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**DECLARATION OF
PROTECTIVE COVENANTS**



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Document Title

Recording Area

Name and Return Address

MLG COMMERCIAL
ATTN: NANCY PFEIFER
13400 BISHOPS LANE, SUITE 100
BROOKFIELD, WI 53005

WAKC 1355.990

Parcel Identification Number (PIN)

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WAUKESHA COUNTY, WI
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11-18-2002 11:28 AM

MICHAEL J. HASSLINGER
REGISTER OF DEEDS

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BROOKFIELD WI 53005

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11/14/2002

**Declaration of Protective Covenants
For
Waukesha Corporate Center**

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ATTACHMENTS

- Exhibit A - Legal Description of Waukesha Corporate Center
- Exhibit B - Map of Waukesha Corporate Center

**DECLARATION OF PROTECTIVE COVENANTS
FOR
WAUKESHA CORPORATE CENTER**

THESE PROTECTIVE COVENANTS ("Protective Covenants") are made this ____ day of _____, 2002 by MLG/Waukesha LLC ("Declarant");

WITNESSETH

WHEREAS, Declarant is the owner of the property described on Exhibit A attached hereto, which property is located in the City of Waukesha, Wisconsin; and

WHEREAS, Declarant intends to create a high-quality office, industrial and commercial mixed-use development on the property; and

WHEREAS, Declarant desires that the investment of each subsequent owner of any part of the property be protected and enhanced; and

WHEREAS, Declarant desires that development of the property generate sufficient property tax revenues to repay public expenditures incurred to provide infrastructure improvements to service the property; and

WHEREAS, an orderly and attractive grouping of well-designed, constructed and landscaped buildings contributes to those objectives; and

WHEREAS, subjecting such property to restrictions, covenants, and reservations is instrumental in achieving those objectives.

NOW, THEREFORE, Declarant hereby declares that the real property hereinafter described shall be held, sold, conveyed, transferred, used and improved only subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall bind and inure to the benefit of the Declarant, and its successors and assigns, and to all parties hereafter having any interest in the property:

1. The Property

The property described on Exhibit A attached hereto, shown on Exhibit B attached hereto and to be known as Waukesha Corporate Center (the "Park") is made subject to the provisions of these Protective Covenants. The Protective Covenants declared herein shall run with the land and shall affect the Park and each part thereof and any interest in the Park or any part thereof

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for all purposes and shall be binding upon and inure to the benefit of the landowners and all owners, lessees, and occupants of property in the Park, and their successors and assigns. Owners shall be fully responsible for compliance by their tenants with the provisions of these Protective Covenants.

2. The Business Park Association

2.01 Formation and Function:

The Declarant shall incorporate a Wisconsin nonstock corporation called Waukesha Corporate Center Association, Inc. (the "Association"). All owners ("Owner") of any separate tract or parcel of land ("Site") in the Park shall be members of the Association. The Association, through its Board of Directors, will be responsible for enforcing these Protective Covenants and maintaining any common areas and improvements in the Park and generally administering the Association.

2.02 Board of Directors

The Association will be governed by a board of three (3) directors (the "Directors") who will initially be designated by the Declarant. The qualifications, election and duties of Directors shall be as set forth in the By-Laws of the Association.

2.03 Declarant Control

Notwithstanding any other provisions contained in the By-Laws, Declarant, its successors and assigns, shall have the right at its option to appoint and remove the members of the Board of Directors and officers of the Association and to amend the By-Laws or rules and regulations of the Association until the earlier of: (a) thirty (30) years after the first sale of a Site in the Park by Declarant or (b) such earlier time as may be determined by Declarant. Each owner of a Site in the Park shall be deemed by acceptance of any deed to any Site to agree, approve and consent to the right of Declarant to so control the Association.

2.04 Waukesha Corporate Center Review Board:

The Declarant shall designate the Waukesha Corporate Center Review Board (the "Review Board") which shall exist for the term of these Protective Covenants and shall review and approve, conditionally approve or disapprove any structure or improvement of any kind, the construction or placement of which is proposed upon any Site within the Park, including, without limitation, any building, paving, landscaping (including screening, walls and fences) or other improvement or modifications thereto. If the Review Board disapproves any such structure or improvement, it shall specify the deficiency in the submitted Application Plans (as defined in Section 4 herein) and the changes necessary to the Application Plans in order to obtain approval from the Review Board.

Before construction or placement of any of the foregoing shall begin on any Site, all plans and specifications therefore shall be submitted to and approved in writing by the Review Board in accordance with Section 4 herein.

Membership of the Review Board shall consist of at least three (3) persons. The Declarant shall designate the Review Board Members, who shall serve in perpetuity unless and until such time as they may be replaced by the Declarant or resign. Upon the resignation of a member of the Review Board, the replacement member shall be appointed by the Declarant.

Any party aggrieved by a decision of the Review Board shall have the right to make a written request to the Board of Directors for review of said decision. The Board of Directors shall accept or decline such request in writing within 15 days after receipt of same. The decisions of the Review Board accepted for review may be overruled by the Board of Directors; the determination of the Board of Directors shall be final and binding in all such review matters.

2.05 Membership Voting:

For any matter to be voted upon by the Association membership, each Owner shall have the number of votes, including fractions thereof, equal to the number of Buildable Acres, as defined in Section 5.02 below, including fractions thereof, owned by said Owner in the Park. When a majority or percentage vote is required under these Protective Covenants, the requirement shall be calculated using the total number of votes available in the Park.

3. Use Restrictions

3.01 Permitted Uses:

All building sites within the Park shall be used solely for office, commercial, retail, laboratory, research, light manufacturing and processing, warehousing, wholesale distribution and service facilities and similar and ancillary uses approved by the Review Board and permitted under the City of Waukesha Zoning Ordinance M-3 District.

3.02 Precluded Uses:

No mini-warehousing, heavy manufacturing, junk or salvage, animal processing, recycling or incineration facility will be permitted except on such Sites, if any, as the Review Board, in its sole discretion, shall first approve. Uses prohibited under the City of Waukesha Zoning Ordinance are prohibited.

