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(a)

BOOK 547 PAGE 0982

**RESTRICTIVE COVENANT FOR THE BENEFIT OF
LOT 5A OF GRANT CREEK TOWN CENTER**

This agreement is entered into as of July 7, 1998, between LV Investors, a California limited partnership whose address is c/o Colliers StepStone, 610 West Ash Street, Suite 1400, San Diego, California 92101 (referred to in this agreement as the "Owner"), and Rocky Mountain Oil, Inc., a Montana corporation whose address is 4567 West 80th Street, Minneapolis, Minnesota 55437 (referred to in this agreement as "Rocky Mountain").

WHEREAS, the Owner owns the following real property (referred to in this agreement as the "Restricted Property"):

Lots 1, 3 and 4 of Grant Creek Town Center, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

Lot 2A of Grant Creek Town Center, Lots 2 and 5, amending Lots 2 and 5 of Grant Creek Town Center, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

Tract 2 of Certificate of Survey No. 4681 in the SE $\frac{1}{4}$ of Section 7, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana.

WHEREAS, the Owner has sold Rocky Mountain the following real property (referred to in this agreement as the "Benefited Property"):

Lot 5A of Grant Creek Town Center, Lots 2 and 5, amending Lots 2 and 5 of Grant Creek Town Center, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

NOW, THEREFORE, in consideration of the purchase of the Benefited Property by Rocky Mountain and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Owner, the Owner agrees as follows:

Section 1. Restrictive covenant. The Owner covenants and agrees with Rocky Mountain that the Restricted Property shall not be used in any manner whatsoever for any of the following purposes:

- (i) No "Cigarette Store" shall be located on the Restricted Property. For purposes of this agreement, the term "Cigarette Store" will mean a facility primarily selling cigarettes and/or other tobacco products.
- (ii) No retail sales of gasoline, diesel, or other motor fuel shall be made from the Restricted Property.

RESTRICTIVE COVENANT FOR THE BENEFIT OF LOT 5A, PAGE 1

SUB-STANDARD QUALITY WHEN FILMED

(iii) No "Convenience Store" shall be located on the Restricted Property. For purposes of this restriction, the term "Convenience Store" will mean a facility selling a limited selection of groceries, sundries, and similar products and services which operates in a building space of less than 15,000 square feet, whether or not the facility sells gasoline, diesel fuel, or other motor fuel.

Section 2. Running of benefits and burdens. The burden of this covenant and restriction will run with the title to the Restricted Property, and any subdivision of the Restricted Property, and will be binding on all present and future owners of the Restricted Property, and any subdivision of the Restricted Property. The benefits of this covenant and restriction are appurtenant to and will run with the title to the Benefited Property, and will inure to the benefit of Rocky Mountain and its successors and assigns, for as long as they own the Benefited Property.

Section 3. Remedies. It is understood that if the Owner breaches this agreement, Rocky Mountain would suffer irreparable harm for which a recovery of money damages would be an inadequate remedy. The parties therefore agree that Rocky Mountain will be entitled, as a matter of right, in any court of competent jurisdiction, to a mandatory injunction restraining and enjoining the Owner from violating or attempting to violate this agreement, both pending litigation and upon a final judgment in favor of Rocky Mountain.

Section 4. Notices. A notice to be given by a party to this agreement will be personally delivered, be sent by registered or certified mail, or be sent by a nationally recognized overnight courier which issues a receipt, in each case postage or shipping prepaid, to the other party or parties at (a) the addresses set forth in this section, or (b) a substitute address designated in a notice given pursuant to this section, or (c) if the Benefited Property and/or the Restricted Property has been sold and the new owner has not designated a new address to which notices are to be sent, to the address to which real estate tax bills are being sent. The initial addresses to which notices are to be sent are as follows:

If to the Owner:

LV Investors
Attention: David W. Hutchinson
c/o Colliers StepStone
610 West Ash Street, Suite 1400
San Diego, California 92101
Fax: (619) 231-8389

If to Rocky Mountain:

Rocky Mountain Oil, Inc.
Attention: real estate department
4567 West 80th Street
Minneapolis, Minnesota 55437
Fax: (612) 830-1674

RESTRICTIVE COVENANT FOR THE BENEFIT OF LOT 5A, PAGE 2

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**DECLARATION OF
CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS
AND GRANT OF EASEMENTS**
Phase I of Grant Creek Town Center, Missoula, Montana

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SIGNATURE OF GRANT CREEK PARTNERS

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**DECLARATION OF
CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS
AND GRANT OF EASEMENTS
Phase I of Grant Creek Town Center, Missoula, Montana**

THIS DECLARATION OF CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS AND GRANT OF EASEMENTS (the "Declaration") is made on _____, 1998, by LV Investors, a California limited partnership whose address is c/a Colliers StepStone, 610 West Ash Street, Suite 1400, San Diego, California 92101 (referred to in this Declaration as "Developer").

RECITALS

A. All capitalized terms are defined in these Recitals or Article I below and, except as otherwise noted, each definition applies where appropriate to the context, to the noun (singular and plural), adjective and verb forms of the defined term. References to "Articles" and "Exhibits" are to the corresponding parts of this Declaration.

B. Developer is the owner of the real property located in the City of Missoula ("City"), County of Missoula ("County"), State of Montana ("State"), described in Exhibit "A" which is attached to this Declaration (the "Property") and shown on the map which is attached to this Declaration as Exhibit B (the "Parcel Map").

C. Developer desires to develop and operate the Property as a retail shopping center (the "Shopping Center") and, therefore, wishes to establish certain easements, covenants and restrictions on the Property and/or portions of the Property.

D. In connection with the development of the Shopping Center or thereafter, Developer may further subdivide, sell, convey, lease or hypothecate all or portions of the Property.

NOW, THEREFORE, in recognition that for the optimum development and operation of the Shopping Center as an integrated project, it is necessary that Developer establish certain covenants running with the land respecting certain matters, including but not limited to matters relating to the construction and maintenance of facilities on, and the use and restrictions on the use of, the Property. Developer declares that all Persons who acquire or occupy portions of the Property and the Shopping Center shall take subject to this Declaration in order that all development on the Property and the operation of the Shopping Center will be in conformity with this Declaration. Notwithstanding a conflict between the terms of this Declaration and the provisions of a particular agreement such as a tenant lease or other occupancy agreement between a Parcel Owner and its Occupant, (i) as among the Parcel Owners and their respective successors and assigns, this Declaration shall control over such an agreement, and (ii) all Occupants shall be bound by the terms of Articles I, III, IV, V, VI and XI of this Declaration and the Rules and Regulations, if any, attached to this Declaration, except to the extent that the provisions contained in such Articles and Rules and Regulations indicate that the terms of an

Occupant's lease may control. In all other respects, the terms of an Occupant's lease shall control over any conflicting provision of this Declaration.

**ARTICLE I
DEFINITIONS**

1.01 Assessment Lien. "Assessment Lien" is a lien placed on a defaulting Parcel Owner's Parcel for sums owing to Developer under the provisions of this Declaration.

1.02 Benefited Parcel. "Benefited Parcel" is any Parcel benefited by an easement, covenant, condition or restriction made or suffered by a Parcel Owner by the terms of this Declaration. Any such benefit shall run with the land in favor of the Parcel Owner(s) of the Benefited Parcel(s), and shall be enforceable as an appurtenant easement, covenant running with the land, and/or as an equitable servitude.

1.03 Building Area. "Building Area" is any portion of the Shopping Center within "building limit lines," as shown on the Plot Plan. Building Area represents the only area within which Store buildings are permitted. The precise location of any Store within its Building Area is subject to Developer's prior approval. The proposed locations of Stores within their respective Building Areas are depicted on the Plot Plan; however, the precise configuration of the Stores is subject to change within the pertinent Building Area. Vertical improvements, other than pylon signs, monument signs and trash enclosures, may be located only in a Building Area. Building canopies and other architectural treatments, loading docks and ramps, staging, storage and Outside Sales Areas, and "drive-thru" areas may be located outside Building Areas if approved by Developer or if shown on the Plot Plan as lying outside the Building Area.

1.04 Burdened Parcel. "Burdened Parcel" is any Parcel subject to and burdened by an easement, covenant, condition or restriction made or suffered by a Parcel Owner by the terms of this Declaration. Any such burden shall run with the land and bind all Parcel Owner(s) of the Burdened Parcel(s) and shall be enforceable as an appurtenant easement, covenant running with the land and/or equitable servitude.

1.05 Common Area. "Common Area" is that portion of the Shopping Center intended for the nonexclusive use by all Parcel Owners, Occupants and Permittees, and shall include all areas of the Shopping Center, together with the Common Area Improvements constructed on the Property, other than (i) any area designated on the Plot Plan as Building Area and/or actually occupied by building improvements and (ii) any loading dock, ramp, storage or staging area or "drive-thru" area utilized by a single Occupant. Following the development of a Store within its Building Area, the portion of such Building Area not actually used for vertical improvements or for a loading dock, ramp, storage or staging area, or "drive-thru" area approved by Developer shall be improved as and shall be deemed a part of the Common Area. All non-Building Areas on a Parcel (excluding any loading dock, ramp, storage or staging area utilized by a single Occupant) shall be improved as, and shall be deemed to be, Common Area for purposes of this Declaration.

1.06 Common Area Maintenance Costs. "Common Area Maintenance Costs" are all expenditures, costs, premiums and expenses incurred by Developer during any given accounting period for maintenance, lighting and security, repair, or replacement of the Common Area, including, but not limited to, those items listed in Section 7.03.

1.07 Common Area Improvements. "Common Area Improvements" are the improvements depicted on the Plot Plan as within the Common Area and the common utility lines and systems to be constructed by Developer, all directional signs, Shopping Center identification signs including pylon or monument signs (excluding, however, any portion of such signage that relates to a particular Occupant), Parking Areas, curbs, sidewalks and any landscaped areas within the Common Area plus any other common facilities in and/or under the Shopping Center.

1.08 Default Rate. "Default Rate" is the lower of fifteen percent or a rate equal to six percent (6%) in excess of the base rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest Banks, as published by the Wall Street Journal.

1.09 Developer. "Developer" means the owner of Lot 1 of Grant Creek Town Center. During the initial development of the Shopping Center, the Developer will be LV Investors, a California limited partnership.

1.10 Developer Stores. "Developer Stores" are the multi-tenant buildings to be constructed by Developer on Lot 1 of Grant Creek Town Center.

1.11 Environmental Laws. "Environmental Laws" are all present and future federal, state or local laws, ordinances, rules, regulations, decisions and other requirements of governmental authorities relating to the environment or to any Hazardous Material, including the following federal laws, as they may have been amended from time to time: The Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, equivalent Montana statutes, and regulations adopted, published and/or promulgated pursuant to those laws.

1.12 Floor Area. "Floor Area" is the aggregate number of square feet of floor space, from time to time, of all floors in any structure, whether roofed or not, whether or not actually occupied, including basement areas, subterranean areas, mezzanines and upper-story floors (except as provided below) measured from the exterior faces or the exterior lines of the exterior walls (including basement walls) or, in those instances where a common wall exists, measured from the mid-point of any such common wall which an Occupant shares with another Occupant. The term "Floor Area" shall not include any of the following:

- (a) the upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes;

(b) areas, whether physically separated or whether otherwise required by building codes, which are used exclusively to house building operating equipment not belonging to an Occupant and not exclusively serving a specific Occupant's premises such as building mechanical, electrical, telephone, telecommunications, and HVAC equipment;

(c) all service areas, truck loading areas, truck parking, turn around and dock areas and ramps and any "drive-thru" areas;

(d) all Common Areas; and

(e) a Shopping Center management office.

Within thirty (30) days of opening its store for business each Parcel Owner's architect shall certify to Developer the amount of Floor Area applicable to each building on its Parcel. In addition, before the scheduled opening date of a Parcel Owners Store and within ninety (90) days after the actual date of opening of the Store, the Project Architect shall have the right to enter the Store for the purpose of measuring the Floor Area of the Store. A copy of the Floor Area calculation shall be provided to both Developer and Parcel Owner. If the Floor Area measurement obtained by the Parcel Owner is more than two percent (2%) less than the Project Architect's measurement, the Parcel Owner may elect to dispute the Project Architect's statement of Floor Area by providing Developer written notice of such deviation and providing Developer with a copy of the Parcel Owner's lower Floor Area measurement certified by the Parcel Owner's architect or engineer. If such a dispute arises, Developer and the Parcel Owner or their representatives shall meet and use their good faith efforts to agree on the proper measure of Floor Area for purposes of this Declaration. If such an agreement is not reached within thirty (30) days of the Parcel Owner's election to dispute the Project Architect's measurements, this matter shall be subject to arbitration by a neutral architect or engineer selected by the Developer and the Parcel Owner; provided, however, that if either party refuses to reasonably cooperate with the selection of an arbitrator, or the commencement and the completion of the arbitration, the Floor Area measurement of the other party shall govern for purposes of this Declaration. All Floor Area measurements shall be made in conformity with the foregoing definition of Floor Area. If any Parcel Owner causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Parcel Owner shall furnish a copy of the survey to the other then-existing Parcel Owners for informational purposes only.

During any period of rebuilding, repairing, replacement, or reconstruction of a building, the Floor Area of that building shall be deemed to be the same as existed immediately prior to that period. Upon completion of the rebuilding, repairing, replacement, or reconstruction, the Parcel Owner upon whose Parcel the building is located shall cause a new determination of Floor Area for the building to be made in the manner described above, and the determination shall be provided to Developer.

1.13 Grantee. "Grantee" is any Parcel Owner (including Developer) of a Benefited Parcel in which Parcel's favor a Grantor has reserved or granted any easement, covenant,

condition, or restriction, whether by a separate grant or conveyance or by virtue of taking title subject to this Declaration.

1.14 Grantor. "Grantor" is any Parcel Owner (including Developer) of a Burdened Parcel that is subject to any easement, covenant, condition, or restriction reserved or granted, whether by a separate grant or conveyance or by virtue of taking title subject to this Declaration.

1.15 Hazardous Material. "Hazardous Material" shall mean materials and substances defined as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," including asbestos, polychlorinated biphenyls, petroleum (or petroleum fuel products), hydrocarbonic substances, and constituents of any of the foregoing, or other similar designations under any Environmental Laws or any regulations promulgated thereunder; and further, any substance or material which because of toxicity, corrosivity, reactivity, ignitability, carcinogenicity, magnification or concentration within biologic chains presents a demonstrated threat to biologic processes when discharged into the environment

1.16 Lot. See Section 1.20 below.

1.17 Mortgage and Mortgagee: The term "Mortgage" means (a) any mortgage, trust indenture, deed of trust, or contract for deed on the interest, whether fee or leasehold, of a Parcel Owner in a Parcel and, to the extent applicable, a "sale and leaseback" or "assignment and subleaseback" transaction entered into for financing purposes. "Mortgagee" shall mean a mortgagee under a mortgage, the trustee and the beneficiary under a trust indenture or deed of trust, or the seller under a contract for deed, and to the extent applicable, a fee owner or lessor or sublessor of any Parcel which is the subject of a lease under which any Parcel Owner becomes a lessee in a so-called "sale and leaseback" or "assignment and subleaseback" transaction entered into for financing purposes.

1.18 Occupant. "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a building in the Shopping Center under an ownership right or any lease, sublease, license, concession or other similar agreement.

1.19 Outside Sales Area. Any area used by an Occupant for temporary or permanent sales, display, customer service or seating and/or storage purposes, including but not limited to patio areas, which areas are located outside of the structure of that Occupant's building. As set forth in Section 6.03, Outside Sales Areas are subject to Developer's approval.

1.20 Parcel. The terms "Parcel" and "Lot" are used interchangeably in this Declaration. A "Parcel" or "Lot" is any of the lots or tracts which comprise the Property until such time as one or more of such lots or tracts are re-subdivided into a different configuration of legal lots, or a new legal lot is added to the Property, or one or more of the

existing lots or tracts are modified. Effective upon any such change or addition, "Lot(s)" or "Parcel(s)" shall mean the legal lots comprising the Property.

1.21 Parcel Map. "Parcel Map" is the map of the Property which is attached to this Declaration as Exhibit B.

1.22 Parcel Owner. "Parcel Owner" is the Person who owns the fee interest in a Parcel, unless the Parcel is subject to a contract or contracts for deed, in which case the "Parcel Owner" is the buyer under the most recent contract for deed. The identity of the Parcel Owner will be determined from the Official Records of the County Recorder, as of the date of the exercise of powers or rights or the performance by such Parcel Owner of obligations created by this Declaration. Such reference shall include any Person designated in writing by the Parcel Owner to act in the manner and at the time provided herein with complete authority and in the place of such Parcel Owner in the matter for which action is taken, powers exercised, or performance required, provided such written authority shall be recorded in the Official Records of the County Recorder, and provided further that:

(i) If the whole of the interest of any Parcel Owner in and to the Parcel in which such Parcel Owner has an interest is assigned, transferred, or conveyed, provided such Parcel Owner does not retain any beneficial interest other than under the terms of a contract for deed, trust indenture, deed of trust, or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate or other possessory interest, then the powers conferred upon such Parcel Owner shall be deemed assigned, transferred or conveyed and the obligations assumed with its interest;

(ii) If the whole of the interest of a Parcel Owner in and to the Parcel in which it has a present interest is assigned, transferred or conveyed, but a new interest is created in such Parcel Owner simultaneously with the assignment, transfer or conveyance of such interest by way of leasehold or similar possessory arrangement, or in the event such Parcel Owner shall convey its interest in said Parcel or any part thereof by mortgage, trust indenture, deed of trust, or other security instrument as security for indebtedness, then none of the powers or obligations conferred upon such Parcel Owner shall be assigned, transferred, conveyed or released, but all of the powers and obligations referred to in this Declaration shall remain in such Parcel Owner so long as it retains any possessory interest in and to said Parcel other than as a beneficiary under the terms of a deed of trust or mortgage. In the event the interest of such Parcel Owners referred to in this subparagraph (ii) shall cease and terminate, then upon such termination the powers and/or obligations of such Parcel Owner shall otherwise vest in accordance with the other provisions of this section; and

(iii) If a Parcel Owner transfers its present interest in its Parcel or a portion of that interest in such a manner as to vest its interest in its Parcel in more than one Person, then not less than fifty-one percent (51%) in interest of the transferees shall designate one of their number to act on behalf of all of the transferees in the exercise of the powers granted to the Parcel Owner under this Declaration. So long as the designation remains in effect,

the designee shall be a Parcel Owner under this Declaration and shall have the power to bind such Parcel and such transferees, and such transferees shall not be deemed to be Parcel Owners. Any such designation must be in writing and served upon the other Parcel Owners hereto by registered or certified mail, and must be recorded in the Official Records of the County. In the absence of such written designation with respect to the exercise of the powers vested by this instrument, the acts of the Persons constituting Parcel Owner whose interest is so divided shall be binding upon all Persons having an interest in such Parcel until such time as written notice of such designation is given and recorded in the Official Records of the County.

1.23 Parking Areas. "Parking Areas" are all vehicular parking spaces, driveways, and loading areas, and includes the areas shown as "Parking Areas" on the Plot Plan plus any Building Area not used for Store improvements and designated as Parking Area by Developer.

1.24 Permittees. "Permittees" shall mean the Parcel Owners and all Occupants and their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees and concessionaires insofar as their activities relate to the intended use of the Shopping Center. Among others, Persons engaging in the following activities on the Common Area will not be considered to be Permittees, except to the extent such activity is protected under the United States Constitution or the State Constitution as a free speech activity:

- (i) Exhibiting any placard, sign or notice;
- (ii) Distributing any circular, handbill, placard, or booklet;
- (iii) Soliciting membership or contributions in or for any organization;
- (iv) Parading, picketing or demonstrating; or
- (v) Failing to follow regulations relating to the use of the Shopping Center

1.25 Person. "Person" or "Persons" is any individuals, partnerships, firms, associations, joint ventures, corporations, limited liability company, or any other form of entity.

1.26 Plot Plan. "Plot Plan" is the Plot Plan attached to this Declaration as Exhibit "C" and incorporated by this reference, as it may be amended from time to time by Developer.

1.27 Project Architect. "Project Architect" is the licensed architect designated from time to time by Developer to render advice and to make judgments respecting the design of the Shopping Center. Initially, the Project Architect is Fehlman-Labarre, 452 Eighth Ave. Suite A, San Diego, CA 92101.

1.28 Property. "Property" is the real property described in Exhibit A, and any real property which may subsequently be made subject to this Declaration by amendment of this Declaration. This term is sometimes used interchangeably with the term "Shopping Center."

1.29 Rules and Regulations. "Rules and Regulations" are those rules and regulations adopted by Developer, from time to time, pertaining to the operation and use of the Common Area by all Parcel Owners, Occupants, and Permittees.

1.30 Shopping Center. "Shopping Center" shall mean the retail or commercial development and related Common Area on the Property. This term is sometimes used interchangeably with the term "Property."

1.31 Store or Stores. "Store or Stores" is any building located in an area of the Shopping Center designated on the Plot Plan as Building Area.

ARTICLE II CONSTRUCTION OBLIGATIONS

2.01 Construction of Common Area Improvements. Prior to the grand opening of the Shopping Center and subject to Sections 2.08 and 5.01(d), Developer shall construct, or cause to be constructed, the Common Area Improvements substantially as shown on the Plot Plan.

2.02 Construction of Developer Stores. Prior to the grand opening of the Shopping Center, Developer shall construct, or cause to be constructed, the Developer Stores substantially as shown on the Plot Plan and the elevations attached to this Declaration as Exhibits "C" and "D".

2.03 Common Utilities. Developer shall construct, or cause to be constructed, all common utilities required by the Developer Stores, and at a minimum Developer shall construct, or cause to be constructed, common utilities required by other Stores up to and within fifteen feet (15'), but not within the boundaries, of each Building Area. Common utilities include, without limitation, the systems for storm drains, sanitary sewer, water (fire and domestic), natural gas, electricity, and telephone.

