDING: Any structure designed or intended for the enclosure, shelter or protection of persons, animals, or property.

11. BUILDING HEIGHT: The vertical dimensions measured from the average elevation of the finished lot grade at the front of the building to the highest point of the ceiling of the top story in the case of a flat roof; to the deck line of the mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.

12. COMMERCIAL FEEDING OPERATIONS: See Livestock Feeding Operations.

13. COMMON OPEN SPACE: An area of land or water or combination thereof planned for passive or active recreations, but does not include areas utilized for streets, alleys, driveways or private roads, off-street parking or loading areas. However, the area of recreational activities such as swimming pools, tennis courts, shuffleboard courts, etc., may be included as common open space.

14. CONDITIONAL USE PERMIT: A special use permit is a written permit issued by the Zoning Administrator with the written authorization of the Governing Body. The special use permit provides permission under special conditions to make certain special

uses of land in certain zoning districts as stipulated in each of the district zoning regulations.

15. DISTRICT: A section or sections of the zoning area for which these regulations governing the use of land, the height of buildings, the size of yards and the intensity of use are uniform.

16. DOG: Any canine specie over twelve (12) months of age.

17. DWELLING: Any building or portion thereof which is designed and used exclusively for residential purposes, excluding mobile homes.

18. DWELLING. SINGLE-FAMILY: A building having accommodations for or occupied exclusively by one family, excluding mobile homes.

19. DWELLING. TWO-FAMILY: A building having accommodations for or occupied exclusively by two (2) families independently.

19 a. EXISTING FARMSTEAD: An area a) that shall include a single family dwelling which was occupied as a single family dwelling on the date of adoption of the Cuming County Zoning Regulations, which is July 1, 2000, and which was occupied for 12 consecutive months prior to the time of the submission of the application made pursuant to the Cuming County Zoning Regulations affecting such dwelling, except for periods of temporary absence such as vacation or hospitalization, provided, however, that utilities serving the premises remain connected and operational during such temporary absence, b) that shall include a legal perpetual access to an improved street or county road, including, but not limited to, by fee simple title or by perpetual easement, c) that shall include all equipment, fixtures and structures necessary or appurtenant thereto, of a private well or of a connection to a public water supply system, including but not limited to, by fee simple title or by perpetual easement, d) that may include a grove of trees, yard or other contiguous land; accessory buildings: agricultural and farm buildings and structures; other structures; or buildings customarily incidental to the permitted or conditional use, and e) shall include a dwelling constructed thereon within one year of continuous vacancy or destruction of a single family dwelling described in a) above, whichever is earlier, provided, however, that a conditional use permit is applied for and granted prior to construction thereon.

20. FARM: shall mean an area containing at least forty (40) acres or more which is used for growing of the usual farm products such as vegetables, fruit, and grain, and storage on the area, as well as for the raising thereon of the usual farm poultry and farm animals up to 300 animal units as defined in these regulations

21. FAMILY: One or more persons related by blood, marriage or adoption, living together as a single housekeeping unit; or a group of not more than four (4) unrelated persons living together as a single housekeeping unit; plus in either case, usual domestic servants. A family shall under no circumstances be construed as a boarding house, fraternity, or sorority house, club, lodging house, hotel or motel.

22. FORTY ACRE TRACT: Shall mean a governmental subdivision forty (40) acre tract also commonly called a quarter/quarter of a section and shall include such quarter/quarter of a section notwithstanding such tract has a portion thereof excluded for highway or road right of way purposes. ONE HUNDRED SIXTY ACRE TRACT: Shall mean a governmental subdivision one hundred sixty (160) acre tract also commonly called a quarter section and shall include such quarter of a section notwithstanding such tract has a portion thereof excluded for highway or road right of way purposes.

23. GOVERNING BODY: That Body having jurisdiction in the zoning area.

24. HOME OCCUPATIONS: Home occupation shall mean an occupation, profession, activity, or use that is a) clearly an incidental and secondary use of a residential dwelling unit, carried on by a member or members of the family who occupy the dwelling for living purposes, which does not alter the exterior of the property or affect the residential character of the neighborhood, or b) the primary source of income, but employs no more than three (3) employees other than family members and causes limited change in traffic to and from the property.

25. JUNKYARD: Any area where waste is discarded or salvaged, bought, stored, sold, exchanged, baled or packed, disassembled or handled including the dismantling or wrecking of automobiles or other vehicles or machinery, house- wrecking yards, used lumber storage, inoperable vehicle storage, and places or yards or entirely within a completely enclosed building, or inoperable farm machinery used with the farming operation.

26. KENNEL BOARDING: Any place, area, building or structures where dogs (including those under one year of age) are boarded, housed, cared for, fed or trained by other than the owner.

27. KENNEL BREEDER: Any place, area, building or structure where more than one dog is kept for purposes of breeding or raising for a fee.

28. LAGOON: Lagoon shall mean an impoundment made by constructing an excavated pit, dam, embankment or combination of these for treatment of waste by anaerobic, aerobic or facultative digestion.

29. LIQUID MANURE: Liquid Manure shall mean that type of livestock waste that is in liquid form, collected in liquid manure pits or lagoons that can be sprayed or injected beneath the surface; provided however, only liquid manure collected in lagoons may be applied by a center pivot or tow-line irrigation systems. (See definition of Lagoon).

30. LIQUID MANURE STORAGE PITS: Liquid manure storage pits shall mean earthen or lined pits located wholly or partially beneath a semi or totally housed (ECH) livestock operation or at some removed location used to collect waste production. In no event shall liquid manure that is stored or collected in a Liquid Manure Storage Pit be applied through the use of a center pivot or towline irrigation system (See definition of Liquid Manure and Lagoon).

31. LIVESTOCK: (See Animals, Farm).

32. LIVESTOCK FEEDING OPERATION (LFO): Livestock feeding operations shall mean the feeding, farrowing or raising of cattle, swine, sheep, poultry, or other livestock, in a confined area where grazing is not possible, and where the confined area is for more than six (6) months in any one calendar year, and where the number of animals so maintained exceeds three hundred (300) Animal Units as defined below. The confined area of the LFO shall include the pens, corrals, sheds, buildings, feed storage areas, waste disposal ponds and related facilities. They shall construct and operate such facilities in conformance with applicable county, state and federal regulations. Two (2) or more LFO's under common ownership are deemed to be a single LFO if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock wastes. Animal units (AU) are defined as follows:

One (1) A.U. = One (1) Slaughter, Feeder Cattle;

One (1) A.U. = One Half (.5) Horses;

One (1) A.U. = Seven Tenths (.7) Mature Dairy Cattle;

One (1) A.U. = Two and One Half (2.5) Swine (55 pounds or more);

One (1) A.U. = Twenty-five (25) Weaned Pigs (less than 55 pounds)

One (1) A.U. = Ten (10) Sheep;

One (1) A.U. = One hundred (100) Chickens;

One (1) A.U.= Fifty (50) Turkeys;

One (1) AU. = Fifty (50) Ducks.

33. LIVESTOCK WASTES: Livestock wastes shall mean animal and poultry excreta and associated feed losses, bedding, spillage or overflow from watering systems, wash and flushing waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto a livestock operation, and other materials polluted by livestock or their direct products.

34. LOT: A parcel of land occupied or intended for occupancy by one main building or a complex of buildings with the accessory structure and including the open spaces and parking required by this regulation, which may include more than one lot of record or meets and bounds described tract having its principal frontage upon a public street or officially approved place.

35. LOT OF RECORD: A lot that is a part of a subdivision, the plat of which has been recorded in the Office of the Register of Deeds prior to the effective date of zoning or a lot described by meets and bounds, the description of which has been recorded in the Office of the Register of Deeds prior to the effective date of zoning.

36. MANUFACTURED HOME: A factory-built structure that is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, which bears a label certifying that it was built according to standards promulgated by the United States Department of Housing and Urban Development.

37. MOBILE HOME: Any prefabricated structure, composed of one or more parts, used for living and sleeping purposes, shipped or moved in essentially a complete condition and mounted on wheels, skids or rollers, jacks, blocks, horses, skirting or a permanent or temporary foundation or any prefabricated structure that has been or reasonably can be equipped with wheels or other device for transporting the structure from place to place, whether by motive power or other means. The term mobile home shall include a trailer home and camp car. Both the definitions shall not apply to any vehicle lawfully operated upon fixed rails.

PERMANENTLY ATTACHED: Attached to real estate enough to require dismantling, cutting away, unbolting from permanent foundation or structural change in such mobile home to relocate it on another site.

PERMANENT FOUNDATION: Base on which building rests to be constructed from either poured concrete or a laid masonry block or brick on a footing to be placed a minimum of 30" below the final ground level.

MODULAR HOME OR MANUFACTURED HOUSING UNIT: (Is considered a conventional type single-family dwelling). Any prefabricated structure, used for dwelling purposes, moved onto a site in essentially complete constructed condition in one or more parts and when completed is a single family unit on a permanent foundation, attached to the foundation with permanent connections. To be a modular home it shall meet or be equivalent to the construction criteria as defined by the Nebraska State Department of Health under the authority granted by Section 71-1555 through 71-1567 Revised Statutes of Nebraska 1943. (1976 Supp.) Residential structures that do not meet the above criteria shall be considered a mobile home.

38. MOBILE HOME PARK: Any area, piece, parcel, tract, or plot of ground equipped as required for support of mobile homes and cabin trailer and offered for use by the owner or representative for mobile home park purposes and/or ground upon which two or more mobile homes are parked, whether for compensation or not, including all accessory uses thereof. The term mobile home park does not include sales on which unoccupied mobile homes are parked for purposes of inspection and sale.

39. NONCONFORMING STRUCTURE: A structure which does not comply with the lot size requirements or bulk regulations applicable to new structures in the zoning district in which it is located.

