

DECLARATIONS OF PROTECTIVE COVENANTS AND RESTRICTIONS  
FOR  
BURLINGTON NORTHERN  
RESERVE STREET INDUSTRIAL CENTER

THIS DECLARATION, made this 14<sup>th</sup> day of November, 1984,  
by BURLINGTON NORTHERN RAILROAD COMPANY, herein referred to as "Declarant".

W I T N E S S E T H:

Declarant is the owner of all of the lots embraced within the boundaries of the proposed Burlington Northern Reserve Street Industrial Center, the plat of which is attached hereto marked Exhibit "A" and by this reference made a part hereof, located in Missoula County, Montana.

Declarant proposes to sell or lease all or a portion of the lots in said Burlington Northern Reserve Street Industrial Center and desires to subject said lots to the conditions, restrictions and covenants hereinafter set forth.

Declarant will incorporate under the laws of the State of Montana a non-profit corporation to be known as the Burlington Northern Reserve Street Industrial Center Owners' Association, to which will be delegated and assigned the powers of administering, maintaining and enforcing the covenants and restrictions and collecting and disbursing the assets and charges hereinafter created.

NOW, THEREFORE, Declarant hereby makes, declares and imposes the following limitations, restrictions, regulations and uses upon any of such real property as restrictive and protective covenants running with the land and binding upon all present and future owners of any part of such real property and further declares that each lot within the premises is and shall be held, transferred, sold, conveyed and occupied subject to the restrictive and protective covenants, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

As used herein, the following words and terms shall have the following meaning, unless in context specifically provided otherwise:

1. "Association": Burlington Northern Reserve Street Industrial Center Owners Association, a non-profit corporation, comprised of the owners acting in concert pursuant to this declaration and by-laws of the association.
2. "Common Expenses":
  - (a) Expenses agreed upon as common by all of the owners, or
  - (b) Expenses declared by law of the by-laws to be common expenses.
3. "Declarant": Burlington Northern Railroad Company
4. "Building": Structures built for the occupancy of persons, chattels of any kind.
5. "Lot": The parcels of land into which the property was divided as shown on any recorded plat of the premises.
6. "Owner": The record owner (including without limitation the Declarant), whether one or more persons or entities of the fee simple title to any lot, except that:
  - (a) Where any lot has been sold by Declarant under an agreement for deed, the buyer thereunder (provided that he is not in default under said agreement) and not the Declarant shall be deemed to be the owner, and
  - (b) The term "owner" shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure of any proceeding in lieu of foreclosure.
7. "Properties": That certain real property hereinabove described.
8. "Structure": Any construction erected or placed upon any lot, including but not limited to part of and additions to buildings, walls, fences and other enclosures, televisions and other antennas, walks and driveways.
9. "Unit": Any lot and the structure and improvements located thereon.

## ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and

shall be held, transferred, sold and occupied pursuant to this declaration is located in Missoula County, Montana, and more particularly described as Burlington Northern Reserve Street Industrial Center and all subsequent phases or replattings of said subdivision.

Section 2. This declaration is recorded on the \_\_\_\_ day of \_\_\_\_\_, 198\_, and applies to \_\_\_\_\_ industrial units. For purposes of identification, all lots on the property have been or will be given identifying numbers and delineated by such numbers on the official plats. The legends and notes contained upon such official plats are incorporated herein and made a part hereof by reference.

### ARTICLE III

#### MEMBERSHIP VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every owner shall be a member of the association provided that any person or entity who is merely holding an interest in a lot as security for the performance of an obligation shall not be a member and the Declarant shall be a member of the association so long as it has any voting rights in the association. There shall be two classes of members in the association as follows:

- (a) "Class A" members shall be all members except Declarant.
- (b) "Class B" members shall be Declarant.

#### Section 2. Voting Rights.

- (a) Every Class "A" member of the association shall have one vote for each lot owned and shall be entitled to cast such vote or votes at the meeting of the members. In the event that the owner of any lot is comprised of more than one entity, such persons or entities shall determine between themselves how the vote for such lot is to be voted; but there shall never be any fractional voting with respect to any lot or more than one vote per lot; and if said common or joint owners do not unanimously agree on how their vote shall be voted, the association, at its option, may refuse to recognize the vote.

(b) The Declarant shall be a Class "B" member and shall be entitled to three (3) votes for each lot in which it holds the interest required for membership.

ARTICLE IV

ASSESSMENTS

Section 1. Creation of the Lien of Assessments. Each lot owner (except the Declarant) hereby covenants and agrees to pay to the association annual assessments, all assessments to be fixed, established and collected from time to time as hereinafter provided. The annual assessments, together with such interest thereon and costs of collection thereon as hereinafter provided, shall be a charge and continuing lien upon the lot (except the lots owned by the Declarant) against which such assessment is made. Each such assessment, together with such interest thereon and costs of collection, including attorney's fees, as is hereinafter provided, shall be the obligation of the owner (except the Declarant) of such lot from the date such lot was purchased.

Section 2. Purpose of Assessments. The assessments which may be levied by the association shall be for the benefit of the owners and members of the association, including but not limited to installation and maintenance of utilities, sidewalks, boulevard landscaping and for such other services as may promote the health, safety and welfare of the owners.

Section 3. Amount of Annual Assessments. The owner of each lot covenants and agrees to pay the association the assessment which may be established by the action of the association through its Board of Directors as hereinafter provided. Such owner further covenants and agrees to pay any special assessments for capital improvements which may be established by the association as may be provided in the by-laws of the association. The initial assessment shall be Five dollars (85), per month, and all monies shall be used to pay the wages, fees or costs incurred by the association. The Declarant agrees that all lots rented with an option to buy or rented by an adjacent owner shall be subject to the annual assessment. The Declarant further agrees not to vote contrary to a majority of the other lot owners in matters of financial assessments.

Section 4. Payment of Annual Assessments. The assessments provided for herien shall be computed on a quarterly basis, commencing on the first day of January for the first quarter, the first day of April for the second quarter, the first day of July for the third quarter and the first day of October for the fourth quarter. The assessments for any quarter shall become due and payable on the last day of that quarter. The Board of Directors of the association shall fix the amount of the assessment against each lot for the assessment period at least thirty (30) days in advance of the due date specified herein and shall at that time prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The amount of the assessment which may be levied on any lot initially purchased shall be prorated in proportion to the total assessment for the entire year. Such liens shall be deemed perfected upon filing with the County Clerk and Recorder of Missoula County an account of the assessment due, together with a correct description of the property to be charged with such lien which is verified by an affidavit, but any error or mistake in the accounted description shall not affect the validity of the lien, if the property can be identified by the description. The priority of such lien shall be determined as of the time of filing with the Clerk and Recorder and it shall be deemed subordinate to all previously recorded or filed interests. Each such assessment, together with interest thereon and costs of obligation thereof as herein provided, shall also be the personal obligation of the owner of such lot at the time when such assessment became due.

Section 5. Effect of Nonpayment of Assessments. If the assessments are not paid by midnight on the date when due (being the date specified in Section 4 hereof), then such assessment shall become delinquent and shall, together with interest thereon, become a continuing lien on the lot which shall run with the land. If the assessment remains unpaid thirty (30) days after such due date, the assessment shall bear interest from the due date at the maximum annual percentage rate permitted by law. The obligation of the then owner to pay any assessment or interest shall not be affected by

any conveyance or transfer of title to said lots. The association may bring an action at law against the owner obligated to pay the same and/or to foreclose the lien against the property and there shall be added to the amount of such assessment the costs of collecting the same or foreclosing the lien, including reasonable attorney's fees and court costs.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. No structure, excavation or construction of any kind and no fence, wall, garage, outbuilding, driveway of any kind or any addition, alteration or remodeling thereof shall be made, erected, constructed, altered, placed or permitted to remain upon any of the properties until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to Declarant and approved in writing by Declarant as to exterior design, size, height, type of construction, location and relation to surrounding structures and topography and with particular view toward grading, drainage and ground cover. In the event Declarant fails to approve or disapprove within thirty (30) days after receipt of detailed plans and specifications, approval shall not be required and this Article will be deemed to have been fully complied with.

Section 2. Declarant shall observe the rules of the City of Missoula in regards to placement of any structure or other improvement on any lot.

Section 3. Declarant shall not be held liable by any person for any damages for any action taken pursuant to these covenants, including but not by way of limitation the issuance of building permits or any delays associated with such actions on the part of the Declarant.

ARTICLE VI

GENERAL RESTRICTIONS AND COVENANTS

Section 1. General Purposes. These covenants are made for the purpose of creating and keeping the premises insofar as possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and for the mutual benefit and protection of the owners of the lots within the premises.

Section 2. Uses and Zoning. All lots within the premises shall be used in conformance with the zoning restrictions of the City of Missoula, Missoula County, Montana.

Section 3. Construction. All construction on or within the property shall be diligently prosecuted to completion and shall in any event be completed within six (6) months of commencement unless specific extension is given by Declarant. No construction materials shall at any time be placed or stored so as to impede, obstruct or interfere with pedestrian or vehicular traffic. Natural drainages must not be blocked or filled.

Section 4. Landscaping. Within one hundred twenty (120) days of the construction or placement of a structure upon any lot, all portions of such lot not covered by improvements shall be landscaped or maintained. All trees, hedges, shrubs, flowers, grass or other ground cover shall be maintained and cultivated so that the same are not unsightly or a detriment to adjacent lots. All landscaping must be designed to preserve and protect the area to prevent erosion. Street trees shall be planted six feet (6') behind the sidewalk. Street trees shall be placed an average of forty feet (40') on center and shall consist of species compatible with the ordinances of the City of Missoula. Suggested species include: Norway Maple, Red Maple, Honey Locust, Green Ash and Globe Locust. The boulevard area, that area three feet (3') behind the sidewalk shall be planted to grass and underground irrigation for this lawn area shall be provided.

Section 5. Unused Land. All unused land area that is planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, stored material, rubbish and debris.

Section 6. Trash, Garbage, Stockpiles, Etc. No trash, garbage or other refuse or inventory or stockpiles or wrecked automobiles, excluding a lumber yard, shall be maintained on the premises without adequate fencing or screening from public view and protected from disturbance, all of which shall be approved by the Declarant. All rubbish, trash, garbage and all other waste materials shall be stored in containers of metal, plastic or other suitable material which has a sufficiently tight fitting

lid to prevent the escape of odors or the attraction of flies or other vermin.

Section 7. Flammable, Caustic and Toxic Liquids. All flammable, caustic and toxic liquids in excess of fifty-five (55) gallons shall be maintained in underground storage approved in advance by the Declarant, and no discharge of any flammable, caustic or toxic materials shall be allowed which infiltrates groundwater or surface water in the area.

Section 8. Industrial Waste. All industrial waste shall be subject to such pretreatment as may be required by the Missoula City Engineers, and Missoula Health Department.

Section 9. Fire and Casualty Damage. Any structure damaged by fire or other casualty must be removed from the premises or repairs commenced within thirty (30) days unless an extension of time for such removal or repair is granted by the Declarant. Any damaged structure not so removed or repaired may be removed and stored at the owner's expense or Declarant may pursue any and all legal or equitable remedies to enforce compliance therewith and shall be entitled to recover from the owner all costs incurred in connection therewith, including court costs and reasonable attorney's fees.

