

RECORDING REQUESTED BY:

& return to:

GVD Commercial Properties, Inc.
810 E. 28th Avenue
Spokane, Washington 99203
Attn: Ryan H. Goodell

Instrument # 799651

BONNER COUNTY, SANDPOINT, IDAHO

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DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS FOR PONDERAY CROSSING

This Declaration of Protective Covenants, Restrictions and Easements for Ponderay Crossing (the "Declaration") is made as of this 10th day of September, 2010 by GVD Commercial Properties, Inc., a California corporation (referred to herein as "Declarant"), with respect to the real property located in Bonner County, Idaho, further defined herein below and legally described in Exhibit "A" attached hereto (the "Property").

RECITALS:

WHEREAS, on or about October 30, 1989, GFI-SANDPOINT INVESTMENTS, LTD. (hereinafter "GFI"), as the then current owner of the Property, recorded a Declaration of Covenants, Conditions and Restrictions and Grant of Easements (the "Original Declaration") pertaining to the Property in the official records of Bonner County as Document No. 368312;

WHEREAS, said Original Declaration was first amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions and Grant of Easements (the "First Amendment to Original Declaration") and recorded in the official record of Bonner County as Document No. 459224, on or about January 20, 1995 (but made effective as of October 30, 1989);

WHEREAS, on or about June 3, 2005, Declarant (and/or related entities) purchased Parcel 1 (defined herein) within the Property from GFI, and the building thereon, formerly known as Kmart Store #3840;

WHEREAS, Declarant, subsequent to its acquisition of Parcel 1 within the Property, as the sole Responsible Owner pursuant to the terms of the Original Declaration, further amended the Original Amendment, and clarified certain provisions contained in the Original Amendment and the First Amendment in that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions and Grant of Easements (the "Second Amendment") recorded in the official records of Bonner County on September 26, 2006 as Document No. 714094.

WHEREAS, Declarant now currently owns Parcel 1, Parcel 2 and Parcel 3 within the Property, which Parcels comprise and are referred to herein as the Property, and are illustrated in the attached Exhibit "B" and more fully defined herein below;

WHEREAS, Declarant now desires to terminate the Original Declaration, the First Amendment and Second Amendment pertaining to the Property, and to delete said Original Declaration the First Amendment and Second Amendment from any and all title reports pertaining to the Property and the Parcels comprised thereof;

WHEREAS, Declarant further desires and intends to subject the Property to certain new and unified covenants, conditions, restrictions and easements for the benefit of the Property, Declarant and future owners and occupants of the Property. The covenants, conditions, restrictions and easements set forth in this Declaration are intended to be common to all of the parcels constituting the Property and to enhance and protect the value, desirability and attractiveness of all such parcels to their mutual benefit.

DECLARATION:

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property, and the buildings, structures and other improvements hereafter constructed thereon, are and will be, held, used, sold, conveyed, leased and encumbered subject to and burdened by the following covenants, conditions, restrictions and easements, for the benefit of the "Owners" (defined below), their heirs, successors, grantees, tenants and assigns. All of the provisions of this Declaration shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall in all respects be regarded as covenants running with the land.

ARTICLE 1 DEFINITIONS

"Common Area" shall mean all that real property on the Property for the common use and enjoyment of the Owners and Occupants and their invitees and customers, including non-dedicated streets. It is Declarant's intention that at such time as each "Building" is constructed within its respective "Permissible Building Area", as such term is hereinafter defined, all property not thereafter developed (i) with vertical improvements, buildings or structures, or (ii) as a truck or loading dock area, shall be deemed to be Common Area for purposes of this Declaration.

"Declarant" means and refers to GVD Commercial Properties, Inc., a California corporation, as Owner of Parcel 1 of the Property, and any successor owner of such Parcel 1 unless as provided for below. Declarant's rights and obligations under this Declaration shall inure to the benefit of and be binding upon the Owner of Parcel 1 and shall run with the land of such Parcel 1, unless Declarant designates another parcel for such purpose, which designation shall become effective

upon Declarant's recording of a "Supplemental Declaration" (defined below) changing the Parcel which shall serve as Declarant's Parcel, which parcel shall be a Parcel of the Property.

"Declaration" means and refers to this instrument, as the same may be supplemented or amended from time to time by Declarant.

"Improvement" or "Improvements" means buildings, out-buildings, roads, driveways, walkways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, storm drains, fire hydrants, sewers, electrical and gas distribution facilities, lighting systems, communication facilities, storage tanks, hedges, windbreaks, plantings, planting trees and shrubs, poles, signs, loading areas, docks, trash enclosures, canopies, awnings, and all other structures, installations and landscaping of every kind and type, whether above or below the land surface.