2.04 Construction of Other Stores. In order to maintain an architecturally compatible Shopping Center, the initial construction of all buildings in the Shopping Center (and any subsequent additions, alterations, exterior remodeling, or reconstruction of buildings in the Shopping Center) shall be performed only in accordance with approved plans for the work as provided in this Declaration. Prior to commencing such work, each constructing Parcel Owner shall submit to Developer detailed plans and specifications as to the exterior of the Store including exterior elevations, descriptions of colors and materials to be used, layouts and descriptions of exterior landscaping, exterior wall configurations, door and storefront configurations, canopies and overhangs, column locations, lighting fixtures, proposed roof plans, all surface drainage features, if any, and exterior sign dimensions, colors, treatments and locations. Developer shall either reasonably approve, disapprove, or make recommendations for change in such plans within thirty (30) days of receipt of the plans. After any disapproval or recommendation for change, the constructing Parcel Owner shall consult with Developer to establish approved plans for the exterior portion of the proposed work. If the Parcel Owner and Developer

disagree after consultation, Developer's decision shall be final. Approval of such plans by the Developer shall not constitute assumption of responsibility for the accuracy, sufficiency, or appropriateness of the plans, nor shall approval constitute a representation or warranty that the plans comply with applicable laws. No material deviation shall be made from the approved plans without the prior written approval of the Developer.

2.05 General Construction Requirements.

(a) **Building Area.** All Stores to be constructed by Parcel Owners may be located only within the Building Areas designated on the Plot Plan for those Stores and if a maximum floor area designation for any building is shown on the Plot Plan or imposed by Article 5 of this Declaration, the designation shall not be exceeded.

(b) **Commencement of construction and business.** Each Parcel Owner will commence substantial construction of a Store on that Parcel Owner's Parcel within six months after the date of acquisition of that Parcel, and will open the Store for business within one year after the date of acquisition of that Parcel. If a Parcel Owner fails to meet either of these deadlines, then the Developer may, at the Developer's option, exercise the following remedies:

(i) If the Parcel Owner fails to commence substantial construction of a Store on the Parcel Owner's Parcel within six months after the date of acquisition of that Parcel, then the Developer may charge the Parcel Owner an amount equal to .83 percent of the amount that the Parcel Owner paid for that Parcel for each month until the Parcel Owner commences substantial construction of a Store on the Parcel.

(ii) If the Parcel Owner fails to commence substantial construction of a Store on the Parcel Owner's Parcel within six months after the date of acquisition of that Parcel, then at any time before the Parcel Owner commences substantial construction of a Store, the Developer will have the right and option to purchase the Parcel from the Parcel Owner for the amount that the Parcel Owner paid for that Parcel. The Developer will give the Parcel Owner written notice that it has elected to exercise this right and option, and will have sixty days after delivery of the written notice to set up a closing and to tender the purchase price of the Parcel to the Parcel Owner. If the Parcel Owner has paid any amounts to the Developer pursuant to Subparagraph (i) above, then at closing, in addition to paying the Parcel Owner the amount that the Parcel Owner paid for the Parcel, the Developer must reimburse the Parcel Owner for any amounts paid to the Developer pursuant to Paragraph (i) above.

(iii) If the Parcel Owner commences substantial construction of a Store on the Parcel, but fails to open the Store for business within one year after the date of acquisition of the Parcel, then the Developer may charge the Parcel Owner an amount equal to .83 percent of the amount that the Parcel Owner paid for the Parcel for each month until the Parcel Owner opens the Store for business.

If a Parcel Owner fails to commence substantial construction of a Store on that Parcel Owner's Parcel within six months after the date of acquisition of that Parcel, then regardless of whether the Developer elects to exercise any of the remedies provided for in this paragraph, the Parcel Owner must improve the Parcel with either landscaping or parking area of the same standard and design as the Common Area, in order to preserve completed site work, make the undeveloped Parcel an attractive element of the Shopping Center, and meet the requirements of applicable city and county ordinances.

(c) Compliance With Laws. All construction activities performed by a Parcel Owner within the Shopping Center shall be performed in compliance with all laws, rules, regulations, orders and ordinances of the city, county, state, and federal governments, or any department or agency thereof, affecting improvements constructed within the Shopping Center.

(d) Interference. The construction activities of a Parcel Owner shall not:

(i) cause any unreasonable increase in the cost of constructing improvements upon another Parcel Owner's Parcel;

(ii) unreasonably interfere with construction work being performed on any other part of the Shopping Center;

(iii) unreasonably interfere with the use, occupancy, or enjoyment of any part of the remainder of the Shopping Center by any other Parcel Owner, its occupants, or its Permittees;

(iv) cause any other Parcel Owner to be in violation of any law, rule, regulation, order, or ordinance of the City, County, State or federal government, or any department or agency of those governments.

(e) General Construction Indemnity. Each Parcel Owner shall defend, indemnify and hold harmless each other Parcel Owner from all claims, actions and proceedings and costs incurred in connection therewith (including reasonable attorneys' fees and costs of suit) resulting from any accident, injury, loss, or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from the performance of any construction activities performed or authorized by such indemnifying Parcel Owner. Any damage occurring to any portion of the Shopping Center as a result of such construction work shall be the responsibility of the Parcel Owner performing such construction work or causing such construction work to be performed and shall be repaired by such Parcel Owner, at such Parcel Owner's sole cost and expense, to the same condition as existed immediately prior to such work promptly upon the completion of such construction work.

(f) Staging Storage and Access Points. Prior to constructing, reconstructing, remodeling, or enlarging a building on its Parcel, a Parcel Owner shall give Developer at least thirty (30) days prior notice of the proposed location of any temporary staging and

storage area. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur on the portions of the Parking Area which are on or adjacent to the constructing Parcel Owner's Parcel, and which will not unreasonably interfere with access between that Parcel, the other areas of the Shopping Center, and the public streets or roadways adjacent to the Shopping Center. All laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Parcel Owner's Parcel unless that Parcel has no access points to a public street, in which case such Persons shall only use the access points approved by Developer. If substantial work is to be performed, the constructing Parcel Owner shall fence off the temporary staging and storage area. Upon completion of the work, the constructing Parcel Owner shall restore the affected Common Area to a condition at least equal to that existing prior to commencement of the work.

(g) Temporary License. Each Parcel Owner and its contractors, materialmen, and laborers shall have a temporary license for such access and passage over and across the Common Area as shall be reasonably necessary to construct and/or maintain improvements on the Parcel of such Parcel Owner; provided, however, that this license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further that the use of this license shall not be exercised so as to unreasonably interfere with the use and/or operation of the Common Area by others. Any Parcel Owner availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

(h) Construction Barricades. Once a Store has opened for business, construction of a Store within any Building Area within one hundred eighty feet (180') of an opened Store shall be screened from view by a barrier or fence of a type and height approved by Developer until completion of the construction in each case.

2.06 Construction Along Common Boundary Line. Any Parcel Owner constructing, repairing, or restoring a Store along a common property line between Parcels shall do so in a manner that does not result in damage to the improvements in place on the adjoining Parcel, and if applicable shall further undertake and assume at its sole cost the obligation of completing, repairing, reconstructing, and maintaining the nominal attachment (flashing and seal) of its building to that of the Store on the other Parcel, it being the intent of Developer to establish and maintain in these situations the appearance of one continuous building complex.

2.07 Mechanic's or Construction Lien. If, because of any act or omission (or alleged act or omission) of any Parcel Owner or its Occupant, or a contractor, employee or agent of either, any Mechanic's or construction lien is filed with respect to any portion of the Shopping Center (whether or not such lien is valid or enforceable as such), the Parcel Owner shall cause the lien to be discharged of record, or bonded, with respect to all portions of the Shopping Center not owned by that Parcel Owner, within thirty (30) days

after it was filed; and the Parcel Owner shall indemnify and save harmless all Parcel Owners, all ground and underlying lessors, and all Mortgagees with respect to any portion of the Shopping Center against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable attorneys' fees resulting therefrom. If the Parcel Owner fails to comply with these requirements, any other Parcel Owner shall have the option of discharging or bonding any such lien, and if such option is exercised, the Parcel Owner which has the obligation under this section to cause the discharge of the lien shall reimburse the Parcel Owner who discharged or bonded the lien for all costs, expenses, and other sums of money (including reasonable attorneys' fees) incurred in connection with the lien promptly upon demand, and the Parcel Owner which discharged or bonded the lien shall have all rights with respect to the amounts owed to it, including but not limited to its rights under Article XII of this Declaration.

2.08 Undeveloped Building Area. Each area shown on the Plot Plan as a Building Area which does not contain buildings as of the grand opening of the Shopping Center shall prior to the grand opening either be covered with an asphalt cap or minimally landscaped, until such time as the Parcel Owner of the undeveloped Parcel shall thereafter commence construction of buildings on that Parcel. Until that time, the undeveloped Building Area shall be deemed a part of the Common Area. Likewise, if a building is subsequently razed and is not to be replaced immediately, until the building is replaced the Building Area shall be improved with an asphalt cap or as landscaped area.

ARTICLE III SIGNS

3.01 Signs. No exterior identification signs shall be allowed within the Shopping Center except as permitted by

(i) the City and any applicable City ordinances or Shopping Center specific requirements,

(ii) the Shopping Center sign criteria for free standing pad buildings attached to this Declaration as Exhibit "E" (the "Sign Criteria"), and/or

(iii) at the discretion or judgment of the Developer or the Project Architect.

**ARTICLE IV
EASEMENTS**

4.01 Ingress, Egress and Parking. (a) Developer reserves for itself and grants to each Parcel Owner, for the benefit of each Parcel (the Benefited Parcel) and its Occupants, a nonexclusive easement on, over and through the Parking Area (the Burdened Parcel) for

(i) vehicular access, ingress and egress by Permittees from public streets at the location of the curb cuts shown on the Plot Plan, passage of Permittees' vehicles over established circulation elements, and parking of Permittees' vehicles within designated parking stalls, and

(ii) pedestrian access, ingress, egress, and passage by Permittees.

Each future Parcel Owner, by taking title to its Parcel subject to this Declaration, shall be deemed to have granted such easement with respect to the Parking Area on its Parcel to all other Parcel Owners and their Occupants. Such easement rights shall exist only during the term of this Declaration and shall be subject to the following reservations as well as other provisions contained in this Declaration:

(b) Except for situations specifically provided for in the following subparagraphs, no fence or other barrier which would unreasonably prevent or obstruct the passage of pedestrian or vehicular travel for the purposes permitted by this Declaration shall be erected or permitted within or across the easement areas; provided, however, that the foregoing provisions shall not prohibit the installation of

(i) convenience facilities (such as mailboxes, public telephones, benches, or public transportation shelters);

(ii) photo kiosks, flower stands, or other retail uses which occupy less than two hundred square feet (200') each, and in the aggregate not more than 600 square feet, so long as the retail use is permitted by the City and is not prohibited by the Parcel Owner of the Parcel on which the retail use is erected or permitted or any lease between the Parcel Owner of that Parcel and a tenant of the Parcel Owner;

(iii) landscaping, berms or planters;

(iv) limited curbing and other forms of traffic controls; or

(v) Outside Sales Areas permitted by Developer pursuant to Section 6.03.

(c) In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Parcel Owner reserves the right to create a temporary staging and/or storage area in the Parking Area on or adjacent to its Parcel at a location which will not

unreasonably interfere with access between its parcel, the other areas of the Shopping Center, and the public streets or roadways adjacent to the Shopping Center.

(d) Developer reserves the right to close off a portion of the Common Area for such minimal, reasonable period of time as may be legally necessary, in the opinion of its counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area, as provided for in this section, Developer shall give written notice to each other Parcel Owner of its intention to do so, and shall attempt to coordinate the closing with each other Parcel Owner so that no unreasonable interference in the passage of pedestrians or vehicles shall occur.

(e) Developer reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Common Area to the extent that such action can be lawfully taken. Developer also reserves the right to designate and enforce employee parking, as more particularly set forth in Paragraph B.4 of Exhibit "F" which is attached to this Declaration.

4.02 Utilities.

(a) Developer reserves for itself and grants to each Parcel Owner for the benefit of each Parcel (the Benefited Parcel) and its Occupants a nonexclusive easement in, to, over, under, along, and across those portions of the Common Area (the Burdened Parcel) necessary for the installation, use, maintenance, relocation, and removal of utility lines or systems, including but not limited to sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone, and communication lines. Each Parcel Owner, by taking title to its Parcel subject to this Declaration, shall be deemed to have granted such easement with respect to the Common Area on its Parcel to all other Parcel Owners and their Occupants, if any. This easement shall continue for the term of this Declaration and for so long afterwards as the easement is utilized for the above-described purposes. Except with respect to ground mounted electrical transformers at the rear of a building or as may be necessary during periods of construction, repair, or temporary service, all utilities shall be underground, unless required to be above ground by the utility providing the service, and to the extent practical shall be located along the perimeter of the Parcel and shall otherwise be located as to not unreasonably interfere with the use and enjoyment of the Parcel by the Parcel Owners or their Occupants. Prior to utilizing the easement and exercising the rights granted in this section, the Grantee shall first provide the Grantor and Developer with a written statement describing the need for such easement and shall identify the proposed location of the utility line. Any Parcel Owner installing utilities pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect to installing the utilities, and shall cause all work in connection with the installation (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area. The Grantee benefiting from a utility easement across another Parcel Owner's Parcel shall indemnify and hold harmless the Grantor from and against all demands, damage, claims, loss, liability, or expense in connection with the use, installation, maintenance and removal of the utility line. If any Parcel Owner elects to install

common utilities, all costs and expenses of the common utilities may be set forth in a separate agreement between those cooperating Parcel Owners.

(b) The initial location and width of any utility shall be subject to the prior written approval of the Grantor, which approval will not be unreasonably withheld. The easement area shall be no larger than whatever is necessary to reasonably satisfy the utility company for a public utility, or five feet (5') on each side of the centerline as to a private line. Upon request, the Grantee shall provide the Grantor with a copy of an as-built survey showing the location of the utility. The Grantor shall have the right at any time to relocate a utility line upon thirty (30) days' prior written notice to the Grantee, provided that the relocation:

- (i) shall not interfere with or diminish the utility services to the Grantee;
- (ii) shall not reduce or unreasonably impair the usefulness or function of the utility;
- (iii) shall be performed without cost or expense to the Grantee;
- (iv) shall be completed using materials and design standards which equal or exceed those originally used;
- (v) shall have been approved by the utility company and the appropriate governmental or quasi-governmental agencies having jurisdiction over the utility; and
- (vi) shall not unreasonably interfere with the Occupant's use of the Grantee's Parcel.

Documentation of the relocated easement area shall be prepared at the Grantor's expense and shall be accomplished as soon as possible. The Grantee shall have the right to require an as-built survey of the relocated utility to be delivered to it at the Grantor's expense.

(c) The Parcel Owners shall each, to the extent necessary and to the extent the same shall not result in the loss of compensation otherwise obtainable from condemnation, join in the execution of such instruments as may be required in order to effectuate the installation (subject to the restrictions contained in this Declaration) for the sole benefit of the Shopping Center or the Parcel Owners' Parcels of public utilities and similar easements under and across portions of their respective Parcels.

4.03 Construction, Maintenance, and Reconstruction.

(a) In order to accommodate any footings, foundations, columns, or walls which may be constructed or reconstructed immediately adjacent to a common boundary line and which may overlap that common boundary line, each Parcel Owner shall grant and, by taking title to its Parcel subject to this Declaration shall be deemed to have granted, to each adjacent Parcel Owner a nonexclusive easement in, to, over, under, and across that

portion of its Parcel adjacent to the common boundary line in space not there-to-fore occupied by any then existing structure for the construction, maintenance, and replacement of subterranean footings to a maximum distance of five feet (5') onto the Grantor's Parcel and for the construction, replacement and maintenance of foundations, columns, or walls to a maximum distance of six inches (6") onto the Grantor's Parcel. The grant of easement shall include the reasonable right of access necessary to exercise and enjoy the grant. The easement shall continue in effect for the term of this Declaration and thereafter so long as the building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of the building if it is destroyed, damaged, or demolished) and shall include the reasonable right of access necessary to exercise and enjoy the grant.

(b) Prior to utilizing the easement right set forth in subparagraph (a) above, the Grantee shall advise the grantor Parcel Owner of its intention to use the easement, shall provide plans and specifications and proposed construction techniques for the improvements to be located within the easement area, and shall give the Grantor an opportunity to commence any construction activities which that Parcel Owner contemplates undertaking at approximately the same time to the end that each Parcel Owner involved shall be able to utilize subterranean construction techniques which will permit the placement above ground of a building on each Parcel immediately adjacent to the common boundary line. If a common subterranean construction element is used by the Parcel Owners, it is specifically understood that each shall assume and pay its reasonable share of the cost and expense of the initial construction, and so long as both Parcel Owners are benefiting from the common element, subsequent maintenance of the common element.

If any building utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any building utilizing the same element located on the adjoining Parcel.

4.04 Surface Drainage Easement. Developer reserves for itself and grants to each existing and future Parcel Owner for the benefit of each Parcel (the Benefited Parcel) a nonexclusive easement for surface drainage over the Common Area (the Burdened Parcel) through the drainage patterns and systems as are established from time to time within the Common Area of the Shopping Center. To the extent a Parcel Owner's Parcel includes Common Area, nothing in this Declaration shall prevent a Parcel Owner from relocating the drainage patterns and systems established upon that Parcel Owner's Parcel, provided the Parcel Owner first provides Developer with plans respecting the relocation and the relocation does not unreasonably interfere with the drainage of other Parcels within the Shopping Center nor interfere with the orderly discharge of water by means of the drainage patterns and systems. By taking title subject to this Declaration, each Parcel Owner shall be deemed to have joined in this grant of easement.

4.05 Restriction on Grant of Easements. No Parcel Owner shall grant any easements over any land within the Shopping Center for the benefit of any land outside the Shopping Center; provided, however, that this section shall not prohibit the granting or

dedicating of utility easements by a Parcel Owner on its Parcel to governmental or quasi-governmental authorities or to public utilities.

4.06 Term and Limitation of Easements, Covenants and Conditions. The easements referred to in Sections 4.01, 4.02, 4.03, 4.04 and 4.05 shall continue in favor of the respective Grantees for the term of this Declaration and for so long afterwards as each of the Grantees shall continuously utilize the easements.

4.07 Benefit and Burden to Run with the Land. The easements granted by this Article IV and all other covenants, conditions, and restrictions contained in this Declaration shall be deemed and construed to be covenants running with the land, which are for the benefit of the Benefited Parcel of the Grantee, which Parcel shall be the dominant estate, and which burden the Parcel on which such easement is located or as to which such covenant is appurtenant, which shall be the servient estate.

ARTICLE V SHOPPING CENTER DEVELOPMENT RESTRICTIONS

5.01 General Restrictions.

(a) No improvements may be built or maintained in the Common Area of the Shopping Center other than (i) parking spaces, driveways, walkways, sidewalks, curbs, loading docks and ramps, service areas, trash receptacles, lights, signs, landscaping, and convenience facilities (such as mailboxes, public telephones, benches or public transportation shelters), and improvements normally found in parking areas of shopping centers, and (ii) photo kiosks, flower stands, or other retail improvements which occupy less than two hundred square feet (200') each, and in the aggregate not more than 600 square feet (provided, however, such kiosk, stand or other retail improvement is permitted by City and is not prohibited by the Parcel Owner Of the subject Parcel nor by any lease between the Parcel Owner of the subject Parcel and a tenant of such Parcel Owner).

(b) As to the areas designated on the Plot Plan as "Building Area," the Parcel Owner of those Building Areas shall be permitted to construct on those Building Areas, or cause to be constructed on those Building Areas, such buildings or structures, in the locations and with the heights, exterior configurations, and designs as Developer shall approve, so long as such improvements

- (i) do not violate City imposed parking requirements for the Shopping Center,
- (ii) are built in accordance with all set-back, zoning and other ordinances of the City, and
- (iii) do not exceed the maximum square footages or the maximum height permitted as designated on the Plot Plan and/or set forth in this Declaration (see Section 5.04).

(c) Notwithstanding anything to the contrary contained in this Declaration, each Parcel Owner and Occupant, by taking title subject to this Declaration, hereby approves of the processing and recording by Developer of, and agrees to execute and acknowledge, an amendment to the Parcel Map (the "Amended Parcel Map") to reflect any changes or modifications to the Parcel Map which do not materially and adversely affect the use or development of the Parcel(s) of the Parcel Owner or directly or indirectly impose on the Parcel Owner or Occupants any greater obligations than those previously agreed to by the Parcel Owner or Occupants. Each Parcel Owner agrees to execute and acknowledge an amendment to this Declaration, and each Occupant agrees to execute and acknowledge a subordination to this Declaration, as so amended, provided that the amendment reflects only the changes required for this Declaration to be consistent with the Amended Parcel Map.

(d) Except to the extent Developer has agreed to greater restrictions in any lease with an Occupant or in any written agreement with another Parcel Owner, Developer may make changes in the Plot Plan provided that

(i) access to then-existing Stores is not impaired by the changes,

(ii) the principal means of ingress and egress to the Shopping Center is not materially altered, and

(iii) Developer complies with all applicable City parking requirements and in all events, complies with Section 5.02(a) below.

(e) At such time as Developer requests, each Parcel Owner shall execute an amendment to this Declaration to replace the Plot Plan with an "as-built" Plot Plan (the "Amended Plot Plan") to reflect the location and/or relocation of any of the Stores, the reconfiguration of the Common Area or any of the Parcels, and the improvements constructed on the Parcels. Except to the extent that an Occupant's lease conditions or limits its willingness to subordinate its lease to an Amended Plot Plan, at such time as Developer requests, each Occupant shall execute a subordination to an Amended Plot Plan.