Section 10. Easement Reservation. Declarant shall have and hereby does reserve the right to locate, install, erect, construct, maintain, use or authorize the location, installation, erection, construction, maintenance and use of drains, sewers, electrical lines, telephone lines, rail spur track lines and other utilities and to give or grant a right-of-way or easement not more than twenty (20) feet in width thereof over any part of a lot within the premises; provided that such location, installation, erection, construction, maintenance and use is harmonious with the development of the premises. In addition, the premises are subject to the easements and rights-of-way for roads and rail lines that show on or are described on any recorded plat of the premises.

Section 11. Nuisance. No unreasonable noise or noise in excess of accepted governmental standards, disturbance of the peace or other noxious or offensive activity shall be permitted,



conducted or carried out upon any lot within the subdivision.

Section 12. Insurance Rates. The owner shall not permit or suffer any activity or failure to act upon their respective units which will increase the rate of insurance upon surrounding lots or which will obstruct or interfere with the rights of other owners.

Section 13. Underground Utilities. All exterior wiring or other utilities upon said premises that may lead to or from any structures thereon shall be buried underground.

Section 14. Parking. All present and future vehicle parking including trucks, trailers, employee and visitor parking, shall be provided on the premises and shall comply with all provisions of the applicable Missoula City Zoning Regulations. All parking areas are to be paved to provide dustfree all-weather surfaces with asphalt, concrete or any approved material other than gravel.

Section 15. Effect and Duration of Covenants. The covenants, conditions and restrictions of this declaration shall run with the land and shall be binding upon each lot within the premises and each owner of the property therein, his or its heirs, successors, representatives and assigns, shall continue in full force and effect for a term of ten (10) years from the date this declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years unless otherwise terminated or modified.

Section 16. Sidewalks. Within one hundred and twenty (120) days of the construction or placement of a structure on any lot, the lot owner shall install a four and one-half foot (4½') wide sidewalk adjacent to the curb for the full frontage of the lot. Plans for sidewalk placement shall be approved by the appropriate governing body official prior to placement.

Section 17. Amendment. The Conditions, restrictions, stipulations, agreements and covenants contained herein shall not be waived, altered, abandoned, terminated or amended in whole or in part except by written consent duly recorded in the office of the Clerk and Recorder of Missoula County, Montana, of the owners of two-thirds of the property located within Burlington Northern Reserve Street Industrial Center. For the purpose

of this Section and Section 15 of this Article, votes shall be cast by the owner in proportion to the quantity of land owned within the subdivision by the owners thereof. The Declarant reserves the right to grant variances to any of the provisions of this declaration where in its discretion it believes the same to be necessary and where the same will not be injurious to the rest of the premises, except that no variance affecting roads, sidewalks, landscaping, lot size or other such variance will be granted by the Declarant without prior written approval by the appropriate City offices.

Section 18. Nonconforming Uses. All lawful uses of land existing on the effective date of filing of these general restrictions and covenants, made no longer permissible by these general restrictions of the Missoula City Zoning Ordinance.

#### ARTICLE VII

##### ANIMALS AND LIVESTOCK

Section 1. No chickens, swine, poultry, goats, horses, livestock or similar animals or fowl shall be raised, kept or cared for on any lot, except under the immediate care of a veterinarian.

#### ARTICLE VIII

##### ENFORCEMENT

Section 1. Conditions, restrictions and covenants herein contained shall bind and inure to the benefit of and be enforceable by the Declarant, its successors, personal representatives and assigns, or by the owner or owners of any lot or lots in said premises. Any owner of any lot may institute and prosecute any proceeding at law or in equity against any person, firm or corporation violating or threatening to violate any of the conditions, restrictions or covenants herein contained. Any such action may be maintained for the purpose of preventing a violation of or to recover damages for the violation or for both such purposes. The failure of Declarant, its successors or assigns, or of any owner of any lot to enforce any of the conditions, restrictions or covenants herein contained shall in no way be deemed a waiver of the right to enforce such conditions, restrictions or covenants hereafter. Any owner or the

association bringing an action under this article shall be entitled to recover the costs of enforcement, including reasonable attorney's fees and court costs. Nothing contained herein shall be construed as preventing the application of any remedy given by law against nuisance, public or private. The remedy herein provided shall be in addition to any other remedy now or hereafter provided by law.

ARTICLE IX

SEVERABILITY

Section 1. Any invalidation of any condition, restriction or covenant herein contained by judgement or order of any court of competent jurisdiction shall in no way affect the validity of the remaining conditions, restrictions or covenants; and said remaining conditions, restrictions and covenants shall continue and remain in full force and effect. Any condition, restriction or covenant as invalidated shall be deemed separable from remaining conditions, restrictions and covenants herein set forth.

ARTICLE X

LIABILITY OF DECLARANT

Section 1. The Declarant shall have no liability for any of its actions or failures to act or for any of the actions or failures to act of any owners of property within the premises. The relationship between the Declarant and the property owners shall be deemed to be that of independent contractors and not that of principal and agent, partnership or joint venture. In addition, the Declarant shall have no liability or obligation under this declaration to any person or entity except such liabilities and obligations as the Declarant has expressly assumed herein.

ARTICLE XI

BINDING EFFECT

Section 1. All purchasers of property subject to these Declarations of Protective Covenants and Restrictions by acceptance of contracts for deeds for any of the property to which these covenants and amendments thereto may apply, or any portion thereof, shall thereby be conclusively deemed to have consented and agreed

to all restrictions, conditions, covenants and agreements set forth herein; and any person who shall succeed in any manner to any interest therein by inheritance, decree, conveyance, lease, rental arrangement or by operation of law shall be bound thereby.

IN WITNESS WHEREOF, this document has been executed the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By: H. P. Shaw  
DIRECTOR - PROPERTY MANAGEMENT

ATTEST  
By: [Signature]  
Assistant Secretary

STATE OF Texas )  
COUNTY OF Tarrant ) ss.

On this 14th day of November in the year 1984, before me, Frances Smith, a Notary Public for the State of Texas, personally appeared H. P. Shaw, known to me to be the DIRECTOR - PROPERTY MANAGEMENT of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.



Frances Smith  
Notary Public for the State of Texas  
Residing at Ft. Worth  
My Commission Expires: June 13, 1988  
FRANCES SMITH  
Notary Public State of Texas  
Commission Expires June 13, 1988

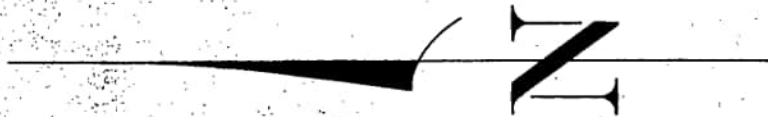
BOOK 216 PAGE 0608

# RESERVE STREET IND

A SUBDIVISION  
LOCATED IN THE SW 1  
T.13

CURVE TABLE							
CURVE NO.	DELTA	RADIUS	ARC	CURVE NO.	DELTA	RADIUS	ARC
1	25°21'00"	1910.00	845.06	31	7°05'03"	573.70	70.93
2	10°21'15"	783.60	141.61	32	13°33'24"	573.70	135.74
3	5°39'06"	1910.00	188.40	33	9°47'03"	573.70	97.97
4	5°48'45"	1910.00	193.76	34	16°44'17"	573.70	167.60
5	1°48'48"	1910.00	60.45	35	6°25'00"	597.70	66.94
6	1°50'42"	1910.00	61.50	36	2°29'40"	573.70	24.98
7	8°03'12"	1910.00	268.47	37	2°32'14"	573.70	25.40
8	2°10'28"	1910.00	72.48	38	5°40'55"	573.70	56.89
9	90°00'00"	30.00	47.12	39	17°27'40"	1000.00	304.75
10	89°22'20"	30.00	46.80	40	9°54'33"	970.00	167.76
11	90°37'40"	30.00	47.45	41	7°33'07"	970.00	127.85
12	11°22'00"	764.50	151.67	42	9°19'36"	1030.00	167.66
13	0°10'10"	764.50	2.26	43	8°08'04"	1030.00	146.23
14	6°37'02"	1638.80	189.27	44	41°49'23"	50.00	36.50
15	4°13'36"	1638.80	120.90	45	3°29'57"	50.00	3.05
16	18°24'48"	573.70	184.37	46	44°37'54"	50.00	38.95
17	7°47'47"	783.60	106.63	47	43°04'08"	170.00	127.79
18	48°29'00"	120.00	101.54	48	46°58'38"	170.00	139.38
19	2°50'55"	150.00	7.46	49	90°02'46"	140.00	220.02
20	13°38'14"	150.00	35.70	50	1°49'59"	764.50	24.46
21	31°59'51"	150.00	83.77	51	8°43'23"	597.70	91.00
22	43°19'19"	90.00	68.05	52	6°23'31"	573.70	64.00
23	5°09'41"	90.00	8.11	53	15°43'56"	573.70	157.53
24	5°48'54"	597.70	60.66	54	4°36'49"	548.70	44.18
25	0°55'52"	1584.90	25.75	55	90°51'30"	30.00	47.57
26	6°03'10"	1584.90	167.43	56	92°48'00"	30.00	48.59
27	5°29'58"	597.70	57.37				
28	12°28'50"	573.70	124.97				
29	5°09'23"	573.70	51.63				
30	4°32'33"	573.70	45.48				

**owner: BURLINGTON NORTHERN RAILROAD COMPANY**



ADDRESS BLOCK		
LOT NO.	NUMBER	STREET
1		GREAT NORTHERN AVE.
2		GREAT NORTHERN AVE.
3		GREAT NORTHERN AVE.

Areas  
*Lots - 57.45 acres*  
*Streets - 5.99 acres*  
*Total - 63.44 acres*

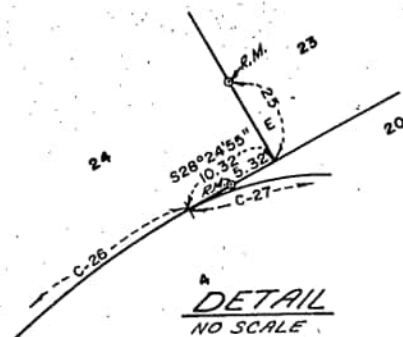
SUB-STANDARD QUALITY WHEN FILMED

# STREET INDUSTRIAL CENTER - PHASE I

A SUBDIVISION OF THE CITY OF MISSOULA, MONTANA  
 LOCATED IN THE SW 1/4 SECTION 8 AND THE N 1/2 SECTION 17  
 T.13 N., R.19 W., P.M.M.