40. PUBLIC UTILITY: Any business that furnishes the public (a) telephone service, (b) telegraph service, (c) electricity, (d) natural gas, (e) water and sewer, (f) any other

business so affecting the public interest as to be subject to the supervision or regulation by any agency of the State.

41. SERVICE STATION: A service station shall consist of a building or group of buildings and surfaced area where automotive vehicles may be refueled and serviced. Self-service pumps without buildings shall also be included. Such service shall not include tire recapping, body repairs or major overhaul.

42. SIGN: Any device that shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of, an advertisement or announcement that directs attention to an object, product, place, activity, person, institution, organization or business but shall not include any display of official notice or official flag.

43. STORY: That portion of a building, other than a basement, included between the surface of any floor and the surface of the floor next above it or if there is no floor above it, then the space between the floor and the ceiling next above it.

44. STREET: A right-of-way, dedicated to the public use, which provides vehicular and pedestrian access to adjacent properties.

45. STREET LINE: A dividing line between a lot, tract or parcel of land and the contiguous street.

46. STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, but not including fences, driveways and surfacing or public items such as utility poles, street light fixtures and street signs.

47. STRUCTURAL ALTERATION: Any change in the supporting members of a building.

48. TRAILER: (See Mobile Home).

49. YARD: A space on the same lot with a main building, open, unoccupied, and unobstructed by buildings or structures from the ground upward.

50. YARD. FRONT: A yard extending across the full width of the lot, the depth of which is the least distance between the street right-of-way and building setback line.

51. YARD. REAR: A yard extending across the full width of the lot, the depth of which is the least distance between the rear lot line and the rear setback line.

52. YARD. SIDE: A yard extending from the front yard, or front lot line where no front yard is required, to the rear yard. The width of the side yard shall be measured horizontally, between the side lot line and the furthest architectural projection of the structure.

53. ZONE OR DISTRICT: A section of the Zoning Area of which uniform regulation governing the use, height, area, size and intensity of the use of buildings, land and open spaces about buildings are herein established.

54. ZONING ADMINISTRATOR: The person or persons authorized and empowered by the Governing body having jurisdiction to administer the requirements of these zoning regulations.

55. ZONING AREA: The area to be zoned as set out on the Official Zoning Map filed of record.

56. ZONING REGULATIONS: The term zoning regulations or this or these regulations shall mean requirements stipulated in the regulations herewith attached.

SECTION 3. OTHER WORDS AND TERMS. Words or terms not herein defined shall have their ordinary meaning in relation to the context.

APPLICATION OF DISTRICT REGULATIONS

SECTION 1. MINIMUM REGULATIONS. The regulations set by these regulations within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided:

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all the regulations herein specified for the district in which it is located.

2. No building or other structure shall hereafter be erected or altered:

a. to exceed the height or bulk;

b. to accommodate or house a greater number of families;

c. to occupy a greater percentage of lot area;

d. to have a narrower or smaller rear yard, front yard, side yard, or other open spaces than herein required, or in any other manner contrary to the provisions of these regulations.

3. Every building hereafter erected or structurally altered shall be located on a lot and no more than one residential building shall be located on a lot, except as provided herein.

"A-1" AGRICULTURAL - INTENSIVE DISTRICT

SECTION 1. INTENT AND PURPOSE OF DISTRICT. The A-1 Agricultural District regulations are intended to provide for the use and conservation of agricultural land, to protect the value of such land, and to protect it from indiscriminate residential and urban development and other incompatible and conflicting land uses: to conserve and protect the value of open space, wooded areas, streams, mineral deposits and other natural resources and to protect them from incompatible land uses and to provide for their timely utilization; to provide for the location and govern the establishment and operation of land uses which are compatible with agriculture and are of such nature that their location away from residential, commercial and industrial areas is most desirable; to provide for the location and govern the establishment of residential uses which are accessory to and necessary for the conduct of agriculture and to provide for the location and govern the establishment and use of limited non-agricultural residential uses. Such non-agricultural residential uses shall not be so located as to be detrimental to or conflict with other uses which are named as permitted or conditional uses in this district and are appropriate to other property in the area. The nature of the A-1 District and the uses allowed out right or by conditional use precludes the provision of services, amenities and protection from other land uses which are afforded to residential uses by the regulations of other districts, and it is not intended that the A-1 District regulations afford such services, amenities and protection to residential uses located therein.

SECTION 2. PERMITTED PRINCIPAL USES. The following principal uses are permitted in the Agriculture A-1 District.

1. Agricultural operations, and the usual agricultural and farm buildings and structures, including the residence of the owners and their families and any tenants and employees who are engaged in agricultural operations on the premises.

A. All use of farm chemicals including application of pesticides and herbicides shall be governed by State Agencies and applicants using restricted-use pesticides shall be required to be certified as required by law.

B. Livestock operations having up to three (300) animal units are considered a farm and are permitted by right provided other requirements in this district are met.

C. Mobile homes are permitted only when the land is used or intended to be used only for agricultural operations.

2. Single family dwellings on lots of one hundred sixty (160) acres or more.

3. Utility substation, utility pumping stations, utility water reservoirs and utility telephone exchange.

4. Public parks and recreation areas, playgrounds, community centers, forest and

conservation areas, private non-commercial recreation areas including country clubs, swimming pools and golf courses but not including commercial miniature golf driving ranges, motorized cart tracks.

Section 3. CONDITIONAL USES. The Governing Body may, by conditional use permit, authorize the following exceptions subject to such conditions as the Governing Body deems necessary:

1. New construction single-family dwellings on lots no less than forty (40) acres, provided the Intensity of Use and all other requirements of this district are met. In no case are single-family dwellings permitted on tracts without legal access to an improved road unless by a conditional use permit. Such tracts include those that have frontage on a minimum maintenance or undeveloped primitive road. The Conditional Use Permit shall include the cost of improving the road as a condition of the permit.
2. Privately owned parks, playgrounds, golf courses, dude ranches, or other outdoor recreational areas such as campgrounds, youth camps, gun clubs, and archery, trap and skeet ranges. All uses requiring buildings or structures shall conform to the flood plain regulations.
3. Privately owned cabins and seasonal dwellings subject to the flood plain regulations and subdivision regulations.
4. Development of natural resources and the extraction of raw materials such as rock, gravel, sand, etc., including gas and oil extraction and exploration, and subject to the requirement of the Supplementary District Regulations.
5. Publicly owned and operated buildings and facilities such as community centers, auditoriums, libraries, museums.
6. Radio and television towers and transmitters.
7. Airports.
8. Cemeteries.
9. Community sewage disposal facilities.
10. Church, seminary and convents.
11. Public and parochial schools.
12. Sanitary landfill siting or expansion conducted in a manner and method approved by the County Board of Supervisors, provided said landfill is not closer than one thousand (1000) feet to a municipal well and/or one (1) mile to any village or city limits or any subdivision, addition or residence platted as of the effective date of this resolution.
13. Lawn and Garden Nurseries.

14. Seed and feed sales, machine repair shop, livestock equipment construction and sales, as a primary occupation in conjunction with an agricultural operation and operated on the premises.

15. Commercial Kennels and facilities for raising, breeding and boarding of dogs and other small animals, including exotic, non-farm and non-domestic animals, provided that all buildings and facilities be at least one hundred (100) feet from the property line and three hundred (300) feet from any neighboring residence.

16. The spreading or stockpiling of sludge, by-products from manufacturing or any processing plant, and/or paunch manure on agricultural land by municipalities or operations inside or outside of the County.

17. Livestock Feeding Operations, subject to the license requirements, waste disposal requirements and recommendations of the State of Nebraska and the Land Use specifications in the Cuming County Comprehensive Plan.

The following minimum sanitation and odor practices, and those imposed by the Planning Commission and/or County Board of Supervisors in considering the health, safety, and general welfare of the public, including such items as property values, dust, lighting, disposal of waste and dead livestock. The Conditional Use Permit shall be approved after public notice has been given and public hearing conducted as required by law.

A. Livestock Feeding Operation (LFO) will be classified in one of five levels according to total number of animal units (A.U.) in the operation at any one time. Levels will include 301-1,000 animal units; 1,001-5,000 animal units; 5,001-10,000 animal units; 10,001-25,000 animal units and 25,000+ animal units. LFOs which have more than one type feeding operation at one location shall be categorized according to the operation which constitutes the majority of the total operation.

NOTE: Livestock Operations of 300 A.U.s and under are considered a farm as defined in the Regulations and do not require a Conditional Use Permit.

All existing LFOs that expand within their designated level, as outlined below, shall not require a conditional use permit. All new LFOs and those expanding to the next level shall require a Conditional Use Permit and shall be located no less than a distance from non-farm residence or other residences not on an owner's property in any affected Zoning District as hereafter described:

(1) LFO having 301 to 1,000 animal units shall locate 1,320 feet from any non-farm residence or other residence not on the owner's property.

(2) LFOs having 1,001 to 5,000 animal units shall locate 1,980 feet from any non-farm residence or other residence not on the owner's property.

(3) LFOs having 5,001-10,000 animal units shall locate 2,640 feet from any non-farm residence or other residence not on the owner's property.

(4) LFOs having 10,001-25,000 animal units shall locate 3,960 feet from any non-residence or other residence not on the owner's property.

(5) LFOs having more than 25,000 animal units shall locate 5,280 feet from any non-residence or other residence not on the owner's property.

(6) The distance requirements for levels (1) through (5) may be decreased or waived by a waiver signed by all of the property owners of non-farm residence or other residence not on the owner's property within the distances specified. The property owners shall sign a waiver on a form provided by the County Zoning Administrator which consent shall be acknowledged before a Notary Public and filed in the office of the Cuming County Clerk/Register of Deeds. The waiver, when filed, shall be evidence of the property owner's consent to the decrease and/or waiver of the required spacing distances as described hereof

(7) LFOs having up to 1,000 animal units shall locate 2,640 feet from a platted residential area and LFOs having more than 1,000 animal units shall locate at least one (1) mile from a platted residential area.