5.02 Parking Standards.

(a) Developer agrees that the Parking Areas will always contain at least that number of parking spaces for automobiles, and driveways and footways incidental to the parking spaces, as is necessary to comply with all City requirements, and that the Parking Areas will contain at least that number of parking spaces for every 1,000 square feet of Floor Area within the Shopping Center as is necessary to comply with all City requirements.

(b) All persons shall use the available Parking Area in accordance with the applicable requirements of this Declaration and all reasonable rules and regulations which Developer shall adopt from time to time.

(c) No person shall have an exclusive right to use any portion of the Parking Area unless Developer has approved of such exclusive use in its sole discretion. Unless required by law, no charge of any type shall be collected from any Permittees for parking, or the right to park vehicles in the Parking Area, except reimbursement of Common Area Maintenance Costs as may be provided in this Declaration or in any agreement with any Occupant

(d) Each Parcel Owner shall cause the employees of all Occupants of its Parcel to park their automobiles in any employee parking areas designated by Developer (see Exhibit "F").

5.03 Obstructions. Except as specifically depicted on the Plot Plan or as may be approved in writing by the Developer, no fence, division, partition, rail, or obstruction of any type or kind shall ever be placed, kept, permitted, or maintained between the Parcels or between any subsequent division of the Parcels or upon or along any of the common property lines of any portion thereof except within the confines of the Building Area, and except as may be required at any time and from time to time in connection with the construction, maintenance, and repair of the Common Area or construction within a Building Area (see Section 2.05(e) and (g)).

5.04 Grading. Any regrading of a Parcel shall require the prior written approval of Developer, which approval shall not be unreasonably withheld or delayed.

ARTICLE VI USE RESTRICTIONS

6.01 Use in General. Except as provided below, the Parcels may only be used primarily for the sale of such goods, merchandise, and services as are commonly sold in first-class neighborhood or community shopping centers in the same geographic area as the Shopping Center, including, without limitation, financial institutions, brokerage offices, real estate services, travel agencies, insurance agencies, movie theaters, restaurants, gasoline service, general office, medical, dental, and gaming.

6.02 Generally Prohibited Uses. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Shopping Center, which use or operation is obnoxious to, or out of harmony with; the development or operation of a first-class shopping center, including but not limited to, the following:

- (a) Any public or private nuisance.
- (b) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness.
- (c) Any smell that is offensive or objectionable due to its nature or intensity.

(d) Any excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store.

(e) Any fire, explosion, or other damaging or dangerous hazard, including the storage, display, or sale of explosives or fireworks.

(f) Any assembly, manufacture, distillation, refining, smelting, agriculture, or mining operations.

(g) Any mobile home or trailer court, labor camp, junkyard, stock yard, or animal raising. Notwithstanding the foregoing, pet shops shall be permitted within the Shopping Center.

(h) Any drilling for and/or removal of subsurface substances.

(i) Any dumping of garbage or refuse, other than in enclosed, covered receptacles intended for that purpose.

(j) Any automobile body and fender repair work, except within those Parcels to be designed specifically for such use and referred to in an amendment to these covenants.

(k) Any flea market, swap meet, "second hand" store or "surplus" store.

(l) Any store in which a substantial portion of the inventory consists of pornography, sexual products, and similar "adult" goods, publications, movies, or videos.

6.03 Noninterference With Common Area. The Common Area is intended for the nonexclusive use by the Occupants and Permittees of the Shopping Center. Except for any Outside Sales Area approved by Developer in writing and any kiosk, stand or other retail improvements permitted by Section 5.01(a), in order to provide for the orderly development and operation of the Shopping Center, no Occupant shall be entitled to the use of any Outside Sales Area, and no Occupant shall display, store, or sell any merchandise or place portable signs or other objects outside the defined exterior walls, roof, and permanent doorways of its Store. Developer's approval of an Occupant's use of Outside Sales Area may be conditioned upon such Occupant's assumption of Common Area Maintenance Costs or maintenance duties related to that use.

6.04 Rules and Regulations. In the operation of the Common Area, Developer from time to time may adopt reasonable Rules and Regulations pertaining to the use of the Common Area by the Permittees of the Shopping Center and employee parking; provided that all such Rules and Regulations and other matters affecting the users of the Common Area (a) will apply equally and without discrimination to all Permittees, (b) comply with City ordinances, and (c) are otherwise consistent with this Declaration. Developer adopts the Rules and Regulations attached to this Declaration as "F", until such time as new Rules

and Regulations shall be adopted by Developer. An amendment of such Rules and Regulations shall not be deemed to be, nor shall it require, an amendment to this Declaration.

6.05 Deliveries and Exterior Maintenance Work. No deliveries of merchandise or other supplies shall be made, and no maintenance work or repair on the exterior of any Store shall be performed between the hours of 10:00 p.m. and 7:00 a.m. each day.

6.06 Additional Use Restrictions and Requirements. In connection with Developer's transfer or conveyance of a Parcel, Developer reserves the right to impose such additional restrictions on operation or use requirements on the transferred Parcel or the Parcels Developer continues to own, which restrictions are consistent and not in conflict with Developers then-existing agreements, as may be agreed to by Developer and the subject Parcel Owner.

ARTICLE VII MAINTENANCE AND REPAIR

7.01 Utilities.

(a) Developer shall replace, repair and maintain, or cause to be replaced, repaired and maintained, in a first-class condition all common utility lines and systems located on the Common Area, unless the same are dedicated to and accepted by a public or quasi-public utility or authority or are maintained by a utility company. Such costs of replacement, repair and maintenance, to the extent such costs are not covered by insurance proceeds, are to be included in Common Area Maintenance Costs, as discussed in Section 7.03.

(b) Each Parcel Owner shall replace, repair, and maintain in first-class condition all utility facilities, lines, and systems located on its Parcel that serve only its Parcel unless the same are dedicated to and accepted by a public or quasi-public utility or authority or are maintained by a utility company.

(c) Any Parcel Owner who is the Grantee of a utility easement referred to in Section 4.02 (exclusive of an easement in which common utility lines and systems are located, which shall be maintained as part of the Common Area), shall maintain and repair at its cost any facilities installed pursuant to that easement which exclusively serve the Grantee's Parcel unless the facilities are granted or dedicated to and accepted by a utility or a governmental agency acceptable to the Grantor which agrees to maintain and replace the facilities. Any maintenance and repair of non-dedicated utilities located on the Grantor's Parcel shall be performed only after two (2) weeks' notice to the Grantor (except in an emergency the work may be initiated with reasonable notice) and shall be done after normal business hours whenever possible and shall otherwise be performed in such a manner as to cause as little disturbance in the use of the Grantor's Parcel as is practicable under the circumstances. Any Grantee performing or causing to be performed such maintenance or repair shall pay all expenses associated with the maintenance and repair,

will diligently complete such work as quickly as possible, and will promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of the work.

7.02 Common Area Maintenance Obligation.

(a) From and after the date upon which the Common Area or a functional portion of the Common Area of the Shopping Center is substantially completed, Developer shall maintain the Common Area or cause it to be maintained, in good order, condition, and repair. Developer shall have the right, from time to time, to select another person or persons to maintain the Common Area and delegate Developer's obligations with respect to the Common Area to such person(s). If Developer selects or delegates another person to maintain the Common Area, that person shall be a recognized professional commercial property management company. Developer may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the Missoula, Montana area.

(b) The minimum standard of maintenance for the Common Area Improvements shall be comparable to the standard of maintenance followed in other first-class retail developments of comparable size in the Missoula, Montana area and in any event in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances, and the provisions of this Declaration. All Common Area Improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integration of the Shopping Center as a whole. In any event, the maintenance and repair obligation shall include but not be limited to the following:

(i) **Drive and Parking Areas.** Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, snow removal, re-striping, repairing, resealing, and resurfacing. (For the purposes of this section, an overlay of the Parking Area shall be considered a repair or maintenance item.)

(ii) **Debris and Refuse.** Periodic removal of all papers, debris, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Area in a first-class, clean, and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by persons intending to conduct business with Occupants of the Shopping Center.

(iii) **Signs and Markers.** Placing, cleaning, keeping in repair, replacing, and repainting any appropriate directional signs or markers, including any handicapped parking signs, and any Shopping Center identification signage (excluding, however, any Occupant signage);

(iv) **Lighting.** Operating (except after-hours lighting requirements - see Section 7.06), keeping in repair, cleaning, and replacing when necessary such Common Area lighting facilities as may be reasonably required, including all lighting necessary or appropriate for Common Area security.

(v) **Landscaped Areas.** Cleaning and maintaining (including any requirement as may be imposed by the City to maintain landscape or to remove debris) all landscaped areas, landscaping, and planters adjacent to exterior walls of buildings, repairing automatic sprinkler systems or water lines in the Common Area, irrigating, weeding, pruning, fertilizing, and replacing shrubs and other landscaping as necessary; provided, however, that if any Parcel Owner requires or installs "special" landscaping (i.e. beyond the standard landscaping requirements for the remainder of the Shopping Center) the maintenance and cost of such special landscaping shall be borne solely by such Parcel Owner without cost or expense to the other Parcel Owners and shall not be included in Common Area Maintenance Costs.

(vi) **Utilities.** To the extent the same have not been dedicated to the public or any public or private utility, maintaining, cleaning, and repairing any and all common storm drains, utility lines, sewers, and other utility systems and services located in the Common Area which are necessary for the operation of the Common Area, and the maintenance and replacement of the trunk line portion of utility lines serving the Building Areas.

(vii) **Obstructions.** Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise not otherwise permitted by this Declaration, unless the obstruction is permitted under the provisions of this Declaration.

(viii) **Sidewalks.** Cleaning (including washing and/or steam cleaning), maintenance, and repair of all sidewalks, including those adjacent and contiguous to buildings located within the Shopping Center. Sidewalks shall be cleaned at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area. Notwithstanding the foregoing, any Occupant which is permitted by Developer or by the terms of this Declaration to use any portion of the Common Area or the sidewalk areas adjacent to its Store for staging, storage, sales, promotional, marketing, customer service, or seating purposes shall keep that area in a neat and clean condition free of refuse and shall be responsible for any increase in Developer's cost of maintaining the Common Area as a result of such activities.

(ix) **Security Personnel.** Providing professional security personnel for the Common Area, if reasonably required.

(x) Traffic. Supervision of traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow.

Notwithstanding anything to the contrary, each Parcel Owner shall maintain and repair, at its sole cost, in a clean, sightly and safe condition all of the following relating to its Parcel: any exterior shipping/receiving dock area, any truck ramp or truck parking area, any refuse, compactor or dumpster area, and any separate utility lines or any lateral utility lines extending to and from common trunk lines.

7.03 Common Area Maintenance Costs. Common Area Maintenance Costs shall include, without limitation, all expenditures, costs, premiums, and expenses for the following:

- (a) casualty and public liability insurance for the Common Area and improvements located on the Common Area, in the amounts and types set forth in Article X below, and payment of any deductible amount in the event of a claim;
- (b) real estate taxes and assessments allocable to the Common Area;
- (c) repairs for any damage to the Common Area including, without limitation, the common utility lines and systems, to the extent that those costs are not covered by insurance proceeds;
- (d) all general maintenance and repairs with respect to the Common Area, whether required by the enactment or operation of law, or otherwise, including, without limitation, painting, re-stripping, resurfacing, cleaning, sweeping, snow removal, and janitorial services;
- (e) maintenance, repair, and replacement as required, of the Common Area, including, without limitation, the common utility lines and systems, and Parking Areas;
- (f) operation, maintenance and repair of the Shopping Center identification monument signs and pylon signs (if any); provided, however, if a monument or pylon sign also identifies specific Occupants, the portion of the operation and maintenance costs proportional to those Occupants' share of the sign area shall be paid by those Occupants and shall not be a Common Area Maintenance Cost;
- (g) maintenance and repair of light standards, all plantings, sprinkler systems, landscaping, directional signs and other markers, and parking bumpers;
- (h) providing common rubbish receptacles (including gates and enclosures) and removal service only for Permittees of the Shopping Center;
- (i) storage space for Common Area maintenance equipment and supplies;

(j) expenses for personnel to implement such services including, if Developer in its sole judgment deems them reasonably necessary, the cost of security guards;

(k) operation, maintenance, repair, and/or installation of any fire protection systems, security alarm systems, lighting systems, storm drainage systems, electrical systems, and any other utility systems serving the Common Area;

(l) payroll, payroll taxes, health, and workers' compensation insurance applicable to employees providing the aforementioned services rendered in connection with the Common Area;

(m) any public utility or governmental charges, surcharges, and any other costs levied, assessed, or imposed pursuant to assessment districts, laws, statutes, regulations, codes, and ordinances promulgated under or created by any governmental or quasi-governmental authority in connection with the development of the Shopping Center or the use of the Common Area;

(n) necessary tools and supplies;

(o) depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); provided, however, that if Developer depreciates any particular machine or piece of equipment or establishes reserves in anticipation of the replacement of that machine or piece of equipment, the aggregate amount of the depreciation and reserves with respect to that particular machine or piece of equipment shall be applied by Developer against the cost of replacing that machine and/or piece of equipment, at the time the machine or piece of equipment is replaced;

(p) other costs and fees necessary or beneficial, in Developer's reasonable judgment, for the maintenance and operation of the Common Area, including the cost of enforcing the terms of this Declaration applicable to the Common Area; and

(q) an allowance or fee for supervision of the Common Area in an amount equal to 15% of the total of all Common Area Maintenance Costs exclusive of this supervision allowance or fee.

To the extent feasible, as determined by Developer in Developer's sole discretion, from an accounting and operational perspective, as determined by Developer in Developer's sole discretion, Developer shall attempt to separately account for Common Area Maintenance Costs on a Parcel-by-Parcel basis.

7.04 Payment of Common Area Maintenance Costs. Common Area Maintenance Costs shall not include any costs of the initial construction of the Common Area Improvements. After the initial construction of the Common Area Improvements, the Common Area Maintenance Costs shall be paid to Developer by each other Parcel Owner as follows:

(a) Each other Parcel Owner shall pay to Developer, on the first day of each calendar month, an amount reasonably estimated by Developer to be one twelfth (1/12) of that Parcel Owner's share of the annual Common Area Maintenance Costs (which estimate, except for the first calendar year, shall be based on the prior year's expenses and reasonably anticipated changes in cost). A Parcel Owner's share of Common Area Maintenance Costs during any applicable monthly, quarterly or annual accounting period shall be the total Common Area Maintenance Costs incurred during that period multiplied by the quotient arrived at by dividing the number of square feet of Floor Area located on that Parcel Owner's Parcel by the total number of square feet of Floor Area which has been completed in the Shopping Center. This estimated monthly charge may be adjusted by Developer at the end of any calendar quarter on the basis of Developer's experience and reasonably anticipated costs. During the period before the construction of the initial Store on a Parcel, the Parcel Owner's share of Common Area Maintenance Costs will be calculated on the basis of the planned or reasonably anticipated number of square feet of Floor Area in the Store which is to be located on the Parcel.

(b) Within a reasonable time following the end of each calendar year, Developer shall furnish to each Parcel Owner a statement covering the calendar year just expired showing the total of the Common Area Maintenance Costs, the amount of each Parcel Owner's share of the Common Area Maintenance Costs for that calendar year, and the payments made by each Parcel Owner with respect to that calendar year as set forth in subparagraph (a) above. Parcel Owners shall have the right to audit any such statements in accordance with subparagraph (e) below. If a Parcel Owner's share of the Common Area Maintenance Costs exceeds that Parcel Owner's payments, the Parcel Owner shall pay to Developer the deficiency within ten (10) days after receipt of the statement. If the payments exceed that Parcel Owner's share of the Common Area Maintenance Costs, the Parcel Owner shall be entitled to offset the excess against the next payments which become due to Developer as set forth in subparagraph (a) above;

(c) Payment of any Common Area Maintenance Costs owed to Developer under this Declaration which is more than ten (10) days past due shall be subject to a late payment penalty of ten percent (10%). In addition, for as long as the amounts owed to Developer remain unpaid, those unpaid amounts shall bear interest at the Default Rate. Any such penalties or interest which are paid by the delinquent Parcel Owner or Owners shall be placed in a fund which shall be established and controlled by Developer and shall be utilized by Developer to pay for un-recovered costs associated with the operation of the Common Area in accordance with this Declaration. Each Parcel Owner acknowledges that the late payment of any monthly installment will cause Developer to incur certain costs and expenses not otherwise contemplated, the exact amount of which is extremely difficult and impractical to fix. Those costs and expenses will include, without limitation, administrative and collection costs, processing and accounting expenses, and other costs and expenses necessary and incidental to those costs and expenses. It is, therefore, agreed that this late charge represents a reasonable estimate of those costs and expenses and is fair compensation to Developer for its loss suffered by the Parcel Owner's nonpayment. The late charge provisions contained in this section are in addition to and do not diminish or

represent a substitute for any or all of Developer's other rights to enforce the provisions of this Declaration.

(d) Within six (6) months after receipt of any Common Area Expense statement, any Parcel Owner may audit that statement. If it is determined as a result of an audit that the auditing Parcel Owner has paid in excess of the amount required pursuant to this Declaration, then the overpayment shall be credited toward the next installment that would otherwise be due from the Parcel Owner. In addition, if the Parcel Owner paid more than five percent (5%) over the amount that the Parcel Owner should have paid (as determined by the approved audit), then the Developer shall pay all of the auditing Parcel Owner's reasonable costs and expenses connected with the audit.

(e) Notwithstanding anything contained in this Declaration to the contrary and without in any way modifying or limiting a Parcel Owner's obligations under this Declaration, each Parcel Owner may enter into agreements with its Occupants pursuant to which the Occupants are obligated to reimburse the Parcel Owner for some or all Common Area Maintenance Costs allocable to the Parcel and/or other expenses related to the operation and maintenance of the Common Area on terms which are more or less favorable than the terms of this Declaration with respect to that Parcel Owner's payment of its share of Common Area Maintenance Costs. If the agreement is entered into on less favorable terms, subject to the immediately following sentence, the Parcel Owner will make up the shortfall. Likewise, in connection with the transfer or conveyance of a Parcel, Developer may enter into an agreement with the respective Parcel Owner pursuant to which the Parcel Owner is obligated to reimburse Developer for some or all Common Area Maintenance Costs allocable to the subject Parcel and/or other expenses related to the operation and maintenance of the Common Area on terms which are more or less favorable than the terms of this Declaration with respect to that Parcel Owner's payment of its share of Common Area Maintenance Costs. If the agreement is entered into on less favorable terms, Developer shall assume the shortfall.

7.05 Building Improvements. After completion of construction on its Parcel, each Parcel Owner or its Occupant shall, at its sole cost and expense, maintain and keep its Store and building improvements (including loading docks, service areas and the like), if any, located on its Parcel in first-class, good, clean condition and state of repair, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction over them, and in compliance with the provisions of this Declaration. Each Parcel Owner or its Occupant shall store all trash and garbage in adequate containers, will locate those containers so that they are not readily visible from the parking area, and will arrange for regular removal of the trash or garbage. If a Parcel Owner or its Occupant fails to comply with Section 7.05, then Developer shall have the right to give the defaulting Parcel Owner written notice of the default, specifying the particulars of the default. If the Parcel Owner which receives the notice fails to cure the default within thirty (30) days after its receipt of the notice, or if the nature of the default is such that it cannot be reasonably cured within a thirty (30) day period and the Parcel Owner does not commence to cure the default within the thirty (30) day period and thereafter diligently pursue the cure to completion, then Developer may cure the default and then bill the

defaulting Parcel Owner for the expense incurred. If the defaulting Parcel Owner does not pay the bill within fifteen (15) days, Developer shall have all rights with respect to the bill as are provided for in Article XII.

7.06 After-Hours Lighting. If any Occupant's use of its Parcel requires Common Area lighting one half hour beyond the normal hours of the Shopping Center (as reasonably determined by Developer), that Occupant shall be responsible for the cost of operating the Common Area lighting on its Parcel and any other Parcel which it elects to have lighted after the normal hours, and the expense shall not be a Common Area Maintenance Cost.

ARTICLE VIII DAMAGE TO IMPROVEMENTS

8.01 Restoration of Common Area. If any of the Common Area Improvements are damaged or destroyed, whether insured or uninsured, Developer shall restore, repair, or rebuild those Common Area Improvements with all due diligence as nearly as possible to at least as good a condition as they were in immediately prior to the damage or destruction. Any cost of the restoration, repair, or rebuilding which is not reimbursed by insurance shall be a Common Area Maintenance Cost.

8.02 Restoration of Stores. If the Store(s) on a Parcel Owner's Parcel are damaged or destroyed, that Parcel Owner may, but shall not be obligated by this Declaration to, restore and reconstruct those Store(s) within the final configuration of the Building Areas within that Parcel Owner's Parcel. If a Parcel Owner elects to reconstruct the Store(s) on its Parcel, those Stores shall be restored to a condition as good as immediately prior to the damage or destruction, and all restoration and reconstruction shall be performed in accordance with the following requirements, as those requirements are applicable to the restoration and reconstruction:

- (a) No restoration or reconstruction work shall be commenced unless the Parcel Owner desiring to perform the work has in each instance complied with the appropriate provisions of Article II with respect to plan approval.
- (b) All restoration and reconstruction work shall be performed in a good and workmanlike manner and shall conform to and comply with:
 - (i) The plans and specifications approved pursuant to Article II;
 - (ii) All applicable requirements of laws, codes, regulations and rules; and
 - (iii) All applicable requirements of this Declaration.
- (c) All restoration and reconstruction work shall be completed with due diligence, and at the sole cost and expense of the Parcel Owner performing the work.

8.03 Clearing of Premises. Whenever a Parcel Owner elects not to restore, repair or rebuild a Store that has been damaged or destroyed, that Parcel Owner, at its sole cost and expense, shall raze the Store, or the parts of the Store which have been damaged or destroyed, shall clear the premises of all debris, and all areas not restored to their original use shall, at the expense of the Parcel Owner, be leveled, cleared, and improved with, at the option of the Parcel Owner, either landscaping or parking area, of like standard and design as the Common Area of the Shopping Center. Although no transfer of ownership shall be deemed to have occurred as a result of the Parcel Owner's election not to restore its Store, if the area is converted to landscaped area or Parking Area, the area shall be treated as Common Area and shall be maintained and insured by Developer as Common Area; however, the Parcel Owner shall reimburse Developer for the maintenance and insurance costs which are fairly allocated to the area and those costs shall not be Common Area Maintenance Costs.