3.03 Additional Precluded Uses:

No nuisance or offensive or noxious odors, fumes, dust, smoke, noise, vibration, pollution, glare or other nuisance, or hazardous uses by reason of excessive danger of fire or explosion shall be permitted in the Park. Determinations of nuisance shall be made by the Board of Directors upon the basis of written complaint or on its own initiative. Standards for nuisance or offensive and noxious use shall be those of the City of Waukesha, Waukesha County, State of Wisconsin, and the United States of America. In addition, no lighting shall be permitted on any Site which, in the judgment of the Review Board, could serve as a nuisance or hazard to other sites or the general public, as described in Section 5.13.

4. Application Plans and Approvals

4.01 Application Procedure

Prior to constructing, expanding or altering of the shape, size or appearance of any building or other structure or improvement in the Park, or changing the use of any existing building or Site, the Owner shall submit to the Review Board for approval site and building plans and a written description of use and operations (the "Application Plans"). Each Owner shall obtain the services of an architect and/or an engineer in the development of the Application Plans and shall meet with a representative of the Review Board prior to preparation and submittal of the Application Plans. No building, structure, or other improvement shall be constructed, altered, or placed upon any Site until the appropriate Application Plans shall have been first approved in writing by the Review Board.

Application Plans shall include the number of copies of each of the following as required by the Review Board:

- Scaled site plan, showing building location and setbacks (including the location of any planned building expansion), parking layout and setbacks, driveway and access locations, loading docks, site lighting and coverage, utility boxes and transformers and signage. Also, details of lighting and signage.
- Drawings showing all exterior building elevations, building heights and roof mounted equipment and utility meters (including size, location and proposed screening) and indicating building materials and colors. Also, a colored rendering or building elevations (showing the actual proposed colors) and samples of building materials and colors.
- Floor plan(s) indicating use.
- Landscaping plan, including sizes, quantities and types of plantings.
- Location, size and proposed screening for outside waste and recycling containers and the size and type of the proposed containers.
- Erosion control, grading and storm water drainage plans, including any existing trees to be removed and including all proposed water impoundments and finished grade levels.
- Written description of proposed use and operation, including number of employees, workshifts, products produced and/or services provided, manufacturing processes, materials handled (including anticipated truck traffic), any hazardous materials used in operations (including proposed safety precautions), any noise emitted and any air, water or solid waste material generated (including proposed methods for storing and disposing).

All plans submitted shall include the preparer's name, the date of preparation and the dates of any revisions. Any revisions to approved Application Plans must be approved in writing by the Review Board.

All Application Plans shall also be submitted to the City of Waukesha and shall comply with all ordinances of the City of Waukesha, as well as the City of Waukesha's "Industrial/Office Planned Development Requirements and Policies" (the "Plan Commission Requirements"), a copy of which is attached to these Protective Covenants as Exhibit C.

4.02 *Review Board Variance:*

Upon written application to it, the Review Board shall have the authority to waive or vary these Protective Covenants when such waiver or variance is consistent with the purposes of these Protective Covenants and where exact adherence to a specified standard will create an undue burden on the owner of the affected Site. Such waivers or variances shall be in writing, shall apply only to these Protective Covenants and shall not pertain to City of Waukesha ordinances or the Plan Commission Requirements.

4.03 *Guidelines:*

In order to assist Owners in complying with these Protective Covenants, the Association or the Review Board may publish guidelines ("Guidelines") from time to time. The Guidelines may pertain to any matters included within the scope of review described in Section 4.01 above. The Guidelines may be updated at any time, in the sole discretion of the Association or the Review Board, to reflect developments in applicable technology or to include changes deemed necessary or advisable, and shall be available to any Owner upon request. To the extent such Guidelines are published, approval of Application Plans by the Review Board shall be in accordance with the Guidelines as updated from time to time. However, the Guidelines shall not constitute amendments or modifications of these Protective Covenants, and in the event of any conflict or inconsistency, these Protective Covenants shall control.

5. **Site Restrictions**

5.01 *Designation of Sites:*

A "Site" is a parcel of land in the Park (a) that has been conveyed to a purchaser other than Declarant or (b) upon which Declarant intends to construct a building.

5.02 *Land/Building Ratio:*

The initial construction on each Site shall equal or exceed the following minimums for the following types of facilities unless otherwise approved in writing by the Review Board:

<u>Type of Facility</u>	<u>Minimum Square Feet/Buildable Acre</u>
Office	4,000
Industrial	5,000

"Office" facility shall mean a facility in which more than fifty percent of the floor space is intended for use as office space. The initial construction on a Site used for office or industrial purposes shall in no event be less than 5,000 square feet, unless otherwise approved in writing by the Review Board. "Buildable Acre" shall mean all areas of the Park except those areas designated as "Greenspace" on Exhibit B. The Declarant may from time to time identify additional unbuildable land in the Park as additional "Greenspace" by recording a supplement to these Protective Covenants. If and when the Declarant adds additional property to the Park pursuant to Section 17, the Declarant may designate any portion of such property as "Greenspace". No more than 75 percent of any Site shall be covered with buildings, surface pavement, or other covering materials which are impervious to surface water absorption unless otherwise approved in writing by the Review Board and the City of Waukesha.

5.03 *Building Setbacks:*

Building setbacks shall comply with the City of Waukesha Zoning Ordinance. No part of any building or other structure on a Site used for an office or industrial facility shall be located within the following distances from the following property lines of the Site, unless otherwise approved in writing by the Review Board:

<u>Property Line</u>	<u>Distance (Feet)</u>
Front Setback	40
Side and Rear Setbacks	25

If a Site has two or more sides that face a public street, then the Review Board in its discretion may determine that only one side will be considered the "front" side. The City of Waukesha Zoning may require larger setbacks.

5.04 *Parking Setbacks:*

Parking setbacks shall comply with the City of Waukesha Zoning Ordinance. No parking on a Site used for an office or industrial facility shall be allowed within the following distances from the following property lines of the Site unless otherwise approved in writing by the Review Board:

<u>Property Line</u>	<u>Distance (Feet)</u>
Front Setback	40
Side and Rear Setback	15

If a Site has two or more sides that face a public street, then the Review Board in its discretion may determine that only one side will be considered the "front" side. The City of Waukesha Zoning may require larger setbacks.

Curbs are required by the City of Waukesha and shall be considered as part of the parking area for purposes of complying with parking setback requirements.