B. Conditional Use Permits shall be approved by the Planning Commission and County Board of Supervisors based upon a proposed site plan and conditions or requirements pending approval of application for a proposed operation and waste disposal plan from the Nebraska Department of Environmental Quality (DEQ) or any other applicable State Agency. The applicant shall file a copy of his/her Operation and Maintenance Plan and Manure Management Plan as filed with the DEQ with the Zoning Administrator, and shall also file a copy of all approved DEQ plans and permits with the Zoning Administrator within thirty (30) days after they are issued by the DEQ.

C. All ground surfaces within outside livestock pens shall be maintained to insure proper drainage of animal waste and storm or surface runoff in such a manner as to minimize manure from being carried into any roadway ditch, drainage area or onto a neighbor's property.

D. In no event shall any manure storage unit or system be constructed in a Flood Plain (as delineated on the Federal Emergency Management Agency's Flood Plain map as adopted by Cuming County) or where the bottom of the unit or system is either in contact with or below the existing water table where the unit or system is to be constructed. Application of manure in designated Floodway and flooded areas of standing water shall be prohibited.

18. Home occupations as defined in Rules and Definitions, Section 2. Definitions., 24. HOME OCCUPATIONS.; subparagraph b)

19. Existing farmsteads may be on lots that comply with all of the following conditions:

1. The lot has a legal perpetual access to an improved street or county road, including, but not limited to, by fee simple title or by perpetual easement.
2. The lot contains all equipment, fixtures and structures necessary or appurtenant thereto, of a private well or of a connection to a public water supply system, including, but not limited to, by fee simple title or by perpetual easement.
3. The lot contains soil suitable for a septic system or sanitation requirements outlined in these regulations.
4. The lot is surveyed and the survey is filed of record with the Cuming County Clerk.
5. The lot is in compliance with the following requirements for subdivision:
 - a. For purposes of this subsection, subdivision shall mean the division of a lot, tract or parcel of land into two or more sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel of land created is more than ten acres in area.
 - b. Subdivision approval is granted by the Cuming County Board, which subdivision approval will be deemed granted if the Cuming County Board approves a conditional use permit setting forth the proposed subdivision.
 - c. No plat of real property constituting a subdivision shall be recorded or shall have any force and effect unless the Cuming County Board approves the same.
6. All owners of the existing farmstead shall properly execute a “Restrictive Covenant, Release and Waiver” with respect to the existing farmstead in form and substance substantially equivalent to the form of “Restrictive Covenant, Release and Waiver” contained in the Appendix of the Cuming County Zoning Regulations as Appendix 1, and, shall file the executive “Restrictive Covenant, Release and Waiver” of record with the Cuming County Clerk, so that the terms and conditions of the “Restrictive Covenant, Release and Waiver” are effective against and apply to all subsequent owners of any interest in the existing farmstead.

SECTION 4. ACCESSORY USES. The following accessory buildings and uses are permitted in the A-1 District.

1. Buildings and uses customarily incidental to the permitted and conditional uses.

2. Home occupations as defined in Rules and Definitions, Section 2, Definitions., 24. HOME OCCUPATIONS:, subparagraph a)

3. Temporary buildings and uses incidental to construction work which shall be removed upon the completion or abandonment of the construction work.

SECTION 5. LOT REOUIREMENTS AND INTENSITY OF USE. The minimum lot requirements shall be as follows:

1. Minimum Lot Area:

A. New construction single family dwellings - One hundred sixty (160) acres as permitted use excluding road ROW and forty (40) acres as conditional use excluding road ROW, except as herein exempted.

B. Mobile homes shall not be permitted except on agricultural operations of forty (40) acres or greater.

C. Seasonal dwellings - Five (5) acres excluding road ROW. Dwelling is not occupied for more than four (4) months of any 12-month period.

D. All other permitted and conditional uses - No minimum except setbacks and sanitation requirements, or as designated in a Conditional Use Permit.

2. Exemptions:

More than one (1) dwelling or mobile home may be permitted on an agricultural operation provided the residence is an accessory use to the agricultural operation and under the same ownership as the existing dwelling(s) or mobile home(s).

3. Minimum Lot Widths, Setbacks, Yards, and Height of Buildings.

A. Minimum lot widths shall be as follows:

Single Family Dwellings . . . 200 feet

Seasonal Family Dwellings . . .100 feet

Other Permitted Uses . . . 200 feet

B. Minimum front yards shall be as follows:

Single Family Dwellings . . . 30 feet

Seasonal Family Dwellings . . . 20 feet

Other Permitted Uses . . . 30 feet

C. Minimum side and rear yards shall be as follows:

Single Family Dwellings . . . Side/15 feet, Rear/25 feet

Seasonal Family Dwellings . . . Side/20 feet, Rear/20 feet

Other Permitted Uses . . . Side/15 feet, Rear/25 feet

D. Minimum required front, side and rear yard setbacks for all uses or structures shall be no less than eighty-three (83) feet from the road centerline when such yards are contiguous to a County road or state highway.

E. Maximum height for structures intended for human occupancy shall be thirty-five (35) feet; all others are not restricted.

SECTION 6. SUPPLEMENTAL REGULATIONS:

New non-farm residences, as defined in these Regulations, shall be located no less than 3,960 feet from a livestock operation or LFO under 5,000 animal units and 5,280 feet from LFOs having more than 5,000 animal units.

"A-2" AGRICULTURAL - TRANSITIONAL DISTRICT

SECTION 1. INTENT AND PURPOSE OF DISTRICT. The A-2 Agricultural District regulations are intended to recognize the transition between agricultural uses of land and communities; to encourage the continued use of that land that is suitable for agriculture, but limit the land uses that may be a detriment to the efficient pursuit of agricultural production.

SECTION 2. PERMITTED PRINCIPAL USES. The following principal uses are permitted in the A-2 Agricultural District.

1. Agricultural operations, and the usual agricultural and farm buildings and structures, including the residence of the owners and their families and any tenants and employees who are engaged in agricultural operations on the premises.
 - A. All use of farm chemicals, including application of pesticides and herbicides, shall be governed by State Agencies and applicants using restricted-use pesticides shall be required to be certified as required by law.
 - B. Livestock operations having up to three hundred (300) animal units are considered a farm and are permitted by right provided other requirements in this district are met.
 - C. Mobile homes are permitted only when the land is used or intended to be used only for agricultural operations.
2. Single family dwellings on lots of forty (40) acres or more.
3. Utility substation, utility pumping stations, utility water reservoir and utility telephone exchange.
4. Public parks and recreation areas, playgrounds, community centers, forest and conservation areas, private noncommercial recreation areas including country clubs, swimming pools and golf courses but not including commercial miniature golf, golf driving ranges, motorized cart tracks.
5. Churches and publicly owned and operated community buildings, public museums, public libraries
6. Lawn and Garden Nurseries.
7. Cemeteries.
8. Community sewage disposal facilities.
9. Public and parochial schools.

Section 3. CONDITIONAL USES. The Governing Body may, by conditional use permit, authorize the following exceptions subject to such conditions as the Governing Body deems necessary:

1. New construction single-family dwellings on lots no less than ten (10) acres, provided the Intensity of Use and all other requirements of this district are met. In no case are single-family dwellings permitted on a tract without legal access to an improved road unless by a conditional use permit. Such tracts include those that have frontage on a minimum maintenance or undeveloped primitive road. The Conditional Use Permit shall include the cost of improving the road as a condition of the permit.
2. Privately owned parks, playgrounds, golf courses, dude ranches, or other outdoor recreational areas such as campgrounds, youth camps, gun clubs, and archery, trap and skeet ranges. All uses requiring buildings or structures shall conform to the flood plain regulations.
3. Privately owned cabins and seasonal dwellings subject to the flood plain regulations and subdivision regulations.
4. Development of natural resources and the extraction of raw materials such as rock, gravel, sand, etc., including gas and oil extraction and exploration, and subject to the requirement of the Supplementary District Regulations.
5. Publicly owned and operated buildings and facilities such as community centers, auditoriums, libraries, and museums.
6. Radio and television towers and transmitters.
7. Airports.
8. Sanitary landfill siting or expansion conducted in a manner and method approved by the County Board of Supervisors, provided said landfill is not closer than one thousand (1000) feet to a municipal well and/or one (1) mile to any village or city limits or any subdivision, addition or residence platted as of the effective date of this resolution.
9. Seed and feed sales, machine repair shop, livestock equipment construction and sales, as a primary occupation in conjunction with an agricultural operation and operated on the same premises.
10. Commercial Kennels and facilities for raising, breeding and boarding of dogs and other small animals, including exotic, non-farm and non-domestic animals, if all buildings and facilities are at least one hundred (100) feet from the property line and three hundred (300) feet from any neighboring residence.
11. The spreading or stockpiling of sludge, by-products from manufacturing or any processing plant, and/or paunch on agricultural land by municipalities or operations inside or outside the County.

12. Home occupations as defined in Rules and Definitions, Section 2, Definitions., 24. HOME OCCUPATIONS.; subparagraph b)

13. Existing farmsteads may be on lots that comply with all of the following conditions:

1. The lot has a legal perpetual access to an improved street or county road, including, but not limited to, by fee simple title or by perpetual easement.
2. The lot contains all equipment, fixtures and structures necessary or appurtenant thereto, of a private well or of a connection to a public water supply system, including, but not limited to, by fee simple title or by perpetual easement.
3. The lot contains soil suitable for a septic system or sanitation requirements outlined in these regulations.
4. The lot is surveyed and the survey is filed of record with the Cuming County Clerk.
5. The lot is in compliance with the following requirements for subdivision:
 - a. For purposes of this subsection, subdivision shall mean the division of a lot, tract or parcel of land in to two or more sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel of land created is more than ten acres in area.
 - b. Subdivision approval is granted by the Cuming County Board, which subdivision approval will be deemed granted if the Cuming County Board approves a conditional use permit setting forth the proposed subdivision.
 - c. No plat of real property constituting a subdivision shall be recorded or shall have any force and effect unless the Cuming County Board approves the same.