EXHIBIT "A"

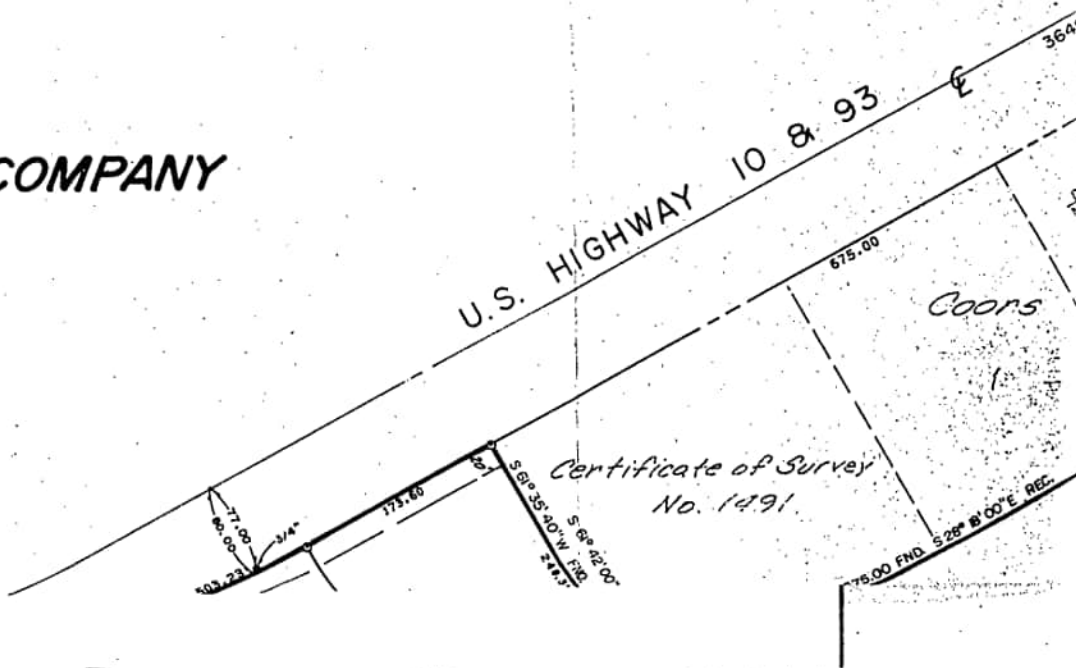
	RADIUS	ARC
13"	573.70	70.93
24"	573.70	135.74
33"	573.70	97.97
17"	573.70	167.60
00"	597.70	66.94
40"	573.70	24.98
14"	573.70	25.40
55"	573.70	56.89
40"	1000.00	304.75
33"	970.00	167.76
07"	970.00	127.85
36"	1030.00	167.66
04"	1030.00	146.23
23"	50.00	36.50
57"	50.00	3.05
54"	50.00	38.95
08"	170.00	127.79
38"	170.00	139.38
46"	140.00	220.02
59"	764.5	24.46
23"	597.7	91.00
31"	573.7	64.00
56"	573.7	157.53
49"	548.70	44.18
30"	30.00	47.57
00"	30.00	48.59



PN RAILROAD COMPANY

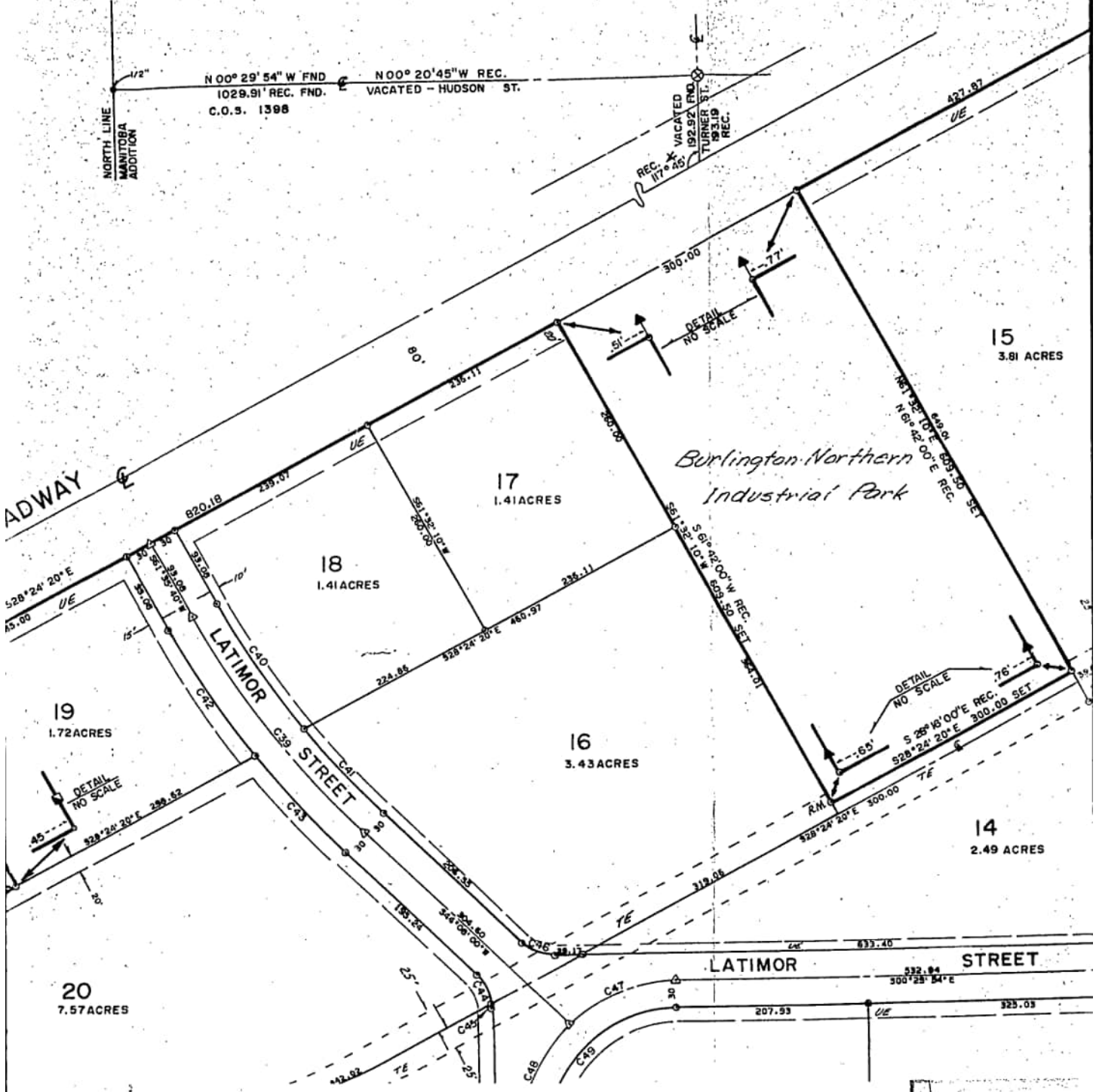
Areas

ts - 57.45 acres  
 cts - 5.99 acres  
 tal - 63.44 acres



SUB-STANDARD QUALITY WHEN FILMED

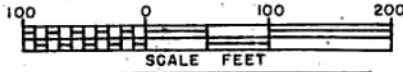




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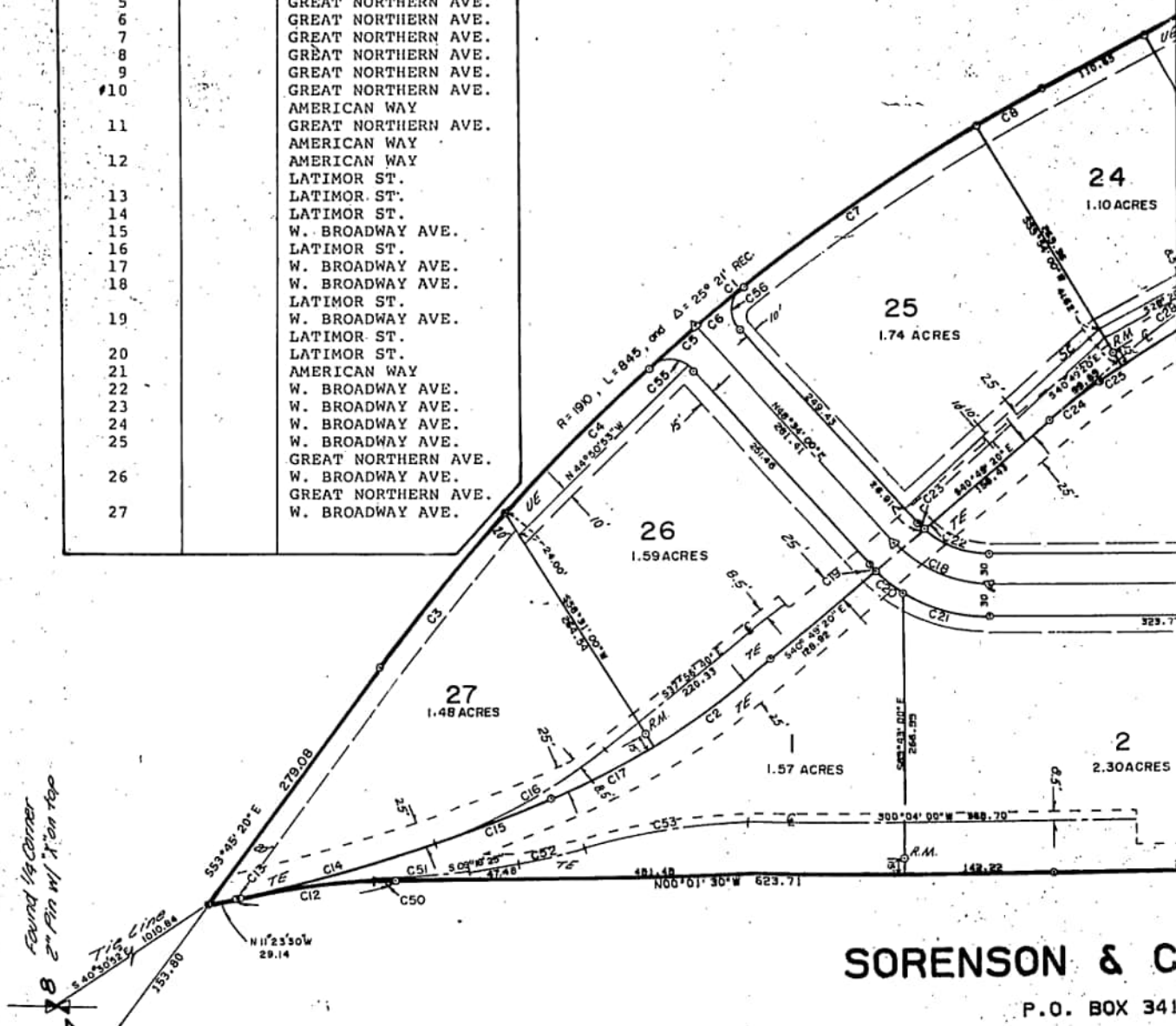






Areas  
 Lots - 57.45 acres  
 Streets - 5.99 acres  
 Total - 63.44 acres

ADDRESS BLOCK		
LOT NO.	NUMBER	STREET
1		GREAT NORTHERN AVE.
2		GREAT NORTHERN AVE.
3		GREAT NORTHERN AVE.
4		GREAT NORTHERN AVE.
5		GREAT NORTHERN AVE.
6		GREAT NORTHERN AVE.
7		GREAT NORTHERN AVE.
8		GREAT NORTHERN AVE.
9		GREAT NORTHERN AVE.
10		GREAT NORTHERN AVE.
11		AMERICAN WAY
12		GREAT NORTHERN AVE.
13		AMERICAN WAY
14		AMERICAN WAY
15		LATIMOR ST.
16		LATIMOR ST.
17		LATIMOR ST.
18		W. BROADWAY AVE.
19		LATIMOR ST.
20		W. BROADWAY AVE.
21		LATIMOR ST.
22		LATIMOR ST.
23		AMERICAN WAY
24		W. BROADWAY AVE.
25		W. BROADWAY AVE.
26		W. BROADWAY AVE.
27		GREAT NORTHERN AVE.
		GREAT NORTHERN AVE.
		W. BROADWAY AVE.