"Mortgage" means and refers to any recorded mortgage or deed of trust encumbering one or more of the Parcels. "First Mortgage" shall mean and refer to a Mortgage with priority over other Mortgages. "Mortgages" shall mean and refer to the holder or beneficiary of any Institutional Mortgages. As used herein, the term "Institutional Mortgagee" or "Institutional Holder" shall include banks, trust companies, insurance companies, mortgage companies, mortgage insurance companies, savings and loan associations, trust, mutual savings banks, credit unions, pension funds, and any agency or department of the United States government or of any state or municipal government.

"Occupant" means a lessee, tenant or licensee of an Owner, or any person or entity other than an Owner in lawful possession of a Parcel, or any portion thereof, with the permission of the Owner of such Parcel, or portion thereof.

"Owner" means and refers to the record owner (whether one or more persons or entities) of a fee interest in any Parcel, but excluding Mortgagees or other persons or entities having such interest merely as security for the performance of an obligation.

"Parcel" means and refers to any one of the following legal parcels which collectively and currently comprise the Property:

"Parcel 1", "Parcel 2" and "Parcel 3", respectively, which Parcels are legally described in the attached Exhibit "A". Declarant shall have the right to create an additional parcel in the northwest corner of Parcel 1, "Future Parcel 4", as illustrated in the attached Exhibit "B". In any event, whether or not Future Parcel 4 is created, there currently exists a Permissible Building Area (defined below) within the northwest corner of Parcel 1, and an additional building may be constructed therein, as further discussed in Paragraph 6.2 of this Declaration.

"Permissible Building Area" means and refers to that area within a Parcel within which non-Common Area Improvements, such as a building or structure, may be constructed. No such building or structure of any kind (collectively "Building") shall be constructed or maintained on any Parcel or Parcels of the Property unless such Building is constructed and maintained entirely within the Permissible Building Area of a Parcel. The Permissible Building Area of each Parcel of the Property is set forth on the site plan attached hereto as Exhibit "B".

"Property" means and refers to the Parcels legally described on Exhibit "A" attached hereto. During the term of this Declaration, Declarant may add additional parcels or land to the Property, which additional parcels or land shall become a part of the Property, subject to this Declaration.

"Supplementary Declaration" means and refers to any recorded declaration which contains such complementary or supplementary provisions to this Declaration, as are deemed appropriate by Declarant.

"Building Floor Area" means and refers to the cumulative square footage of floor area, including without limitation, the ground floor area, of any non-Common Area Improvements, such as a building or structure, which have been constructed within the Permissible Building Area of a Parcel.

ARTICLE 2

ACCESS AND PARKING EASEMENT AND SEPARATE UTILITIES EASEMENT

Declarant hereby declares the following perpetual easements over, under and across the Common Areas for the following purposes: (a) a reciprocal, non-exclusive easement in favor of all Parcel Owners and Occupants, and their respective employees, customers, invitees and permittees, for vehicular and pedestrian ingress and egress and temporary vehicular parking, but only if such parking does not otherwise materially obstruct the ingress and egress rights granted in this Declaration (collectively the "Access and Parking Easement") over and across any completed portions of the Common Area if and when such completed portions of the Common Area (as such completed portions of the Common Area relate to either vehicular or pedestrian ingress and egress) have been completed by any party permitted to construct or install such Common Area Improvements as expressly set forth in this Declaration, (b) a non-exclusive easement in favor of all Parcel Owners for any Parcel Owner's placement, maintenance, repair and replacement of any underground utilities which exclusively serve such Owner's Parcel or any non-Common Area Improvements thereon (the "Separate Utilities Easement"), so long as such placement, maintenance, repair and replacement of any such underground utilities which exclusively serve such any Owner's Parcel or any non-Common Area Improvements thereon, do not, in Declarant's judgment, unreasonably or materially interfere with the easements declared in the Access Easement or any other Easements declared in this Declaration.

ARTICLE 3

INSURANCE, INDEMNIFICATION, GOVERNMENTAL COMPLIANCE AND PROPERTY TAXES

- 3.1 Insurance. Commencing with the date of this Declaration and hereafter, each Owner shall, at its sole cost and expense, maintain a commercial general liability insurance policy in an amount of not less than two million dollars (\$2,000,000) per occurrence, insuring against claims for personal injury or death or property damage occasioned by accident occurring upon, in or about such Owner's Parcel. The policies of such insurance

shall name Declarant as additional insured and loss payee and each owner shall furnish the Declarant with a current Certificate of Insurance at all times.

3.2 Indemnification. Each Owner shall indemnify and hold harmless Declarant and the other Owners, and the Occupants of the other Owners' Parcels, from and against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury or damage to property or any of the above, occurring on such Owner's Parcel, or occasioned wholly or in part by any act or omission of such Owner, its Occupants, agents, employees, licensees or invitees, on the Property. The insurance coverage required under Paragraph 3.1 above shall extend to any liability of the Owners arising out of the above indemnities.