**ARTICLE IX
EMINENT DOMAIN**

9.01 Eminent domain. If any part of the Shopping Center, including the Common Area, shall be taken by eminent domain or any other similar authority of law, the entire award for value of the land and improvements so taken shall belong to the Parcel Owner whose property was so taken or its Occupants, as their interests may appear or as the Parcel Owner and Occupants have agreed to in the Occupant's lease, and the other Parcel Owner(s) shall not claim any portion of the award by virtue of any interests created by this Declaration. However, the other Parcel Owner(s) may file a claim with the condemning authority over and above the value of the property so taken to the extent of any damage suffered by those Parcel Owner(s) resulting from the severance of the area taken. The Parcel Owner whose property was condemned shall promptly repair and restore in accordance with this Declaration the remaining portion of its Parcel as nearly as practicable to the condition existing just prior to the condemnation without contribution from the other Parcel Owner(s).

**ARTICLE X
TAXES AND INSURANCE**

10.01 Realty Taxes and Assessments. In addition to each Parcel Owner's payment of its share of real estate taxes and assessments on the Common Area as provided in Article VII, each Parcel Owner shall pay, or cause to be paid by that Parcel Owner's Occupants when due, all real estate taxes and assessments which may be levied, assessed, or charged by any public authority against that Parcel Owner's Parcel, the improvements on that Parcel, or any other part of that Parcel. If a Parcel Owner shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property) to be excessive or illegal, that Parcel Owner shall have the right, at its own costs and expense, to contest the tax or assessment by appropriate proceedings, and nothing contained in this section shall require the Parcel Owner to pay the real estate tax or assessment as long as (a) no other Parcel Owner's Parcel would be immediately affected by the failure to pay (or bond) the tax or assessment; and (b) the amount or

validity of the tax or assessment shall be contested in good faith. If the failure to pay (or bond) the tax or assessment would affect another Parcel Owner's Parcel, that other Parcel Owner shall have the right to pay the tax and shall have a lien on the nonpaying Parcel Owner's Parcel for the amount so paid until reimbursed for the payment. The lien shall be subject to and junior to, and shall in no way impair or defeat the interest, lien, or charge of any Mortgagee or Occupant.

10.02 Indemnification. Developer or any other person who operates and maintains the Common Area shall indemnify, defend, and save the other Parcel Owners harmless from and against any and all demands, liability, damage, expense, cause of action, suit, claims, and judgments, including reasonable attorneys' fees, arising from injury or death to person or damage to property that occurs as a result of that person's operation and maintenance of the Common Area except to the extent that the injury, death, or damage is caused by the indemnified Parcel Owner's negligence or willful act or omission. In addition, each Parcel Owner shall indemnify, defend, and save the other Parcel Owners harmless from and against any and all demands, liability, damages, expenses, causes of action, suits, claims, and judgments, including reasonable attorney's fees, arising from injury or death to person or damage to property that occurs as a result of the use or operation of the indemnifying Parcel Owner's Parcel, except to the extent that the injury, death or damage is caused by the indemnified Parcel Owner's negligence or willful act or omission; provided, however, indemnification under this sentence shall not be required where the claim or loss underlying an indemnitee's request for indemnity is (i) required to be indemnified against pursuant to the immediately preceding sentence, (ii) is insured against by the insurance required to be maintained by the Developer covering the Common Area in accordance with Section 10.4 or (iii) is insured against by the insurance required to be maintained by the indemnitee with respect to the use and operation of the Stores on the indemnitee's Parcel in accordance with Section 10.04.

10.03 Casualty Insurance and Restoration.

(a) Developer, as respects the improvements on its Parcels and as respects all of the Common Area Improvements, will carry or cause to be carried, casualty insurance in an amount equal to 90% of the full replacement cost (exclusive of the cost of excavation, foundations and footings) of those buildings and improvements for the risks covered within the classification of "all-risk" coverage, excluding coverage against earthquake and flood unless the cost of the that coverage is, in Developer's business judgment, economically reasonable. The insurance shall be carried with a financially responsible insurance company or companies. The insurance shall provide that the policies may not be canceled, reduced, or materially amended without at least thirty (30) days prior written notice being given by the insurer to the other Parcel Owners.

(b) Each other Parcel Owner, as respects the building improvements on its Parcel (excluding Common Area Improvements on its Parcel), will carry or cause to be carried "all-risk" casualty insurance, excluding coverage against earthquake and flood unless the cost of the same is, in the Parcel Owner's business judgment, reasonably exercised, economically reasonable. The insurance shall be in an amount equal to 90%

of the full replacement cost (exclusive of the cost of excavation, foundations and footings of the Store). The insurance shall be carried with a financially responsible insurance company or companies. The insurance shall contain a provision that it may not be canceled, reduced or materially amended without at least thirty (30) days written notice being given by the insurer to the other Parcel Owners. To the extent Developer is causing the insurance to be carried by an Occupant who has ground leased premises in the Shopping Center and who has developed its Store substantially at its own cost and expense, Developer may agree to a reduced insurance obligation for that Occupant near the end of that Occupant's lease term.

10.04 Parcel Owners' Liability Insurance. Each Parcel Owner shall, severally, at all times during the term of this Declaration, maintain or cause to be maintained by its Occupant in full force and effect a comprehensive occurrence public liability insurance policy covering the use and operation of Stores (and other structures, if applicable) on its Parcel (and, as to Developer, covering the use and operation of all of the Common Area), with a financially responsible insurance company or companies, including coverage for any accident resulting in bodily injury to or death of any person and consequential damages arising therefrom, and comprehensive property damage insurance, each in an amount not less than \$3,000,000 per occurrence or, as to an Occupant of a Developer owned Parcel and as to a Parcel Owner other than Developer, such lesser amount as may be agreed to by Developer. Developer's public liability policy with respect to the Common Area shall name each other Parcel Owner as an additional named insured and each public liability policy with respect to the use and operation of the Stores on a Parcel Owner's Parcel shall name Developer and each other Parcel Owner as an additional named insured. Developer's public liability policy with respect to the Common Area and each Parcel Owner's public liability policy with respect to the Stores on its Parcel shall also include a contractual liability endorsement in an amount not less than the amount of the above-described comprehensive public liability policy to insure their respective indemnities set forth in Section 10.02. Each Parcel Owner shall furnish to each other Parcel Owner which requests proof of insurance in writing, evidence that the insurance referred to in this section is in full force and effect and that the premiums for the policy have been paid. The insurance shall provide that it may not be canceled, reduced below the required minimum or materially amended without at least thirty (30) days prior written notice being given by the insurer to all other Parcel Owners.

10.05 Blanket Insurance. Any insurance required to be carried pursuant to this Article may be carried under a policy or policies covering other liabilities and locations of a Parcel Owner; provided, however, that the policy or policies must apply to the properties required to be insured by this Article in an amount not less than the amount of insurance required to be carried by the Parcel Owner with respect to the Parcel, pursuant to this Article.

10.06 Release and Waiver of Subrogation. Each Parcel Owner hereby releases and waives for itself, and to the extent legally possible for it to do so, on behalf of its insurer, each of the other Parcel Owners from any liability for any loss or damage to its property located upon the Shopping Center, which loss or damage is of the type covered

by the "all-risk" casualty insurance described in this Article X, irrespective of any negligence on the part of the other Parcel Owner which may have contributed to or caused such loss. Each Parcel Owner covenants that it will, if generally available in the insurance industry, obtain for the benefit of the other Parcel Owners an express waiver of any right of subrogation which the insurer of that Parcel Owner may acquire against the other Parcel Owner by virtue of the payment of any such loss covered by the insurance.

If any Parcel Owner is by law, statute, or governmental regulation unable to obtain a waiver of the right of subrogation for the benefit of another Parcel Owner, then, during any period of time when a waiver of subrogation is unobtainable, the Parcel Owner shall be deemed not to have released any surrogated claim of its insurance carrier against the other Parcel Owner, and during the same period of time the other Parcel Owner shall be deemed not to have released the Parcel Owner who has been unable to obtain a waiver of subrogation from any claims they or their insurance carriers may assert which otherwise would have been released pursuant to this section.

ARTICLE XI ENVIRONMENTAL MATTERS

11.01 Duties of Parcel Owners. Except as provided in Section 11.03, neither Parcel Owners nor Occupants shall release, generate, treat, use, store, dump, transport, handle, or dispose of any Hazardous Material within the Parcels or otherwise permit the presence of any Hazardous Material on, under, or about the Parcels or transport any Hazardous Material to or from the Parcels. Any such use, handling or storage permitted under Section 11.03 shall be in accordance with all Environmental Laws and all other applicable laws, ordinances, rules, and regulations now or hereafter promulgated by any governmental authority having jurisdiction thereof. Neither Parcel Owners nor Occupants shall install, operate or maintain any above, below, or at grade tank, sump, pit, pond, lagoon, or other storage or treatment vessel or device on or about the Parcels with the exception of gasoline, diesel and/or oil underground storage tanks or other storage devices or containers utilized in connection with an automobile gasoline and/or service station provided that such use is permitted in the Shopping Center, and further provided that the operator of the service station has obtained Developer's consent to the underground storage tanks or other storage devices or containers pursuant to last paragraph of Section 11.03 of this Declaration.

11.02 Specific Construction Materials. No Parcel Owner or Occupant shall introduce, or permit any other Person to introduce, any friable asbestos, radioactive material, urea formaldehyde foam insulation, or devices containing polychlorinated biphenyls (PCBs) into any portion of the Shopping Center.

11.03 Permitted Use, Storage, Handling, and Disposal of Hazardous Materials. Notwithstanding anything contained in Section 11.01 to the contrary, incident to the normal operation of motor vehicles within the Parking Areas, the Parcel Owners and their Occupants and Permittees may utilize gasoline and petroleum products used to fuel and/or lubricate motor vehicles. In addition, notwithstanding anything contained in Section 11.01

to the contrary, the Parcel Owners or their Occupants may utilize cleaning products and sell and otherwise merchandise products, which may contain Hazardous Materials, so long as those products are commonly utilized for maintenance purposes or merchandised in other first-class shopping centers, and so long as those products are safely handled and stored in compliance with applicable laws.

A Parcel Owner or its Occupants may also use other Hazardous Materials in connection with its use of its Parcel if the Parcel Owner has received Developer's prior consent to the use. Developer shall not unreasonably withhold or delay its consent provided (i) the Parcel Owner or Occupant demonstrates to Developer's reasonable satisfaction that the Hazardous Materials (a) are necessary or useful to the Parcel Owner's or Occupant's business, (b) will be monitored, used, stored, handled, and disposed of in compliance with all Environmental Laws, (c) will not endanger any persons or property, (d) are consistent with and normally found in first-class retail establishments, and (e) will not invalidate or limit the coverage or increase the premiums of any insurance policy effecting or covering the Store, the Parcel, or the Shopping Center; (ii) such use is not prohibited by Article VI of this Declaration; (iii) the Parcel Owner or Occupant provides Developer with such security as may be reasonably required by Developer; and (iv) the Parcel Owner or Occupant satisfies any other requirements Developer may reasonably impose with respect to the Parcel Owner's or Occupant's use of the Hazardous Materials.

ARTICLE XII LIENS

12.01 Assessment Lien. If any sum of money payable by any Parcel Owner pursuant to any provision of this Declaration to any other Parcel Owner is not paid when due, and after the defaulting Parcel Owner has been notified in writing of the default and the expiration of any applicable grace period set forth in this Declaration, or a reasonable period of time not to exceed thirty (30) days if there is no express grace period, the Person to whom the sums are owing shall have the right to record, in the office where documents are to be recorded, a notice of Assessment Lien ("Notice of Assessment Lien") which shall set forth the then-delinquent amount owed by the defaulting Parcel Owner pertaining to any Parcel (including, if applicable, interest at the Default Rate) and a legal description of the Parcel within the Shopping Center owned by that defaulting Parcel Owner. Upon recordation of a Notice of Assessment Lien, the then delinquent amount owed by the Parcel Owner, together with interest on that amount, shall constitute an Assessment Lien upon the property within the Shopping Center described in the Notice of Assessment Lien which is owned or was previously owned by the defaulting Parcel Owner. If the amount secured by an Assessment Lien is not paid in full within ten (10) days after a Notice of Assessment Lien has been recorded, and the Parcel Owner has been provided with a copy of the recorded Notice of Assessment Lien, the Person to whom the amounts are owed may enforce payment of the assessment or other amount due, or enforce the Assessment Lien against the property of the delinquent Parcel Owner, by foreclosing the Assessment Lien against the delinquent Parcel Owners Parcel in accordance with the laws relating to the foreclosure of realty mortgages (including the right to recover any deficiency), either

judicially or non-judicially under a power of sale, such power being hereby granted to Developer as a mortgagee.

12.02 Assessments as Personal Obligations. Each amount due by a Parcel Owner pursuant to any provision of this Declaration, together with interest at the Default Rate, costs and attorneys' fees, shall be the personal obligation of the defaulting Parcel Owner, but the personal obligation of the Parcel Owner shall not be deemed to discharge or limit the lien on the land of any Assessment Lien encumbering the property of the Parcel Owner within the Shopping Center. No Parcel Owner shall avoid liability for payment of any amount due under this Declaration which fell due while that Person was the Parcel Owner by nonuse of the Common Area or by transfer or abandonment of the Parcel Owner's property. If any property within the Shopping Center as to which a Notice of Assessment Lien has been recorded pursuant to Section 12.01 is sold, conveyed or otherwise transferred, in whole or in part, by the Parcel Owner of that Parcel, the property shall remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien.

12.03 Superiority of Assessment Lien. The Assessment Lien provided for above shall be superior to any and all other charges, liens and encumbrances which hereafter in any manner may arise or be imposed upon any portion of the Shopping Center, regardless of the order of filing of any of the foregoing; provided, however, that the Assessment Lien shall in all events be subject and subordinate to:

(a) Liens for taxes and other public charges which by applicable law are expressly made superior to the lien of the Assessment Lien;

(b) Any mortgages, trust indentures, deeds of trust, or security instruments of any kind recorded in the office of the County clerk and recorder prior to the date of recordation of a Notice of Assessment Lien; provided, however, that all liens recorded subsequent to the recordation of a Notice of Assessment Lien shall be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien; and

(c) The rights of any and all Occupants occupying any portion of the Shopping Center under written leases, whether the lease at issue was dated and/or a of the lease was recorded before or after the Assessment Lien at issue.

If a Parcel Owner is delinquent in paying any amounts due under this Declaration, and as a result of the delinquency a Notice of Assessment Lien is recorded as provided in this Declaration, the Person recording the Notice of Assessment Lien may record subsequent Notices of Assessment Lien as to any amounts owed by that Parcel Owner to the same person which become delinquent after the recordation of the initial Notice of Assessment Lien, and the priority of the Assessment Lien as to any amounts thereafter becoming delinquent shall be fixed as of the date of recordation of the initial Notice of Assessment Lien, but only if the initial Notice of Assessment Lien has not been discharged. A person may prosecute a single Assessment Lien foreclosure action as to amounts

delinquent at the time a Notice of Assessment Lien is recorded and as to amounts thereafter becoming delinquent, up to and including the time a final judgment is rendered in the action.

12.04 Release of Assessment Lien. Within 10 days after the curing of any default for which a Notice of Assessment Lien was recorded, the Person who recorded the Notice of Assessment Lien shall record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Parcel Owner of a reasonable fee, to be determined by the person recording the Notice of Assessment Lien, to cover the costs of preparing and recording the release, together with the payment of such other costs, including, without limitation, reasonable legal fees, court costs, interest, and fees, as that Person shall have incurred in connection the Assessment Lien. Any Assessment Lien relative to which suit has not been filed and a lis pendens recorded in the records of Missoula County, Montana with one (1) year after the date of the recordation of the Assessment Lien. shall automatically be rendered null, void and of no further force or effect. The foregoing nullification of any Assessment Lien shall be self-operative and shall not require the execution or recordation of any further documents.

12.05 Litigation of Assessment Lien. Notwithstanding any provision contained in this Declaration, any Parcel Owner shall have the right to contest, in a court of competent jurisdiction, the recordation of any Notice of Assessment Lien against the property within the Shopping Center owned or occupied by that Parcel Owner on the basis that the recordation of the Notice of Assessment Lien or the amounts claimed to be delinquent in the Notice of Assessment Lien are incorrect or improper under the provisions of this Declaration. The prevailing party in the action shall be entitled to recover from the other party or parties its reasonable attorneys' fees incurred in connection with the action.

ARTICLE XIII RESALE RESTRICTIONS

13.01 Right of first refusal. The Developer will have a right of first refusal, on the terms and conditions set forth in this article, with respect to each Parcel in the Shopping Center. The right of first refusal will be binding on all Parcels and all Parcel Owners throughout the term of this Declaration.

13.02 Negotiations before marketing. If a Parcel Owner wishes to attempt to sell its Parcel, then before attempting to market the Parcel or solicit offers to purchase the Parcel, the Parcel Owner will inform the Developer in writing of the Parcel Owner's intent to sell the Parcel, and will then enter into good faith negotiations for sale of the Parcel to the Developer on mutually acceptable terms and conditions. If despite such good faith negotiations the Parcel Owner and the Developer cannot reach a mutually acceptable agreement under which the Parcel Owner will sell the Parcel to the Developer, then the Parcel Owner may attempt to market the Parcel to third parties, subject to the requirements of this article.

13.03 Notice of intent to sell. No Parcel Owner will have the right to sell or otherwise transfer its Parcel to any person other than the Developer unless and until the Parcel Owner has complied with the following requirements:

(i) If the Parcel Owner enters into a good faith, bonafide contract to sell or otherwise transfer its Parcel to a person other than the Developer, then the Parcel Owner must promptly deliver a complete copy of the sale contract, or a complete summary of the terms of any oral sale contract, to the Developer, together with a written notice advising the Developer that unless the Developer exercises the right of first refusal granted by this agreement within ten business days, then the Parcel Owner intends to sell or transfer the Parcel to the third party in accordance with the terms of the sale contract attached to the notice. The written notice described in this paragraph is referred to in this article as a "Notice of Intent to Sell."

(ii) Upon receipt of a Notice of Intent to Sell and a copy of a sale contract, the Developer will have a period of ten business days in which to advise the Parcel Owner in writing that the Developer intends to purchase the Parcel from the Parcel Owner on terms and conditions identical to those set forth in the sale contract attached to the Notice of Intent to Sell.

(iii) If within ten business days after receipt of a Notice of Intent to Sell, the Developer delivers a written notice to the Parcel Owner stating that the Developer has elected to purchase the Parcel on the terms and conditions set forth in the sale contract attached to the Notice of Intent to Sell, then the Parcel Owner will transfer good and marketable title to the Parcel to the Developer on those terms and conditions.

(iv) If the Parcel Owner does not receive a written notice stating that the Developer has elected to purchase the Parcel within ten business days after the Developer receives a Notice of Intent to Sell, or the Developer notifies the Parcel Owner in writing that the Developer has decided not to exercise the right of first refusal provided for in this article, or the Developer fails to purchase the Parcel on the terms and conditions set forth in the sale contract attached to the Notice of Intent to Sell, then the Parcel Owner may sell the Parcel to the third party on the terms and conditions set forth in the sale contract attached to the Notice of Intent to Sell.

13.04 Transfers exempt from right of first refusal. (a) The Parcel Owner will not be required to comply with the requirements of this article, and the Developer will not have the right to exercise the remedies provided for in this article, in the following situations:

(i) **Transfers involving only the Parcel Owner.** If the Parcel Owner consists of two or more individuals and/or entities, and any of those individuals or entities sells that party's interest in the Parcel to one or more of the other individuals and/or entities which comprise the Parcel Owner.

(ii) **Death.** If the Parcel Owner is an individual, and the Parcel is transferred upon the death of the Parcel Owner to a third party by action of law or through probate proceedings.

(iii) **Divorce.** If the Parcel Owner's interest in the Parcel is transferred to the Parcel Owner's spouse in the course of divorce proceedings.

(iv) **Foreclosure.** The Parcel is transferred to a third party by foreclosure proceedings, by trustee's sale or other non-judicial foreclosure proceedings, by forfeiture of the Parcel Owner's rights under a contract for deed, or by deed in lieu of foreclosure.

(v) **Execution of judgment.** The Parcel is transferred to a third party at sheriff's sale in connection with the execution of a judgment which has attached to the Parcel.

(vi) **Bankruptcy.** The Parcel is transferred to a third party in connection with bankruptcy proceedings involving the Parcel Owner.

(vii) **Gifts.** The Parcel, or any interest in the Parcel, is transferred to a third party without consideration, or for less than full consideration, as a gift.

13.05 Effect of failure to comply with this article. If a Parcel or any interest in a Parcel is transferred to any person without satisfying the requirements of this article, or on terms other than those set forth in a Notice of Intent to Sell, then the Developer will be entitled to purchase the Parcel from the transferee at any time within two years after the Developer receives actual knowledge of the transfer or the violation of the requirements of this article for the amount that the transferee paid for the Parcel. The Developer will not waive its rights under this article, or be estopped from exercising its rights under this article, as a result of any delay in exercising those rights after a transfer which violates this article.

ARTICLE XIV MISCELLANEOUS

14.01 Notices. Any notice, payment, demand, offer, or communication required or permitted to be given by any provision of this Declaration shall be deemed to have been sufficiently given or served for all purposes if personally delivered, sent by registered or certified mail, postage and charges prepaid, or by Federal Express or other reputable overnight courier or delivery service, addressed as follows:

To the Developer: LV Investors
 c/o Collers StepStone
 610 West Ash Street, Suite 1400
 San Diego, California 92101
 Attn.: Jack Nalboff

To other Parcel Owners: At addresses provided to the Developer by the Parcel Owners in writing from time to time.