5.05 Building Height:

No building shall be higher than 50 feet unless otherwise approved by the Review Board.

5.06 Storage:

No fuel or chemical storage tank that is not in compliance with applicable Federal, State and Local laws and regulations shall be allowed in the Park. No outdoor storage of waste or recycling containers or any articles, goods, materials, finished or semi-finished products, incinerators, storage tanks, or any other items shall be permitted except as provided in Section 7.01 below.

5.07 Fencing:

No fences shall be constructed on any Site without the written approval of the Review Board. Fencing, where permitted, shall be solely for purposes of screening, security and landscape enhancement. Fencing shall be constructed only of permanent materials such as pressure-treated wood, masonry, or metal, and shall be approved by the Review Board in every instance. Plantings shall be provided along all fencing where such fencing is visible from any street.

5.08 Temporary Structures:

No temporary structures or trailers are permitted without prior written approval of the Review Board, except those belonging to construction companies during periods of construction.

5.09 Ancillary Structures:

No water tower, storage tank, processing equipment, solar collector, telecommunications equipment, cooling tower, satellite disks or other ancillary structure or outside equipment shall be constructed, erected or placed in the Park without the prior written approval of the Review Board.

5.10 Freight Handling:

All freight loading and unloading shall be handled on those sides of a building which do not face a street located in the Business Park (a "Business Park Street") except for situation where the size of the building and constraints of the site make a side location unfeasible. Exceptions such as the condition in the preceding sentence may be made at the sole discretion of the Review Board. If an exception is made, any loading dock facing a street must be at least 100 feet from the Business Park Street and screened to the Review Board's satisfaction. Center Road shall not be considered to be a Business Park Street.

5.11 Signs/ Mailbox:

All signs must be approved in writing by the Review Board and by the City of Waukesha Sign Review Board. On-site directional signage will be allowed in any area needed to control traffic or parking provided such signage has received written approval from the Review Board. The Association shall have the right to enforce uniform sign and mailbox standards throughout the Park. All signage is subject to the Plan Commission Requirements.

5.12 Canopies:

No truck canopies with visible wall hangers will be permitted without written approval from the Review Board. Design of canopies shall be in keeping with the design of the building.

5.13 Lighting:

All exterior lighting must be approved in writing by the Review Board. Lighting of a Site shall be of a design and height and shall be located so as to illuminate only the Site. No flashing, traveling, animated, or intermittent lighting shall be visible from the exterior of any building, whether such lighting is of temporary or long term duration. All lighting fixtures shall be maintained as originally approved. In addition, no lighting shall be permitted on any site which, in the judgement of the Review Board, would serve as a nuisance or hazard to other sites or to the general public. Lot lighting on street sides to be provided by pole mounted, down lighting fixtures. All exterior lighting is subject to the Plan Commission Requirements.

5.14 Erosion and Sediment Control:

The drainage pattern on any Site shall not be changed significantly and no change in the drainage pattern onto lands adjacent to the Site shall be allowed. Specific erosion control, grading and storm water drainage plans shall be submitted as part of the Application Plans, and in addition to review and approval by the Review Board under Section 4 herein, must be approved by the City of Waukesha. Each Owner shall be responsible for 1) prevention of erosion of its Site, 2) control of runoff of silt debris or sedimentation from its Site onto adjacent drain systems or properties, 3) removal of any such runoff, erosion, or sedimentation and 4) repair of any damage to such Site or adjacent Site by such runoff, erosion or sedimentation. In the event that an Owner fails to comply with any of the foregoing obligations within 30 days after receipt of notice from the Association or from the City of Waukesha, the Association or City may, in its sole discretion but without any obligation to do so, perform such obligations. If the City performs the work, all costs incurred shall be assessed to the Owner and added to the Owner's property tax bill for the Site. If the Association performs the work, and the cost of the work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected pursuant to procedures set forth in Section 15.

Storm drainage from the completely developed Site shall be in compliance with all Federal, State and local rules and regulations.

6. Parking and Landscaping

6.01 *Parking Generally:*

Each Site shall be provided with adequate paved off-street automobile parking as approved by the Review Board. No parking will be permitted on any street, driveway, or any place in the Park other than in approved parking spaces. Overnight parking of campers, mobile homes, boats, trailers and similar vehicles is prohibited unless prior written approval is obtained from the Association. Overnight parking of trucks and service vehicles shall be behind landscape screening so as to minimize visibility from the roadway unless prior written approval is secured from the Association.

6.02 *Parking Ratio:*

Unless otherwise approved by the Review Board, areas for current and future parking needs shall be provided as follows:

- a. For any Site used for an office or industrial facility, a minimum ratio of one off-street passenger car parking space for each 1,100 square feet of gross warehouse building area, for each 575 square feet of gross manufacturing, production or service building area, and for each 250 square feet of gross office building area; and
- b. Notwithstanding the foregoing, each Site shall have parking capacity adequate to serve the reasonably expected parking needs for the Site; and
- c. No parking shall be permitted at any time upon any street or driveway in the Park or on any unpaved area of a Site; and
- d. No continuing or extended use shall be made of a Site or any building constructed thereon which requires, or is reasonably expected to require, parking in excess of the capacity of the parking facilities available on said Site.

6.03 *Parking Location:*

No parking shall be allowed within the parking setbacks described in Section 5.04 above unless otherwise approved in writing by the Review Board.

6.04 *Screening and Landscaping of Parking Areas:*

In the event parking is approved within the parking setbacks described in Section 5.04 above, such parking shall be screened by berm and/or increased landscaping from public view in a manner approved by the Review Board. Paved parking areas larger than 20,000 square feet shall have landscaped areas equaling not less than 5% of the parking area intermittently placed throughout the parking area which serves to define vehicular and pedestrian circulation and provides additional screening of parking areas.

6.05 *Requirement to Pave Surfaces:*

All parking surfaces, driveways and loading areas shall be paved with a bituminous or concrete surface within ninety (90) days after occupancy or substantial completion of the building, whichever comes first, weather permitting. Concrete curbs are required by the City of Waukesha.