3.3 Compliance with Law. Each Owner shall, with respect to such Owner's Parcel, and at such Owner's sole cost and expense, comply with all laws, rules, regulations and requirements of all public, governmental or quasi-governmental authorities.

3.4 Property Taxes and Assessments. Each Owner shall pay, before delinquency, all real and personal property taxes, general and special assessments, and any other municipal or governmental charges (collectively "Taxes"), levied on or assessed against its Parcel or against any personal property located on such Parcel and/or any Improvements thereon. Such Taxes shall be entirely paid by the Owner of such Parcel, at such Owner's sole cost and expense. If such Owner fails to timely pay any such Taxes levied on or assessed against its Parcel, such Owner shall be in Default under this Declaration, and Declarant shall have all rights available to it under this Declaration, at law or in equity, including without limitation, the right (but not the obligation) to pay such Taxes on behalf of such Owner, and declare such amount, plus interest as provided herein, as an assessment against such Owner's Parcel.

ARTICLE 4 ASSESSMENTS AND LIENS

4.1 Assessments. Each Parcel's share of any costs or expenses incurred by Declarant pursuant to this Declaration, including, without limitation, any costs or expenses incurred pursuant to Declarant's written election per Paragraph 7.1 herein to Maintain the Common Area or any portion or elements thereof, shall be an assessment against such Parcel and its Owner.

4.2 Effect of Non-payment of Assessment. If any assessment payment is not made in full within thirty (30) days after it was first due and payable as specified on Declarant's invoice for such assessment, the unpaid amounts shall constitute a lien against the Parcel assessed, and shall bear interest from such due date at a rate not to exceed the lesser of (a) twelve percent (12%) per annum, or (b) the highest rate then permitted by law. By acceptance of a deed to a Parcel, or any other means of acquisition of an ownership interest, and whether or not it shall be so expressed in any such deed or other instrument, each Owner shall be deemed to grant thereby to Declarant the right and power to bring all

actions against such Owner personally for the collection of such assessments as a debt, together with reasonable attorney's fees related thereto, and to enforce the liens created by this Declaration by foreclosure of the continuing liens in the same form of action as is then provided for the foreclosure of a mortgage of real property under applicable law. The liens provided for in this Declaration shall be for the benefit of Declarant, and the Declarant shall have the power to bid in at any lien foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel foreclosed against. No Owner is relieved of liability for assessments by non-use of the Common Areas or by abandonment of a Parcel.

- 4.3 Lien to Secure Payment of Assessments. Each Parcel is hereby subject to a lien to secure the payment of all assessments, interest, costs and attorney's fees payable by an Owner pursuant to this Declaration, and Declarant hereby subjects all Parcels perpetually to such power. Such lien shall arise in accordance with the terms of this Declaration without the necessity of any further action, and any such lien when created shall be a security interest in the nature of a mortgage in favor of the Declarant. Such lien shall become a continuing lien in the amount stated in the assessment from the time of the assessment, but expiring pro rata as the assessment payments are made, and shall also be the personal obligation of the person or entity that is the Owner of the Parcel at the time of the assessment.
- 4.4 Reserves for Replacement. As a Common Area expense Declarant shall be entitled to establish and maintain a reserve fund for replacement of the improvements and facilities located on or within the Common Areas by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by Declarant. The reserve fund shall be expended only for the purpose of the replacement of the facilities and improvements on or within the Common Areas. Declarant may establish such other reserves for such other purposes as it may from time to time consider to be necessary or appropriate. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his, her or its Parcel and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Parcel to which is appertains and shall be deemed to be transferred with such Parcel.

ARTICLE 5 MORTGAGEE RIGHTS

- 5.1 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, covenants, conditions, easements and assessments shall be binding and effective against any Owner of all or a portion of the Property, any Parcel, or any part thereof, who acquires title by foreclosure or 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 hereunder, though otherwise subject to the provisions hereof.

Notwithstanding any other provision in this Declaration, any third party institutional mortgagee of any Owner in non-compliance/default hereunder, shall be entitled to notice of said non-compliance/default, in the same manner that other notices are required to be given under this Declaration; provided, however, that said mortgagee shall have, prior to the time of the non-compliance/default, notified in writing via certified mail, the Declarant and any Owner giving said notice of non-compliance/default, of the mortgagee's mailing address. In the event that any notice of non-compliance/default shall be given to any mortgagee as hereinabove described, then such mortgagee shall have the right but not the obligation to cure any such non-compliance/default within thirty (30) days, or, if such 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 thereafter. Giving of any notice of default or the failure to deliver a copy to any mortgagee shall in no event create any liability on the part of Declarant or any Owner so declaring a default.

ARTICLE 6 REGULATION OF OPERATIONS AND USES

- 6.1 Use Restrictions. Neither the Property nor any Parcel or portion thereof shall be used for any purpose or purposes which would be in violation of any restrictions set forth in any instruments recorded against the Property, or against any Parcel or portion thereof, either now or in the future. Furthermore, no use which, in Declarant's sole discretion, is not compatible with a retail shopping center or business park shall be permitted on any portion of the Property.