Any such notice shall be deemed to be given (i) on the date of personal service upon the person to whom the notice is addressed or if such person is not available the date such notice is left at the address of the person to whom it is directed, (ii) three (3) days after the date the notice is deposited with the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, and (iii) on the date the notice is delivered by a reputable professional courier service (including Federal Express, Express Mail, Emery or similar operation) to the address of the person to whom it is directed, provided it is sent prepaid.

14.02 Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained in this Declaration shall attach to and run with each Parcel and shall benefit or be binding upon the successors and assigns of the respective Parcel Owners. This Declaration and all the terms, covenants, and conditions contained in it shall be enforceable as equitable servitudes in favor of all or any portion of the Parcels.

14.03 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Parcel Owner to cancel, rescind, or otherwise terminate this Declaration, and such limitations shall not affect in any manner any of the rights or remedies which the Parcel Owners may have by reason of any breach of this Declaration.

14.04 Legal Action. If any of the Parcel Owners breaches any provision of this Declaration, then any other Parcel Owner may institute legal action against the defaulting Parcel Owner for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law. In addition to the recovery of any amounts expended on behalf of the defaulting Parcel Owner, the prevailing Parcel Owner shall be entitled to recover from the losing Parcel Owner such amount as the court may adjudge to be reasonable attorneys' fees.

14.05 Breach - Effect on Mortgagee and Right to Cure. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith, but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any Owner of any portion of the Shopping Center who acquires title by foreclosure, by trustee's sale, or by deed in lieu of foreclosure or trustee's sale; provided, however, that any such Owner who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale shall take title free of any liens created or provided for under this Declaration, though otherwise subject to the provisions of this Declaration. Notwithstanding any other provision in this Declaration for notices of default, the Mortgagee of any Parcel Owner in default under this Declaration shall be entitled to notice of the default, in the same manner that other notices are required to be given under this Declaration; provided, however, that the Mortgagee shall have, prior to the time of the default, notified the Parcel Owner giving the notice of default of the Mortgagee's interest and mailing address. If any notice is given of the default of a Parcel Owner and the defaulting Parcel Owner has failed to cure or commence to cure

that default as provided in this Declaration, then the Parcel Owner giving the notice of default covenants to give the Mortgagee (which has previously given the notice described above to the Parcel Owner) under any Mortgage affecting the Parcel of the defaulting Parcel Owner an additional notice given in the manner provided above, that the defaulting Parcel Owner has failed to cure the default and the Mortgagee shall have thirty (30) days after the additional notice to cure the default, or, if the default cannot be cured within thirty (30) days, diligently to commence curing within such time and diligently pursue such cure to completion within a reasonable time after the notice of default. The giving of any notice of default or the failure to deliver a copy of the notice to any Mortgagee will not create any liability on the part of the Parcel Owner which declares a default.

14.06 Effect on Third Parties. Except for Section 13.05 which is for the benefit of Mortgagees, the rights, privileges, or immunities conferred under this Declaration are for the benefit of the Parcel Owners and not for any third party.

14.07 No Partnership. Neither this Declaration nor any acts of the Parcel Owners shall be deemed or construed by the parties to this Declaration, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Parcel Owners to this Declaration.

14.08 Modification. No modification, waiver, amendment, discharge, or change of this Declaration shall be valid unless it is in writing and signed by all of the Parcel Owners. Consent to a change or alteration of this Declaration requested with respect to a specific Parcel in order to facilitate the business being pursued by the Occupant of that Parcel shall not be unreasonably withheld by any Parcel Owner or other person or entity whose consent or approval or the change or alteration is required by this Declaration, unless the change or alteration would have a material adverse affect on the Parcel Owner or other person or entity. If a request to change or alter this Declaration is made by any "institutional lender," as defined in this section, proposing to extend credit to be secured by a first trust indenture, first deed of trust, or first mortgage on the interest of any Parcel Owner within the Shopping Center, in order to (i) clarify the rights of that lender under this Declaration and/or (ii) otherwise better secure to the lender its ability to protect its security, consent to the changes or alteration of this Declaration shall not be unreasonably withheld by any Parcel Owner or other person or entity whose consent or approval of the changes or alteration is required by this Declaration. The term "institutional lender," as used in this section, shall be deemed to mean any bank, savings or building and loan association, trust, or other similar institutional type of lender (including loan service correspondent companies designated by any such lender).

14.09 Severability. If any term, covenant, condition, provision, or agreement contained in this Declaration is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction; the holding shall in no way affect the validity of enforceability of any other term, covenant, condition, provision, or agreement contained in this Declaration.

14.10 Governing Law. This Declaration and the obligations of the Parcel Owners under this Declaration shall be interpreted, construed, and enforced in accordance with the laws of the State of Montana.

14.11 Terminology: Captions. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Article and section titles or captions contained in this Declaration are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Declaration or any provisions of this Declaration.

14.12 Counterparts. This Declaration may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.

14.13 Consent. In any instance in which any Parcel Owner shall be requested to consent to or approve of any matter with respect to which consent or approval is required by any of the provisions of this Declaration, the consent or approval or disapproval shall be given in writing.

14.14 Estoppel Certificate. Each Parcel Owner severally covenants that upon written request of any other Parcel Owner it will issue to the other Parcel Owner or to any prospective Mortgagee or purchaser of the other Parcel Owner's Parcel an Estoppel Certificate stating: (a) whether the Parcel Owner to whom the request has been directed knows of any default under this Declaration and if there are known defaults specifying the nature of those defaults; (b) whether to its knowledge this Declaration has been assigned, modified, or amended in any way (and if it has, then stating the nature of the modifications or amendments); and (c) whether to the Parcel Owner's knowledge this Declaration as of that date is in full force and effect.

14.15 Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of Developer that this Declaration shall be strictly limited to and for the purposes expressed in this Declaration.

14.16 Release. If a Parcel Owner sells, transfers, or assigns its entire Parcel or its interest in its Parcel, it shall, except as provided in this Declaration, be released from its unaccrued obligations under this Declaration from and after the date of the sale, transfer or assignment. It shall be a condition precedent to the release and discharge of any Grantor or assignor Parcel Owner from its unaccrued obligations under this Declaration that the following conditions are satisfied: (a) the Grantor or assignor shall give notice to the other Parcel Owner(s) of the sale, transfer, conveyance, or assignment prior to the filing for record of the instrument effecting the same, (b) the Grantor or assignor shall pay all monetary sums then owed under the terms of this Declaration, and (c) the transferee shall execute and deliver to the other Parcel Owner(s) a written statement in recordable

form in which: (i) the name and address of the transferee shall be disclosed; and (ii) the transferee shall acknowledge its obligation under this Declaration and agree to be bound by this Declaration and perform all obligations under this Declaration in accordance with the provisions of this Declaration. Failure to deliver this written statement shall not affect the running of any covenants contained in this Declaration with the land, however, it shall constitute a default by the transferee.

Anything in this section to the contrary notwithstanding, it is expressly understood and agreed that no sale, transfer, or assignment or written acknowledgment by the Transferee of its obligations under this Declaration shall effectuate a release of its Transferor with respect to obligations which accrued prior to the transfer.

14.17 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

14.18 Excuse for Nonperformance. Each Parcel Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions of this Declaration (unless the payment is conditioned upon performance of any obligation or undertaking excused by this section), if and so long as the performance of the obligation is prevented or delayed, retarded, or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment facilities, materials, or supplies in the ordinary course on the open market, failure of normal transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental agencies, approvals, or permits despite the exercise of due diligence and best efforts by a Parcel Owner or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the Parcel Owner, other than the lack of or inability to obtain funds.

14.19 Computation of time. Whenever the last day for the exercise of any privilege or the discharge of any duty under this Declaration falls upon a Saturday, a Sunday, or any public or legal holiday, whether state or federal, the party having the privilege or duty shall have until 5:00 p.m. on the next regular business day to exercise the privilege or discharge the duty.

14.20 Duration. This Declaration and each term, easement, covenant, restriction, and undertaking of this Declaration will remain in effect for a term of sixty (60) years from the its recordation date and will automatically be renewed for successive ten (10) year periods unless the Parcel Owners owning two thirds or more of the land comprising the Shopping Center elect in writing not to so renew.

14.21 Waiver of Default. No waiver of any default by any Parcel Owner shall be implied from any omission by any other Parcel Owner to take any action in respect of the default if the default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in the express waiver. One or more written waivers of any default in the

performance of any term, provision, or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision, or covenant or any other term, provision, or covenant contained in this Declaration. The consent or approval by any Parcel Owner to or of any act or request by any other Parcel Owner requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any Parcel Owner by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or if any other right or remedy at law or in equity which any Parcel Owner might otherwise have by virtue of a default under this Declaration, and the exercise of one right or remedy by any Parcel Owner shall not impair the Parcel Owner's standing to exercise any other right or remedy.

14.22 Common Ownership. The ownership of all Parcels in the Shopping Center by the same Person shall not result in the termination of this Declaration.

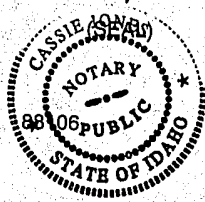
EXECUTED as of Sept. 18, 1998.

LV INVESTORS, by H&S FINANCIAL CORPORATION, its general partner

By [Signature]
Harold D. McNee, Jr., President

STATE OF Idaho)
COUNTY OF Blaine) :ss

This instrument was acknowledged before me on September 18, 1998, by Harold G. McNee, Jr., as President of H&S Financial Corporation, the general partner of LV Investors.



Cassie Jones
Notary public for the state of Idaho
Residing at Hailey
My commission expires 9-7-2000

BOOK 556 PART 0255

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

Lots 1, 3, and 4 of Grant Creek Town Center, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

GRANT CREEK TOWN CENTER Phase I DECLARATION OF COVENANTS, EXHIBIT A, PAGE 1

EXHIBIT B
PARCEL MAP

BOOK 556 PAGE 0256

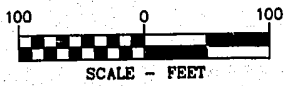
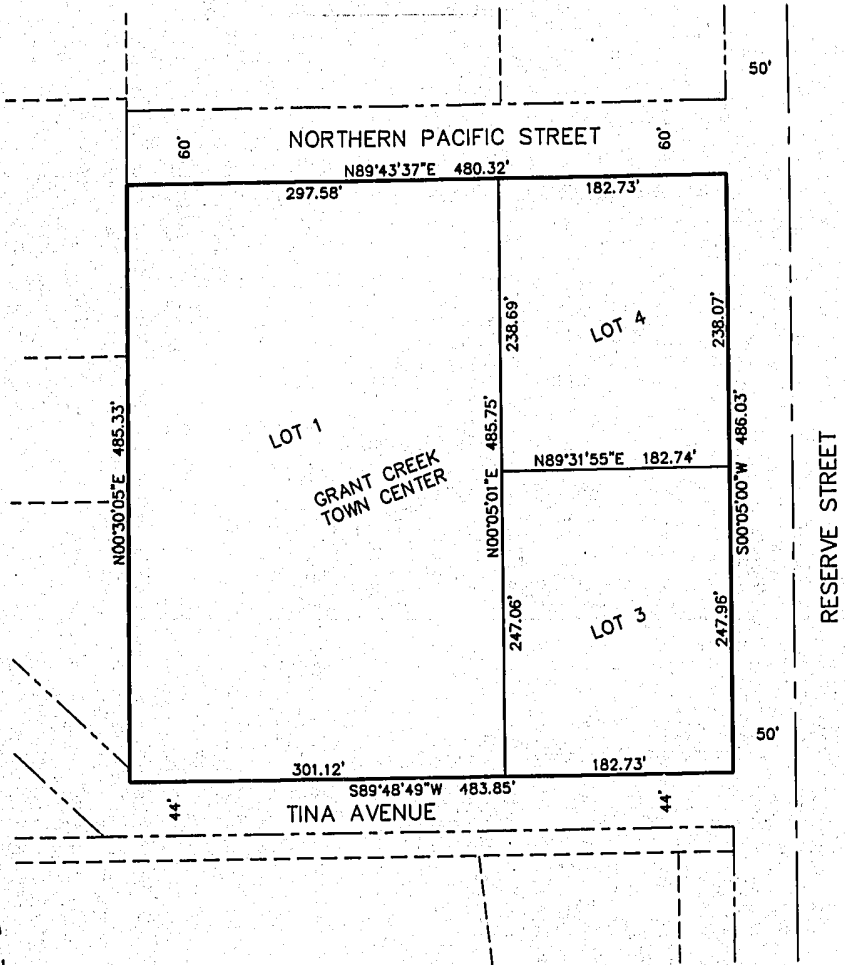


EXHIBIT "B"
PARCEL MAP

WGM group
ENGINEERING-SURVEYING-PLANNING
P.O. BOX 3418
MISSOULA, MONTANA 59806

FILE NO.: L-1249
DRAFT: CEO

DATE: 09/17/98
PROJECT: 98-01-07

960107PE.DWG

BOOK 556 PART 0257

EXHIBIT C
PLOT MAP
Building Area //

LOT 5

NORTHERN PACIFIC STREET

LOT 4

LOT 3

RESERVE STREET

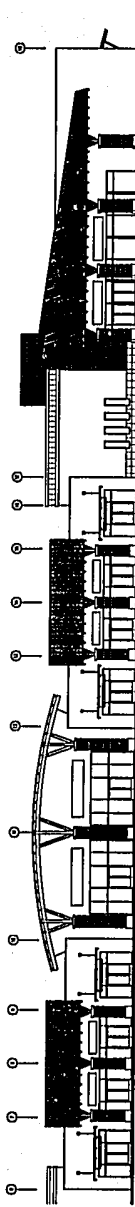
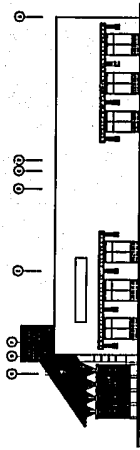
TINA AVENUE

DESIGNING - SURVEYING - PLANNING
 WGM GROUP
 SITE PLAN - PHASE I
 GRANT CREEK TOWN CENTER
 MISSOULA, MONTANA
 2011

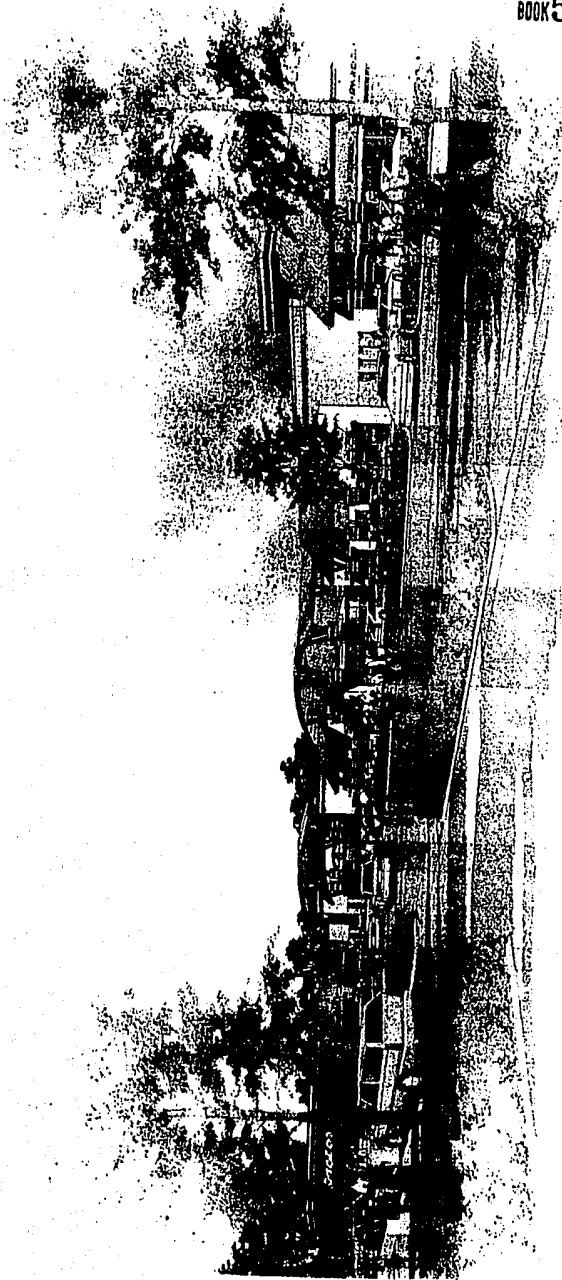


SUB-STANDARD QUALITY WHEN FILMED

EXHIBIT "D"
BUILDING ELEVATIONS



BOOK 556 PAGE 0259



SUB-STANDARD QUALITY WHEN FILMED

BOOK 556 PAGE 0260

EXHIBIT "E"
FREE STANDING PAD BUILDING SIGN CRITERIA

The Parcel Owners and/or Occupants of Lot 5A of Grant Creek Town Center and Tract 2 of Certificate of Survey No. 4681 will:

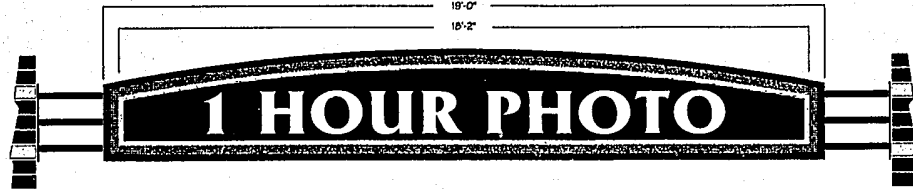
(a) incorporate the architectural elements, design features, and building materials used in the Developer Stores into the designs for signs located on those Parcels, and

(b) use sign designs and materials which are generally consistent with the project signs erected by the Developer for the Shopping Center and signs installed on the Developer Stores by their Occupants,

unless the incorporation of those architectural elements, design features, and materials is inconsistent with national and/or regional trademarks used by the Parcel Owners and/or Occupants of Lot 5A and Tract 2. Examples of appropriate designs and materials are shown in the illustrations which are attached to this exhibit.

GRANT CREEK TOWN CENTER DECLARATION OF COVENANTS, EXHIBIT E

BOOK 556 PAGE 0261



GRANT CREEK TOWN CENTER / SIGN TYPE "A"

BACKGROUND/STANCION:

2"X3" REC. TUBE ALUMINUM FRAME W/ 2" ALUM. TUBE SPREADER BRACKETS AND MOUNTING PLATES. PERFORATED ALUMINUM SHEET FRAMEWORK FACING .090 ALUMINUM BACK. ALUMINUM CHANNEL PERIMETER CONCEALING NOVIOL GOLD NEON HALO (60 MA TRANSFORMERS) PRIMARY FEED THRU BUILDING COLUMN & SPREADER BRACKET TUBE.