SECTION 4. ACCESSORY USES. The following accessory buildings and uses are permitted in the A-2 District.

1. Building and uses customarily incidental to the permitted and conditional uses.
2. Home occupations as defined in Rules and Definitions, Section 2. Definitions., 24. HOME OCCUPATIONS.; subparagraph a)
3. Temporary buildings and uses incidental to construction work that shall be removed upon the completion or abandonment of the construction work.

SECTION 5. LOT REQUIREMENTS AND INTENSITY OF USE. The minimum lot requirements shall be as follows:

1. Minimum Lot Area:

A. New construction single family dwellings - Forty (40) acres as permitted use and ten (10) acres as conditional use, except as herein exempted.

B. Mobile homes shall not be permitted except on agricultural operations of ten (10) acres or greater.

C Seasonal dwellings - Five (5) acres. Dwelling is not occupied for more than four (4) months of any 12-month period.

D All other permitted and conditional uses - No minimum except setbacks and sanitation requirements or as designated in a Conditional Use Permit.

2. Exemptions:

A. More than one (1) dwelling or mobile home may be permitted on an agricultural operation provided the residence is an accessory use to an agricultural operation and under the same ownership as the existing dwelling(s) or mobile home(s).

3. Minimum Lot Widths, Setbacks, Yards, and Height of Buildings.

A. Minimum lot widths shall be as follows:

Single Family Dwellings . . . 200 feet

Seasonal Family Dwellings . . . 100 feet

Other Permitted Uses . . . 200 feet

B. Minimum front yards shall be as follows:

Single Family Dwellings . . . 30 feet

Seasonal Family Dwellings . . . 20 feet

Other Permitted Uses . . . 30 feet

C. Minimum side and rear yards shall be as follows:

Single Family Dwellings . . . Side /15 feet, Rear/25 feet

Seasonal Family Dwellings . . . Side/20 feet, Rear/20 feet

Other Permitted Uses . . . Side/15 feet, Rear/25 feet

D. Minimum required front, side and rear yard setbacks for all uses or structures shall be no less than eighty-three (83) feet from the road centerline when such yards are contiguous to a County road or state highway.

E. Maximum height for structures intended for human occupancy shall be thirty-five (35) feet; all others are not restricted.

"R-1" RESIDENTIAL DISTRICT

SECTION 1. INTENT AND PURPOSE OF DISTRICT. The R-1 District is established for the purpose of low-density single-family dwelling control and to allow certain public facilities. Regulations are intended to control density of population and to provide adequate open space around buildings and structures in the district to accomplish these purposes. The intent of this District is to recognize the gradual urbanization near cities and to provide for the proper development and facilities necessary for future growth.

SECTION 2. PERMITTED PRINCIPAL USES. The following principal uses are permitted in the R-1 Residential District.

1. Single-family dwellings.
2. General agricultural operations, but this shall not include or permit:
 - A. Livestock feeding operations.
 - B. The spreading, accumulation, feeding or use of garbage or animal waste in any manner on the open surface of the land.
 - C. A use or activity engaged in within three hundred (300) feet of a residential or retail business structure, if such use or activity results in continuous odor, dust or noise.
 - D. The construction of agricultural buildings or structures closer than sixty (60) feet from the right-of-way.
3. Public parks and recreational areas and community buildings owned and operated by a public agency.
4. Churches, synagogues, and other similar places of worship.
5. Public and parochial schools.
6. Golf courses, pitch and putt golf courses and driving tees. Miniature golf is permitted if it is a part of the total golfing operation.
7. Home occupations.
8. Accessory buildings and uses.

SECTION 3. CONDITIONAL USES. The Governing Body may, by conditional use permit, authorize the following exceptions, subject to such conditions as the Governing Body deems

necessary:

1. Any public building erected on land used by any department of the City, County, State or Federal Government.
2. Telephone exchange, electric substations, communication towers and structures, regulatory stations or other public utilities.
3. Medical clinics, hospitals, rest homes, and nursing homes.
4. Vocational, private and business schools.
5. Multi-unit dwellings.

SECTION 4. LOT REQUIREMENTS. In the R-1 Residential District, the height of buildings, the minimum dimensions of lots and yards, and the minimum lot area per family permitted on any lot or tract, shall be as follows subject to the sanitary requirements of these Regulations:

1. There shall be a front yard of not less than thirty (30) feet.
2. There shall be a side yard on each side of a building not less than eight (8) feet, except on corner lots, the setback for all buildings shall be a minimum of thirty (30) feet on the side abutting a street/road.
3. There shall be a rear yard of no less than twenty-five (25) feet.
4. The minimum width of a lot shall be one hundred (100) feet.
5. Every dwelling or accessory building or structure hereafter erected, constructed, reconstructed, moved or altered, shall provide a lot area, excluding road ROW of not less than five (5) acres or not less than one-half (1/2) acre per family subject to the sanitary requirements of these Regulations.
6. Minimum required front, side and rear yard setbacks for all uses or structures shall be no less than eighty-three (83) feet from the road centerline when such yards are contiguous to a county road or state highway.
7. Height of Buildings.
 - A. Maximum height for principal uses: thirty-five (35) feet, except as part of a multi-unit dwelling maximum height shall be fifty (50) feet.
 - B. Maximum height for accessory uses: twenty (20) feet.

"R-M" MOBILE HOME RESIDENTIAL DISTRICT

SECTION 1. INTENT AND PURPOSE OF DISTRICT. The intent of the R-M Mobile Home Residential District shall be to provide for mobile home dwellings on leased or owned property in areas where a mobile home court is appropriate, where such development is recognized as being in the best interest of the citizens and taxpayers of Cuming County.

SECTION 2. PERMITTED PRINCIPAL USES: The following uses are permitted in the R-M Mobile Home Residential District.

1. Mobile Home Court.
2. Single family dwelling.
3. Public School.
4. Private and public park, playground and recreational facilities.
5. Church, educational facilities and parish house.
6. On-site sign.
7. Multi-unit dwellings.

SECTION 3. ACCESSORY USES:

1. Buildings and uses customarily incidental to the permitted uses.
2. Home occupation.
3. Off-street parking.
4. Nursery or day-care schools.
5. Utility installations such as electric substations, sewer lift stations, telephone exchanges, gas regulators and major transmission lines (not including utility office, repair, storage or production facilities).
6. Sewage disposal and water supply and treatment facilities.
7. Campgrounds.
8. Public buildings.

SECTION 4. AREA AND LOT REQUIREMENTS.

1. A mobile home court shall have an area of not less than five (5) acres. No mobile homes or other structures shall be located less than eighty-three (83) feet from the road centerline when contiguous to or having frontage to a street, county road or state highway. The setback on all other court property lines shall be twenty-five (25) feet. These areas shall be landscaped. The minimum lot width for a mobile home court shall be two hundred (200) feet.

2. Each lot provided for occupancy of a single mobile home shall have an area of not less than seven thousand five hundred (7,500) square feet, excluding road ROW, and a width of not less than seventy (70) feet of an interior lot, eighty (80) feet of a corner lot, or forty-five (45) feet when facing cul-de-sac turnaround or curve on a minor loop street. Each individual lot shall have:

A. Side yards shall not be less than eight (8) feet on one side and not less than eight (8) feet on the other side, except that on corner lots, the setback for all buildings shall be a minimum of twenty-five (25) feet on the side abutting a street/road.

B. Front yard of not less than twenty-five (25) feet.

C. A rear yard of not less than twenty-five (25) feet.

3. There shall be a minimum liveable floor area of five hundred (500) square feet in each mobile home.

4. Height of Buildings.

A. Maximum height for principal uses: thirty-five (35) feet, except as part of a Planned Unit Development maximum height shall be fifty (50) feet.

B. Maximum height for accessory uses: twenty (20) feet.

SECTION 5. COMMUNITY FACILITIES.

1. Each lot shall have access to a hard surfaced drive not less than twenty-two (22) feet in width excluding parking.

2. Community water and community sewage disposal facilities shall be provided with connections to each lot, in accordance with these Regulations. The water supply shall be sufficient for domestic use and for fire protection.

3. Service buildings including adequate laundry and drying facilities.

4. Not less than eight percent (8%) of the total court area shall be designated and used for park, playground and recreational purposes.

SECTION 6. PLAN REQUIREMENTS. A complete plan of the mobile home court shall be submitted showing:

1. A development plan and grading plan of the court.
2. The area and dimensions of the tract of land.
3. The number, location, and size of all mobile home spaces.
4. The area and dimensions of the park, playground and recreation areas.
5. The location and width of roadways and walkways.
6. The location of service buildings and any other proposed structures.
7. The location of water and sewer lines and sewage disposal facilities.
8. Plans and specifications of all buildings and other improvements constructed or to be constructed within the mobile home court.

"C-1" COMMERCIAL DISTRICT

SECTION 1. INTENT AND PURPOSE OF DISTRICT. The intent of the C-1 Commercial District shall be to provide for commercial businesses that principally support the buying needs for rural residents of Cuming County.

SECTION 2. PERMITTED PRINCIPAL USES: The following uses are permitted in the C-1 Commercial District.