No Parcel Owner or Occupant shall conduct its business in any manner which causes a nuisance to other Parcel Owners or Occupants, or their customers or guests on the Property. Each Parcel Owner and its Occupants shall, at their sole cost, obtain and keep in effect all permits, licenses and approvals required for the operation of their business on their Parcel.

No Parcel Owner or Occupant shall conduct or operate its business in any manner which could jeopardize or increase the rate of any fire or other insurance or in any manner which would constitute a nuisance to or interfere with the property or business of any Parcel Owner or Occupant of the Property. No Parcel Owner or Occupant shall display or sell merchandise or allow carts, portable signs, devices or any other object to be stored or to remain outside the defined exterior walls, roof or permanent doorways of its Building (excluding any enclosed outdoor sales areas adjacent to Major Retail "A"), without the prior written consent of Declarant. No aerial or antenna shall be erected on the roof or exterior walls of any Building without, in each instance, the prior written consent of Declarant. Declarant's consent to any such installation may be conditioned upon the requesting Parcel Owner's compliance with Declarant's requirements, including restrictions and limitations as to size, location, dimensions, color and screening. Any aerial or antenna installed without such written consent shall be subject to removal, at the offending Parcel Owner's cost. In addition, no Parcel Owner or Occupant shall solicit in any manner any of the vehicles parking in the Common Area of any Parcel of the Property.

All Parcel Owners and Occupants shall use their best efforts to complete or cause to be completed all deliveries, loading, unloading and services to the Parcels they own or occupy, before 10:00 a.m. each day, and to prevent delivery trucks or other vehicles servicing their Parcels from parking or standing in service areas for undue periods of time. Declarant reserves the right further to regulate reasonably the activities of all Parcel Owners and Occupants in regard to deliveries and servicing of their Parcels, and all such Parcel Owners and Occupants shall abide by such further reasonable rules and regulations of Declarant.

6.2 Further Prohibited Uses. In addition to the uses prohibited under the Paragraph 6.1 above, the following use restrictions shall apply to the Property:

- a. Parcel 1 shall be used and operated for retail stores (including incidental outdoor sales and display areas), restaurants, hotels, financial institutions, service shops, or office uses (including medical and dental), quasi-retail uses, such as a brewery and for no other purpose. No change of use shall be permitted on such Parcel 1, except as approved by Declarant in writing pursuant to Paragraph 6.2(e) below. The Major Retail "A" building in Parcel 1 shall not exceed thirty (30) feet in height nor shall the Total Building Floor Area exceed 100,000 square feet. The Retail "B" building in Parcel 1 shall not exceed twenty-two (22) feet in height nor shall the total Building Floor Area for exceed 8,500 square feet.
- b. Parcel 2 shall be used and operated for retail stores, convenient stores, service stations, restaurants, financial institutions, service shops, or office uses (including medical and dental) and for no other purpose. No change of use shall be permitted on such Parcel 2, except as approved by Declarant in writing pursuant to Paragraph 6.2(e) below. No building located on Parcel 2 shall exceed twenty-two (22) feet in height nor shall the total Building Floor Area for Parcel 2 exceed 5,000 square feet plus drive thru.
- c. Parcel 3 shall be used and operated for retail stores (including the incidental outdoor display and sales areas), restaurants, financial institutions, service shops, or office uses (including medical and dental) and for no other purpose. No change of use shall be permitted on such Parcel 3, except as approved by Declarant in writing pursuant to Paragraph 6.2(e) below. No building located on Parcel 3 shall exceed twenty-four (24) feet in height nor shall the total Building Floor Area for Parcel 3 exceed 12,000 square feet.
- d. The building within the Permissible Building Area in Parcel 1 (or the Future Parcel 4, if created) shall be used and operated for retail stores, restaurants, financial institutions, service shops, quasi-retail uses or office uses (including medical and dental) and for no other purpose. No change of use shall be permitted, except as approved by Declarant in writing pursuant to Paragraph 6.2(e) below. No building located within such Permissible Building Area (or Future Parcel 4, as the case may be) shall exceed twenty-four (24) feet in height nor shall the total Building Floor Area exceed 7,500 square feet plus drive thru.

- e. With regards to each and every Parcel comprising the Property, the following restrictions shall apply:

Each Owner agrees that its Parcel shall be occupied and used solely for a purpose which is approved in writing by Declarant and for no other use or purpose without, in each and every instance, the prior written consent of Declarant, which consent may be withheld at Declarant's sole discretion.