6.06 *Driveways and Loading Areas:*

Driveway and loading areas shall be large enough to accommodate all vehicle maneuvering on the Site. Truck turn-arounds are prohibited on all public streets in the Park. Driveway points of access to public streets must be approved by the Review Board. Areas on the site designed for truck/trailer storage are only allowed with approval of the Review Board and such approval will be contingent on such storage area being adequately screened as determined by the Review Board in its sole discretion.

6.07 *Open Spaces:*

All open spaces shall be paved, landscaped, or planted as lawns. Not less than one-half of the required building setback area from any dedicated street shall be devoted solely to lawns, trees, shrubs, and walkways of a design approved by the Review Board. Landscaping, as approved by the Review Board, shall be installed within ninety (90) days after occupancy or substantial completion of the building, whichever comes first, weather and appropriate planting seasons permitting.

6.08 *Greenspace:*

No buildings or improvements of any kind shall be permitted in the Greenspace and no buildings or improvements may damage or impair the Greenspace.

6.09 *Trees:*

Trees may be cut on any Site only to the extent needed for construction and/or landscaping purposes and only following written approval from the Review Board. No trees may be cut on that part of a Site, if any, zoned by the City of Waukesha as C-1 Conservancy.

6.10 *Right to Act on Owner's Behalf:*

If, in the opinion of the Association, any Owner fails to complete all required parking and landscaping as shown on approved Application Plans within the time periods specified in Sections 6.05 and 6.07 above, either the Association or the City of Waukesha or both may give such Owner written notice and such Owner must, within thirty (30) days after such notice, complete such improvements in accordance with the notice. In the event that such Owner fails to complete such improvements within such 30-day period, the Association or the City shall have the right and power, but not the obligation, to complete such improvements. If the City completes such improvements, all costs incurred may be assessed to the Owner by the

City and added to the Owner's property tax bill for the Site. If the Association completes such improvements and the cost of the work remains unpaid for 30 days after the Owner is billed therefore, such charges may be collected pursuant to the procedure set forth in Section 15.

7. Screening:

7.01 *Storage:*

Waste and recycling containers shall be screened from view from the streets and adjacent sites by completely opaque screens unless otherwise approved in writing by the Review Board. No other articles, goods, materials, finished or semi-finished products, incinerators, storage tanks, or other items shall be kept outdoors or exposed to public view, or to view from adjacent sites. A variance may be granted by the Review Board upon written application and prior written approval, as provided in Section 4. All outside storage is subject to the requirements of the City of Waukesha M-3 zoning district and all dumpsters are subject to the Plan Commission Requirements.

7.02 *Roof Mounted Equipment:*

Roof mounted equipment shall be so located and/or screened to minimize visibility from streets and adjacent Sites. All roof mechanicals are subject to the Plan Commission Requirements.

7.03 *Loading Docks:*

Outside loading docks shall be screened from view from the streets and adjacent sites by extended building wall, berm and/or landscaping.

7.04 *Utility Connections:*

Unless otherwise approved in writing by the Review Board and the City of Waukesha, all utility connections, including all electrical and telephone connections and other installation of wires to buildings, shall be made underground from the nearest available source. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole nor hung on the outside of any building. All transformers and meters shall be placed on or below the surface of the property and where placed on the surface shall be screened and/or landscaped so as to minimize visibility from streets and adjacent sites. No electric utility boxes or transformers shall be located between a building and an abutting street. All ground-mounted mechanicals are subject to the Plan Commission Requirements.

8. Utility Easements

The Association shall have the right to grant easements for utilities within the building setback areas of any Site for the benefit of Owners of other Sites within the Park. Such easements shall be approved by a resolution of the Board of Directors and signed by officers of the Association and shall be recorded with the Register of Deeds for Waukesha County, Wisconsin.

9. Construction Obligation and Repurchase Rights

9.01 Construction Obligation:

Each Owner shall promptly begin, diligently pursue and ultimately complete construction of buildings and other improvements on its Site pursuant to approved Application Plans.

In the event that construction of improvements has not been commenced within one (1) year after the date of closing of (a) the initial sale of a Site by Declarant or (b) any resale by a subsequent Owner to an Unrelated Party, then, until such construction is commenced, the City and the Declarant shall each have the option of repurchasing the Site from the Owner (the "Commencement Option"). Commencement of construction is defined to mean that footings and foundation have been poured, and construction of the outer shell of the building has begun, all in accordance with applicable, local, state and federal requirements. "Unrelated Party" is defined to mean a party that is not owned or controlled by any of the same persons. To exercise the Commencement Option, the City or the Declarant shall provide written notice of exercise of option (the "Notice") to Owner at Owner's last known address, including the date of repurchase closing. Notice shall be deemed to be received two days after deposit of the notice, postage prepaid, in the U.S. mail. The City shall have the exclusive right to exercise the Commencement Option during the first sixty (60) days of the Commencement Option. If the City has not exercised the Commencement Option within sixty (60) days after the Commencement Option begins, then the Declarant may exercise the Commencement Option at any time thereafter until such time, if any, as the City exercises the Commencement Option; provided, however, that the City shall continue to have the right to exercise the Commencement Option until such time, if any, as the Declarant exercises the Commencement Option. The repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after delivery of the Notice on the date specified in the Notice.

If after commencing construction work on any Site, construction ceases for a period of one hundred eight (180) consecutive days at any time before the completion of construction as provided in Owner's approved plans ("Cessation of Construction"), the City and the Declarant shall each have the option to repurchase the Site from the Owner at any time within one (1) year after cessation of construction (the "Construction Option"). To exercise the Construction Option, the City or the Declarant shall provide written Notice of Exercise of Option as described above. The City shall have the exclusive right to exercise the Construction Option during the first sixty (60) days of the Construction Option. If the City has not exercised the Construction Option within sixty (60) days after the Construction Option begins, then the Declarant may exercise the Construction Option at any time thereafter until such time, if any, as the City exercises the Construction Option; provided, however, that the City shall continue to have the right to exercise the Construction Option until such time, if any, as the Declarant exercises the Construction Option. Repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after delivery of the Notice on the date specified in the Notice. "Substantial completion of construction" means that construction has been completed to a point that a certificate of occupancy could be obtained.