**SORENSEN & C**

P.O. BOX 341

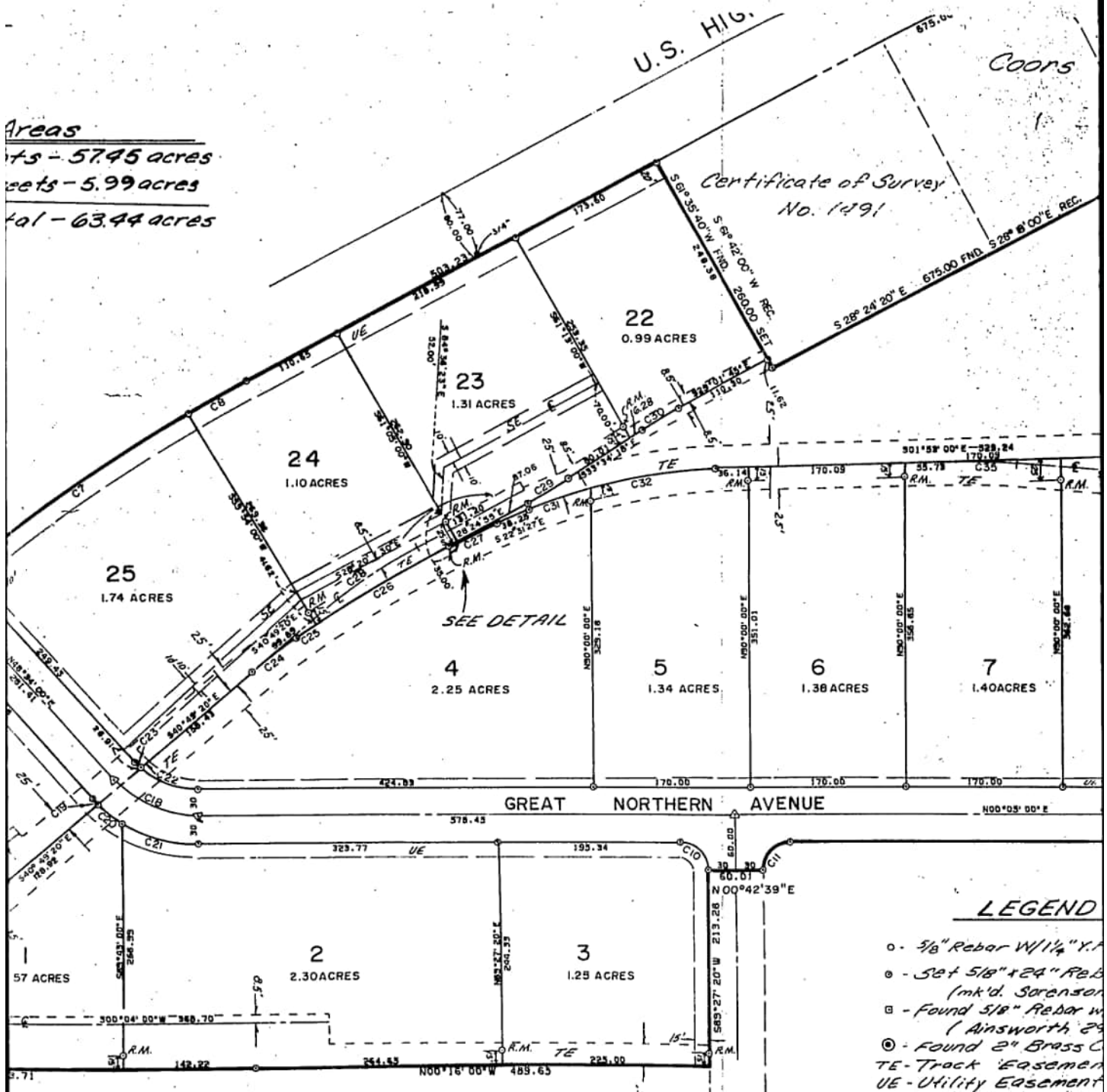
MISSOULA, MONTANA

BOOK 216 PAGE 0611

SUB-STANDARD QUALITY WHEN FILMED

Areas

lots - 57.45 acres  
 sets - 5.99 acres  
 total - 63.44 acres



**SORENSEN & COMPANY**  
 P.O. BOX 3418

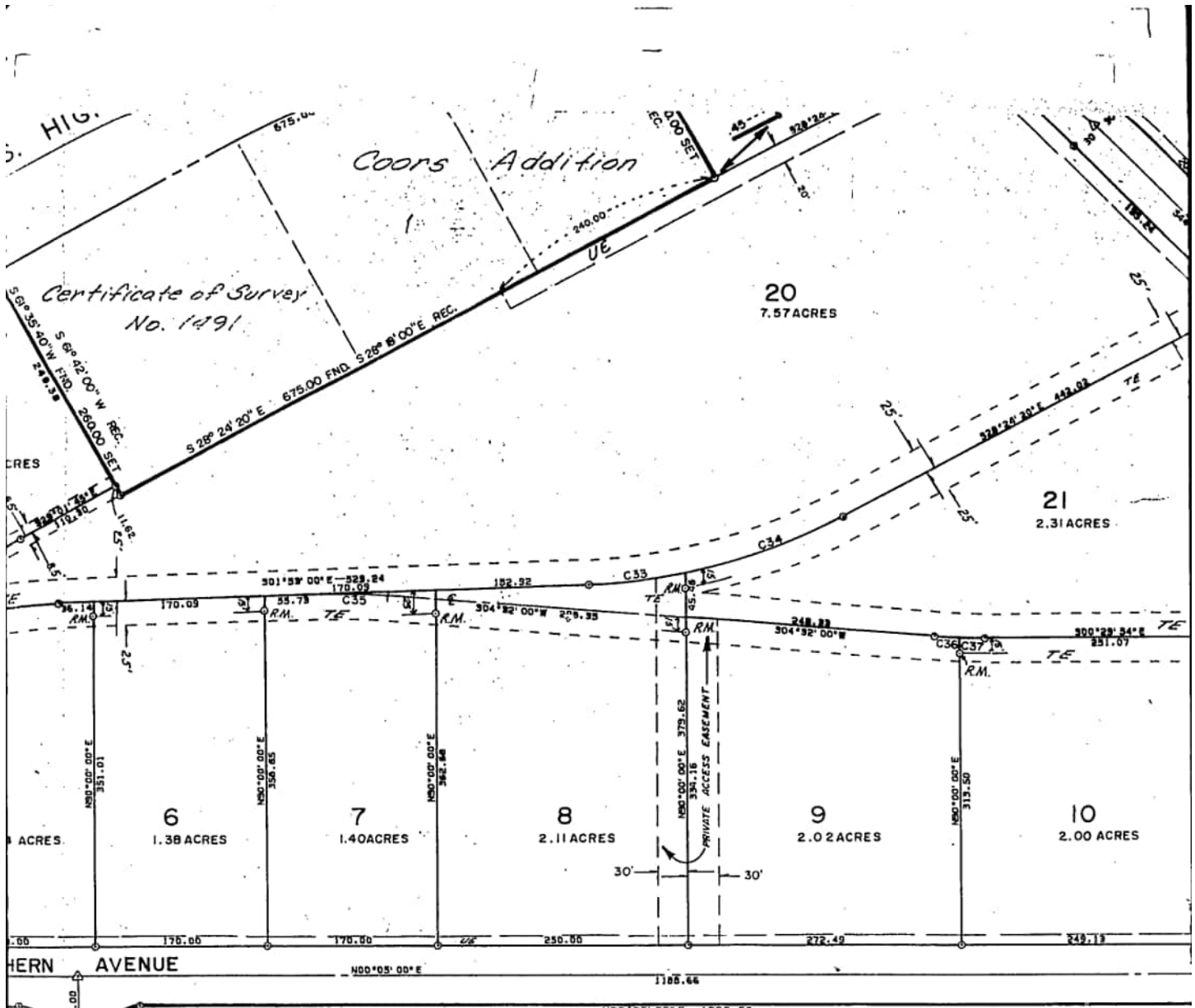
MISSOULA, MONTANA 59806

BOOK 216 PAGE 0612

**LEGEND**

- - 5/8" Rebar w/1/4" Y.P.C.
- ⊙ - Set 5/8" x 24" Rebar (mk'd. Sorenson)
- ⊠ - Found 5/8" Rebar w/ (Ainsworth 20)
- ⊙ - Found 2" Brass C
- TE - Track Easement
- UE - Utility Easement
- ▲ - 5/8" x 24" Rebar To be set after co
- ⊗ - Stone Found
- ⊙ - 1" Y.P.C. Found (Eli 3)
- - Iron Pin, Found (5" size)
- ▲ - 3" Lewis Guardrail
- ⊠ - 5/8" Rebar, Found
- ⊠ - 5/8" Rebar w/1/2" Alum
- SE - Sewer Easement

SUB-STANDARD QUALITY WHEN FILMED



HIG.  
 Certificate of Survey  
 No. 1291

Coors Addition

20  
 7.57 ACRES

21  
 2.31 ACRES

6  
 1.38 ACRES

7  
 1.40 ACRES

8  
 2.11 ACRES

9  
 2.02 ACRES

10  
 2.00 ACRES

HERN AVENUE

Radius  
 N 00° 32' 40"