During the term of this Declaration, Declarant shall be entitled, but shall not be obligated, to grant and record exclusive use restrictions and other use restrictions against some or all Parcels comprising the Property, in favor of one or more Parcels or other property. Any such exclusive use hereafter granted by Declarant, which functions as a restriction against all or any portion of the Property, shall be effective only so long as the benefited Parcel is operating as its exclusive use, barring remodeling not to exceed twelve (12) months, or restoration after a casualty not to exceed twelve (12) months.

- f. Prohibited Uses. Without limiting the generality of the foregoing, the following uses shall not be permitted without the Declarant's approval: (i) any night club or discotheque, (ii) any second hand or surplus store (provided that this restriction shall not be deemed to preclude the operation of a first-class antique or consignment store), (iii) any mobile home park or trailer court (except that this provision shall not prohibit the temporary use of construction trailers), (iv) any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any building), (v) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (vi) dry cleaning plant (except that this prohibition shall not be applicable to on-site service provided solely for pickup and delivery by the ultimate consumer, including nominal supporting facilities, or a so-called "green cleaners" [i.e. the facility does not use perclorothane or any other Hazardous Materials for cleaning operations]), (vii) any automobile, truck trailer or R.V. sales, leasing display or repair, (viii) any skating rink, (ix) any living quarters, sleeping apartments or lodging rooms, (x) any animal raising facilities, (xi) any mortuary (xii) any establishment selling or exhibiting pornographic materials (provided that the sale or rental of "adult" materials, shall not violate this restriction as long as the same is conducted in compliance with all applicable laws and is only an incidental use with no sign, advertisement or display in any store front window or otherwise in locations visible from the outside), (xiii) any movie theater, (xiv) any operation used primarily as a training or educational facility, including but not limited to, beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers, (xv) any church, temple, synagogue or other place of worship, (xvi) any off-track or sports betting parlor or bingo parlor (this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant and are approved in advance by Declarant), (xvii) any massage

parlor (except for bona fide therapeutic massage, chiropractic care, sports therapy, a beauty salon/day spa and other bona fide massage services in connection with a permitted health club use), topless club or "strip joint" (xviii) any assembling, distilling, refining, smelting, agricultural or mining operation, (xiv) any assembling, which is a public or private nuisance, or (xx) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Property.

- g. Hazardous Materials. No Owner(s) or Occupant(s) shall release, generate, use, store, dump, transport, handle or dispose of any Hazardous Material within the Property or otherwise permit the presence of any Hazardous Material on, under, or about the Property or transport any used Hazardous Material to or from the Property except for non-substantial amounts of commonly used cleaners and other solvents incident to the normal course of operating a retail facility, brewery, office supplies, and gasoline and petroleum products used in connection with a gasoline service station, lube n tune, or similar use, and then in strict accordance with all applicable laws, ordinances, rules and regulations now or hereafter promulgated by any governmental authority having jurisdiction thereof. No Owner(s) or Occupant(s) shall install, operate or maintain any above, below or at grade tank, dump, pit, pond, lagoon or other storage or treatment vessel or device on or about the Property without the prior written consent of the Declarant. Each Owner and Occupant shall immediately advise Declarant in writing and provide Declarant with a copy of: (i) any notices of violation or potential or alleged violation of any laws, ordinances or regulations which are received by said Owner and/or Occupant from any governmental agency concerning the use, storage, release and/or disposal of Hazardous Materials on or about such Owner's Parcel, (ii) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to such Owner, its Parcel(s) and/or the Occupants thereof, (iii) all claims made or threatened by any third party against such Owner, its Parcel (s) and/or the Occupants thereof relating to any Hazardous Materials; and (vi) any release of Hazardous Materials on or about the Property which such Owner or Occupant knows of or reasonably believes may have occurred. The Declarant shall not be liable in damages or otherwise by reason of its receipt pursuant to this Paragraph 6.2.g of information of any kind submitted to Declarant relating to Hazardous Materials, and no duty of any kind shall be inferred or imputed to Declarant as a result of its receipt of such information. In no event shall Declarant be obligated to make or perform any inquiry, investigation, enforcement, cleanup, removal or take any other action with respect to the presence of Hazardous Materials on any portion of the Property, nor shall Declarant be obligated or permitted to take any action with respect to the presence of Hazardous Materials on any portion of the Property. Every person who submits such information to Declarant hereunder agrees by submission of such information, and every Owner of any interest in the Property agrees by acquiring an interest therein, that he will not bring any action or suit against the Declarant to recover any such damages. Each Owner on behalf of itself and its Occupants agrees to indemnify, defend and hold harmless

Declarant, Operator and all other Owners and Occupants from and against any and all claims, judgments, damages, penalties, fines, costs, losses, expenses and liabilities arising from any breach or violation of this Paragraph 6.2.g by such Owner and its Occupants or arising from the presence, storage, use, release or disposal of any Hazardous Materials within the Property by such Owner or its Occupants.