If Owner does not complete construction of the improvements as described in the approved plans and obtain an occupancy permit for the improvements within three (3) years after the date of closing of Owner's purchase of the Site from Declarant or such Owner's resale of the Site to an Unrelated Party, the City and the Declarant shall each have an option to repurchase the Site from the Owner (the "Completion Option"). To exercise the Completion Option, the City or the Declarant shall provide written Notice as described above. The City shall have the exclusive right to exercise the Completion Option during the first sixty (60) days of the Completion Option. If the City has not exercised the Completion Option within sixty (60) days after the Completion Option begins, then the Declarant may exercise the Completion Option at any time thereafter until such time, if any, as the City exercises the Completion Option; provided, however, that the City shall continue to have the right to exercise the Completion Option until such time, if any, as the Declarant exercises the Completion Option. Repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after deliver of the Notice on the date specified in the Notice.

9.02 Terms of Repurchase:

If the City or the Declarant exercises any of the options described in Section 9.01 above, at repurchase closing the Owner shall tender a warranty deed free and clear of all liens and encumbrances except municipal and zoning ordinances, recorded easements for public utilities and these Protective Covenants in exchange for a sum equal to Owner's purchase price for the Site less any unpaid real estate taxes, the proration for the then current year's real estate taxes, and the title insurance premium. Owner shall provide the party exercising the option with a title insurance policy for the full amount of Owner's purchase price.

In the event of repurchase as provided in this section, Owner shall also be liable to the City or the Declarant, as appropriate, for all reasonable costs and expenses incurred in retaking and restoring the Site to marketable condition, and such costs and expenses shall be deducted from the amount of the purchase price paid to the Owner. Owner shall be deemed to consent to enforcement of the options described in Section 9.01 on the above terms by specific performance.

9.03 Right of First Refusal to Repurchase Vacant Land:

In the event that any Owner shall wish to convey any vacant portion of a Site or a vacant Site (the "Vacant Site") at any time within three (3) years after closing acquisition of the Vacant Site from Declarant, it shall first give the Declarant the right to purchase the Vacant Site at Owner's original purchase price and on the same terms and conditions as Owner's purchase. Within thirty (30) days after receipt of written notice that Owner wishes to convey a Vacant Site, Declarant shall notify Owner of its decision concerning repurchase. If Declarant decides to repurchase, closing shall occur within sixty (60) days after Declarant's receipt of Owner's written notice. If the Declarant is repurchasing a portion of a Site, the purchase price shall be prorated to reflect the total buildable square footage of the Vacant Site as compared to the total original buildable square footage of the Site purchased by Owner. "Buildable" shall mean that part of a Site not located within a Greenspace as described in Section 6.08 above.

10. Disclaimer of Liability

Neither the Association or the Review Board shall be liable to any person or entity submitting Application Plans for approval, or seeking any other approval under these Protective Covenants, or to any other person or entity affected by these Protective Covenants, by reason of engineering, architectural or technical errors or omissions in the Application Plans or materials submitted for approval. The Association and the Review Board shall not be deemed to provide architectural or engineering services in the review and approval of Application Plans, or in any other manner. Neither the Association or the Review Board shall be responsible for inspecting improvements during construction or for ensuring compliance with approved Application Plans. The City of Waukesha shall not be liable to any person or entity as a result of (a) having approved of the form of this Declaration of Protective Covenants, or (b) the exercise or non-exercise of any right or discretion granted to the City of Waukesha under these Protective Covenants, or (c) the exercise of any authority granted or vested in the City of Waukesha by any applicable law, ordinance, rule or regulation pertaining to the Park.

11. Maintenance

11.01 General Site Maintenance:

Except as otherwise provided in Section 14 below, the Owner of any Site shall have the duty of, and responsibility for, keeping the buildings, paving, landscaping, lighting and other improvements, on the Site in a well-maintained, safe, clean, and attractive condition at all times. Although the Owner may by contract require tenants or occupants to perform these duties, the Owner shall be responsible to the Association for the duties arising under this Section. All grass, trees, and shrubbery must be kept in good appearance at all times. All grass must be cut whenever necessary and weeds must be controlled up to the curbs of public rights-of-way. Each Owner shall be responsible for removal of any rubbish or trash of any character which may accumulate on a Site. Damaged or cracked areas of all parking lots, sidewalks, and other hard surfaces shall be promptly repaired or replaced.

11.02 Site Maintenance During Construction:

During construction it shall be the responsibility of each Owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials.

11.03 Damage to Public Right-of-Ways and Common Areas:

No Owner or its employees, contractors or agents shall dispose of snow or any other materials in the public right-of-ways located in the Park. No Owner or its employees, contractors or agents shall damage any public right-of ways in the Park or any Common Area (as described in Section 14 below).

11.04 Right to Act on Owner's Behalf:

If, in the opinion of the Association or the City of Waukesha, any Owner fails to comply with these maintenance and damage provisions, the Association or the City or both may give such

Owner written notice and such Owner must, within 15 days after such notice, undertake the care and maintenance required to restore said Owner's property to a well-maintained safe, clean, and attractive condition, as to repair any damage, in accordance with the notice. In the event that such Owner fails to remedy the condition after notice, the Association or City shall have the right and power, but not the obligation, to perform such care and maintenance, or to repair any damage, as it deems necessary or desirable to remedy the violation. If the City performs the work, all costs incurred may be assessed to the Owner by the City and added to the Owner's property tax bill for the Site. If the Association performs the work, and the cost of the work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected pursuant to the procedure set forth in Section 15.

12. Inspection

The Association and the City of Waukesha may from time to time at any reasonable hour or hours, enter or inspect any Site or improvements to ascertain compliance with these Protective Covenants. The Association shall use its best efforts not to compromise security measures and shall strive not to interfere with normal conduct of business when inspecting property under this provision.

13. Enforcement

13.01 By Legal Action:

These Protective Covenants may be enforced at law or in equity by the Association or the City of Waukesha. However, if the Owners of 50% or more of the Buildable Acres in the Park shall file with the Association a written petition for enforcement or commencement by the Association of proceedings to enforce these Protective Covenants and the Association shall fail to act accordingly within 30 days, or shall refuse such petition, then such petitioners may within a period of six months after filing such petition commence an action or proceeding against the violating Owner in law or in equity for enforcement or for damages arising from any violation of these Protective Covenants. Neither the Association nor the City of Waukesha shall be liable to any person or entity for failure or refusal to enforce any provision of these Protective Covenants.