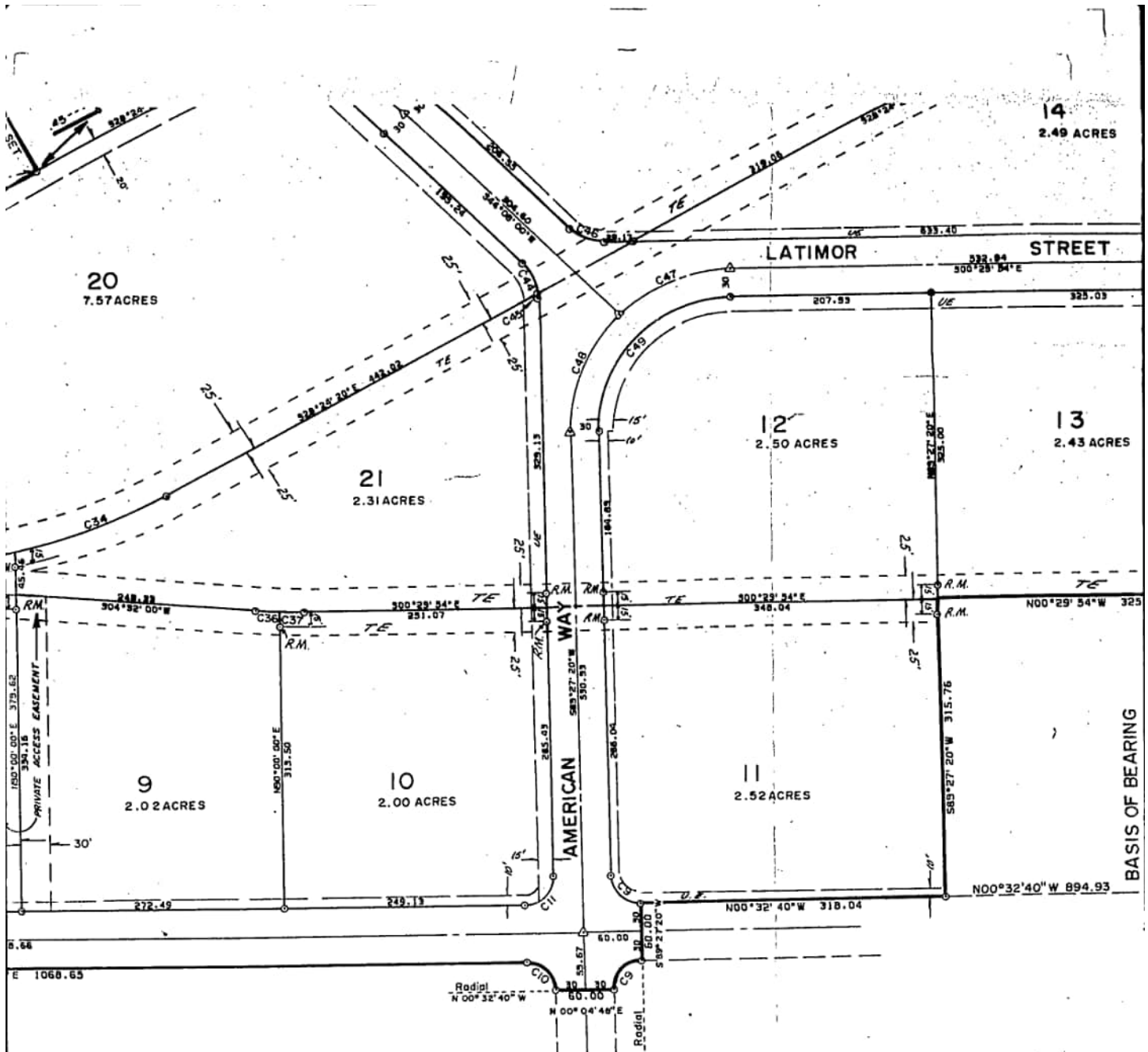
**LEGEND**

- - 5/8" Rebar w/ 1/4" Y.P.C., Fnd. (mk'd Sorenson & Co.-McCarthy 44685)
- - Set 5/8" x 24" Rebar w/ 1/4" Y.P.C. (mk'd. Sorenson & Co.-McCarthy 44685).
- - Found 5/8" Rebar w/ 1/2" Aluminum Cap (Ainsworth 29235).
- ⊙ - Found 2" Brass Cap set in concrete.
- TE - Track Easement
- UE - Utility Easement
- ▲ - 5/8" x 24" Rebar w/ 1/2" Aluminum Cap (mk'd Sorenson & Co 44685) To be set after completion of improvements, but not more than two calendar years c
- ⊗ - Stone Found
- ⊙ - 1" Y.P.C. Found (Eli 37135)
- - Iron Pin, Found (Size As Noted)
- ▲ - 3" Lewis Guardrail Bolt Found (Urbach)
- ⊗ - 5/8" Rebar, Found
- - 5/8" Rebar w/ 1/2" Aluminum Cap (Schurian 31025) Found
- SE - Sewer Easement

BOOK 216 PAGE 0613

PROJECT: 78  
 FILE NO.: H-  
 BOOK

SUB-STANDARD QUALITY WHEN FILMED



son & Co.-McCarthy 44685)

4685).

Cap (mk'd Sorenson & co 44685)

vements, but not more than two calendar years after the filing date of this plat.

31025) Found

PROJECT: 78-12-07  
FILE NO.: H-76

BOOK 216 PAGE 0614

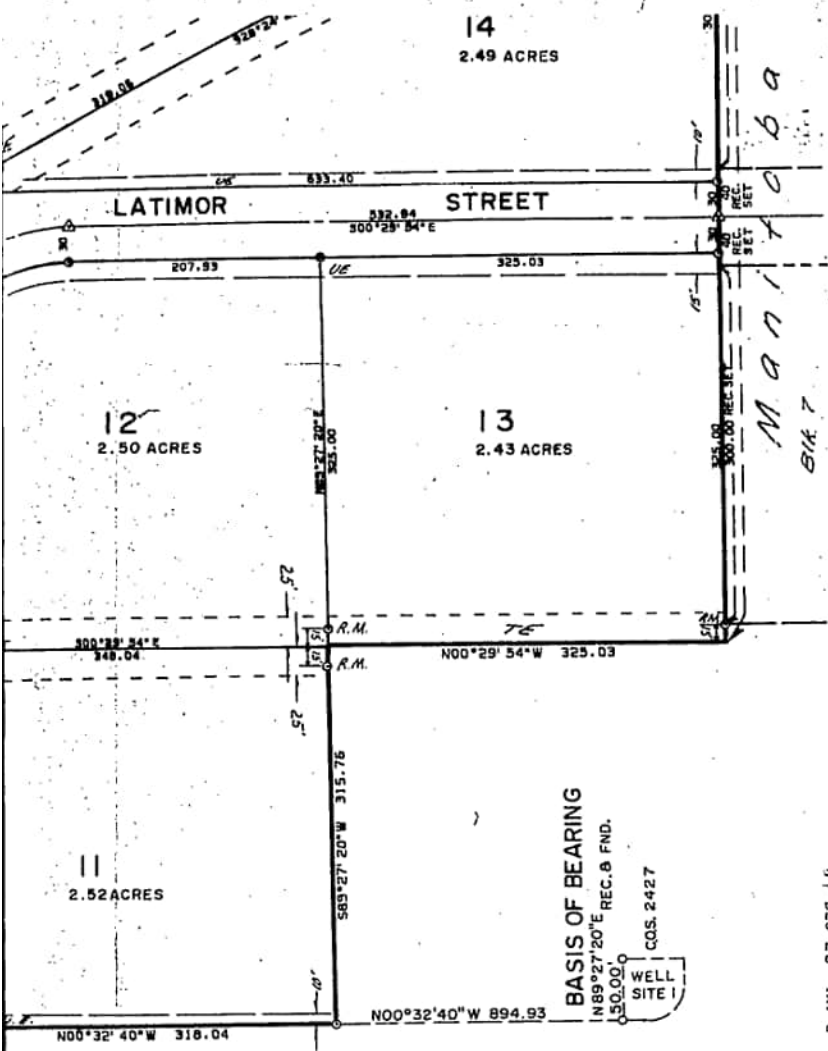
SUB-STANDARD QUALITY WHEN FILMED

84221

I received and filed this instrument for record on the 20th and it is recorded to Vol. 216 on Page 514, Micro # Montana. Witness my hand, Fern Hart, County Recorder. Dec. 17th 1978. Fee \$5.50 Pd. \$6. Return

SHEET 1 OF 2

1/4	S
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>



794 DEC 20 AM 8 11

8422177

I received and filed this instrument for record on the 20 day of Dec, 1984, at Billings, and it is recorded in Vol. 216, on Page 594, Micro Records of the County of Missoula, State of Montana. Witness my hand, Fern Hart, County Recorder, By Ramona Cox, Deputy, Dec. DM Fee 55.50 Pd. ck Return Spencer Co.

re of this plot.

1/4	SEC	T.	R
<input checked="" type="checkbox"/>	8	13 N.	19 W.
<input checked="" type="checkbox"/>	17	13 N.	19 W.

SHEET 1 OF 2

BOOK 216 PAGE 0615

SUB-STANDARD QUALITY WHEN FILMED

DECLARATIONS OF PROTECTIVE COVENANTS AND RESTRICTIONS

FOR

GATEWAY PLACE  
MISSOULA, MONTANA

THIS DECLARATION, made this 8 day of March,  
1987, by A & C Ventures II, herein referred  
to as "Declarant".

W I T N E S S E T H :

Declarant is the owner of all of the lots embraced within the boundaries of the proposed Gateway Place, the plat of which is attached hereto marked Exhibit "A" and by this reference made a part hereof, located in Missoula County, Montana.

Declarant proposes to sell or lease all or a portion of the lots in said Gateway Place, and desires to subject said lots to the conditions, restrictions and covenants hereinafter set forth.

Declarant will incorporate under the laws of the State of Montana a non-profit corporation to be known as the Gateway Place Owner's Association, to which will be delegated and assigned the powers of administering, maintaining and enforcing the covenants and restrictions and collecting and disbursing the assets and charges hereinafter created.

NOW, THEREFORE, Declarant hereby makes, declares and imposes the following limitations, restrictions, and protective covenants running with the land and binding upon all present and future owners of any part of such real property and further declares that each lot within the premises is and shall be held, transferred, sold, conveyed and occupied subject to the restrictive and protective covenants, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

As used herein, the following words and terms shall have the following meaning, unless in context specifically provided otherwise:

1. "Association": Gateway Place Owners Association, a non-profit corporation, comprised of the owners acting in concert pursuant to this declaration and by-laws of the association:

2. "Common Expenses":

- (a) Expenses agreed upon as common by all of the owners, or
- (b) Expenses declared by law of the by-laws to be common expenses.

3. "Declarant": A & C Ventures II

4. "Building": Structures built for the occupancy of persons, chattels of any kind.
5. "Lot": The parcels of land into which the property was divided as shown on any recorded plat of the premises.
6. "Owner": The record owner (including without limitation the Declarant, whether one or more persons or entities of the fee simple title to any lot, except that:
  - (a) Where any lot has been sold by Declarant under an agreement for deed, the buyer thereunder (provided that he is not in default under said agreement) and not the Declarant shall be deemed to be the owner, and
  - (b) The term "owner" shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure of any proceeding in lieu of foreclosure.
7. "Properties": That certain real property hereinabove described.
8. "Structure": Any consideration erected or placed upon any lot, including but not limited to part of and additions to buildings, walls, fences and other enclosures, televisions and other antennas, walks and driveways.
9. "Unit": Any lot and the structure and improvements located thereon.

## ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold and occupied pursuant to this declaration is located in Missoula County, Montana, and more particularly described as Gateway Place and all subsequent phases or replattings of said subdivision.

Section 2. This declaration is recorded on the 8 day of March, 1987, and applies to 60 industrial units. For purposes of identification, all lots on the property have been or will be given identifying numbers and delineated by such numbers on the official plats. The legends and notes contained upon such official plats are incorporated herein and made a part hereof by reference.

## ARTICLE III

MEMBERSHIP VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every owner shall be a member of the association provided that any person or entity who is merely holding an interest in a lot as security for the performance of an obligation shall not be a member and the Declarant shall be a member of the association so long as it has any voting rights in the association. There shall be two classes of members in the association as follows:



- (a) "Class A" members shall be all members except Declarant.
- (b) "Class B" members shall be Declarant.

Section 2. Voting Rights

- (a) Every Class "A" member of the association shall have one vote for each lot owned and shall be entitled to cast such vote or votes at the meeting of the members. In the event that the owner of any lot is comprised of more than one entity, such persons or entities shall determine between themselves how the vote for such lot is to be voted; but there shall never be any fractional voting with respect to any lot or more than one vote per lot; and if said common or joint owners do not unanimously agree on how their vote shall be voted, the association, at its option, may refuse to recognize the vote.
- (b) The Declarant shall be a Class "B" member and shall be entitled to three (3) votes for each lot in which it holds the interest required for membership.