6.3 Maintenance of Grounds. Each Owner shall be responsible, at its sole cost and expense, for the construction, installation, operation, maintenance, repair, replacement, lighting, drainage, landscaping, signage, security and insurance of all parking areas, driveways, walkways, utilities, landscaping and any and all other Common Area Improvements and/or other Improvements on its Parcel (save and except those certain particular CAM Costs for those certain portions of the Common Area of a Parcel that Declarant has elected in writing to maintain subject to each Owner's contribution obligations pursuant to Paragraph 7.3 herein, and only during the period of such election, as provided in Paragraph 7.1 herein). Certain of the foregoing responsibilities of each Owner shall include, without limitation:

- a. Construction, installation, maintenance, repair and replacement of all parking areas, driveways and walkways in a first class, clean and safe condition including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute as shall, in all respects, be equal in quality, appearance and durability; snow and ice removal; the removal of debris and waste material and the washing and sweeping of paved areas as required; and painting and repainting of striping markers and directional signals as required.
- b. Construction, installation, cleaning, maintenance, repair, replacement, operation, re-lamping and payment of electricity of any external lighting fixtures on each Owner's Parcel, except such fixtures as may be the property of any public utility or government body.
- c. Performing necessary installation, maintenance, repair, replacement, and irrigation of all landscaping, including the trimming, watering and fertilization of all grass, ground cover, shrubs or trees, removal of dead or waste materials, and rapid replacement of any dead or diseased grass, ground cover, shrubs or trees.
- d. Keeping open and maintaining the surface path of natural or man-made drainage flow over and across their properties and disposing of it in accordance with the Common Area utility plans prepared by or approved by Declarant in writing, in its sole discretion.

6.4 Repair of Buildings. No Building or other Improvement on any Parcel shall be permitted to fall into disrepair, and each such Building and/or other Improvement shall at all times be kept by its Parcel Owner, at its sole cost and expense, in first class condition, repair and appearance, and painted or otherwise finished. Any Building exterior which is

painted must be repainted by its Parcel Owner as needed as reasonably determined by the Declarant.

- 6.5 Refuse Collection Areas. All outdoor refuse collection areas shall be visually screened by brick, decorative concrete or similar treatment so as not to be visible from neighboring property or streets and accessed by getting approved by the Declarant and any governmental authority, if required. Use of cyclone fencing with slats for this purpose is not permitted unless approved by Declarant and any governmental authority, if required. No refuse collection area shall be permitted between a street and the front of a Building. All refuse shall be stored in closed containers. Such containers and all grounds shall be maintained in a manner that will not attract or aid in the propagation of insects or rodents or create a health hazard. No hazardous or toxic substances shall be handled or disposed of in any manner in the refuse collection area.
- 6.6 Owner's Maintenance Responsibilities. Except for the period specified under Declarant's written election, if any, to maintain certain or all elements of all or a portion of the Common Area pursuant to Paragraph 7.1 herein, the construction, installation, operation, maintenance, upkeep, repair, replacement, lighting, drainage, landscaping, signage, security and insurance of individual Parcels and all Improvements thereon (including any replacements necessary) shall be the sole responsibility of the individual Owners thereof, and in no way shall it be the responsibility of the Declarant or its agents, subagents, officers, directors or employees. Each Owner shall maintain its Parcel and any and all appurtenances thereto at all times in good order, condition and repair, and in a sightly and sanitary condition.

ARTICLE 7 COMMON AREAS

7.1 Common Area Maintenance.

Each Owner shall at its sole cost construct, install, manage, secure, insure, maintain, repair, replace, drain, light, landscape and pay all utility costs and all other costs pertaining to its Parcel's Common Area and all Improvements thereon (collectively "Maintaining the Common Area"). The costs and expenses incurred in Maintaining the Common Area are referred to herein as the "CAM Costs" (defined herein).

Notwithstanding the foregoing and notwithstanding Paragraph 6.3 herein, at Declarant's election, as given in writing from time to time to the Owners, Declarant may elect in its sole discretion to perform or cause to be performed some or all of the elements of "Maintaining the Common Area" for some or all of the Common Area on some or all of the Parcels, and if it does so elect, Declarant shall have the right to assess the Parcels and each Owner for their pro rata share of such CAM Costs (defined below) incurred by Declarant or its designee. In such case, Declarant shall notify the Owners in writing of such election and thereafter, with respect to the designated CAM Cost items for the designated Common Area included in such notification, Declarant, or its designee, shall