13.02 Association May Levy Fines:

The Association may levy fines for continuing or flagrant violations of these Protective Covenants, including the parking provisions contained in Section 6. Fines shall be \$50 per violation or per day of continuing violation, until such time as a different fine schedule is adopted by the Board of Directors. Fines shall be assessed by written notice from the Board of Directors and paid to the Association. Fines for continuing violations shall not commence earlier than 48 hours prior to delivery of written notice to the Owner. Such fines and penalties, if they remain unpaid for 30 days, may become a lien against the Site pursuant to the procedures set forth in Section 15.

13.03 Right to Act on Owner's Behalf:

In addition to the foregoing remedies, the Association may undertake the obligations of any Owner arising under Section 5.14, Section 6.10 or Section 11 of these Protective Covenants. The right to act on Owner's behalf shall arise if the Owner has not acted to correct a violation of 5.14, concerning sediment and erosion control, Section 6.10, concerning parking and landscaping, or Section 11, concerning maintenance, after receipt of notice of violation from the Association and an opportunity to cure the violation, both as provided in Section 5.14, Section 6.10 and Section 11, respectively.

14. Park Maintenance

The Association shall be responsible for maintenance of the following (together, the "Common Areas"):

- a. Entrance monuments for the Park, including all related landscaping and lighting, if any.
- b. Any parcel of land or improvement designated as Common Areas on Exhibit B.
- c. Any parcel of land or improvement located in Expansion Lands (as defined in Section 17 below) and designated by the Declarant as Common Areas at the time such Expansion Lands are added to the Park.
- d. Any property owned by the Association.
- e. Any other property that the Association agrees to be responsible for maintaining.

Except as otherwise provided in this Section 14, the Owners of Sites within the Park shall be responsible for maintenance of such Sites, including Greenspace within such Sites, as set forth in Section 11 of these Protective Covenants.

15. Association Assessments*15.01 General Annual Assessment:*

All Sites and the Owners thereof shall be subject to a general annual assessment, determined and levied by the Board of Directors, for the purpose of paying the costs and expenses incurred by the Association in performing its purposes and functions, including but not limited to the enforcement of these Protective Covenants. The Board of Directors shall prepare an annual budget and shall determine a general annual assessment based thereon which shall be sufficient to meet the estimated costs and expenses of the Association for the ensuing year.

If within fifteen (15) days after the annual budget is distributed to the Association members a petition is presented to the Board of Directors protesting such assessments or the budget upon which they are based, and the petition is signed by members having more than fifty percent (50%) of the total number of votes available in the Park, then the Directors shall notify all members of a meeting called for the sole purpose of reviewing such assessments or budget.

At such meeting, the vote of more than fifty percent (50%) of the total number of votes available in the Park may revise the budget and assessments, and such revised budget and corresponding assessments shall replace for all purposes the ones previously established; provided, however, that the annual budget and assessments may not be revised downward to a point lower than the average total budget for the preceding two years and provided further, that if a budget and assessments have not been established and made for two preceding years, then the budget and assessments may not be revised downward until two years of experience exist.

The general annual assessment shall be allocated and prorated among the members of the Association in proportion to the Buildable Acres owned by each Owner, and shall be paid at the time and in the manner determined by the Board of Directors.

15.02 Special Assessments:

Each Site and the Owners thereof shall be subject to special assessment by the Board of Directors to cover all or any part of any extraordinary expenses incurred by the Association but not included in the annual budget. Such special assessments shall be allocated among the Owners in proportion to the Buildable Acres owned by each Owner. Special assessments shall be due and payable sixty (60) days after the affirmative vote declaring such special assessments by the Board of Directors of the Association. Special assessments levied in any one calendar year shall not exceed 20% of the annual budget for such year without approval of a majority of the total number of votes available in the Park.

15.03 Collection and Enforcement:

The right to collect or enforce the collection of any assessments, special assessments, charges or fines assessed by the Association under these Protective Covenants is hereby delegated exclusively to the Association. The Owners shall be obligated to pay such charges, assessments, special assessments or fines, when due, and such charges, assessments, special assessments or fines shall also be and constitute a lien until paid, against the Site to which charged. All charges, assessments, special assessments and fines levied by the Association which are unpaid when due shall bear interest from such due date at a rate equal to three percent (3%) per annum above the prime interest rate reported in the Wall Street Journal, or if the Wall Street Journal is unavailable, the prime interest rate in a similar publication selected by the Association, until paid in full provided, however, that the interest rate shall be not less than twelve percent (12%) per annum ("Interest"). Such Interest, together with the underlying assessment or fine, shall from such time as the assessment or fine is unpaid when due become and remain a part of the lien upon such Site until paid.

15.04 Lien Against Site:

In the event that any assessment, charge or fine levied against any Site hereunder remains unpaid for a period of sixty (60) days from the due date, the Board of Directors may, in its discretion, file an action at law or a claim pursuant to Section 779.70(4) of the Wisconsin Statutes for a lien against such Site at any time within six (6) months from the date of the levy, such claim to be filed in the office of the Clerk of the Circuit Court of Waukesha County. The

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resulting lien may be enforced by foreclosure proceedings brought by the Association. Any such foreclosure action shall be brought in the same manner as an action to foreclose a real estate mortgage, and there shall be added to the amount due the costs of suit and interest, together with a reasonable attorney's fee.

Any lien upon a Site securing unpaid assessments, special assessments, charges or fines arising hereunder shall be subject to and subordinate to the lien of any first mortgage upon such Site whether the mortgage is executed or recorded prior to or after the creation of such lien. Nothing herein contained shall prevent or impede the collection of lawful charges, assessments and taxes by the City of Waukesha.

16. Amendment and Term of Protective Covenants

16.01 Amendment of Protective Covenants:

These Protective Covenants may be terminated, extended or amended, with a written affirmative vote of 66-2/3% of the total number of votes available in the Park; provided, however, that as long as Declarant owns any portion of the Park, no such termination, extension or amendment shall be effective without the written approval of Declarant.