1. Agricultural implement sales and services.
2. Animal hospitals when all facilities are within an enclosed building.
3. Automobile and truck sales and service.
4. Automotive accessory stores.
5. Boat sales, service and rental.
6. Car washes.
7. Construction equipment rental and sales.
8. Convenience stores.
9. Dance balls and ballrooms.
10. Electric and telephone substations and offices.
11. Hotels and motels including accessory service uses, such as newsstands, swimming pools (for motel guests only), flower and gift shops.
12. Indoor theaters.
13. Lumber and building materials sales yards.
14. Mobile home sales and service.
15. Motorcycle sales, service and rental.
16. Nursery and garden stores.
17. Parks, playgrounds and community buildings owned and operated by public agency.
18. Restaurants including drive-in and carry-out establishments.
19. Service stations or filling stations.

SECTION 3. CONDITIONAL USES. The Governing Body may, by conditional use permit, authorize the following exceptions subject to such conditions as the Governing Body deems necessary:

1. Signs and billboards.
2. Governmental buildings.
3. Outdoor amusement establishments such as amusement parks, permanent carnival and kiddie parks, miniature golf pitch and putt courses, driving ranges and other similar establishments.
4. Campgrounds.

SECTION 4. HEIGHT AND AREA REGULATIONS. In District C-1 the height of the buildings, the minimum dimensions of lots and yards and the minimum lot area permitted on any lot shall be as follows:

1. Height of Buildings.
 - A. Maximum height for principal uses: sixty (60) feet, except that when located within one hundred (100) feet of the R-1 or R-M Districts buildings or structures shall not exceed thirty-five feet in height.
 - B. Maximum height for accessory uses: twenty (20) feet.
2. The front yard requirements shall be not less than thirty-five (35) feet.
3. The side yard shall not be less than ten (10) feet.
4. The depth of the rear yard shall be at least twenty-five (25) feet. Where an alley of record exists such rear yard may be measured from the centerline of said alley.
5. Minimum lot width shall be at least one hundred fifty (150) feet.
6. Minimum lot area shall be at least one (1) acre excluding road ROW.
7. The total coverage of all buildings shall not occupy more than forty (40) percent of the lot area.
8. Minimum required front, side and rear yard setbacks for all uses or structures shall be no less than eighty-three (83) feet from the road centerline when such yards are contiguous to a County road or state highway.

"I-1" INDUSTRIAL DISTRICT

SECTION 1. INTENT AND PURPOSE OF DISTRICT. The intent of the I-1 Industrial District shall be to provide for businesses involved in the manufacturing or handling of any industrial materials.

SECTION 2. PERMITTED PRINCIPAL USES: The following uses are permitted in the I-1 Industrial District, except those which by reason of the emission of odor, dust, fumes, smoke, noise and other obnoxious characteristics would be injurious to the public health, safety and general welfare. Permitted uses shall include uses such as:

1. Assembly of metal products.
2. Building materials storage and sales yard.
3. Concrete or cement products manufacture.
4. Dyeing and cleaning establishment.
5. Farm and industrial equipment sales.
6. Laboratory.
7. Manufacture and assembly of electrical and electronic appliances.
8. Manufacture of light sheet metal products including heating and ventilation equipment.
9. Machine shop or other metal working excluding drop hammers and other noise producing tools.
10. Painting and publishing business.
11. Stone and monument works.
12. Storage of farm and agriculture products.
13. Truck and freight terminal.
14. Utility substation, pumping station and water reservoir.
15. Warehouse and wholesale business.
16. Any other industrial, manufacturing or commercial agricultural use, except those uses specially permitted as a conditional use in this district.

SECTION 3. CONDITIONAL USES. The Governing Body may, by conditional use permit, authorize the following exceptions subject to such conditions as the Governing Body deems

necessary.

1. Alfalfa dehydrating plant.
2. Asphalt manufacture or refining.
3. Blast furnace or electric furnace.
4. Cement, lime, gypsum or plaster-of-paris manufacture.
5. Fat rendering.
6. Fertilizer manufacture and bone grinding.
7. Forage plant.
8. Iron, steel, brass or copper foundry.
9. Packing house.
10. Plating works.
11. Sausage manufacture.
12. Slaughter house.
13. Smelter.
14. Stock yards.
15. Storage or baling of scrap paper, iron bottles, rags, tires or junk.
16. Tallow, grease or lard manufacture or refining from animal fat.
17. Vehicle wrecking yards, junkyards, salvage yards, and scrap processing yards subject to the following:
 - A. The operation shall be located on a tract of land at least six hundred and sixty (660) feet from a residential district zone.
 - B. The operation shall be conducted wholly within a non-combustible building or within an area completely surrounded on all sides by a solid fence or wall, of uniform height, insure maximum safety to the public, obscure the junk from normal view of the public, and preserve the general welfare of the neighborhood. The fence or wall shall be installed in such a manner as to retain all scrap, junk, or other material within the yard.
 - C. No junk shall be loaded, unloaded or otherwise placed either temporarily or permanently outside the enclosed building, fence or wall, or within the public right-of-way.

D. Burning of paper, trash, junk, or waste materials shall be permitted only after approval of the Fire Department. The burning, when permitted, shall be done only during daylight hours.

E. No junk, salvage, scrap or other materials shall be piled or stacked higher than the top of the required fence or wall.

F. This use shall not be located on or visible from an arterial or major street or highway.

18. Other uses which may be noxious or offensive by reason of the emission or odor, dust, smoke, gas, noise or vibration or hazardous.

SECTION 4. LOT REQUIREMENTS. The minimum lot requirements shall be as follows:

1. Minimum yard sizes or permitted uses:

Front Yard 35'

Side Yard 10'

Rear Yard 25'

2. Minimum required front, side and rear yard setbacks for all uses or structures shall be no less than eighty-three (83) feet from the road centerline when such yards are contiguous to a County road or state highway.

3. Height of Buildings:

A. Maximum height for principal uses: sixty (60) feet, except that when located within one hundred (100) feet of the R-1 or R-M Districts buildings or structures shall not exceed thirty-five (35) feet in height.

B. Maximum height for accessory uses: twenty-five (25) feet.

4. Minimum lot width shall be at least one hundred and fifty (150) feet.

5. Minimum lot area shall be at least one (1) acre excluding road R.O.W.

6. The total coverage of all buildings shall not occupy more than fifty (50) percent of the lot area.

Cuming County, Nebraska

Zoning Overlay District

Floodplain Management Ordinance

AN ORDINANCE RECOMMENDED BY THE CUMING COUNTY PLANNING COMMISSION DATED AUGUST 19, 2002, CREATING FLOODWAY AND FLOOD FRINGE DISTRICTS DEFINING THE SAME AND SETTING FORTH REGULATIONS THEREOF, AND ADOPTED BY THE CUMING COUNTY BOARD OF SUPERVISORS DATED AUGUST 28, 2002.

SECTION 1.0 STATUTORY AUTHORIZATION. FINDINGS OF FACT AND PURPOSES

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of Nebraska has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety and general welfare. The Legislature, in Sections 31-1001 to 31-1022, R.R.S. 1943, has further assigned the responsibility to adopt, administer, and enforce floodplain management regulations to the county, city or village with zoning jurisdiction over the flood-prone area. Therefore, the Planning Commission /Board of Supervisors of Cuming County, Nebraska, ordains as follows:

1.2 FINDINGS OF FACT

1.21 Flood Losses Resulting from Periodic Inundation

The flood hazard areas of Cuming County, Nebraska, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base all of which adversely affect the public health, safety and general welfare.

1.22 General Causes of the Flood Losses

These flood losses are caused by: (1) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise unprotected from flood damages.

1.23 Methods Used to Analyze Flood Hazards

This ordinance uses a reasonable method of analyzing flood hazards, which consists of a series of interrelated steps.

A. Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood is selected for this ordinance. It is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent (1%) chance of occurrence in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study, and illustrative materials dated 4/1/96 as amended, and any future revisions thereto.

B. Calculation of water surface profiles based on a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.

C. Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.

D. Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile.

E. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but which still is subject to inundation by the base flood.

1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.21 by applying the provisions of this ordinance to:

1.31 Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.

1.32 Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

1.33 Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.

1.34 Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

SECTION 2.0 GENERAL PROVISIONS

2.1 LANDS TO WHICH ORDINANCE APPLIES

This ordinance shall apply to all lands within the jurisdiction of Cuming County outside

of the jurisdiction of involved municipalities, identified on the Flood Insurance Rate Map (FIRM) dated 4/1/96 and any revisions thereto, as numbered and unnumbered A Zones (including *AE, AO and AH* Zones) and within the Zoning Districts FW and FF established in Section 4.0 of this ordinance. In all areas covered by this ordinance no development shall be permitted except upon the issuance of a floodplain permit to develop, granted by Cuming County or its duly designated representative under such safeguards and restrictions as the Cuming County or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Sections 5.0,6.0, and 7.0.

2.2 THE ENFORCEMENT OFFICER

The Floodplain Administrator/Zoning Administrator of Cuming County is hereby designated as the community's duly designated Enforcement Officer under this Ordinance.

2.3 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES

The boundaries of the floodway and flood fringe overlay districts shall be determined by scaling distances on the official zoning map or on the Flood Insurance Rate Map or Floodway Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Enforcement Officer shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board of Adjustment and to submit his own technical evidence, if he so desires.

2.4 COMPLIANCE

Within identified special flood hazard areas of this community, no development shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

2.5 ABROGATION AND GREATER RESTRICTIONS

It is not intended by this ordinance to repeal, abrogate or impair any existent easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

2.6 INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

2.7 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodway and flood fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This ordinance shall not create liability on the part of Cuming County or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

2.8 SEVERABILITY

If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

2.9 APPEAL

Where a request for a permit to develop or a variance is denied by the Floodplain Administrator/Zoning Administrator, the applicant may apply for such permit or variance directly to the Board of Adjustment.