ARTICLE IV

ASSESSMENTS

Section 1. Creation of the Lien of Assessments. Each owner (except the Declarant) hereby covenants and agrees to pay to the association annual assessments, all assessments to be fixed, established and collected from time to time as hereinafter provided. The annual assessments, together with such interest thereon and costs of collection thereon as hereinafter provided, shall be a charge and continuing lien upon the lot (except the lots owned by the Declarant) against which such assessment is made. Each such assessment, together with such interest thereon and costs of collection, including attorney's fees, as is hereinafter provided, shall be the obligation of the owner (except the Declarant) of such lot from the date such lot was purchased.

Section 2. Purpose of Assessments. The assessments which may be levied by the association shall be for the benefit of the owners and members of the association, including but not limited to installation and maintenance of utilities, sidewalks, boulevard landscaping and for such other services as may promote the health, safety and welfare of the owners.

Section 3. Amount of Annual Assessments. The owner of each lot covenants and agrees to pay the association the assessment which may be established by the action of the association through its Board of Directors as hereinafter provided. Such owner further covenants and agrees to pay any special assessments for capital improvements which may be established by the association as may be provided in the by-laws of the association. The initial assessment shall be ~~five~~ (\$ 5.00 ), per month, and all monies shall be used to pay the wages, fees or costs incurred by the association. The Declarant agrees that all lots rented with an option to buy or rented by an adjacent owner shall be subject to the annual assessment. The Declarant further agrees not to vote contrary to a majority of the other lot owners in matters of financial assessments.

Section 4. Payment of Annual Assessments. The assessments provided for herein shall be computed on a quarterly basis, commencing on the first day of January for the first quarter, the first day of April for the second quarter, the first day of July for the third quarter and the first day of October for the fourth quarter. The assessments for any quarter shall become due and payable on the last day of that quarter. The Board of Directors of the association shall fix the amount of the assessment against each lot for the assessment period at least thirty (30) days in advance of the due date specified herein and shall at that time prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The amount of the assessment which may be levied on any lot initially purchased shall be prorated in proportion to the total assessment for the entire year. Such liens shall be deemed perfected upon filing with the County Clerk and Recorder of Missoula County an account of the assessment due, together with a correct description of the property to be charged with such lien which is verified by an affidavit, but any error or mistake in the accounted description shall not affect the validity of the lien, if the property can be identified by the description. The priority of such lien shall be determined as of the time of filing with the Clerk and Recorder and it shall be deemed subordinate to all previously recorded or filed interests. Each such assessment, together with interest thereon and costs of obligation thereof as herein provided, shall also be the personal obligation of the owner of such lot at the time when such assessment became due.

Section 5. Effect of Nonpayment of Assessments. If the assessments are not paid by midnight on the date when due (being the date specified in Section 4 hereof), then such assessment shall become delinquent and shall, together with interest thereon, become a continuing lien on the lot which shall run with the land. If the assessment remains unpaid thirty (30) days after such due date, the assessment shall bear interest from the due date at the maximum annual percentage rate permitted by law. The obligation of the then owner to pay any assessment or interest shall not be affected by any conveyance or transfer of title to said lots. The association may bring an action at law against the owner obligated to pay the same and/or to foreclose the lien against the property and there shall be added to the amount of such assessment the costs of collecting the same or foreclosing the lien, including reasonable attorney's fees and court costs.

#### ARTICLE V

#### ARCHITECTURAL CONTROL

Section 1. No structure, excavation or construction of kind and no fence, wall, garage, outbuilding, driveway of any kind or any addition, alteration or remodeling thereof shall be made, erected, constructed, altered, placed or permitted to remain upon any of the properties until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same have been submitted to Declarant and approved in writing by Declarant as to exterior design, size, height, type of construction, location and relation to surrounding structures and topography and with particular view toward grading, drainage and ground cover. In the event Declarant fails to approve or disapprove within thirty (30) days after receipt of detailed plans and specifications, approval shall not be required and this Article will be deemed to have been fully complied with.

Section 2. Declarant shall observe rules of the City of Missoula in regards to placement of any structure or other improvement on any lot.

Section 3. Declarant shall not be held liable by any person for any damages for any action taken pursuant to those covenants, including but not by way of limitation the issuance of building permits or any delays associated with such actions on the part of the Declarant.

#### ARTICLE VI

##### GENERAL RESTRICTIONS AND COVENANTS

Section 1. General Purposes. These covenants are made for the purpose of creating and keeping the premises insofar as possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and for the mutual benefit and protection of the owners of the lots within the premises.

Section 2. Uses and Zoning. All lots within the premises shall be used in conformance with the zoning restrictions of the City of Missoula, Missoula County, Montana.

Section 3. Construction. All construction on or within the property shall be diligently prosecuted to completion and shall in any event be completed within six (6) months of commencement unless specific extension is given by Declarant. No construction materials shall at any time be placed or stored so as to impede, obstruct or interfere with pedestrian or vehicular traffic. Natural drainage must not be blocked or filled.

Section 4. Landscaping. Within one hundred twenty (120) days of the construction or placement of a structure upon any lot, all portions of such lot not covered by improvements shall be landscaped or maintained. All trees, hedges, shrubs, flowers, grass or other ground cover shall be maintained and cultivated so that the same are not unsightly or a detriment to adjacent lots. All landscaping must be designed to preserve and protect the area to prevent erosion. Street trees shall be planted six feet (6') behind the sidewalk. Street trees shall be placed an average of forty feet (40') on center and shall consist of species compatible with the ordinances of the City of Missoula. Suggested species include: Noway Maple, Red Maple, Honey Locust, Green Ash, and Globe Locust. The boulevard area, that area three feet (3') behind the sidewalk shall be planted to grass and underground irrigation for this lawn area shall be provided.

Section 5. Unused Land. All unused land area that is planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, stored material, rubbish and debris.

Section 6. Trash, Garbage, Stockpiles, Etc. No trash, garbage or other refuse or inventory or stockpiles or wrecked automobiles, excluding a lumber yard, shall be maintained on the premises without adequate fencing or screening from public view and protected from disturbance, all of which shall be approved by the Declarant. All rubbish, trash, garbage and all other waste materials shall be stored in containers of metal, plastic or other material which has a sufficiently tight fitting lid to prevent the escape of odors or the attraction of flies or other vermin.

Section 7. Flammable, Caustic or Toxic Liquids. All

flammable, caustic and toxic liquids in excess of fifty-five (55) gallons shall be maintained in underground storage approved in advance by the Declarant, and no discharge of any flammable, caustic or toxic materials shall be allowed which infiltrates groundwater or surface water in the area.

Section 8. Industrial Waste. All industrial waste shall subject to such pretreatment as may be required by the Missoula City Engineers, and Missoula Health Department.

Section 9. Fire and Casualty Damage. Any structure damaged by fire or other casualty must be removed from the premises or repairs commenced within thirty (30) days unless an extension of time for such removal or repair is granted by the Declarant. Any damaged structure not so removed or repaired may be removed and stored at the owner's expense or Declarant may pursue any and all legal or equitable remedies to enforce compliance therewith and shall be entitled to recover from the owner all costs incurred in connection therewith, including court costs and reasonable attorney's fees.

Section 10. Easement Reservation. Declarant shall have and hereby does reserve the right to locate, install, erect, construct, maintain, use or authorize the location, installation, erection, construction, maintenance and use of drains, sewers, electrical lines, telephone lines, rail spur track lines and other utilities and to give or grant a right-of-way or easement not more than twenty (20) feet in width thereof over any part of a lot within the premises; provided that such location, installation, erection, construction, maintenance and use is harmonious with the development of the premises. In addition, the premises are subject to the easements and rights-of-way for roads and rail lines that show on or are described on any recorded plat of the premises.

Section 11. Nuisance. No unreasonable noise or noise excess of accepted governmental standards, disturbances or the Peace or other noxious or offensive activity shall be permitted, conducted or carried out upon any lot within the subdivision.

Section 12. Insurance Rates. The owner shall not permit or suffer any activity or failure to act upon their respective units which will increase the rate of insurance upon surrounding lots or which will obstruct or interface with the rights of other owners.

Section 13. Underground Utilities. All exterior wiring or other utilities upon said premises that may lead to or from any structure thereon shall be buried underground.

Section 14. Parking. All present and future vehicle parking including trucks, trailers, employee and visitor parking, shall be provided on the premises and shall comply with all provisions of the applicable Missoula City Zoning Regulations. All parking areas are to be paved to provide dustfree all-weather surfaces with asphalt, concrete or any approved material other than gravel.

Section 15. Effect and Duration of Covenants. The covenants, conditions and restrictions of this declaration shall run with the land and shall be binding upon each lot within the premises and each owner of the property therein, his or its heirs, successors, representatives and assigns, shall continue in full force and effect for a term of ten (10) years from the date this declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years unless otherwise terminated or modified.

Section 16. Sidewalks. Within one hundred and twenty (120) days of the construction or placement of a structure on any lot, the lot owner shall install a four and one-half foot (4-1/2')

wide sidewalk adjacent to the curb for the full frontage of the lot. Plans for sidewalk placement shall be approved by the appropriate governing body official prior to placement.

Section 17. Amendment. The Conditions, restrictions, stipulations, agreements and covenants contained herein shall not be waived, altered, abandoned, terminated or amended in whole or in part except by written consent duly recorded in the office of the Clerk and Recorder of Missoula County, Montana, of the owners of two-thirds of the property located within Gateway

Place. For the purpose of this Section and Section 15 of this Article, votes shall be cast by the owner in proportion to the quantity of land owned within the subdivision by the owners thereof. The Declarant reserves the right to grant variances to any of the provisions of this declaration where in its discretion it believes the same to be necessary and where the same will not be injurious to the rest of the premises, except that no variance affecting roads, sidewalks, landscaping, lot size or other such variance will be granted by the Declarant without prior written approval by the appropriate City offices.

Section 18. Nonconforming Uses. All lawful uses of land existing on the effective date of filing of these general restrictions and covenants, made no longer permissible by these general restrictions of the Missoula City Zoning Ordinances.

#### ARTICLE VII

##### ANIMALS AND LIVESTOCK

Section 1. No chickens, swine, poultry, goats, horses, livestock or similar animals or fowl shall be raised, kept or cared for on any lot, except under the immediate care of a veterinarian.

#### ARTICLE VIII

##### ENFORCEMENT

Section 1. Conditions, restrictions and covenants herein contained shall bind and inure to the benefit of and be enforceable by the Declarant, its successors, personal representatives and assigns, or by the owner or owners of any lot or lots in said premises. Any owner of any lot may institute and prosecute any proceeding at law or in equity against any person, firm or corporation violating or threatening to violate any of the conditions, restrictions or covenants herein contained. Any such action may be maintained for the purpose of preventing a violation of or to recover damages for the violation or for both such purposes. The failure of Declarant, its successors or assigns, or of any owner of any lot to enforce any of the conditions, restrictions or covenants herein contained shall in no way be deemed a waiver of the right to enforce such conditions, restrictions or covenants hereafter. Any owner or the association bringing an action under this article shall be entitled to recover the costs of enforcement, including reasonable attorney's fees and court costs. Nothing contained herein shall be construed as preventing the application of any remedy given by law against nuisance, public or private. The remedy herein provided shall be in addition to any other remedy now or hereafter provided by law.