16.02 Term of Protective Covenants:

These Protective Covenants shall remain in force for 30 years from the date hereof. Thereafter, these Protective Covenants shall renew automatically for successive periods of 5 years each unless terminated by a majority vote of the total number of votes available in the Park, provided that the City of Waukesha consents to termination.

17. Expansion of the Park

Declarant may from time to time during the term of these Protective Covenants, add property to the Park (the "Expansion Lands"), and by recorded supplement to these Protective Covenants, declare such Expansion Lands, and the owners of such property to be subject to the terms of these Protective Covenants. Declarant shall designate those parts, if any, of such Expansion Lands that will be "Greenspace" or "Common Areas".

18. Termination and Assignment of Declarant's Rights

The rights of Declarant under these Protective Covenants as set forth in Section 2.03, 2.04 and 16.01 and 17 shall terminate thirty (30) years after the date of these Protective Covenants. Declarant may assign all or part of its rights under these Protective Covenants.

19. Municipal Rights of Approval

All pertinent and applicable laws, ordinances, rules and regulations of governmental agencies shall be applicable to the development of the Park, including, but not limited to ordinances of

the City of Waukesha, such as the zoning code, building code, erosion control and fire protection ordinances, as well as the Plan Commission Requirements. Nothing in these covenants shall be construed as waiving or releasing any person from compliance with such laws, ordinances, rules and regulations or the Plan Commission Requirements; provided, however, that the City of Waukesha retains the right to grant variances from its requirements.

20. Waiver of Rights

The failure of the Association, the Review Board or the City of Waukesha, or any Owner to enforce any provision of these Protective Covenants shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction. Nor shall the failure of the Review Board or the City of Waukesha to exercise any option to purchase deemed a waiver of any other right under this Declaration or any applicable law, ordinance, rule or regulation.

21. Right to Re-Subdivide

At the time of purchase of a Site from Declarant, such Site shall be considered as a single building site for all purposes hereunder. Re-subdividing of such Site by an individual Owner shall not be permitted without prior approval by the Association and the City of Waukesha.

22. Fee In Lieu of Property Taxes.

In the event that the Owner of a Site is exempt by law from payment of real or personal property taxes, the Owner hereby agrees to pay to the City of Waukesha a fee in lieu of property taxes (the "Property Fee") equal to the property taxes that would have been payable to the City by the Owner with respect to the Site (and any real or personal property located thereon) if the Owner were not so exempt. The Property Fee shall be payable on the same installment basis, and be subject to the same penalties for late payment, and be subject to the same enforcement procedures, as provided by law for payment of property taxes to the City.

23. Effect of Invalidation of Any Provision

In the event that any provision of these Protective Covenants shall be held to be invalid by any court, the invalidity of such provision shall not affect the remaining provisions of these Protective Covenants, which shall continue in full force and effect to the extent enforceable.

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EXHIBIT A

Legal Description
of
Waukesha Corporate Center

Lots 1 & 2 of CSM 9459, Lots 1, 2 & 3 of CSM 9458 and Lot 3 & Outlot 1 of CSM 9455

Any areas shown on the Business Park CSM as wetlands, drainage easements or within 75 feet of the centerline of the creek shall be considered "Greenspace" for the purpose of these Protective Covenants.

EXHIBIT B

Map of Waukesha Corporate Center

(Attached)



Stock No. 26273

CERTIFIED SURVEY MAP NO.

BEING A REDMISION OF PART OF CSM NO. 8409 AND UNPLATTED LANDS ALL BEING A PART OF THE SE 1/4 AND SW 1/4 OF THE SW 1/4 OF SECTION 15, AND THE NW 1/4, NE 1/4 AND SE 1/4 OF THE NW 1/4 SECTION 22, T.6N., R.19E., CITY OF WAUKESHA, WAUKESHA COUNTY, WI

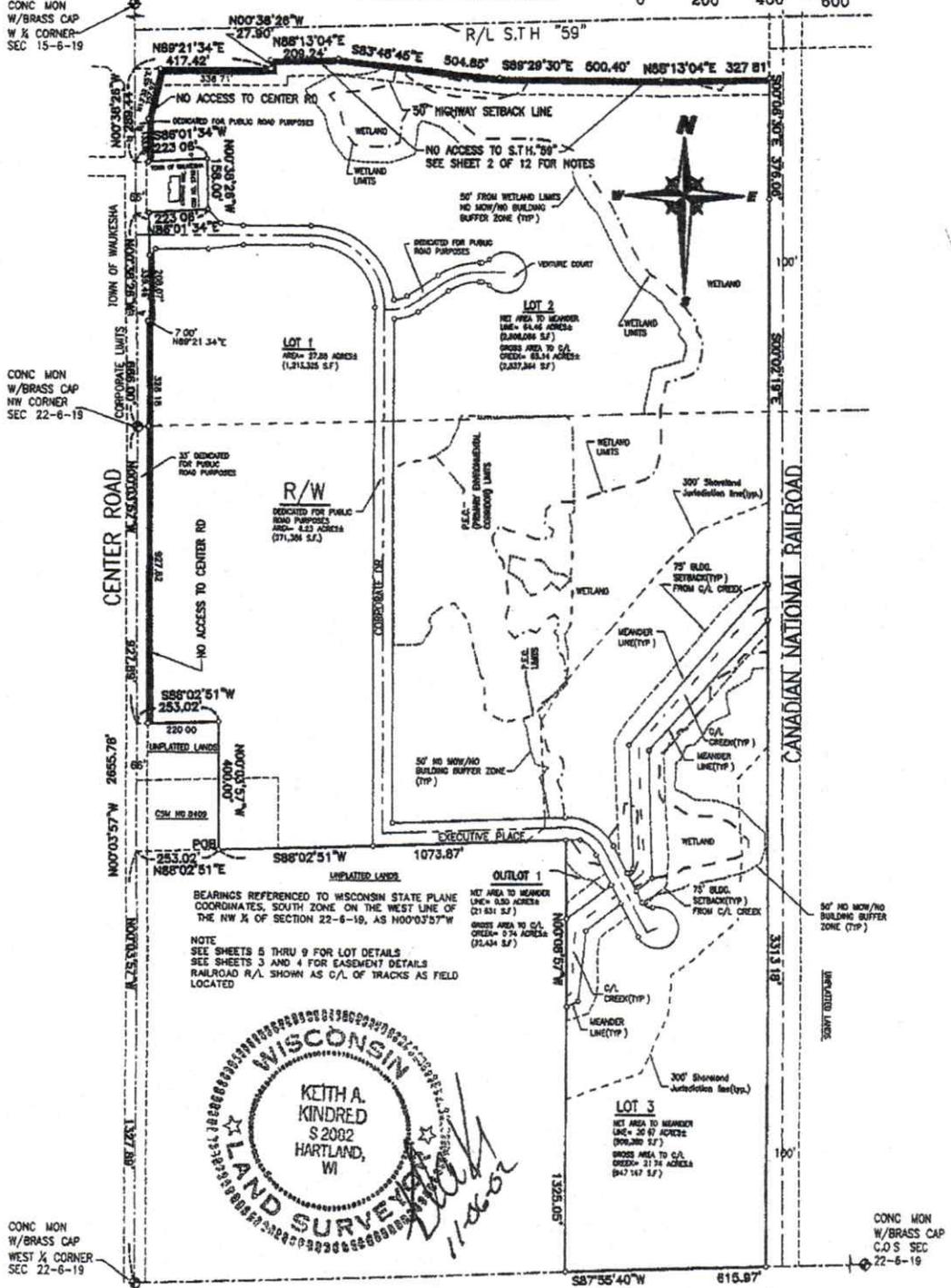
SURVEY BY
KEITH A. KINDRED, R.L.S. #2082
WELCH, HANSON AND ASSOC., INC.
A DIVISION OF YAGGY COLBY ASSOC., INC.
355 AUSTIN CIRCLE, SUITE 100
DELAFIELD, WI 53018
(262) 848-8855 OR (262) 367-4225