SECTION 3.0 DEVELOPMENT PERMIT

3.1 PERMIT REQUIRED

No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development.

3.2 ADMINISTRATION

A. The Floodplain Administrator/Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.

B. Duties of the Floodplain Administrator/Zoning Administrator shall include, but not be limited to:

(1) Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of this ordinance have been satisfied.

(2) Review applications for proposed development to assure that all necessary permits have been obtained from those Federal, state or local governmental agencies from which prior approval is required.

(3) Notify adjacent communities and the Nebraska Natural Resources Commission prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(5) Verify, record and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures in special flood hazard areas.

(6) Verify record and maintain record of the actual elevation (in relation to mean sea level) to which new or substantially improved structures have been floodproofed.

(7) When floodproofing is utilized for a particular structure the Floodplain Administrator shall be presented certification from a registered professional engineer or architect.

3.3 APPLICATION FOR PERMIT

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

3.31 Identify and describe the development to be covered by the floodplain development permit.

3.32 Describe the land on which the proposed development is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.

3.33 Indicate the use or occupancy for which the proposed development is intended.

3.34 Be accompanied by plans and specifications for proposed construction,

3.35 Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

3.36 Give such other information as reasonably may be required by the Floodplain Administrator/Zoning Administrator.

SECTION 4.0 ESTABLISHMENT OF ZONING DISTRICTS

Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following districts: A floodway overlay district (FW) and a flood fringe overlay district (FE) as identified in the Flood Insurance Study [and accompanying map(s)]. Within these districts all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.

SECTION 5.0 STANDARDS FOR FLOODPLAIN DEVELOPMENT

5.1 No permit for development shall be granted for new construction, substantial improvements and other development(s) including the placement of mobile homes within all numbered and unnumbered A zones (including *AE*, *AO*, and *AH* zones) unless the conditions of this Section are satisfied.

5.2 All areas identified as unnumbered A zones on the FIRM are subject to inundation of the base flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of SECTION 6.0. Cuming County shall utilize base flood elevation or floodway data currently available from FIRM and the *Flood Plain Study, Elkhorn River, 3/87, Nebraska Natural Resources Commission*.

5.3 Until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard areas unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown on the Flood Insurance Study. Certification will be supplied by registered professional engineer or surveyor.

5.4 New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of mobile homes and other developments shall require:

5.41 Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

5.42 New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.

5.43 Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5.44 All utility and sanitary facilities be elevated or floodproofed up to the regulatory flood protection elevation.

5.5 Storage of Material and Equipment

5.51 The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

5.52 Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

5.6 Subdivision proposals and other proposed new development, including mobile home parks or subdivisions, be required to assure that (a) all such proposals are consistent with the need to minimize flood damage, (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage, (c) adequate drainage is provided so as to reduce exposure to flood hazards, and (d) proposals for development (including proposals for mobile home parks and subdivision) of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the base flood elevation.

SECTION 6.0 FLOOD FRINGE OVERLAY DISTRICT - (Including AO and AH Zones)

6.1 PERMITTED USES

Any use permitted in Section 7.0 shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 5.0 are met.

6.2 STANDARDS FOR THE FLOOD FRINGE OVERLAY DISTRICT

6.21 Require new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.

6.22 Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below that level, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 3.2B(7).

6.23 Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing

for the entry and exit of floodwaters. Designs for meeting this requirement must be certified by a registered professional engineer or architect and meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be not higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

6.24 Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

6.25 Mobile Homes

A. All mobile homes shall be anchored to resist floatation, collapse, or lateral movement. Mobile homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

(1) Over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side;

(2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side;

(3) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

(4) Any additions to the mobile home be similarly anchored.

B. Require that all mobile homes to be placed or substantially improved within special flood hazard areas on the community's FIRM on sites:

(1) Outside of a mobile home park or subdivision,

(2) In a new mobile home park or subdivision,

(3) In an expansion to an existing mobile home park or subdivision, or

(4) In an existing mobile home park or subdivision on which a mobile home has incurred "substantial damage" as the result of a flood,

be elevated on a permanent foundation such that the lowest floor of the mobile home is at or above one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 6.25A.

C. Require that mobile homes to be placed or substantially improved on sites in

an existing manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of Section 6.25B be elevated so that either:

(1) The lowest floor of the mobile home is at or above one (1) foot above the base flood elevation, or

(2) The mobile home is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to adequately anchored foundation system in accordance with the provisions of Section 6.25A.

6.26 Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements and the elevation and anchoring requirements for "mobile homes of this ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

6.27 Located within the areas of special flood hazard established in Section 2.1 are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply within AO Zones:

A. All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

B. All new construction and substantial improvements of non-residential structures shall:

(1) Have the lowest floor elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or

(2) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such certification shall be provided to the official as set forth in Section 3.2B(7).

C. Adequate drainage paths around structures on slopes shall be required in order

to guide floodwaters around and away from proposed structures.

SECTION 7.0 FLOODWAY OVERLAY DISTRICT

7.1 PERMITTED USES

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance. The following are recommended uses for the Floodway District:

7.11 Agricultural uses such as general farming, pasture, nurseries, forestry.

7.12 Residential uses such as lawns, gardens, parking and play areas.

7.13 Non-residential areas such as loading areas, parking and airport landing strips.

7.14 Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

7.2 STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT

New structures for human habitation are prohibited. All encroachments, including fill, new construction, substantial improvements and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during occurrence of the base flood discharge. These uses are subject to the standards of Section 5.0 and 6.0. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, State or other sources or Section 5.6(d) of this ordinance, in meeting the standards of this section.

SECTION 8.0 VARIANCE PROCEDURES

8.1 The Board of Adjustment established by Cuming County shall hear and decide appeals and requests for variances from the requirements of this ordinance.

8.2 The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

8.3 Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 23-168, R.R.S. 1943 (For Counties); 19-912, R.R.S. 1943 (For municipalities).

8.4 In passing upon such applications, the Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:

8.41 The danger that materials may be swept onto other lands to the injury of others;

- 8.42 The danger to life and property due to flooding or erosion damage;
- 8.43 The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- 8.44 The importance of the services provided by the proposed facility to the community
- 8.45 The necessity to the facility of a waterfront location, where applicable;
- 8.46 The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 8.47 The compatibility of the proposed use with existing and anticipated development;
- 8.48 The relationship of the proposed use to the comprehensive plan and floodplain management program for that area
- 8.49 The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - 8.491 The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,
 - 8.492 The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

8.5 CONDITIONS FOR VARIANCES

- 8.51 Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (8.52-8.56 below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- 8.52 Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- 8.53 Variances shall not be issued within any designated floodway if any increase in flood levels along the floodway profile during the base flood discharge would result.
- 8.54 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 8.55 Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a

determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

8.56 The applicant shall be given a written notice over the signature of a community official that (1) the issuance of a variance to construct a structure below the base flood level will result in increased premiums rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions as required by this ordinance.

SECTION 9.0 NONCONFORMING USE

9.1 A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

9.11 If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this ordinance.

9.12 Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

9.2 If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration shall not preclude its continued designation.

SECTION 10.0 PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$5000.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent Cuming County or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 11.0 - AMENDMENTS

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in Cuming County. At least 10 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this ordinance are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Flood Plain Management Act.

SECTION 12.0 DEFINITIONS

In cases of confusion, definitions in main body of Zoning Regulations will determine meaning. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application:

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Base Flood" means the flood having one percent chance of being equaled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Existing Construction" means (for the purposes of determining rates) structures for which the "start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures".

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the

construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The usual and rapid accumulation of runoff of surface waters from any source.

"Flood Fringe" is that area of the floodplain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

"Flood Insurance Study" is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

"Floodplain" means any land area susceptible to being inundated by water from any source (see definition of flooding).

"Floodway" or "Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2)

Directly by the Secretary of the Interior in states without approved programs.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Mobile Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Mobile Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New Construction" For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"Overlay District" is a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure is above ground.

"Recreational Vehicle" means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Special Flood Hazard Area" is the land in the floodplain within a community subject to one percent or greater chance of flooding in any given year.

"Start of Construction" (for other than new construction or substantial improvements under the coastal Barrier Resources Act (Pub. L. 97-348) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration

of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground, as well as a mobile home, and a gas or liquid storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage, regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure, provided that the alteration will not preclude the structure's continued designation as a "historic structure.

"Variance" is a grant of relief to a person from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

DISTRICTS, BOUNDARIES AND MAPS

SECTION 1. PURPOSE OF DISTRICT. The purpose of this resolution is to encourage the most appropriate use of land, to promote the highest and best use and conserve and stabilize property values, to aid in providing space for public uses, and to promote orderly growth, public health, safety and general welfare.

SECTION 2. This zoning regulation divides the zoning area into districts designated on the zoning map and described in specific articles herein.

SECTION 3. DISTRICT ZONING MAP. The boundaries of the district are shown on the map and/or sections thereof attached hereto and made a part of this regulation, which map is designated as the "Official Zoning Map". The Official Zoning Map and all notations, references and other information shown thereon are a part of this regulation and have the same force and effect as if said map and all the notations, references and other information shown thereon were all fully set forth or described herein. The Official Zoning Map is properly attested and is on file in the office of the Clerk having jurisdiction.

SECTION 4. ANNEXATION RULE. All territory which may hereafter become the zoning jurisdiction of the County as a result of a city or village jurisdiction boundary change, shall be in the "A-2" Agricultural-Transitional District and be confirmed by amending the Zoning District map following the procedures outlined by these regulations. Should the use of the property not conform to the permitted use in the "A-2" Agricultural-Transitional District, the property shall be considered a legal and non-conforming use and shall remain so until rezoned to the appropriate zoning district following the rezoning procedures outlined in these regulations.