Maintain the designated CAM Cost items for the designated portion of the Common Area of such designated Parcel(s) and such Owner(s) shall pay its/their pro-rata share, as determined by Declarant, of such Common Area expenses and costs ("CAM Costs"). At any time, Declarant may (upon thirty (30) days prior written notice) change the party to either Declarant or the Parcel Owner, which party shall then be responsible for maintaining the designated CAM Cost items for the designated Common Area of a particular Parcel. If Declarant elects to Maintain certain or all CAM Cost items for all or a portion of the Common Area pursuant to the above notification, with respect to such Common Area and the CAM Costs items so notified, Declarant shall, subject to the Owners' reimbursement obligations under Paragraph 7.3 herein, pay for the designated maintenance items of the designated Common Area portion of the Parcels and shall maintain such designated Common Area improvements in good repair, including establishing reserves for and/or making replacements when and where necessary or desirable. CAM Costs to be reimbursed by the Owners (based on their pro rata shares) shall include, but are not limited to, all sums expended for, or in connection with: the operation, maintenance, repair, replacement and restoration, resurfacing, painting, restriping, cleaning, rubbish removal, snow removal, de-icing and sanding, sweeping of, and janitorial services for the Common Area; maintenance, repair and replacement of sidewalks, curbs, Property signs, sprinkler or irrigation systems, awnings, planting and landscaping; lighting and other utilities including meter reading, common tenant identification signs, common area signs and common pylon signs, directional signs and other markers and bumpers; operation, maintenance, repair and replacement of any lighting systems, common pylon signs, storm drainage system and any other utility system; personnel to implement such services including, if Declarant deems necessary, the cost of security guards or devices; real property taxes and personal property taxes and governmental charges, fees or assessments of any kind or nature (including reserves therefore) on improvements and land comprising the Common Area, including parking structures or other facilities, street improvements, storm drainage, park-and-ride facilities and community-facility districts; charges, surcharges and other costs related to requirements of any governmental agency; maintenance, repair and replacement of, and depreciation on, operating and maintenance machinery and equipment, if owned, and rental paid for such machinery and equipment, if rented; nonrefundable reserves for replacements other than equipment; premiums for public liability insurance, and any other insurance carried by Declarant or its designee with respect to the Property for the benefit of the Common Area, labor, payroll taxes, materials and supplies for the foregoing, workers' compensation insurance, and an allowance to Declarant for Declarant's supervision of the Common Area in an amount equal to ten percent (10%) of the total of the aforementioned expenses for each calendar year. If Declarant shall elect to contest any tax or assessment affecting all or a portion of the Property, the expenses involved in such contest shall be part of the Common Area expenses, as long as said contest affects some or all of the Buildings on the Property or all or a portion of the Common Area. If Declarant receives a refund pursuant to its contest of any such tax or assessment, so long as such refund is attributable to a particular Parcel Owner's Parcel, and such Parcel's Owner has paid its pro-rata share of the costs incurred by Declarant in connection with such contest as set forth in Paragraph 7.3 herein, then Declarant shall

reimburse such Parcel Owner a portion of the total refund, prorated as set forth in Paragraph 7.3 herein.

Should Declarant acquire or make available additional land not shown as part of the Property on Exhibit "B", and make the same available as Common Area, at Declarant's written election, the CAM Costs incurred by Declarant or its designee in Maintaining certain or all CAM cost items for all or a portion of the Common Area shall also include the CAM Costs incurred in connection with said additional land.

Nothing contained herein shall be deemed to create any liability upon Declarant for any damage to motor vehicles of customers or employees or for loss of property from within such motor vehicles, unless caused by the gross negligence of Declarant or its employees.

7.2 Records. For the periods that Declarant elects in writing to maintain the Common Area, Declarant shall keep records for a period of three (3) years therefrom showing in reasonable detail all expenses incurred for its Common Area maintenance during such periods. These records shall, upon reasonable request, be made available for inspection during business hours at the offices of Declarant or its designee.

7.3 Parcel Owners' Contributions. In the event that Landlord elects in its sole discretion pursuant to Paragraph 7.1 herein to Maintain the Common Area or perform any of the Common Area expense or cost items in this Declaration, all Owners shall pay to Declarant monthly as an assessment against their Parcels, commencing on the date of such election by Declarant, such Parcel Owner's pro rata share of the amount of all expenses described in Paragraph 7.1 based either (at Declarant's option) on (a) the amount of such expenses actually incurred during the billing period, payable within three (3) business days after billing, or (b) equal monthly installments that have been estimated in advance by Declarant for a particular calendar year, payable on the first day of each month, and Declarant shall endeavor within ninety (90) days after the end of such year adjust the estimated expenses to reflect the actual expenses incurred for that year. Any underpayment by any Owner shall be paid by such Owner within ten (10) days of billing by Declarant. Any overpayment by such Owner shall be credited to the next installment or installments due from such Owner under this paragraph. Such Owner's pro rata share shall be equal to the ratio which such Owner's Building Floor Area on its Parcel bears to the total completed Floor Area of all completed Buildings on the Property, whether or not then occupied. Notwithstanding the ratio set forth above, if, in Declarant's reasonable opinion, any Parcel Owner benefits from a service which is utilized by less than all Parcel Owners, then such Parcel Owner's pro rata share for that service shall be equal to the ratio which such Parcel Owner's Building Floor Area bears to the total Building Floor Area of all Buildings on those Parcels of the Property utilizing that particular service. In the event that a Parcel benefits solely from a service, such Parcel's Owner shall pay the full cost of the service or, at Declarant's election, contract directly for the service. Further, if in Further, in those situations where occupants of free standing Buildings or major tenants such as department stores, supermarkets, drug stores, home improvement stores or other stores in excess of 10,000 square feet, maintain portions of the Common Area at their own expense, such Parcel Owner's pro rata share shall be equal to the ratio which a