SURVEY FOR
MLO/WAUKESHA LLC
13400 BISHOPS LN, SUITE 100
BROOKFIELD, WI 53005

SURVEY FOR
WAUKESHA WATER UTILITY
115 DELAFIELD ST.
WAUKESHA, WI 53186

LEGEND
⊙ - CONC. MON. W/ BRASS CAP
○ - 1" DIA. IRON PIPE SET, 18" LONG, WT. = 1.13 LBS./LIN. FT.
SCALE - 1" = 400'

EXTERIOR DETAIL



BEARINGS REFERENCED TO WISCONSIN STATE PLANE COORDINATES, SOUTH ZONE ON THE WEST LINE OF THE NW 1/4 OF SECTION 22-6-19, AS N00°03'57"W
NOTE
SEE SHEETS 5 THRU 9 FOR LOT DETAILS
SEE SHEETS 3 AND 4 FOR EASEMENT DETAILS
RAILROAD R/L SHOWN AS C/L OF TRACKS AS FIELD LOCATED



EXHIBIT C

City of Waukesha "Industrial/Office Planned Development Requirements and Policies"

A copy of the current City of Waukesha "Industrial/Office Planned Development Requirements and Policies (revised 5/99)" is attached hereto.

**INDUSTRIAL/OFFICE
PLANNED DEVELOPMENT
REQUIREMENTS AND POLICIES**

The following list covers many items in the M-3(22.52) Industrial/Office Planned Development zoning.

- ◆ Once final development plans are approved by the Plan Commission, any changes to the building or site must be presented for Staff or full Commission review. Otherwise, changes are not allowed.
- ◆ All elements of each plan are to be fully maintained - including lighting, signage, landscaping, waste enclosures, et al.
- ◆ Staff is available to answer any questions or help in the development of corrective plans.

SPECIFIC POLICIES:

- A. *Dumpsters* - If outside storage is desired, all waste, refuse, debris or recycling materials are to be stored in the proper receptacles until collection, and must be fully contained within the proper enclosure. The proper enclosure is a solid three-sided containment facility, at least seven (7) feet tall, made of brick or masonry to match the existing building. The fourth side is to have movable, lockable gates, attached to a metal framework.

All waste materials and recycling receptacles are to be kept within this enclosure. This includes all dumpsters and recycling containers, as well as materials such as wood, pallets, grease traps, bottles, cans, glass, scrap metal, trays, racks and the like. If the approved dumpster enclosure does not have the capacity to handle all of the materials, it either must be expanded to screen all wastes or the overflow must be removed from the site.

- B. *Rooftop Mechanicals*** - All rooftop mechanicals (including vents) must be screened from public view by parapet walls or other acceptable architectural screening. Such screening must match the architectural treatment and color of the building as closely as possible. Such screening may not be made of wood.

Also architectural building elevation drawings submitted for final approval must show all rooftop mechanicals and screening. A bond is required to insure proper screening of all units prior to building permits being issued.

- C. *Ground-Mounted Mechanicals*** - For all HVAC devices which are located on the ground: they are to be kept fully behind a properly designed screened enclosure; or they are to be softened from view with adequate landscaping, or they are to be screened by some combination of the above.
- D. *Landscaping*** - Each Planned Development has an approved planting plan, which is to be fully maintained and kept in effect. Dead, damaged, or dying materials are to be replaced on a timely basis, by the same size and type of material, and no materials, grass/sod or greenspaces are to be removed once they are installed without specific Plan Commission approval.
- E. *Signage*** - Each site is covered by the city's Sign Review Ordinance, which regulates the amount of signage each Planned Development may have. Any changes or proposed additions to each site's approved signage must be reviewed and approved prior to installation. Temporary signage, which has its own rules and procedures, is also covered by this ordinance and must be similarly reviewed and approved before installation.
- F. *Lighting*** - The City allows high pressure sodium lighting fixtures. Metal halide or any other fixtures are not allowed, with the only exception having been made for car dealerships, which require a "true" light for display of vehicles. All light fixtures are to be directed perpendicular to the ground (i.e., straight down) to minimize ambient light. Heights of poles, colors and appearances, and numbers of fixtures per pole are also reviewed. A full length copy of the city's detailed lighting policy is available upon request.
- G. *Additions or Changes to the Site*** - It is always possible to bring forward ideas to alter, expand, revise or redesign your site. But the Planned Development zoning requires that permission be obtained from the Plan Commission before those changes are made. Proposals should be submitted to the Director of Planning, which will initiate the review process, at the Planning department office, 524-3750.

vb/plan/ind-pud revised 5/99