SIGN CABINET / FACE:

EXTRUDED ALUMINUM CABINET W/ 800MA HO FLUORESCENT LAMP ILLUMINATION RACEWAY HOUSED BALLASTS / TRANSFORMERS / WIRING (SERVICE THRU FACE W/ RETAINERS) SOLAR GRADE POLYCARBONATE FACES

TENANT GRAHICS / LETTERING:

COLORS: BACKGROUND, 3M FILMS #36 DARK BLUE, #49 BURGUNDY, # 76 HOLLY GREEN COPY, WHITE WITH BLACK OUTLINE

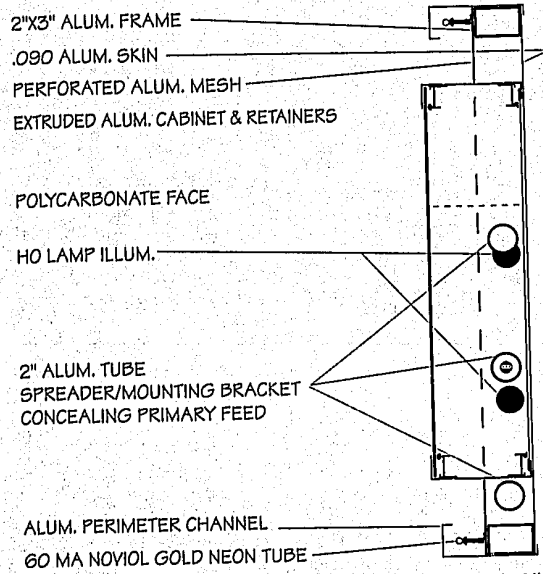
*EXCEPTION: NATIONALLY REGISTERED TRADE MARKS, REGIONAL OR NATIONAL CHAIN COLORS ALL GRAPHICS LAYOUTS / LETTER STYLES TO BE APPROVED BY GRANT CREEK TOWN CENTER

PAINT: MATHEWS ACRYLIC POLYURETHANE SEMI GLOSS

BRACKETS BLACK / FRAME, CABINET, CHANNEL & BACK WEATHERED BRONZE MESH BACKGROUND LIGHT BRONZE RETAINERS MATCH BEN.MOORE 3/D#1090 "COPPER SPRINGS"

GRANT CREEK
· TOWN · CENTER ·

SUB-STANDARD QUALITY WHEN FILMED



SECTION DETAIL 1.5" = 1'-0"

GRANT CREEK TOWN CENTER / SIGN TYPE "A", "A1"

GRANT CREEK
TOWN CENTER

BOOK 556 PAGE 0263

9'-0"

8'-2"

1 HOUR PHOTO

GRANT CREEK TOWN CENTER / SIGN TYPE "B"

BACKGROUND/STANION:

2"x3" REC. TUBE ALUMINUM FRAME

PERFORATED ALUMINUM SHEET FRAME FACING

.090 ALUMINUM BACK. ALUMINUM CHANNEL PERIMETER CONCEALING NOVIOL GOLD
NEON HALO (60 MA TRANSFORMERS) PRIMARY FEED THRU BACK OF SIGN

SIGN CABINET / FACE:

FABRICATED ALUMINUM CABINET W/ 800MA HO FLUORESCENT LAMP ILLUMINATION

RACEWAY HOUSED BALLASTS / TRANSFORMERS / WIRING (SERVICE THRU FACE W/ RETAINERS)

SOLAR GRADE POLYCARBONATE FACES W/ 3M FILM GRAPHICS

TENANT GRAHICS / LETTERING:

COLORS: 3M FILMS #36 DARK BLUE, #49 BURGUNDY, # 76 HOLLY GREEN (BACKGROUNDS)

LETTERS: WHITE W/ BLACK OUTLINE

*EXCEPTION: NATIONALLY REGISTERED TRADE MARKS, REGIONAL OR NATIONAL CHAIN COLORS
ALL GRAPHICS LAYOUTS / LETTER STYLES TO BE APPROVED BY GRANT CREEK TOWN CENTER

PAINT: MATHEWS ACRYLIC POLYURETHANE SEMI GLOSS

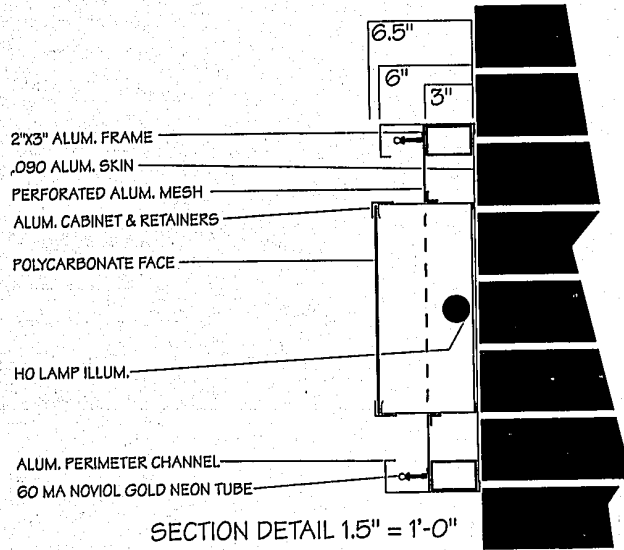
FRAME, CABINET, CHANNEL & BACK WEATHERED BRONZE

MESH BACKGROUND LIGHT BRONZE

RETAINERS MATCH BEN.MOORE 3/D#1090 "COPPER SPRINGS"

GRANT CREEK
TOWN CENTER

SUB-STANDARD QUALITY WHEN FILMED



GRANT CREEK TOWN CENTER / SIGN TYPE "B"

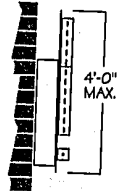
GRANT CREEK
TOWN CENTER

BOOK 556 PAGE 0265

NOT TO EXCEED 50% OF LEASE HOLD FRONTAGE



DISPLAY SHOWN IS EXAMPLE ONLY



GRANT CREEK TOWN CENTER / SIGN TYPE "C"

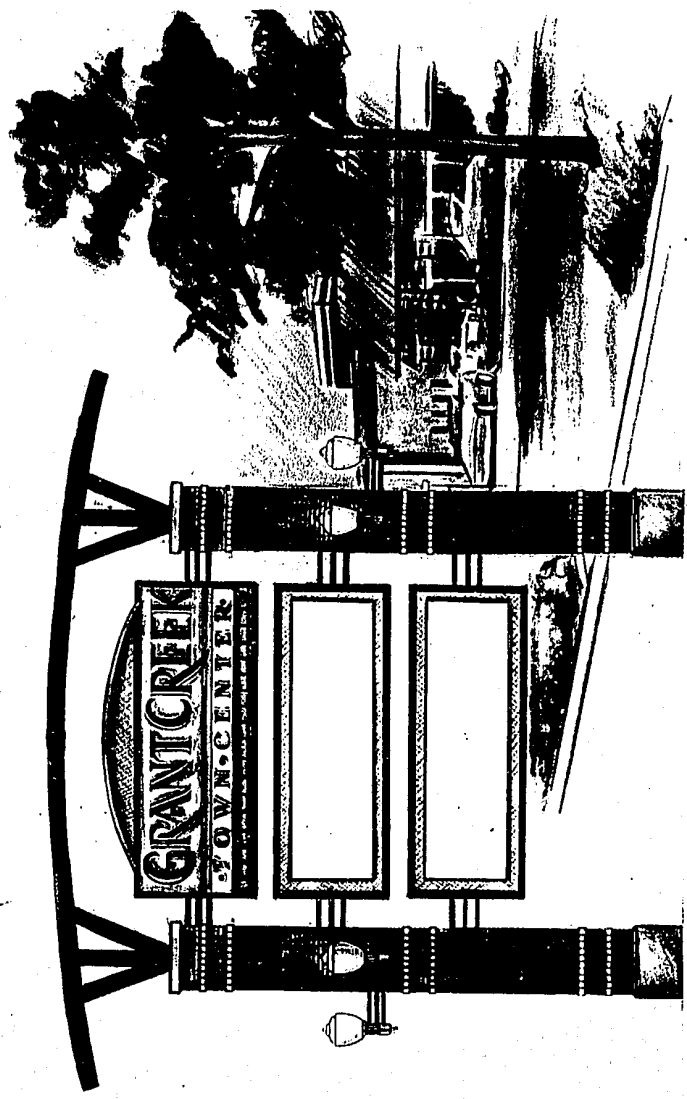
DISPLAY SHOWN IS OPEN FACE PAN CHANNEL NEON
LETTERS & LOGO ON ALUMINUM SIGN PANEL BACKGROUND
& RACEWAY

TENANTS ARE ENCOURAGED TO SHOW CREATIVITY IN THEIR
USE OF COLORS, SHAPES, LIGHTING AND GRAPHIC APPLICATIONS.
TENANTS WILL BE REQUIRED TO SUBMIT SCALE DRAWINGS
INCLUDING SPECIFICATIONS & COLOR ARTWORK FOR WRITTEN
APPROVAL PRIOR TO PERMIT APPLICATION.
ALL SIGNAGE IS SUBJECT TO APPROVAL BY CITY SIGNAGE PERMITTING
ALL DESIGNS, GRAPHIC LAYOUTS, LETTER STYLES, LOGOS TO BE
APPROVED BY GRANT CREEK TOWN CENTER

GRANT CREEK
TOWN CENTER

SUB-STANDARD QUALITY WHEN FILMED

BOOK 556 PAGE 0266



GRANT CREEK TOWN CENTER
John Howenstine, Inc.
PREPARED BY CONCEPT & FABRICATION

SUB-STANDARD QUALITY WHEN FILMED

EXHIBIT "F"
RULES AND REGULATIONS

A. Occupant Stores

1. Each Parcel Owner shall use its best efforts to require its Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings and parking stall markings.
2. All Stores in the Shopping Center shall have their window displays, exterior signs, and exterior advertising displays adequately illuminated continuously during such hours as the Shopping Center is open for business to the public as determined by Developer in its reasonable discretion.
3. All Stores, including entrances and returns, doors, fixtures, windows, and plate glass shall be maintained in a safe, neat and clean condition.
4. All trash, refuse, and waste materials shall be regularly removed from the premises of each Store within the Shopping Center, and until removal shall be stored (a) in adequate containers, which containers shall be covered with lids and shall be located so as not to be visible to the general public shopping in the Shopping Center, and (b) so as not to constitute any health and fire hazard or nuisance to any Permittee. Occupants who utilize an exterior trash storage receptacle and who are responsible for arranging for the regular removal of trash from that receptacle shall cause the removal to occur between the hours of 7 a.m. and 10 p.m.
5. No portion of the Shopping Center shall be used for lodging purposes.
6. Except as may be permitted by Developer or by the terms of an occupant's lease, neither sidewalks nor walkways shall be used to display, store or place any merchandise, equipment, or devices.
7. No advertising medium shall be utilized which can be heard or experienced outside of any Store, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios, or television.
8. No use shall be made of the Shopping Center or any portion or portions of the Shopping Center which would (a) violate any law, ordinance, or regulation, (b) constitute a nuisance, (c) constitute an extra-hazardous use, or (d) violate, suspend, or void any policy or policies of insurance on the Stores.
9. The Parcel Owners and Occupants shall use their best efforts to require all trucks servicing their respective Stores to load and unload those trucks (a) only during the hours permitted by Section 6.05 of the Declaration, or (b) so as not to materially interfere with the operation of the other Stores within the Shopping Center.

B. Conduct of Persons

The following rules and regulations are hereby established for the use of roadways, walkways, the Parking Area, and other common facilities provided for the use of Permittees:

1. No person shall use any roadway or walkway (other than Outside Sales Areas permitted by Developer), except as a means of egress from or ingress to any Store and the Parking Area within the Shopping Center or adjacent public streets, or such other uses as are approved by the Parcel Owners. All use of roadways and walkways shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways within the Shopping Center shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. No walkway (other than Outside Sales Areas permitted by Developer) shall be used for other than pedestrian travel or such other uses as are approved by the Parcel Owners.
2. No person shall use the Parking Area except for the parking of motor vehicles during the period of time the person or the occupants of the vehicles are customers or business invitees of the business establishments within the Shopping Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, limitations may be imposed as to the length of time for parking use. Such limitations may be made in specified areas.
3. No person shall use any utility area, truck court, or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use that area is given.
4. Developer reserves the right to designate certain portions of the Parking Area for nonexclusive use as parking areas by the respective employees, agents, contractors, licensees and concessionaires of the Occupants. Those portions of the Parking Area may be more particularly set forth in the Plot Plan. Developer and each Occupant shall use its reasonable best efforts to require its employees, agents, contractors, licensees, and concessionaires to park in the portions of the Parking Area designated by Developer, as may be shown on the Plot Plan, for that use. Each Occupant shall furnish Developer with a list of all of their respective employees' license plate numbers and shall thereafter notify Developer of any changes to those license plate numbers within ten (10) days after any change. If the employees fail to park their vehicles in the designated parking areas, except to the extent Developer may have agreed to the contrary in any lease with an Occupant or any of-record written agreement with another Parcel Owner, then Developer may charge the Occupant or the Parcel Owner with respect to that occupant, \$15.00 per day per vehicle for each day or partial day that employee vehicle(s) are parked in any areas other than those so designated. All amounts due under the provisions of this paragraph shall be payable to Developer within ten (10) days after Developer's demand for payment of those amounts. All Occupants authorize Developer to tow away or cause to be towed away from

the Shopping Center any vehicle in violation of the provisions of this paragraph, and/or to attach violation stickers or notices to such vehicles.

5. Developer shall have the right to supplement these Rules and Regulations with rules and regulations dealing with the public's right to engage in expressive activity in the Shopping Center ("Expressive Activities Regulation"), which Expressive Activities Regulations shall comply with then current Montana and federal law.

6. Subject to the Expressive Activities Regulations, no person shall, in or on any part of the Common Area.

(a) Vend, peddle, or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet, or other matter whatsoever.

(b) Exhibit any sign, placard, banner, notice, or other written material.

(c) Distribute any circular, booklet, handbill, placard, or other material.

(d) Solicit membership in any organization, group, or association or contribution for any purpose.

(e) Parade, rally, patrol, picket, demonstrate, or engage in any conduct that might tend to interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interest of any of the retail establishments within the Shopping Center.

(f) Use any Common Area for any purpose when none of the retail establishments within the Shopping Center is open for business or employment.

(g) Throw, discard, or deposit any paper, glass, or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

(h) Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to any Permittee.

(i) Deface, damage, or demolish any sign, light standard or fixture, landscaping material, or other improvement within the Shopping Center, or the property of customers, business invitees, or employees situated within the Shopping Center.

The listing of specific items as being prohibited is not intended to be exclusive but is intended to indicate in general the manner in which the right to use the Common Area may be limited.

BOOK 556 PART 0270

Any Parcel Owner shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Shopping Center or any portion of the Shopping Center and prohibit, abate, and recover damages arising from any unauthorized act, whether or not the act is in express violation of the prohibitions listed above. In so acting such Parcel Owner is not the agent of other Parcel Owners or occupants of the Shopping Center, unless expressly authorized or directed to do so by the Parcel Owner or Occupant in writing.

EXHIBIT "F"
RULES AND REGULATIONS

A. Occupant Stores

1. Each Parcel Owner shall use its best efforts to require its Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings and parking stall markings.
2. All Stores in the Shopping Center shall have their window displays, exterior signs, and exterior advertising displays adequately illuminated continuously during such hours as the Shopping Center is open for business to the public as determined by Developer in its reasonable discretion.
3. All Stores, including entrances and returns, doors, fixtures, windows, and plate glass shall be maintained in a safe, neat and clean condition.
4. All trash, refuse, and waste materials shall be regularly removed from the premises of each Store within the Shopping Center, and until removal shall be stored (a) in adequate containers, which containers shall be covered with lids and shall be located so as not to be visible to the general public shopping in the Shopping Center, and (b) so as not to constitute any health and fire hazard or nuisance to any Permittee. Occupants who utilize an exterior trash storage receptacle and who are responsible for arranging for the regular removal of trash from that receptacle shall cause the removal to occur between the hours of 7 a.m. and 10 p.m.
5. No portion of the Shopping Center shall be used for lodging purposes.
6. Except as may be permitted by Developer or by the terms of an occupant's lease, neither sidewalks nor walkways shall be used to display, store or place any merchandise, equipment, or devices.
7. No advertising medium shall be utilized which can be heard or experienced outside of any Store, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios, or television.
8. No use shall be made of the Shopping Center or any portion or portions of the Shopping Center which would (a) violate any law, ordinance, or regulation, (b) constitute a nuisance, (c) constitute an extra-hazardous use, or (d) violate, suspend, or void any policy or policies of insurance on the Stores.
9. The Parcel Owners and Occupants shall use their best efforts to require all trucks servicing their respective Stores to load and unload those trucks (a) only during the hours permitted by Section 6.05 of the Declaration, or (b) so as not to materially interfere with the operation of the other Stores within the Shopping Center.

B. Conduct of Persons

The following rules and regulations are hereby established for the use of roadways, walkways, the Parking Area, and other common facilities provided for the use of Permittees:

1. No person shall use any roadway or walkway (other than Outside Sales Areas permitted by Developer), except as a means of egress from or ingress to any Store and the Parking Area within the Shopping Center or adjacent public streets, or such other uses as are approved by the Parcel Owners. All use of roadways and walkways shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways within the Shopping Center shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. No walkway (other than Outside Sales Areas permitted by Developer) shall be used for other than pedestrian travel or such other uses as are approved by the Parcel Owners.
2. No person shall use the Parking Area except for the parking of motor vehicles during the period of time the person or the occupants of the vehicles are customers or business invitees of the business establishments within the Shopping Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, limitations may be imposed as to the length of time for parking use. Such limitations may be made in specified areas.
3. No person shall use any utility area, truck court, or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use that area is given.
4. Developer reserves the right to designate certain portions of the Parking Area for nonexclusive use as parking areas by the respective employees, agents, contractors, licensees and concessionaires of the Occupants. Those portions of the Parking Area may be more particularly set forth in the Plot Plan. Developer and each Occupant shall use its reasonable best efforts to require its employees, agents, contractors, licensees, and concessionaires to park in the portions of the Parking Area designated by Developer, as may be shown on the Plot Plan, for that use. Each Occupant shall furnish Developer with a list of all of their respective employees' license plate numbers and shall thereafter notify Developer of any changes to those license plate numbers within ten (10) days after any change. If the employees fail to park their vehicles in the designated parking areas, except to the extent Developer may have agreed to the contrary in any lease with an Occupant or any of-record written agreement with another Parcel Owner, then Developer may charge the Occupant or the Parcel Owner with respect to that occupant, \$15.00 per day per vehicle for each day or partial day that employee vehicle(s) are parked in any areas other than those so designated. All amounts due under the provisions of this paragraph shall be payable to Developer within ten (10) days after Developer's demand for payment of those amounts. All Occupants authorize Developer to tow away or cause to be towed away from

the Shopping Center any vehicle in violation of the provisions of this paragraph, and/or to attach violation stickers or notices to such vehicles.

5. Developer shall have the right to supplement these Rules and Regulations with rules and regulations dealing with the public's right to engage in expressive activity in the Shopping Center ("Expressive Activities Regulation"), which Expressive Activities Regulations shall comply with then current Montana and federal law.

6. Subject to the Expressive Activities Regulations, no person shall, in or on any part of the Common Area.

(a) Vend, peddle, or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet, or other matter whatsoever.

(b) Exhibit any sign, placard, banner, notice, or other written material.

(c) Distribute any circular, booklet, handbill, placard, or other material.

(d) Solicit membership in any organization, group, or association or contribution for any purpose.

(e) Parade, rally, patrol, picket, demonstrate, or engage in any conduct that might tend to interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interest of any of the retail establishments within the Shopping Center.

(f) Use any Common Area for any purpose when none of the retail establishments within the Shopping Center is open for business or employment.

(g) Throw, discard, or deposit any paper, glass, or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

(h) Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to any Permittee.

(i) Deface, damage, or demolish any sign, light standard or fixture, landscaping material, or other improvement within the Shopping Center, or the property of customers, business invitees, or employees situated within the Shopping Center.

The listing of specific items as being prohibited is not intended to be exclusive but is intended to indicate in general the manner in which the right to use the Common Area may be limited.

BOOK 556 PAGE 0274

Any Parcel Owner shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Shopping Center or any portion of the Shopping Center and prohibit, abate, and recover damages arising from any unauthorized act, whether or not the act is in express violation of the prohibitions listed above. In so acting such Parcel Owner is not the agent of other Parcel Owners or occupants of the Shopping Center, unless expressly authorized or directed to do so by the Parcel Owner or Occupant in writing.

'98 SEP 23 PM 4:02

199825409

Return to: Peter Dayton
Warden Shane & Hairies
111 N Higgins
Missoula MT 59802

GRANT CREEK TOWN CENTER PHASE I RULES AND REGULATIONS, EXHIBIT F, PAGE 4

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 23 DAY OF Sep. 1998 AT 4:02 O'CLOCK P M AND IT IS RECORDED
IN VOL. 556 OF MICRO RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 204 FEE 376 PAID B
RETURN TO ADDRESS BY J. Kelly N. White DEPUTY REC. DM

3

BOOK 557 PAGE 1784

18

**FIRST AMENDMENT TO DECLARATION OF
CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS
AND GRANT OF EASEMENTS
Phase I of Grant Creek Town Center, Missoula, Montana**

THIS FIRST AMENDMENT TO DECLARATION OF CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS AND GRANT OF EASEMENTS is made on October 6, 1998, by LV Investors, a California limited partnership whose address is c/o Colliers StepStone, 610 West Ash Street, Suite 1400, San Diego, California 92101, Carisch Brothers, a Minnesota general partnership whose address is 641 East Lake Street, Suite 226, Wayzata, Minnesota 55391 (referred to in this agreement as "Carisch"), and Western Security Bank, a federally chartered savings bank whose address is 100 East Broadway, Missoula, Montana 59802 (referred to in this agreement as "Western")

RECITALS

WHEREAS, LV Investors has executed a Declaration of Construction and Operation Covenants and Restrictions with respect to Phase I of Grant Creek Town Center in Missoula, Montana, which was recorded on September 23, 1998, in Book 556 of Micro Records, Page 209, records of Missoula County, Montana (referred to in this amendment as the "Declaration"); and

WHEREAS, as of the date and time of execution of this amendment, LV Investors owns Lots 1 and 2 of Grant Creek Town Center, and Western owns Lot 3 of Grant Creek Town Center; and

WHEREAS, Western intends to construct and operate a bank facility on Lot 3; and

WHEREAS, the Parties wish to amend certain provisions of the Declaration; and

WHEREAS, Section 14.08 of the Declaration provides that "No modification, waiver, amendment, discharge, or change of this Declaration shall be valid unless it is in writing and signed by all of the Parcel Owners;"

NOW, THEREFORE, acting pursuant to Section 14.08 of the Declaration, the Parties agree to amend the Declaration in the following respects:

Section 1. Amendment of Resale Restrictions. With respect to Lot 3 of Grant Creek Town Center, as that lot now exists or may subsequently be modified (referred to in this amendment as "Lot 3"), the Parties agree to amend the resale restrictions contained in Article XIII of the Declaration in the following respects:

- (a) The requirements of Section 13.02 of the Declaration, which require each Parcel Owner to negotiate with the Developer before attempting to market a Parcel or solicit offers to purchase a Parcel, will not apply to Lot 3 if the Parcel Owner of

Lot 3 is negotiating with a person, or attempting to market Lot 4 to a person, who intends to operate a banking facility on Lot 3.

(b) The requirements of Section 13.03 of the Declaration will not apply to Lot 3 if the Parcel Owner of Lot 3 receives an offer to purchase Lot 3 from a person who intends to operate a banking facility on Lot 3.

Section 2. Amendment of Construction Requirements. With respect to Lot 3, the Parties agree to amend the general construction requirements contained in Section 2.05 of the Declaration by replacing Section 2.05(b) with the following provisions:

(b) **Commencement of construction and business.** The Parcel Owner of Lot 3 will construct an ATM facility on Lot 3, improve the Parcel with paving and landscaping, and open the ATM facility for business by June 1, 1999. The Parcel Owner of Lot 3 will construct a branch bank office on Lot 3 and open the office for business by June 1, 2000. If the Parcel Owner of Lot 3 fails to meet either of these deadlines, then the Developer may, at the Developer's option, exercise the following remedies:

(i) If the Parcel Owner of Lot 3 fails to open an ATM facility on Lot 3 for business by June 1, 1999, or fails to open a branch bank office on Lot 3 for business by June 1, 2000, then the Developer may charge the Parcel Owner an amount equal to .83 percent of the amount that the Parcel Owner paid for Lot 3 for each month until the Parcel Owner opens the ATM facility or the branch bank office for business.