SECTION 5. RULES WHERE UNCERTAINTY MAY ARISE. Where uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of this regulation, the following rules apply:

1. The district boundaries are the centerline of either streets or alleys unless otherwise shown.
2. Where the property has been or may hereafter be divided in blocks and lots, the district boundaries shall be construed to be the lot lines, and where the districts designated on the map accompanying and made a part of this regulation are bounded approximately by lot lines, the lot lines shall be construed to be the boundary of the district unless the boundaries are otherwise indicated on the map.
3. In subdivided property, the district boundary line on the map accompanying and made

a part of this regulation shall be determined by the use of the scale appearing on the map.

4. Boundaries indicated as approximately following municipal boundaries shall be construed as following municipal boundaries.

CONDITIONAL USE PERMITS

SECTION 1. PROCEDURES: The Governing Body may grant exceptions to the provisions of the zoning regulations but only in those instances where the Governing Body is specifically authorized to grant such exceptions to these zoning regulations. In no event shall exceptions to the provisions of the zoning regulations be granted where the use or exceptions contemplated is not specifically listed as an exception in the Zoning Regulations. Further, under no conditions shall the Governing Body have the power to grant an exception when the conditions of this exception, as established by these regulations, are not found to be present.

Final action on an application for a Conditional Use Permit shall be taken only after public hearings by the Planning Commission and the Governing Body have been held and a recommendation received from the Planning Commission.

In considering any application for a Conditional Use Permit hereunder, the Governing Body shall give consideration to the Comprehensive Zoning Plan, the health, safety, morals, comfort and general welfare of the inhabitants of the community including, but not limited to, the following factors:

- 1 . The stability and integrity of the various zoning districts.
2. Conservation of property values.
3. Protection against fire and casualties.
4. Observation of general police regulations.
5. Prevention of traffic congestion.
6. Promotion of traffic safety.
7. Promotion of the safety of individuals and property.
8. Provision of adequate light and air.
9. Provision of over-crowding and excessive intensity of land uses.
10. Provision of public utilities and schools.
11. Invasion by inappropriate uses.

12. Value, type and character of existing and authorized improvements and land uses.
13. Encouragement of improvements and land uses in keeping with overall planning.
14. Provision for orderly and proper urban renewal, development and growth.

SECTION 2. APPLICATION: The procedure for requesting a hearing for a special use permit are as follows:

1. All applications shall be in writing on forms provided by the Zoning Administrator and fees paid as set by the Governing Body.
2. A notice of the time, place, and subject of each hearing shall be published in the official newspaper (as designated by the governing body) at least ten (10) days prior to the date fixed for the public hearing. A copy of the notices of public hearings shall be sent to each party of interest.
3. At least ten (10) days prior to the date fixed for the public hearings, the Administrator shall notify the following interested parties by United States mail;
 - a. All neighboring property owners of property located within 1,000 feet of the property in question if said neighboring property is located within county zoning jurisdiction.
 - b. All neighboring property owners of property located within 300 feet of the property in question if said neighboring property is located within any municipal zoning jurisdiction.
 - c. Any other interested parties as determined by the Planning Commission, Governing Body and/or Zoning Administrator.
 - d. The applicant shall provide the Board with a list of the names and addresses of all neighboring property owners that are to be notified pursuant to Subparts a and b above. Said list shall be certified by a registered land abstractor.
 - e. The applicant shall submit a statement in writing justifying the Special Use Permit applied for, and indicating under which Article and Section of the Zoning Regulations for the Governing Body is believed to have jurisdiction.
 - f. The applicant shall prepare and submit in duplicate at the time of filing the application, a detailed plot plan drawn to scale, showing all existing and proposed structures, property lines with dimensions, parking spaces, and points of ingress and egress, driveways and any other information which would be helpful to the Governing Body in consideration of the application.

SECTION 3. PERFORMANCE. The Governing Body may impose such restrictions, terms, time limitations, landscaping and other appropriate safeguards to protect adjoining property as may be necessary.

The Governing Body may require a performance bond to guarantee the installation of improvements such as parking lot surfaces, landscaping, etc. The amount of the bond shall be based on a general estimate of cost for the improvement as determined by the Governing Body and shall be enforceable by or payable to the Governing Body in the sum equal to the cost of constructing the required improvements.

In lieu of the performance bond requirement, the Governing Body may specify a time limit for the completion of such required improvements and in the event the improvements are not completed within the specified time, the Governing Body may declare the granting of the application null and void after reconsideration.

BOARD OF ADJUSTMENT

SECTION 1. FORMATION. A Board of Adjustment is hereby created in accordance with State Statutes covering such creation. The word "Board" when used in this Article shall mean Board of Adjustment. The Board shall adopt rules of procedure as may be necessary and proper to govern its own proceedings; such rules shall not be in conflict with other laws, ordinances, or resolutions. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the description of evidence presented, the findings of fact by the Board, the decision of the Board and the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Board immediately and shall be a public record.

SECTION 2. POWERS AND JURISDICTIONS. The Board shall have the following powers and jurisdictions.

1. Appeals: To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of these regulations.
 - a. Appeals to the Board may be taken by the person aggrieved, or by any officer, department, or Bureau of the government affected by any decision of the Zoning Administrator. Such appeal shall be taken within a reasonable time, as shall be prescribed by the Board by general rule, by filing with the Zoning Administrator and with the Secretary of the Board a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Secretary of the Board all papers constituting the record upon which the action appealed from is taken.
 - b. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after the Notice of Appeals shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause eminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board, or by a court of record on application or notice to the Zoning Administrator on good cause shown.
2. Variance: To authorize in specific cases a variance from the specific terms of these

regulations which will not be contrary to the public interest and where, owing to special conditions, a provision of these regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.

a. The applicant must show that his property was acquired in good faith and whereby reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the District Zoning Regulations or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prohibit the use of his property in the manner similar to that of other property in the zoning district where it is located.

b. Variances shall include intensity of use, yard and height regulations only and are limited to the following:

1) A yard regulation variance shall not encroach upon the required setback for adjacent buildings.

2) One story in height may be allowed for each one foot of additional building setback provided in addition to that required by the district regulation in which the property is located.

c. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition and the finding shall be entered in the record:

1) The variance requested arises from such conditions which are unique to the property in question and which are not ordinarily found in the same zone or district, and are not created by an action or actions of the property owner or applicant.

2) The granting of the permit for the variance shall not adversely affect the rights of adjacent property owners or residents.

3) The strict application of the provisions of the zoning regulations of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

5) The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

3. Interpretation: To hear and decide, in accordance with the provisions of this regulation, requests for the interpretation of any map.

4. Conditions of Determination: In exercising the foregoing powers, the Board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the officer from where the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.

A majority of the Board shall constitute a quorum for the transaction of business and a concurring vote of four members of the Board shall be necessary to reverse an order, requirements, decision or determination of the Zoning Administrator, or to decide in favor of the applicant upon any matter which it is required to pass under any such Regulation, or to affect any variation in such regulation. Upon the hearing, any party may appear in person or by agent or by attorney.

SECTION 3. APPLICATION.

1. The procedure for requesting a hearing before the Board shall be as follows:

a. All applications to the Board shall be in writing on forms provided by the Board.

b. The Board shall fix a reasonable time for the hearing of an application and notice of the time, place and subject of each hearing shall be published in the official newspaper (as designated by the governing body) at least ten (10) days prior to the date fixed for the public hearing. A copy of the notice of public hearing shall be sent to each party of interest and to the Planning Commission.

c. At least ten (10) days prior to the date fixed for the public hearing, the Board shall notify the following interested parties by United States mail:

1) All neighboring property owners of property located within 1,000 feet of the property in question if said neighboring property is located within county zoning jurisdiction.

2) All neighboring property owners of property located within 300 feet of the property in question if said neighboring property is located within any municipal zoning jurisdiction.

3) Any other interested parties as determined by the Board and/or Zoning Administrator.

4) The applicant shall provide the Board with a list of the names and addresses of all neighboring property owners that are to be notified pursuant to Subparts 1 and 2 above. Said list shall be certified by a registered land abstractor.

d. An application shall be accompanied by a filing fee to be established by the Governing Body.

2. In addition to the above requirements, certain applications require additional information as follows:

a. Appeals:

- 1) An application for an appeal shall be filed within sixty (60) days after a ruling has been made by the Zoning Administrator.
- 2) A copy of the order, requirement, decision or determination of the Zoning Administrator which the appellant believes to be in error.
- 3) A clear and accurate written description of the proposed use, work or action in which the appeal is involved and a statement justifying the appellant's position.
- 4) Where necessary, a plat plan, drawn to scale, in duplicate showing existing and proposed plans for the area in question shall be submitted.

b. Variance:

- 1) The applicant shall submit a statement, in writing, justifying the variance requested indicating specifically the enforcement provisions of the zoning regulations from which the variance is requested, and outlining in detail the manner in which it is believed that this application will meet each of the five conditions as set out in Section 2, 2, c. of this Article.
- 2) The applicant shall prepare and submit in duplicate at the time of filing the application, a detailed plot plan drawn to scale, showing all existing and proposed structures, property lines with dimensions, parking spaces points of ingress and egress, driveways and any other information which would be helpful to the Board in consideration of the application.

c. Exceptions:

- 1) The applicant shall submit a statement in writing justifying the special use permit applied for, and indicating under which Article and Section of the Zoning Regulations the Board of Zoning Appeals is believed to have jurisdiction.
- 2) The applicant shall prepare and submit in duplicate at the time of filing the application, a detailed plot plan drawn to scale, showing all existing and proposed structures, property lines with dimensions, parking spaces, points of ingress and egress, driveways and any other information which would be helpful to the Board in consideration of the application.

SECTION 4. PERFORMANCE. In making any decision varying or modifying any provisions of the zoning regulations or in granting an exception to the district regulations, the Board shall impose such restrictions, terms, time limitations, landscaping and other appropriate safeguards to

protect adjoining property.