ARTICLE IX

SEVERABILITY

Section 1. Any invalidation of any condition, restriction or covenant herein contained by judgement or order of any court of competent jurisdiction shall in no way affect the validity of the remaining conditions, restrictions or covenants; and said remaining conditions, restrictions, and covenants shall continue and remain in full force and effect. Any condition, restriction or covenant as invalidated shall be deemed separable from remaining conditions, restrictions and covenants herein set forth.

ARTICLE X

LIABILITY OF DECLARANT

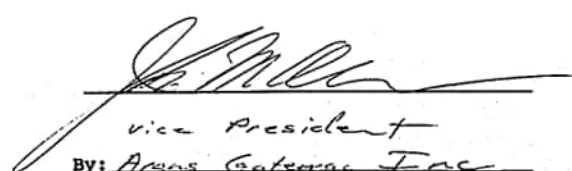
Section 1. The Declarant shall have no liability for any of its actions or failures to act or for any of the actions or failures to act of any owners or property within the premises. The relationship between the Declarant and the property owners shall be deemed to be that of independent contractors and not that of principal and agent, partnership or joint venture. In addition, the Declarant shall have no liability or obligation under this declaration to any person or entity except such liabilities and obligations as the Declarant has expressed assumed herein.

ARTICLE XI

BINDING EFFECT

Section 1. All purchases of property subject to these Declarations of Protective Covenants and Restrictions by acceptance of contracts for deeds for any of the property to which these covenants and amendments thereto may apply, or any portion thereof, shall thereby be conclusively deemed to have consented and agreed to all restrictions, conditions, covenants and agreements set forth herein; and any person who shall succeed in any manner to any interest therein by inheritance, decree, conveyance, lease, rental arrangement or by operation of law shall be bound thereby.

IN WITNESS THEREOF, this document has been executed the day and year first above written.

  
vice President  
By: Agnes Gateway, Inc  
General Partner  
A+C Ventures II a Washington  
Limited Partnership.

ATTEST

By: Agnes Gateway, Inc

State of Montana )  
County of Missoula ) ss.



On this 8 day of March in the year 1987,  
before me, Karen Mason, a Notary Public for  
the State of Montana, personally appeared  
Kathryn D. Hubbell, known to be to be the Vice President +  
Secretary of the corporation that executed the within  
instrument and acknowledged to me that such corporation executed  
the same.

Karen Mason  
Notary Public for the State of Montana  
Residing at Alberton  
My Commission Expires: Jan 27 1992

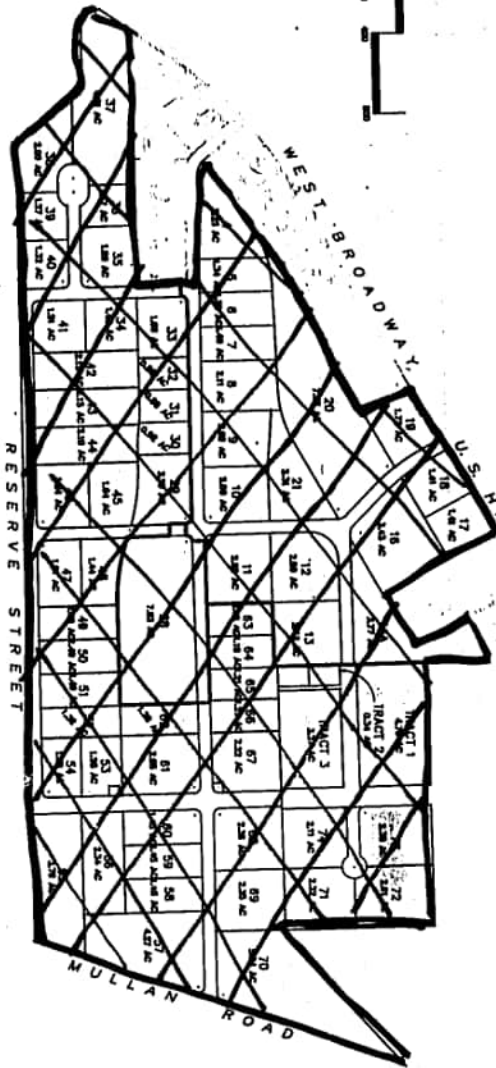
BOOK 290 PAGE 2206

# GATEWAY PLACE

Family Reserve Street Improvement Center - 10 & 93  
Phase I, II & III

'89 MAR 8 PM 2 50

Exhibit "A"



8903336

STRECKER & COMPANY  
PLATTERS & SURVEYORS  
1011 WESTERN AVE  
SEATTLE, WA 98104

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 8 DAY OF Mar 1989 AT 4:30 O'CLOCK P. AND IT IS RECORDED  
 IN VOL. 290 OF MCRO RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 2197 FEE 50.00 PAID 2/27/89  
 RETURN TO Argus WITNESS MY HAND, FERN HART, COUNTY RECORDER DM  
 ADDRESS 1011 Western Ave BY Karen Moran DEPUTY DOC.  
Suite 807  
Seattle, WA 98104



RESTATED DECLARATIONS OF PROTECTIVE CONDITIONS,  
COVENANTS AND RESTRICTIONS  
FOR  
GATEWAY PLACE  
MISSOULA, MONTANA

THIS RESTATED DECLARATION ("Declaration"), is dated the 7 day of August, 1991, by A & C VENTURES II (the "Declarant") to restate and replace the Declaration dated May 16, 1989, and recorded under Book 293, Pages 1809-1816, the Declaration dated March 8, 1989, and recorded under Book 290, Pages 2197-2206, and the Declaration dated November 14, 1984, and recorded under Book 216, Pages 0594-0617.

WITNESSETH  
Declarant at the time of the original Declaration was the owner of all the Property, at the time of this restated Declaration owns in excess of two-thirds of the Property, embraced within the boundaries of the Property known as Gateway Place, the plat of which is attached hereto as Exhibit A and by this reference incorporated herein, located in Missoula County, Montana.

Declarant proposes to sell or lease all or a portion of the Property in said Gateway Place, and desires to subject said Property to the conditions, restrictions and covenants hereinafter set forth.

Declarant restates the Declarations to make creation of an owners' association optional in the future, to eliminate general assessments against the Lots and to confirm the enforcement of the development guidelines and landscape maintenance requirements by each Owner.

NOW, THEREFORE, Declarant hereby makes declares and imposes the following conditions, restrictions and covenants running with the land and binding upon all present and future Owners of any part of such real property, and further declares that each Lot within the Property is and shall be held, transferred, sold, conveyed and occupied subject to the protective conditions, restrictions, covenants, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

As used herein, the following words and terms shall have the following meaning, unless in context specifically provided otherwise:

1. "Declarant": A & C Ventures II or any successor owner or assignee from A & C Ventures II who acquires all of the unsold portions of the Property for development or resale and not for end use.
2. "Building": Any improvement built for the occupancy of persons or property or for any business or use of any kind.
3. "Lot": The parcels of land into which the Property was divided as shown on any recorded plat of the Property.
4. "Owner": The record owner (including without limitation the Declarant), whether one or more persons or entities of the fee simple title to any Lot or other portion of the Property, except that:
  - (a) Where any Lot has been sold by Declarant under an agreement for deed, the buyer thereunder (provided that he is not in default under said agreement), and not the Declarant, shall be deemed to be the Owner, and
  - (b) The term "Owner" shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure of any proceeding in lieu of foreclosure.
5. "Property": That certain real property described in Article II.
6. "Structure": Any improvement erected or placed upon any portion of the Property, including but not limited to part of and additions to Buildings, walls, fences and other enclosures, antennas, walks and driveways.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold and occupied pursuant to this Declaration is located in the City of Missoula, Missoula County, Montana, and more particularly described on Exhibit A attached hereto and known as Gateway Place, including all subsequent phases or replattings of said Property.

Section 2. Recording. This restated Declaration is recorded on the 7 day of August, 1991, applies to all of the Property and restates and supersedes the Declaration recorded in Book 293, Pages 1809-1816. Effective upon the recording of this restated Declaration, the provisions of the original

Declaration shall no longer be applicable to the Property. For purposes of identification, all Lots on the Property have been or will be given identifying numbers and delineated by such numbers on the official plats. The legends and notes contained upon such official plats are incorporated herein by this reference.

#### ARTICLE III

##### FUTURE CREATION OF ASSOCIATION

Upon the affirmative vote of Owners representing at least two-thirds of the Property (based upon square footage), the Owners may incorporate under the laws of the State of Montana a non-profit corporation for any lawful purpose relating to the Property, including without limitation enforcement of this Declaration or re-establishment of an architectural control committee (after Declarant has sold all of the Lots to end users). However, no assessments shall be levied or charged against any Lot unless each Lot to be assessed has consented to an assessment system as part of formation of the non-profit corporation or on a case-by-case basis.

#### ARTICLE IV

##### ARCHITECTURAL CONTROL

Section 1. Development Guidelines and Required Approvals. No Structure, Building, excavation or construction of any kind and no fence, wall, garage, outbuilding, driveway or any kind or any addition, alteration or remodeling thereof shall be made, erected, constructed, altered, placed or permitted to remain upon any of the Lots until the plans and specification showing the nature, kind, shape, height, materials, and location of the same have been submitted to Declarant, through the Architectural and Development Control Committee appointed by Declarant, and approved in writing by Declarant as to exterior design, size, height, type of construction, location and relation to surrounding structures and topography, including grading, drainage and ground cover. If Declarant fails to approve or disapprove within thirty (30) days after receipt of complete and detailed plans and specifications, approval shall not be required and this Article will be deemed to have been fully complied with. Development Guidelines for Gateway Place have been prepared by Declarant, and may be amended or waived by Declarant from time to time, to inform individual owners of the established standards which will be applied in approving or disapproving all proposed improvements under this Article IV.

Section 2. City Compliance. Declarant and all Owners shall observe rules of the City of Missoula in regard to placement of any Structure or other improvement on any Lot.

## ARTICLE V

GENERAL RESTRICTIONS AND COVENANTS

Section 1. General Purposes. This Declaration is made for the purpose of creating and keeping the Property desirable, attractive, beneficial and suitable in architectural design, materials and appearance, and for the mutual benefit and protection of the Owners of the Lots.

Section 2. Uses and Zoning. All Lots within the Property shall be used in conformity with the zoning restrictions of the City of Missoula, Missoula County, Montana.

Section 3. Construction. All construction on or within the Property shall be diligently prosecuted to completion and shall in any event be completed within six (6) months of commencement unless specific extension is given by Declarant. No construction materials shall at any time be placed or stored so as to impede, obstruct or interfere with pedestrian or vehicular traffic. Natural drainage must not be blocked or filled.

Section 4. Landscaping. Within one hundred twenty (120) days of the construction or placement of a Structure upon any Lot, all portions of such Lot not covered by improvements shall be landscaped or maintained in accordance with the Development Guidelines and the approvals by Declarant under Article IV. The Owner of each Lot shall maintain, replace dead or dying, irrigate, and cultivate all trees, hedges, shrubs, flowers, grass or other ground cover on its respective Lot so that the same are healthy, not unsightly nor a detriment to adjacent Lots. All landscaping must be designed to preserve and protect the area to prevent erosion.

Section 5. Unused Land. All unused land area that is planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, stored material, rubbish and debris.