(ii) If the Parcel Owner of Lot 3 fails to open an ATM facility on Lot 3 for business by June 1, 1999, or fails to open a branch bank office on Lot 3 for business by June 1, 2000, then at any time before the Parcel Owner commences substantial construction of the branch bank office, the Developer will have the right and option to purchase Lot 3 from the Parcel Owner for the amount that the Parcel Owner paid for that Parcel. The Developer will give the Parcel Owner written notice that it has elected to exercise this right and option, and will have sixty days after delivery of the written notice to set up a closing and to tender the purchase price of the Parcel to the Parcel Owner. If the Parcel Owner has paid any amounts to the Developer pursuant to Subparagraph (i) above, then at closing, in addition to paying the Parcel Owner the amount that the Parcel Owner paid for the Parcel, the Developer must reimburse the Parcel Owner for any amounts paid to the Developer pursuant to Paragraph (i) above.

Section 3. Defined terms. The capitalized terms used in this amendment will have the meanings established for those terms in the Declaration.

BOOK 557 PAGE 1786

Section 4. Effect of this amendment. The Declaration will remain in full force and effect, and will continue to be enforceable in accordance with its terms, as revised by this amendment.

Executed as of 10-6, 1998.

LV INVESTORS, by H&S FINANCIAL CORPORATION, its general partner

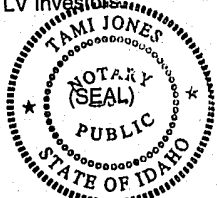
WESTERN SECURITY BANK

By: [Signature]
Harold D. McNee, Jr., President

By: [Signature]
Title: CEO

STATE OF Idaho)
COUNTY OF Blaine) :SS

This instrument was acknowledged before me on October 6th, 1998, by Harold D. McNee, Jr., as President of H&S Financial Corporation, the general partner of LV Investors.



[Signature]
Notary public for the state of Idaho
Residing at Blaine
My commission expires 9-11-2004

STATE OF MONTANA)
COUNTY OF MISSOULA) :SS

'98 OCT 8 PM 4:15

This instrument was acknowledged before me on October 8, 1998, by Douglas G. Bardwell as the Executive Vice President and Chief Operating Officer of Western Security Bank.



NOTARY PUBLIC MONTANA
Residing in Missoula, MT
My Comm. Expires July 13, 1999.

[Signature]
Notary public for the state of _____
Residing at _____
My commission expires _____

199826854

94254

FIRST AMENDMENT TO GRANT CREEK TOWN CENTER PHASE I DECLARATION, PAGE 3

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 8 DAY OF Oct 1998 AT 4:15 O'CLOCK P M AND IT IS RECORDED IN VOL 557 OF MICRO RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 1784 FEE 18 PAID 0 WITNESS MY HAND AND SEAL THIS 8 DAY OF October 1998. [Signature] DEPUTY REC'D DM

Return to: St. Anne's car title
attn: duggie

M33991

(3)

BOOK 557 PAGE 1791

4/1/99

**SECOND AMENDMENT TO DECLARATION OF
CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS
AND GRANT OF EASEMENTS
Phase I of Grant Creek Town Center, Missoula, Montana**

THIS SECOND AMENDMENT TO DECLARATION OF CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS AND GRANT OF EASEMENTS is made on October 6, 1998, by LV Investors, a California limited partnership whose address is c/o Colliers StepStone, 610 West Ash Street, Suite 1400, San Diego, California 92101, Carisch Brothers, a Minnesota general partnership whose address is 641 East Lake Street, Suite 226, Wayzata, Minnesota 55391, and Western Security Bank, a federally chartered savings bank whose address is 100 East Broadway, Missoula, Montana 59802 (collectively referred to in this agreement as the "Parties").

RECITALS

WHEREAS, LV Investors recorded a Declaration of Construction and Operation Covenants and Restrictions with respect to Phase I of Grant Creek Town Center in Missoula, Montana (referred to in this amendment as the "Declaration") on September 23, 1998, in Book 556 of Micro Records at Page 209; and

WHEREAS, LV Investors and Western Security Bank have recorded a First Amendment to the Declaration; and

WHEREAS, Section 14.08 of the Declaration provides that "No modification, waiver, amendment, discharge, or change of this Declaration shall be valid unless it is in writing and signed by all of the Parcel Owners;" and

WHEREAS, as of the date and time of execution of this amendment, LV Investors owns Lot 1 of Grant Creek Town Center, Western Security Bank owns Lot 3 of Grant Creek Town Center, and Carisch Brothers owns Lot 4 of Grant Creek Town Center; and

WHEREAS, Carisch Brothers intends to construct and operate a fast food restaurant on Lot 4, and the Parties wish to amend certain provisions of the Declaration;

NOW, THEREFORE, acting pursuant to Section 14.08 of the Declaration, the Parties agree to amend the Declaration in the following respects:

Section 1. Amendment of Resale Restrictions. With respect to Lot 4 of Grant Creek Town Center, as that lot now exists or may subsequently be modified (referred to in this amendment as "Lot 4"), the Parties agree to amend the resale restrictions contained in Article XIII of the Declaration in the following respects:

(a) The requirements of Section 13.02 of the Declaration, which require each Parcel Owner to negotiate with the Developer before attempting to market a Parcel

SECOND AMENDMENT TO GRANT CREEK TOWN CENTER PHASE I DECLARATION, PAGE 1

or solicit offers to purchase a Parcel, will not apply to Lot 4 if the Parcel Owner of Lot 4 is negotiating with a person, or attempting to market Lot 4 to a person, who intends to operate a fast food restaurant on Lot 4.

(b) The requirements of Section 13.03 of the Declaration will not apply to Lot 4 if the Parcel Owner of Lot 4 receives an offer to purchase Lot 4 from a person who intends to operate a fast food restaurant on Lot 4.

Section 2. Effect of this amendment. The Declaration will remain in full force and effect, and will continue to be enforceable in accordance with its terms, as revised by this amendment.

Executed as of 10-6, 1998.

WESTERN SECURITY BANK

CARISCH BROTHERS

By: Douglas G. Bardwell
Title: VP/PT COO

By: _____
Gerald Carisch, Partner

STATE OF _____)
COUNTY OF _____) :ss

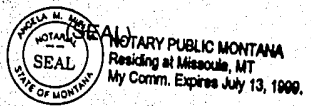
This instrument was acknowledged before me on _____, 1998, by Gerald Carisch as a partner of Carisch Brothers.

(SEAL)

Notary public for the state of _____
Residing at _____
My commission expires _____

STATE OF MONTANA)
COUNTY OF MISSOULA) :ss

This instrument was acknowledged before me on October 8th, 1998, by Gerald Carisch as a partner of Carisch Brothers, Douglas G. Bardwell as Executive Vice President and Chief Operating Officer of Western Security Bank.



Pamela M. Mueller
Notary public for the state of _____
Residing at _____
My commission expires _____

10/06 13:48 1998 FROM:
10/06/98 TUE 12:00 FAX

TO: 1234567

PAGE: 6

BOOK 557 PAGE 1793

008

or solicit offers to purchase a Parcel, will not apply to Lot 4 if the Parcel Owner of Lot 4 is negotiating with a person, or attempting to market Lot 4 to a person, who intends to operate a fast food restaurant on Lot 4.

(b) The requirements of Section 13.03 of the Declaration will not apply to Lot 4 if the Parcel Owner of Lot 4 receives an offer to purchase Lot 4 from a person who intends to operate a fast food restaurant on Lot 4.

Section 2. Effect of this amendment. The Declaration will remain in full force and effect, and will continue to be enforceable in accordance with its terms, as revised by this amendment.

Executed as of 10-6, 1998.

WESTERN SECURITY BANK

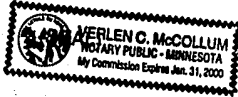
CARISCH BROTHERS

By: _____
Title: _____

By: 
Gerald Carisch, Partner

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) :SS

This instrument was acknowledged before me on OCTOBER 6, 1998, by Gerald Carisch as a partner of Carisch Brothers.



Verlen C. McCallum
Notary public for the state of MINNESOTA
Residing at WAYZATA, MN
My commission expires 1-31-2000

STATE OF _____)
COUNTY OF _____) :SS

This instrument was acknowledged before me on _____, 1998, by Gerald Carisch as a partner of Carisch Brothers.

(SEAL)

Notary public for the state of _____
Residing at _____
My commission expires _____

SECOND AMENDMENT TO GRANT CREEK TOWN CENTER PHASE I DECLARATION, PAGE 2

BOOK 557 PAGE 1794

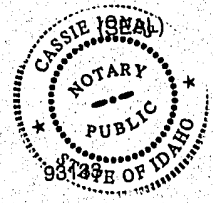
LV INVESTORS, by H&S FINANCIAL CORPORATION, its general partner

By: Harold D. McNee, Jr., President

STATE OF Idaho)
COUNTY OF Blaine) :ss

This instrument was acknowledged before me on September 18, 1998, by Harold G. McNee, Jr., as President of H&S Financial Corporation, the general partner of LV Investors.

Cassie Jones
Notary public for the state of Idaho
Residing at Hailey
My commission expires 9-7-2000



Return to: St American title
attn: Anzeji

'98 OCT 8 PM 4:15

199826857

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 8 DAY OF Oct 98 AT 4:15 O'CLOCK P M AND IS RECORDED IN VOL 557 OF MICRO RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 111 FEE 24 PAID 6 BY Nickie M. Trier COUNTY RECORDER DEPUTY DOC DM

FIRST AMENDMENT TO GRANT CREEK TOWN CENTER PHASE I DECLARATION, PAGE 3

**THIRD AMENDMENT TO DECLARATION OF
CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

Phase I of Grant Creek Town Center, Missoula, Montana

THIS THIRD AMENDMENT TO DECLARATION OF CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS AND GRANT OF EASEMENTS is made on Oct 29, 1998, by LV Investors, a California limited partnership whose address is c/o Colliers StepStone, 610 West Ash Street, Suite 1400, San Diego, California 92101 (referred to in this agreement as "LV Investors"), Carisch Brothers, a Minnesota general partnership whose address is 641 East Lake Street, Suite 226, Wayzata, Minnesota 55391 (referred to in this agreement as "Carisch"), and Western Security Bank, a federally chartered savings bank whose address is 100 East Broadway, Missoula, Montana 59802 (referred to in this agreement as "Western").

RECITALS

WHEREAS, LV Investors has executed a Declaration of Construction and Operation Covenants and Restrictions with respect to Phase I of Grant Creek Town Center in Missoula, Montana, which was recorded on September 23, 1998, in Book 556 of Micro Records, Page 209, records of Missoula County, Montana, and has also executed a First Amendment to Declaration of Construction and Operation Covenants and Restrictions with respect to Phase I of Grant Creek Town Center in Missoula, Montana, which was recorded on October 8, 1998, in Book 557 of Micro Records, Page 1784, records of Missoula County, Montana, and a Second Amendment to Declaration of Construction and Operation Covenants and Restrictions with respect to Phase I of Grant Creek Town Center in Missoula, Montana, which was recorded on October 8, 1998, in Book 557 of Micro Records, Page 1791, records of Missoula County, Montana (collectively referred to in this amendment as the "Declaration"); and

WHEREAS, Exhibits A, B, and C of the Declaration state that the Declaration covers Lots 1, 3, and 4 of Grant Creek Town Center; and

WHEREAS, the parties have filed an amended subdivision plat known as "Grant Creek Town Center Lots 1, 3, and 4," and as of the date and time of execution of this amendment LV Investors owns Lot 1A of Grant Creek Town Center Lots 1, 3, and 4, Western owns Lot 3A of Grant Creek Town Center Lots 1, 3, and 4, and Carisch owns Lot 4A of Grant Creek Town Center Lots 1, 3, and 4; and

WHEREAS, the parties wish to amend the Declaration to reflect the amended boundaries of the subdivision; and

WHEREAS, Section 14.08 of the Declaration provides that "No modification, waiver, amendment, discharge, or change of this Declaration shall be valid unless it is in writing and signed by all of the Parcel Owners;"

THIRD AMENDMENT TO GRANT CREEK TOWN CENTER PHASE I DECLARATION, PAGE 1

NOW, THEREFORE, acting pursuant to Section 14.08 of the Declaration, the parties agree to amend the Declaration in the following respects:

Section 1. Amendment of Exhibit A. The parties agree to amend Exhibit A of the Declaration, which contains the legal description of the Property, by replacing it with the Exhibit A which is attached to this amendment.

Section 2. Amendment of Exhibit B. The parties agree to amend Exhibit B of the Declaration, which is the Parcel Map which shows the boundaries of the various Parcels which make up the Shopping Center, by replacing it with the Exhibit B which is attached to this amendment.

Section 3. Amendment of Exhibit C. The parties agree to amend Exhibit C of the Declaration, which is the Plot Plan which shows the location of various areas and improvements in the Shopping Center, by replacing it with the Exhibit C which is attached to this amendment.

Section 4. Defined terms. The capitalized terms used in this amendment will have the meanings established for those terms in the Declaration.

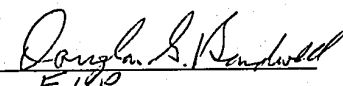
Section 5. Effect of this amendment. The Declaration will remain in full force and effect, and will continue to be enforceable in accordance with its terms, as revised by this amendment.

Executed as of Oct 28, 1998.

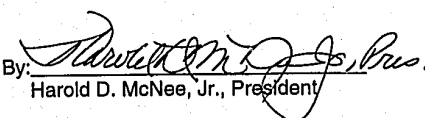
CARISCH BROTHERS

By: 
Gerald Carisch, Partner

WESTERN SECURITY BANK

By: 
Title: EVP.

LV INVESTORS, by H&S FINANCIAL CORPORATION, its general partner

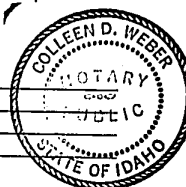
By: 
Harold D. McNee, Jr., President

STATE OF Idaho)
COUNTY OF Blaine) :ss

This instrument was acknowledged before me on October 28, 1998, by Harold G. McNee, Jr., as President of H&S Financial Corporation, the general partner of LV Investors.

(SEAL)

Colleen D. Weber
Notary public for the state of Idaho
Residing at Heiley
My commission expires 3/5/04



STATE OF MONTANA)
COUNTY OF MISSOULA) :ss

This instrument was acknowledged before me on NOVEMBER 3, 1998, by DAKAS G. BARNWELL as the G.V.P. of Western Security Bank.



Peter S. Dayton
Notary public for the state of MONTANA
Residing at MISSOULA
My commission expires 14 APRIL 1998

STATE OF Montana)
COUNTY OF Gallatin) :ss

This instrument was acknowledged before me on November 9, 1998, by Gerald Carisch as a partner of Carisch Brothers.



Terry Stark
Notary public for the state of Montana
Residing at Bozeman
My commission expires 3-19-99

BOOK 565 PAGE 0024

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

Lots 1A, 3A, and 4A of Grant Creek Town Center, Lots 1, 3, and 4, amending Lots 1, 3, and 4 of Grant Creek Town Center, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

THIRD AMENDMENT TO GRANT CREEK TOWN CENTER PHASE I DECLARATION, PAGE 4

BOOK 565 PAGE 0025

EXHIBIT B
PARCEL MAP

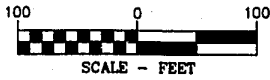
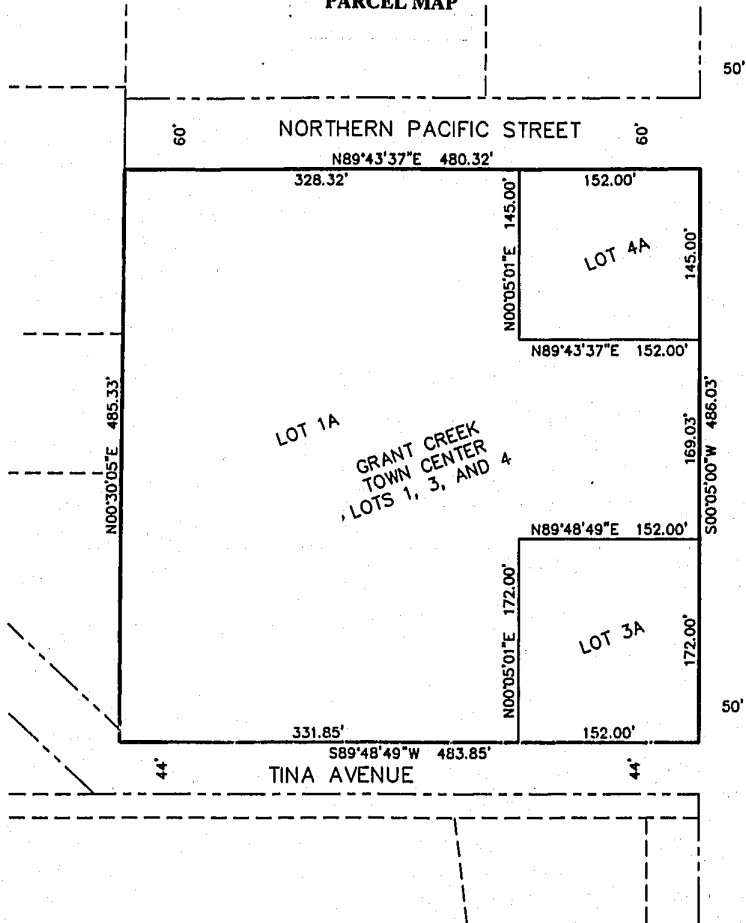


EXHIBIT "B"
PARCEL MAP

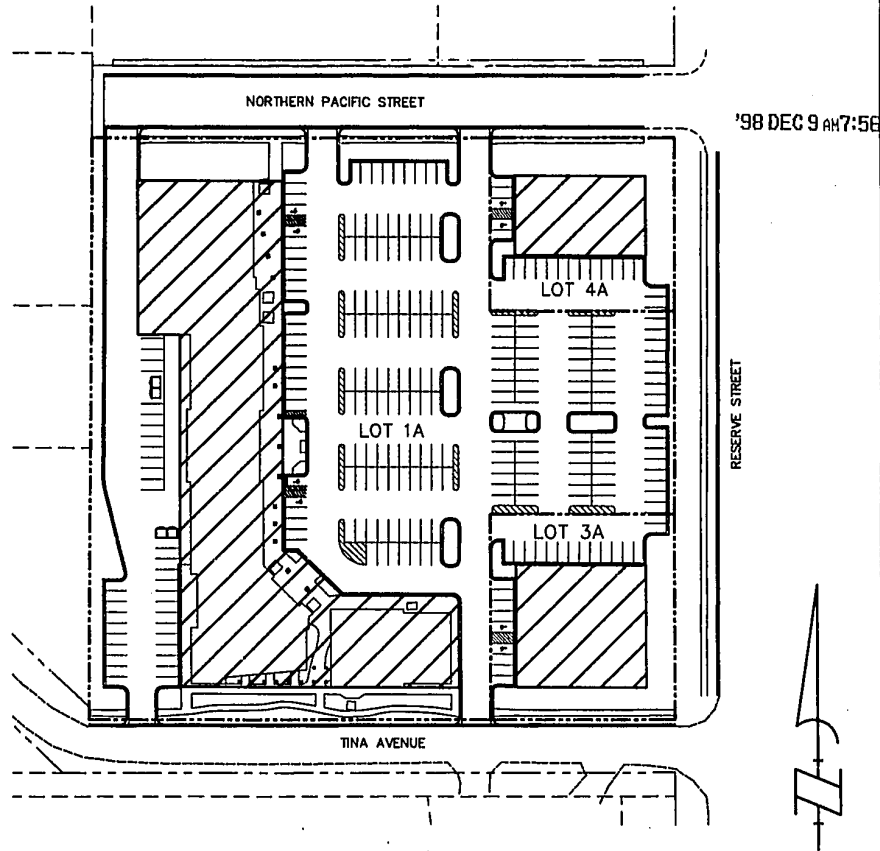
WGM group

ENGINEERING-SURVEYING-PLANNING
 FILE NO.: L-1249 P.O. BOX 3418 DATE: 09/17/98
 DRAFT: CEO MISSOULA, MONTANA 59806 PROJECT: 96-01-07

960107/PE.DWG

SUB-STANDARD QUALITY WHEN FILMED

BOOK 565 PAGE 0026



'98 DEC 9 AM 7:58

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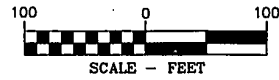


EXHIBIT "C"
 PLOT MAP
 BUILDING AREA / / / / /
 GRANT CREEK TOWN CENTER, PHASE II

DRAFT: CEG

WGM group

ENGINEERING-SURVEYING-PLANNING
 P.O. BOX 16027
 MISSOULA, MONTANA 59808

DATE: 11/13/98
 PROJECT: 98-01-13

04/21/98 (NW)

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 9 DAY OF Dec 1998 AT 7:56 O'CLOCK A M. AND IT IS RECORDED
 IN VOL 565 OF MICRO-RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 21 FEE 36 PAID TK
 RETURN TO WGM ADDRESS Miss. Mont. BY Vickie M. Zeier WITNESS MY HAND, VICKIE M. ZEIER, COUNTY RECORDER
 DEPUTY DOC DM

SUB-STANDARD QUALITY WHEN FILMED

IT 49206

**FOURTH AMENDMENT TO DECLARATION OF CONSTRUCTION
AND OPERATION COVENANTS AND RESTRICTIONS
AND GRANT OF EASEMENTS
Phase II of Grant Creek Town Center, Missoula, Montana**

THIS FOURTH AMENDMENT TO DECLARATION OF CONSTRUCTION AND OPERATION COVENANTS AND RESTRICTIONS AND GRANT OF EASEMENTS ("Amendment") is entered into effective April 15, 2003, by and between the Parcel Owners, namely: WOODMONT MISSOULA, L.P., a Texas limited partnership, whose address is 2100 West 7th Street, Fort Worth, Texas 76107 ("Woodmont"); and DELAY ENTERPRISES, L.L.C., a Montana limited liability company, whose address is S5426 Quail Ridge Circle, Spokane, Washington 99223 ("Delay") (Woodmont and Delay being sometimes collectively referred to herein as the "Parties").