The Board may require a performance bond to guarantee the installation of improvements such as parking lot surfacing, landscaping, etc. The amount of the bond shall be based on a general estimate of cost for the improvements as determined by the Board, and shall be enforceable by or payable to the Governing Body in the sum equal to the cost of constructing the required improvements.

In lieu of the performance bond requirement, the Board may specify a time limit for the completion of such required improvements and in the event the improvements are not completed within the specified time, the Board may declare the granting of the application null and void after reconsideration.

SECTION 5. WHO MAY APPEAL FROM THE BOARD DECISION. Any person, persons, department or departments of the government jointly or separately aggrieved by any decision of the Board may present to the District Court having jurisdiction, a petition, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief therefrom. Such petition shall be presented to the Court within fifteen (15) days after the date of filing the decision in the office of the Board.

RESOLUTION

BE IT RESOLVED by the Cuming County Board of Supervisors that:

WHEREAS, the Board determined that Cuming County may benefit from a comprehensive land use plan and zoning regulations; and

WHEREAS, the said Board appointed a Planning Commission to develop a comprehensive growth and land use plan and zoning regulations; and

WHEREAS, the Cuming County Planning Commission consulted with public officials and agencies, civic organizations, educational institutions, public utilities, and the citizens of Cuming County; Nebraska, and

WHEREAS, all of the statutory notices of meeting and hearing were given as required by law, the said Planning Commission recommended to this Board a Comprehensive Plan and Zoning Resolution; and

WHEREAS, this Board caused a notice of meeting and hearing before this Board to be given as required by law;

NOW THEREFORE, IT IS HEREBY RESOLVED that the Zoning Resolution presented at the public hearing held the 20th day of March, 2000, and continued to the 11th day of April, 2000, should be and is hereby adopted and approved as amended and is incorporated herein by reference, provided, however, that the effective date of the zoning resolution shall be the 1st day of July, 2000.

PASSED this 26th day of April, 2000.

Last revision: November 27, 2002, pages 1-22, "existing farmstead", appendix 1 "Restrictive Covenant, Release and Waiver".

Appendix 1

RESTRICTIVE COVENANT, RELEASE AND WAIVER

**THE FOLLOWING IS A LEGAL DOCUMENT AND SHOULD BE REVIEWED BY
YOUR ATTORNEY**

WHEREAS, the undersigned is the sole owner, or, if more than one, are all of the owners of real estate located in an “A-1” Agricultural-Intensive District as set forth in the Cuming County Zoning Regulations, said real estate being an existing farmstead as defined by the Cuming County Zoning Regulations, and being particularly described on the survey attached hereto as Exhibit “A”, hereinafter referred to as the real estate. (Note: If the survey does not contain a **full complete legal description** of the real estate, the **full complete legal description** of the real estate must be set forth below or attached hereto as a separate identified Exhibit)

WHEREAS, the undersigned desires to transfer and convey the real estate, in conformity with the Cuming County Zoning Regulations.

FOR AND IN CONSIDERATION of the mutual covenants existing or hereafter to exist by and between the undersigned and the grantee or grantees of the real estate, and in consideration of the benefits conferred to the undersigned to transfer and convey the real estate in conformity with the with the Cuming County Zoning Regulations, and in consideration of the covenants, promises and benefits conferred to the third party beneficiaries of this agreement as set forth herein, and other valuable consideration, receipt of which is hereby acknowledged, the undersigned, the undersigned’s heirs, successors, assigns and legal representatives, and all grantees of the undersigned of the real estate, and such grantees’ heirs, successors, assigns and legal representatives:

1. Hereby acknowledges that residential use of the real estate in an “A-1” Agricultural-Intensive District may not be compatible with the allowable uses of land in an “A-1” Agricultural-Intensive District.

2. Hereby specifically acknowledges that landowners, residents and visitors in an “A-1” Agricultural-Intensive District must be prepared to and must accept as reasonable and normal the effects on rural living of normal, usual, customary, or generally accepted farming practices or farming operations, and all matters in any way related or incidental thereto, as the same now exist or as the same may be hereafter developed, in other parts of Cuming County, Nebraska, in the “A-1” Agricultural-Intensive District, such practices and operations may include, but are not limited to, noise from tractors, equipment, and aerial spraying, at all hours; dust from animal pens, field work, harvesting, gravel roads; odor from livestock operations and animal confinement operations, silage, manure, and manure application procedures; smoke from burning ditches or other approved burning; insects, such as flies and mosquitoes; the use and application practices for all livestock waste, herbicides, pesticides, fertilizer and other chemicals, including drift by aerial spraying or other application of such products; all field preparation and harvest practices all livestock animal husbandry practices; the movement of livestock and machinery and equipment on public roads, and all other similar or related farming practices or farming operations and all matters in any way related or incidental thereto

3. Hereby acknowledge that the State of Nebraska has adopted the “The Nebraska Right to Farm Act”, Sections 2-4401 to 2-4404 Neb. Rev. Stat. (Reissue 1997), as amended, (Right to Farm Act) and that the undersigned is fully informed of the nature and effect of the Right to Farm Act”.

4. Hereby freely, voluntarily and intelligently assumes all risks of damage to the real estate that may in any way be caused or result, or that in any way may be caused or result in the future, from all allowable uses of real estate in an “A-1” Agricultural-Intensive District, including, but not limited to all farming practices and farming operations described in this instrument.

5. Hereby adopt, place, represent, warrant, covenant, promise, and agree to be bound by restrictions upon the above-described real estate whereby the undersigned, the undersigned’s heirs, successors, assigns and legal representatives, and all grantees of the undersigned of the real estate, and such grantees’ heirs, successors, assigns and legal representatives, and by execution hereof, hereby release, waive, and forever discharge all persons and entities herein described as third party beneficiaries of this agreement, their employees, agents or other representatives, individually and in all representative or other capacities, of and from any and every liability, claim, demand, action, cause of action, suit, damage of whatever kind, nature or description whatsoever, either in law or equity, known and unknown, and stemming, arising, or resulting, or that may stem, arise, in the future, in any way in any aspect of or from normal, usual, customary, or generally accepted farming practices and farming operations described in this instrument, as the same now exist or as the same may be hereafter developed, in other parts of Cuming County, Nebraska, in the “A-1” Agricultural-Intensive District, and which do not otherwise violate other provisions of any federal, state, or local laws, ordinances, requirements, rules and regulations, including all administrative and regulatory agencies of every nature or description, all health,

fire, police authorities and other governmental authorities, including, but not limited to, all environmental protection laws, all as the same exist now or may hereafter be enacted, modified or amended, such farming practices and farming operations include, but are not limited to, all farming practices and farming operations described in this instrument.

6. Hereby acknowledge that the use of the real estate for residential purposes as provided herein does not in any way grant or provide any additional rights or benefits to the real estate and all owners, invitees or other persons in any way connected to or affected by the real estate or farming practices and farming operations on adjoining real estate, other than as may be allowed under the Cuming County Zoning regulations or other applicable laws.

7. The third party beneficiaries for whom these restrictions and covenants are made and benefit include all persons and entities who now own, or who may hereafter own in the future, any real estate that is utilized for any agricultural purpose and any part of a contiguous tract of such third party beneficiary is located within 3 miles of the real estate. Any such third party beneficiary is specifically given the right to enforce the restrictions and covenants set forth in this instrument by injunction or other lawful procedure, and to recover damages resulting from any violation thereof, including all court costs and reasonable attorney fees.

8. The provisions of this instrument are intended to be as broad, far-reaching and inclusive in furtherance of the policies of Cuming County to support intensive agricultural practices as set forth herein, in the Cuming County Zoning Regulations, and in the Comprehensive Plan for Cuming County, as is permitted by all applicable laws and shall be construed and interpreted to provide the greatest possible protections for farming practices and farming operations of the third party beneficiaries described herein. To the extent any provision or term of this instrument shall be determined to be legally unenforceable, the undersigned, the undersigned's heirs, successors, assigns and legal representatives, and all grantees of the undersigned of the real estate, and such grantees' heirs, successors, assigns and legal representatives, expressly agree that any such provision or term may be reformed to provide the greatest possible protections for farming practices and farming operations of the third party beneficiaries described herein.

9. The failure of any third party beneficiary to insist upon strict performance of any term, covenant, agreement or obligation of this agreement or to exercise any option or right contained herein shall not be deemed to constitute a waiver with respect thereto or a waiver of any of such third party beneficiary's rights or remedies and shall not be deemed a waiver of any subsequent breach or default of any term, covenant, agreement or obligation of this agreement.

10. It is agreed that the provisions of this instrument are separable and, therefore, the invalidity or unenforceability of any provision of this instrument shall not affect or impair the validity and enforceability of any other provision.

11. The undersigned is fully informed and aware of the nature and extent of all possible risks and impacts associated with the execution of this agreement on the above-described real estate.

12. That this instrument shall be recorded in the deed records of Cuming County, Nebraska, and shall be binding upon the undersigned, the undersigned's heirs, successors, assigns and legal representatives, and shall run with the real estate.

Dated the _____ day of _____, 20__.

ACKNOWLEDGMENT OF AN INDIVIDUAL

STATE OF NEBRASKA)

)ss.

COUNTY OF CUMING)

The foregoing instrument was acknowledged before me on the _____ day of _____, 20__, by _____

(insert name or names) _____(insert marital status).

Notary Public

ACKNOWLEDGMENT OF ENTITY

STATE OF NEBRASKA)

)ss.

COUNTY OF CUMING)

The foregoing instrument was acknowledged before me on the _____ day of _____, 20____, by _____ (insert individual's name), _____ (insert individual's title in entity), of _____ (insert entity name).

Notary Public