Section 6. Trash, Garbage, Stockpiles, Etc. No trash, garbage or other refuse or inventory or stockpiles or wrecked automobiles, excluding a lumber yard, shall be maintained on any Lot without adequate fencing or screening from public view and protected from disturbance, all of which shall be approved by the Declarant. All rubbish, trash, garbage and all other waste materials shall be stored in containers of metal, plastic or other material which has a sufficiently tight fitting lid to

prevent the escape of odors or the attraction of flies or other vermin.

Section 7. Flammable, Caustic or Toxic Liquids. All flammable, caustic and toxic liquids in excess of fifty-five (55) gallons shall be maintained in underground storage approved in advance by the Declarant, and no discharge of any flammable, caustic or toxic materials shall be allowed which infiltrates groundwater or surface water in the area. Each Owner shall comply with all governmental regulations applicable to flammable, caustic and toxic materials.

Section 8. Industrial Waste. All industrial waste shall be subject to such pretreatment as may be required by the Missoula City Engineers, and Missoula Health Department or other agency.

Section 9. Fire and Casualty Damage. Any Structure damaged by fire or other casualty must be removed from the Property or repairs commenced within thirty (30) days unless an extension of time for such removal or repair is granted by the Declarant. Any damaged Structure not so removed or repaired may be removed and stored at the Owner's Expense.

Section 10. Easement Reservation. Declarant shall have and hereby does reserve the right to locate, install, erect, construct, maintain, use or authorize the location, installation, erection, construction, maintenance and use of drains, sewers, electrical lines, telephone lines, rail spur track lines and other utilities and to give or grant a right-of-way or easement no more than twenty (20) feet in width over, on or under along the perimeter of any Lot; provided, however, any disturbed portion of the Lot as a result of exercise of the easement shall be restored as nearly as practical to its condition prior to exercise of the easement rights under this Section 10, at no cost to the Lot Owner. In addition, the Property is subject to the easements and rights-of-way for roads and rail lines that show on or are described on any recorded plat of the Property.

Section 11. Nuisance. No unreasonable noise or noise in excess of governmental standards, disturbances of the peace or other noxious or offensive activity shall be permitted, conducted or carried out upon any Lot.

Section 12. Insurance Rates. No Owner shall permit nor suffer any activity or failure to act upon their respective Lots which will increase the rate of insurance upon surrounding Lots or which will obstruct or interfere with the rights of other Owners.

Section 13. Underground Utilities. All exterior wiring or other utilities upon said Property that may lead to or from any Structure thereto shall be buried underground.

Section 14. Parking. All present and future vehicle parking including trucks, trailers, employee and visitor parking shall be provided on the Property and shall comply with all provisions of the applicable Missoula City Zoning Regulations. All parking areas are to be paved to provide dust free all-weather surfaces with asphalt, concrete or other material approved by Declarant other than gravel.

Section 15. Effect and Duration of Covenants. The covenants, conditions and restrictions of this Declaration shall run with the land and shall be binding upon each Lot within the Property and each Owner therein, his or its heirs, successors, representatives and assigns, shall continue in full force and effect for a term of ten (10) years from the date this restated Declaration is recorded, after which this Declaration shall be automatically extended for successive periods of ten (10) years unless otherwise terminated or modified under Section 16 below.

Section 16. Amendment or Termination. The conditions, restrictions and covenants contained in this Declaration shall not be waived, altered, abandoned, terminated or amended in whole or in part except by written consent duly recorded in the office of the Clerk and Recorder of Missoula County, Montana, of the Owners representing at least two-thirds of the Property (based on square footage). The Declarant reserves the right to grant variances to any of the provisions of this Declaration where in its discretion it believes the same to be necessary and believes the same will not be injurious to the rest of the Property, except that no variance affecting roads, sidewalks, landscaping, Lot size or other such variance will be granted by the Declarant without prior written approval, where required by Code, by the appropriate City officials.

#### ARTICLE VI

##### ANIMALS AND LIVESTOCK

No chickens, swine, poultry, goats, horses, livestock or similar animals or fowl shall be raised, kept or cared for on any Lot, except under the immediate care of a veterinarian.

#### ARTICLE VII

##### ENFORCEMENT

Section 1. By Owners. All conditions, restrictions and covenants contained in this Declaration shall bind and inure to

the benefit of and be enforceable by the Declarant, its successors, personal representatives and assigns, and/or by the Owner or Owners of any Lot(s) within the Property. Any Owner of any Lot may institute and prosecute any proceeding at law or in equity against any person, firm or corporation violating or threatening to violate any of the conditions, covenants, or restrictions herein contained. Any such action may be maintained for the purpose of preventing a violation of or to recover damages or obtain specific performance for the violation or for both such purposes. The failure of Declarant, its successors or assigns, or of any Owner of any Lot to enforce any of the conditions, restrictions or covenants herein contained shall in no way be deemed a waiver of the right to enforce such conditions, restrictions or covenants thereafter against any party. Nothing contained herein shall be construed as preventing the application of any remedy given by law against public or private nuisance. The remedies herein provided shall be in addition to any other remedy now or hereafter provided by law.

Section 2. Entry for Maintenance. If any Owner fails to maintain, replace, irrigate and/or cultivate landscaping on its respective Lot as required by Section 4 of Article V, then Declarant and/or any other Owner(s), after delivery of a 14-day written notice to the Owner which has failed to maintain or replace its landscaping, may enter that Owner's Lot and undertake such maintenance, replacement, irrigation and/or cultivation as necessary to restore and maintain the Property in accordance with Section 4 of Article V. The Declarant or other Owner undertaking such maintenance and replacement shall be entitled to full reimbursement for all costs and fees incurred in undertaking said maintenance and replacement, in addition to any remedy or recovery otherwise provided under this Article VII. The cost of such maintenance and replacement shall, together with interest thereon at 18% per annum or the maximum allowed by law, whichever is less, shall from and after completion of the work be a continuing lien on the Lot which shall run with the land. The Declarant and/or any Owner may bring an action to foreclose the lien against the Lot, in addition to any other remedy provided in this Article VII. The Owner which failed to maintain or replace shall remain liable after any conveyance of its Lot.

Section 3. Fees. The Declarant or any Owner prevailing in an enforcement proceeding under Sections 1 and/or 2 of this Article VII shall be entitled to recover all costs and fees of enforcement, including all reasonable attorneys' fees and court costs.

ARTICLE VIII

SEVERABILITY

Any invalidation of any condition, restriction or covenant herein contained by judgment or order of any court of competent jurisdiction shall in no way affect the validity of the remaining conditions, restrictions or covenants; and said remaining conditions, restrictions, and covenants shall continue and remain in full force and effect. Any condition, restriction or covenant as invalidated shall be deemed separable from remaining conditions, restrictions and covenants herein set forth.

ARTICLE IX

LIABILITY OF DECLARANT

Other than Declarant's obligations under this Declaration as an Owner, which shall be binding on Declarant, Declarant shall have no liability to any Owner or other person, except for Declarant's gross negligence or willful misconduct, for any damages or other relief for its actions or failures to act or for any of the actions or failures to act of any Owner(s) or with regard to any Property covered by this Declaration, including without limitation the issuance or not of building permits or any delays associated with Declarant's authority under Article IV (Architectural Control), Article V (General Restrictions and Covenants), and Article VII (Enforcement). The relationship between the Declarant and the Owners shall be deemed to be that of independent contractors and not that of principal and agent, partnership or joint venture. In addition, the Declarant shall have no liability or obligation under this Declaration to any person or entity except such liabilities and obligations as the Declarant has expressly assumed herein.

ARTICLE X

BINDING EFFECT

By execution of any contract to purchase or acceptance of any deed for any portion of the Property covered by this Declaration, and each successor, heir or assign thereof, as an Owner shall be conclusively deemed to have consented and agreed to all conditions, covenants and restrictions and agreements set forth herein. Any person who shall succeed in any manner to any interest therein by inheritance, decree, conveyance, lease, rental arrangement or by operation of law shall be bound fully by this Declaration.



IN WITNESS WHEREOF, this document has been executed the day and year first above written.

DECLARANT:

A & C VENTURES II, a Washington limited partnership

By ARGUS GATEWAY, INC., a Washington corporation, as its general partner

By [Signature]  
Vice President

Exhibit A - Description and Map of Property

ATTEST:

By \_\_\_\_\_

STATE OF MONTANA )  
COUNTY OF MISSOULA ) ss.

On this 7<sup>th</sup> day of August, 1991, before me, Joan Chausse, a Notary Public for the State of Montana, personally appeared John M. Allen, known to me to be the Vice President of the corporation that executed the within instrument and acknowledge to me that such corporation executed the same as the general partner of the limited partnership executing this document.

Joan Chausse  
NOTARY PUBLIC for the State of Montana, residing at Missoula  
My commission expires 7-22-92



EXHIBIT A

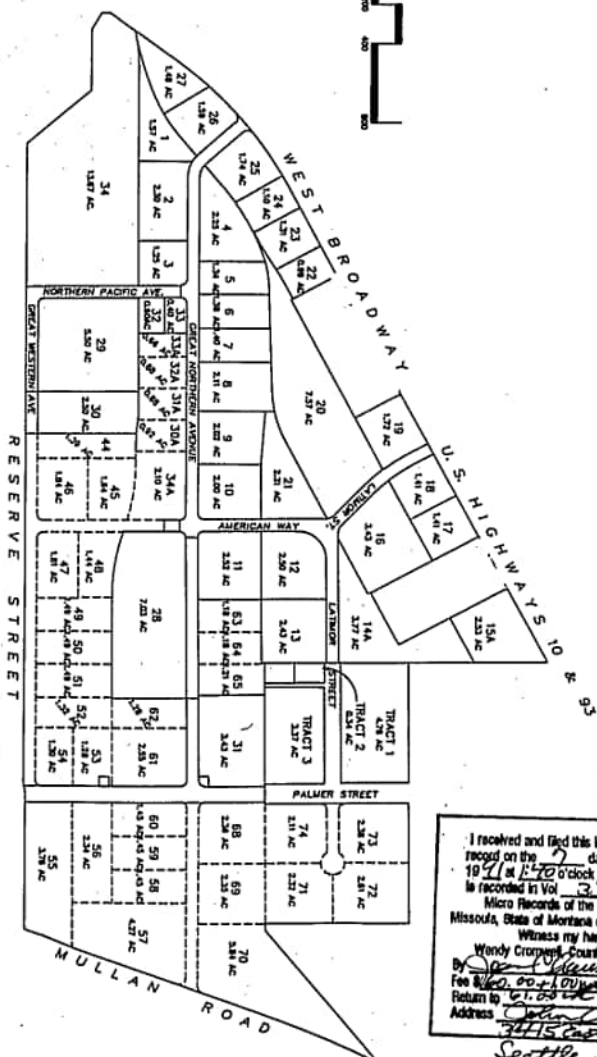
BOOK 334 PAGE 2062

GATEWAY PLACE

9:01 AUG 7 PM 1 90

9113572

I received and filed this instrument for record on the 7 day of Aug 1990 at 4:20 o'clock PM and it is recorded in Vol. 334 of Micro Records of the County of Missoula, State of Montana on page 2062.  
 Witness my hand, Date: DM  
 Wendy Cronquist, County Recorder  
 By: [Signature] Deputy  
 Fee \$6.00 00.10 Paid  
 Return to [Signature]  
 Address 3415 East St. Andrews  
Seattle, WA 98112



SHERRILLSON & COMPANY  
PLAT 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.