WITNESSETH

WHEREAS, LV Investors, a California limited partnership ("LV") executed a Declaration of Construction and Operation Covenants and Restrictions (the "REA") with respect to Phase II of Grant Creek Town Center in Missoula, Montana, which was recorded on July 8, 1998, in Book 547 of Micro Records, Page 912, records of Missoula County, Montana;

WHEREAS, LV executed that certain First Amendment to Declaration of Construction and Operation Covenants and Restrictions and Grant of Easements (Phase II of Grant Creek Town Center, Missoula, Montana) recorded on July 8, 1998, at Book 547, Page 973 Micro Records, County of Missoula, Montana (the "First Amendment");

WHEREAS, LV and Rocky Mountain Oil, Inc., a Montana corporation, whose address is 4567 West 80th Street, P.O. Box 1224, Minneapolis, Minnesota 55440 (owner of Lot 5A, hereinafter referred to as "Rocky Mountain") entered into that certain Second Amendment to Declaration of Construction and Operation Covenants and Restrictions and Grant of Easements (Phase II of Grant Creek Town Center, Missoula, Montana), recorded September 1, 1998, at Book 553, Page 2091, Micro Records, County of Missoula, Montana (the "Second Amendment");

WHEREAS, LV and Rocky Mountain further entered into that certain Restrictive Covenant for the Benefit of Lot 5A of Grant Creek Town Center (the "Lot 5A Restriction"), dated July 1, 1998, recorded at Book 547, Page 0982 of the Micro Records of Missoula County, Montana;

WHEREAS, LV sold its right, title and interest in and to the Parcels subject to the REA to Woodmont in that certain Warranty Deed recorded on August 15, 2001, at Book 666, Page 936 of the Micro Records of Missoula County, Montana;

-1-



200314735
Page: 1 of 5
04/28/2003 03:51P
Bk-704 Pg-1438

Missoula County Vickie M Zeier COV

WHEREAS, Rocky Mountain Oil conveyed its right, title and interest in and to the Parcels subject to the REA to Woodmont in that certain Warranty Deed recorded on August 15, 2001, at Book 666, Page 930 of the Micro Records of Missoula County, Montana;

WHEREAS, as required in its Warranty Deed to Woodmont, a Restrictive Covenant for the benefit of Rocky Mountain Oil, Inc. was filed on August 15, 2001, restricting Lot 5A of Grant Creek Town Center from operation as a convenience, fuel or cigarette store, which Restrictive Covenant was recorded in Book 666, Page 932, of the Micro Records of Missoula County, Montana;

WHEREAS, Woodmont and Delay entered into that certain Third Amendment to Declaration of Construction and Operation Covenants and Restrictions and Grant of Easements, dated August 3, 2001, recorded at Book 666, Page 939, of the Missoula County Micro Records (the "Third Amendment"), wherein the Parties clarified the ownership of the Parcels such that Delay owns Parcel I and Woodmont owns Parcels II and III, and the Third Amendment revoked and terminated the First Amendment;

WHEREAS, the Declarations, as amended by the First Amendment (later terminated), and further amended by the Second Amendment, and further amended by the Third Amendment, and further amended by this Amendment is hereinafter referred to collectively as the "Declaration");

WHEREAS, Section 14.08 of the Declaration provides that, "No modification, waiver, amendment, discharge, or change of this Declaration shall be valid unless it is in writing and signed by all of the Parcel Owners;"

WHEREAS, as of the date of execution of this Amendment, Delay and Woodmont own the Parcels which are all of the real property subject to the Declaration; and

WHEREAS, Woodmont and Delay desire to amend certain provisions of the Declaration to reflect minor changes and corrections made in Exhibit "C" (the "Plot Map") to the Declaration;

NOW, THEREFORE, for and in consideration of the above recitals, the mutual covenants of the parties hereto and the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree to amend the Declaration in the following respects:

1. Exhibit "C" attached to the Third Amendment to the Declaration is hereby deleted, and Exhibit "C" attached hereto and incorporated herein fully by reference is hereby substituted in its place and stead.



Missoula County Vickie M Zeier COV

200314735

Page: 2 of 5

04/28/2003 03:51P

Bk-704 Pg-1438

2. All defined terms used in this Amendment shall have the same meaning as is ascribed thereto in the Declaration.
3. This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
4. Except as previously and hereby amended, the Parties do hereby confirm and ratify the Declaration and agree that the Declaration will continue to be enforceable in accordance with its terms and shall remain unchanged and in full force and effect.
5. This Amendment may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical and when taken together shall constitute one and the same instrument.

EXECUTED as of April 15, 2003.

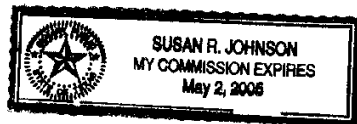
WOODMONT MISSOULA, L.P., a Texas limited partnership

By: Woodmont Missoula GP, L.L.C., a Texas limited liability company, its General Partner

By: *Stephen Coslik*
Stephen Coslik, Managing Member

STATE OF TEXAS)
) SS
COUNTY OF TARRANT)

This instrument was acknowledged before me on this the 21st day of April, 2003, by Stephen Coslik, Managing Member of Woodmont Missoula GP, L.L.C., a Texas limited liability company, the General Partner of Woodmont Missoula, L.P., a Texas limited partnership, for and on behalf of said partnership.



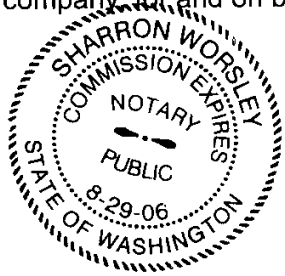
Susan R. Johnson
Notary Public in and for the State of Texas
My Commission Expires: 5-2-06
Susan R. Johnson 2005

DELAY ENTERPRISES, L.L.C., a Montana limited liability company

By: Paul J. Delay Joseph P. Delay
Title: Co. Manager

STATE OF ^{Washington}~~MONTANA~~)
) SS
COUNTY OF King)

This instrument was acknowledged before me on this the 15th day of April, 2003, by Paul J. Delay & Joseph P. Delay, as Members of Delay Enterprises, L.L.C., a Montana limited liability company, for and on behalf of said limited liability company.



Sharron Worsley
Notary Public in and for the State of ~~Montana~~
Washington

My Commission Expires: 8/29/06
2006

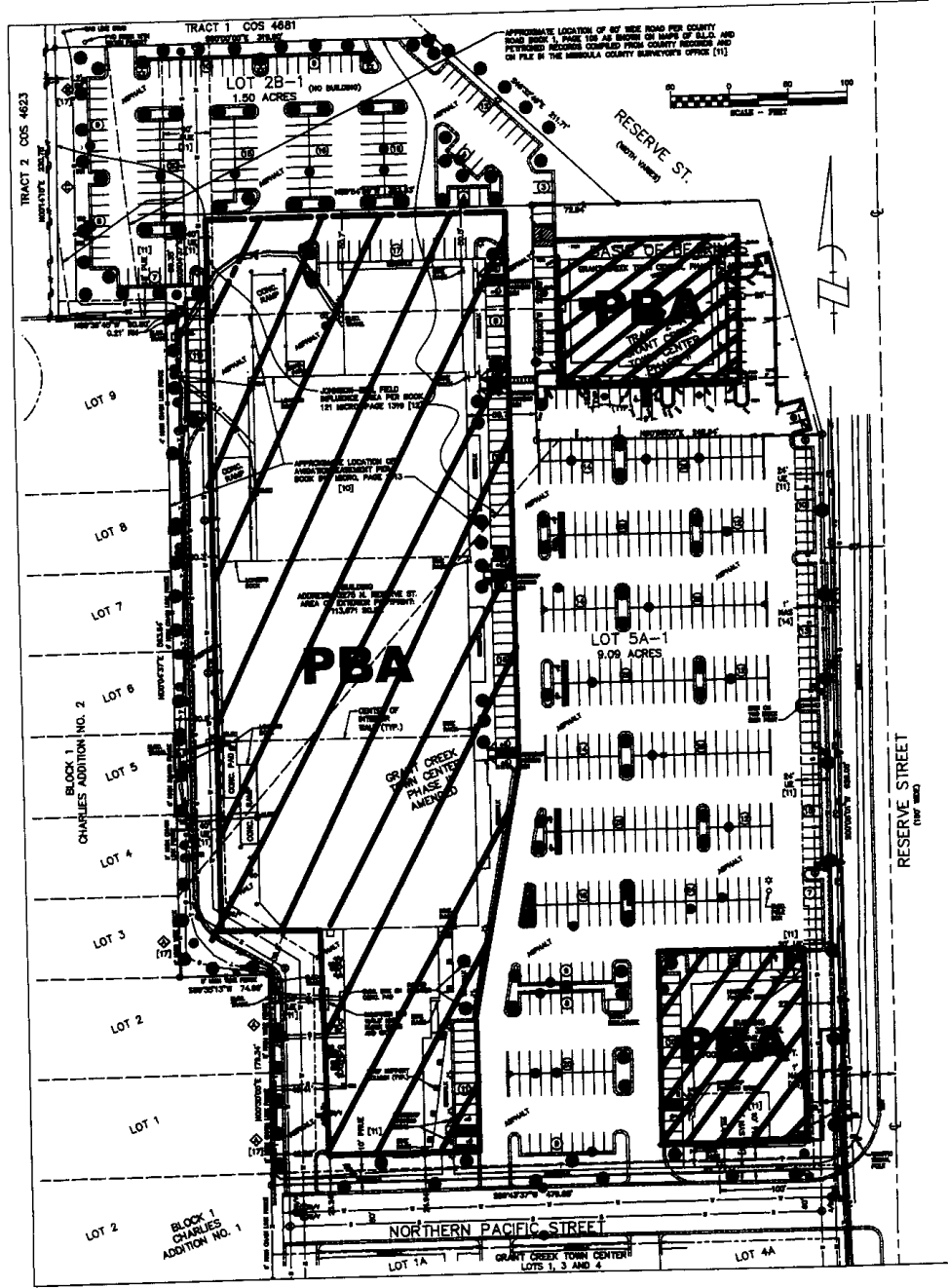
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Page: 4 of 5
04/28/2003 03:51P
Missoula County Vickie M Zeier cov **Bk-704 Pg-1438**



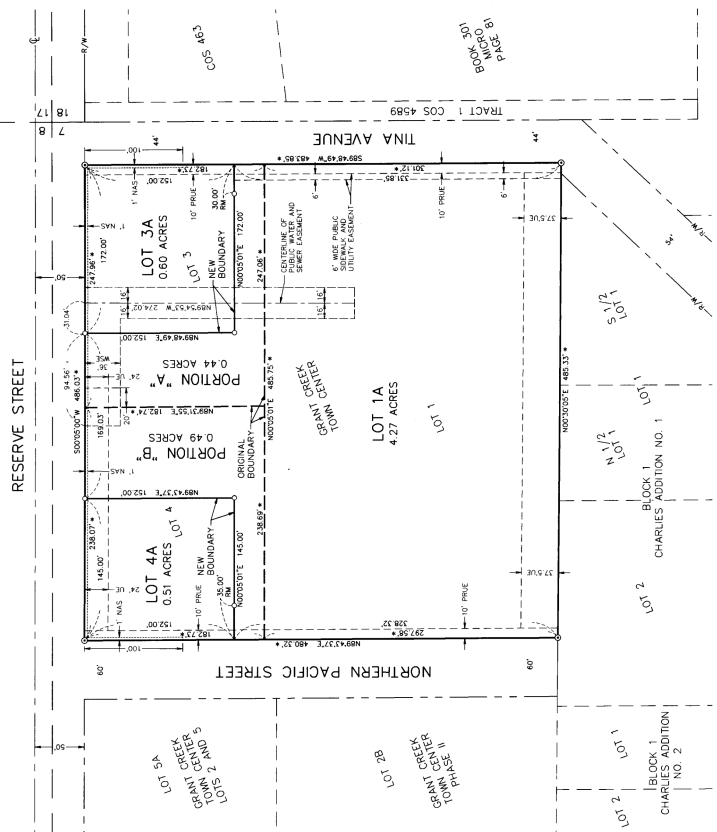
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 Page: 6 of 5
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EXHIBIT C (revised)
4-14-03
PLOT MAP
Building Area //////////////



GRANT CREEK TOWN CENTER, LOTS 1, 3, AND 4

AMENDING LOTS 1, 3, AND 4 OF GRANT CREEK TOWN CENTER
A SUBDIVISION OF THE CITY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 7, T. 13 N., R. 19 W.
PRINCIPAL MERIDIAN, MONTANA



OWNERS

LOT 1 - WJ INVESTMENTS, INC., PARTNERSHIP
 LOT 3 - WESTERN SECURITY BANK, A FEDERALLY CHARTERED SAVINGS BANK
 LOT 4 - CARISCH BROTHERS, A MINNESOTA GENERAL PARTNERSHIP

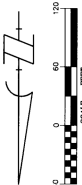
LOT	STREET ADDRESS
1A	RESERVE STREET
3A	TINA AVENUE
4A	TINA AVENUE
1 1/2	TINA AVENUE

AREAS
 LOT AREA = 5.39 ACRES
 TOTAL AREA = 5.39 ACRES

SHEET 1 OF 1
 DATED: OCTOBER 15, 1998
 DRAFTER: J. M. BROWN
 PROJECT NO.: 98-01-13
 FILE NO.: 98013AP.DWG

1/4	SEC.	T.	R.
7	13N	19W	

WGM group
 ENGINEERING - SURVEYING - PLANNING
 3021 Palmer • (406) 728-4611
 P.O. Box 16027 • Missoula, MT 59808



LEGEND

- SET 5/8" x 3/4" REBAR W/ 1/2" YELLOW PLASTIC CAP
- FOUND 5/8" x 3/4" REBAR W/ 1/2" YELLOW PLASTIC CAP
- FOUND 5/8" x 3/4" REBAR W/ 1/2" YELLOW PLASTIC CAP (TOWN GROUP ACCURACY 4/88)
- RM REFERENCE MONUMENT
- RECORD AND FOUND DATA PER GRANT CREEK TOWN CENTER
- PUBLIC WATER AND SEWER EASEMENT PER GRANT CREEK TOWN CENTER
- EXISTING PUBLIC ROADWAY AND UTILITY EASEMENT PER GRANT CREEK TOWN CENTER
- EXISTING 10' ACCESS STRIP PER GRANT CREEK TOWN CENTER

SURVEYOR'S CERTIFICATE

I, THE UNDERSIGNED, THOMAS P. MCGARTHY, REGISTERED LAND SURVEYOR, REGISTRATION NO. 11201, MISSOURI, DO HEREBY CERTIFY THAT THE ACCOMPANYING PLAT IN THE SE 1/4 OF SECTION 7, T. 13 N., R. 19 W., PRINCIPAL MERIDIAN, MONTANA, SHOWS THE BOUNDARIES AND DIMENSIONS OF LOTS 1, 3, AND 4, AND FURTHER THAT THE SURVEY WAS MADE IN THE MONTH OF JULY, 1998, ACCORDING TO THE METHODS AND PRACTICES OF THE SURVEYING PROFESSION IN MISSOURI.

DATE: 08/19/1998
 SIGNATURE: *Thomas P. McGarty*
 REGISTERED LAND SURVEYOR
 MISSOURI REGISTRATION NO. 11201

EXAMINED & APPROVED

STATE OF MISSOURI
 COUNTY OF MISSOURI
 DATED THIS 8TH DAY OF DECEMBER 1998.
 MISSOURI CITY TOWNSHIP
 MISSOURI CITY/COUNTY HEALTH DEPT.

PURPOSE OF SURVEY
 THE BOUNDARIES AS SHOWN IN THIS PLAT ARE TO DEFINE THE BOUNDARIES OF LOTS 1, 3, AND 4 OF GRANT CREEK TOWN CENTER, A SUBDIVISION OF THE CITY OF MISSOULA, MONTANA, PLATTED SUBDIVISION, RELOCATION OF COMMON BOUNDARIES.

*Book 22, Page 67
 08/19/98
 Charles E. Carisch
 Carisch Brothers
 5100 N. 2nd St.
 Missoula, MT 59808*

LEGAL DESCRIPTION - PERMEER
 LOTS 1, 3, AND 4 OF GRANT CREEK TOWN CENTER, A REGISTERED SUBDIVISION OF MISSOULA COUNTY, MONTANA, SHOWING THE BOUNDARIES OF LOTS 1, 3, AND 4, BEING SHARPER AND MONUMENTED ACCORDING TO THIS PLAT.

LEGAL DESCRIPTION - PORTION "A"
 PORTION "A" OF GRANT CREEK TOWN CENTER, LOTS 1, 3, AND 4, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA, CONTAINING 0.44 ACRES, MORE OR LESS, BEING SHARPER AND MONUMENTED ACCORDING TO THIS PLAT.

LEGAL DESCRIPTION - PORTION "B"
 PORTION "B" OF GRANT CREEK TOWN CENTER, LOTS 1, 3, AND 4, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA, CONTAINING 0.49 ACRES, MORE OR LESS, BEING SHARPER AND MONUMENTED ACCORDING TO THIS PLAT.

NOTE:
 PORTIONS "A" AND "B" OF THIS PLAT DO NOT BE ASSERTED AS INTERESTS OR RIGHTS UNDER MISSOURI LAW. TRANSFERS AFTER THE DATE OF THIS PLAT SHALL BE ASSERTED AS INTERESTS OR RIGHTS EXCEPT WHEN INCLUDED WITH OR EXCLUDED FROM ADJOINING PROPERTIES.

CERTIFICATE OF OWNERS

WE HEREBY CERTIFY THAT THE PURPOSE OF THIS SURVEY IS TO RELOCATE COMMON BOUNDARIES, MONUMENTED BY PERMEER, AND TO DEFINE THE BOUNDARIES OF LOTS 1, 3, AND 4 OF GRANT CREEK TOWN CENTER, A SUBDIVISION OF THE CITY OF MISSOULA, MONTANA, PURSUANT TO 78-3-207(16) M.C.A.

THE UNDERSIGNED HEREBY GRANTS TO EACH AND EVERY PERSON, FIRM, OR CORPORATION, WHETHER INDIVIDUAL OR CORPORATE, THE RIGHT TO USE AND ENJOY THE PUBLIC UTILITY EASEMENTS FOR GAS, CABLE TELEVISION WATERS, OR SEWER SERVICE TO THE PUBLIC, THE RIGHT TO THE JOINT USE OF THE PUBLIC UTILITY EASEMENTS FOR GAS, CABLE TELEVISION WATERS, OR SEWER SERVICE TO THE PUBLIC, AND OTHER FACILITIES, IN, OVER, UNDER AND ACROSS EACH AREA DESIGNATED ON THIS PLAT AS "UTILITY EASEMENT" TO HAVE AND TO HOLD FOREVER.

FURTHERMORE, THE UNDERSIGNED HEREBY GRANTS TO THE PUBLIC THE RIGHT TO THE USE OF ANY AND ALL PUBLIC UTILITY EASEMENTS, IN, OVER, UNDER AND ACROSS EACH AREA DESIGNATED ON THIS PLAT AS "PUBLIC WATER AND SEWER EASEMENT" TO HAVE AND TO HOLD FOREVER.

IN WITNESS WHEREOF, THE UNDERSIGNED HEREBY GRANTS TO THE PUBLIC THE RIGHT TO THE USE OF ANY AND ALL PUBLIC UTILITY EASEMENTS, IN, OVER, UNDER AND ACROSS EACH AREA DESIGNATED ON THIS PLAT AS "UTILITY EASEMENT" FOR THE CONSTRUCTION, MAINTENANCE, REPAIR, AND REPLACEMENT OF SUBWAY AND CROSS EACH AREA DESIGNATED ON THIS PLAT AS "PUBLIC SIDEWALK EASEMENT" TO HAVE AND TO HOLD FOREVER.

WITNESSED AND SUBSCRIBED BY US, THE UNDERSIGNED, IN MISSOURI, THIS 19TH DAY OF JULY, 1998.

BY: HAS FINANCIAL CORP., A CALIFORNIA LTD. PARTNERSHIP,
 AUTHORIZED TO DO BUSINESS IN MONTANA,
 GENERAL MANAGER,
Heidi Marie, Jr. President
 BY: HAS FINANCIAL CORP., A CALIFORNIA CORP.,
 AUTHORIZED TO DO BUSINESS IN MONTANA,
 GENERAL MANAGER,
Heidi Marie, Jr. President

STATE OF MISSOURI
 COUNTY OF MISSOURI
 DATED THIS 19TH DAY OF JULY 1998.

ACKNOWLEDGEMENT

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS 18TH DAY OF OCTOBER, 1998, BY HEIDI MARIE, JR., PRESIDENT OF HAS FINANCIAL CORP., A CALIFORNIA CORP., NOTARY PUBLIC FOR THE STATE OF MISSOURI.

Heidi Marie, Jr. President
 MY COMMISSION EXPIRES 3/31/04

ACKNOWLEDGEMENT

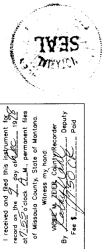
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS 19TH DAY OF DECEMBER 1998, BY THOMAS P. MCGARTHY, REGISTERED LAND SURVEYOR, MISSOURI REGISTRATION NO. 11201, MISSOURI, NOTARY PUBLIC FOR THE STATE OF MISSOURI.

Thomas P. McGarty
 MY COMMISSION EXPIRES 11 MAR 2000

ACKNOWLEDGEMENT

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS 19TH DAY OF DECEMBER 1998, BY CARISCH BROTHERS, A MINNESOTA GENERAL PARTNERSHIP OF CARISCH BROTHERS, A MINNESOTA GENERAL PARTNERSHIP, NOTARY PUBLIC FOR THE STATE OF MISSOURI.

Charles E. Carisch
 MY COMMISSION EXPIRES 3-19-00



*Book 22, Page 67
 08/19/98
 Charles E. Carisch
 Carisch Brothers
 5100 N. 2nd St.
 Missoula, MT 59808*