Parcel Owner's Building Floor Area bears to the Building Floor Area of all completed Buildings on the Property utilizing a particular service, exclusive of the foregoing major/freestanding tenants or occupants. For purposes of the Paragraph 7.3 only, the terms "Property" or "Parcels" shall be deemed to include any additional land Declarant elects in writing to make available as Common Area pursuant to Paragraph 7.1 herein.

- 7.4 Operation and Control. Declarant shall have general possession and control of the Common Area. The manner and standard in which the Common Area and all Common Area Improvements (and any Separate Utilities Easement underground utilities thereon) shall be constructed, installed, operated, maintained, repaired, replaced, drained, lit, landscaped, signed, insured, and secured shall be in Declarant's sole discretion regardless of whether Declarant has elected in writing pursuant to Paragraph 7.1 herein, to Maintain the Common Area. Declarant reserves the right to appoint a substitute operator, including without limitation, any Owner or Occupant of any Parcel, or any tenant or user of any additional land made available as Common Area pursuant to Paragraph 7.1 herein, to carry out any or all of Declarant's rights and duties relating to the Common Area. Declarant may enter into a contract either by a separate document or in a lease agreement with such operator on such terms and conditions and for such period as Declarant may deem proper. In such case, Declarant may direct any or all Owners to pay such amounts directly to such substitute operator.

Declarant shall have the right to establish and, from time to time, change, alter and amend, and to enforce against the Parcels and their Owners, and the other users of the Common Area, such reasonable rules and regulations (including the exclusion of employees' parking therefrom) as may be deemed necessary or advisable for the proper and efficient construction, installation, operation, maintenance, repair, replacement, lighting, drainage, landscaping, signage, security and insurance of the Common Area and/or any Common Area Improvements thereon, and/or any Separate Utilities Easement underground utilities thereon. The rules and regulations herein provided for may include, without limitation, the hours during which the Common Area shall be open for use. Declarant may, if in its opinion the same shall be advisable, establish a system or systems of validation or similar operation, including a system of charges against non-validated parking of users, and the Parcel Owners shall conform to and abide by all such reasonable rules and regulations in their use and the use of their customers and patrons with respect to said automobile parking areas.

- 7.5 Restricted Parking. Declarant may designate which part of the Common Area, if any, shall be used for automobile parking by owners, tenants, permitted occupants and their respective employees, and these persons shall not use any part of the Common Area for parking except the area or areas so designated.
- 7.6 Prohibitions. Except for Common Area Improvements installed or caused to be installed by Declarant, no fence (excluding a fence enclosing an outdoor sales area adjacent to Major Retail "A"), wall, structure, or other obstruction of any kind shall be placed or permitted by any Parcel Owner or its Occupants on the Common Area. The following activities are prohibited in the Common Areas: the sale, display, advertising, promotion,

or storage of merchandise or any business activities of any kind whatsoever without Declarant's prior written consent, which consent may be evidenced in a separate document or in an executed lease agreement; affixing bumper stickers on vehicles or distributing handbills or other advertising matter; and permitting any person to use the Common Area for solicitations, demonstrations or any other activities that would interfere with the conduct of business on the Property or tend to create civil disorder or commotion.

- 7.7 Site Lighting. At Declarant's option, the parking lot lighting located on the Common Area portion of each Parcel, may be separately metered for each individual Parcel Owner on the Property. If the site lighting is individually metered, each Parcel Owner agrees to keep lit its Parcel as controlled and metered, during the hours reasonably determined by Declarant. Such Parcel Owner will pay directly all such lighting costs associated with lighting its Parcel. If the site lighting is not individually metered, each Parcel Owner agrees to reimburse Declarant for its share of all site lighting costs (electricity, maintenance, repair, replacement, etc.) in a manner as reasonably determined by Declarant as part of such Parcel Owner's share of CAM Costs.

ARTICLE 8 CONSTRUCTION OF IMPROVEMENTS

- 8.1 Approval of Plans Required. No Improvements which would violate any provision of any instrument recorded against the Property or any Parcel or portion thereof, as of the date hereof, shall be erected, placed, altered, maintained or permitted to remain on any Parcel by an Owner or Occupant. Furthermore, no Improvements shall be erected, placed, altered, maintained or permitted to remain on any Parcel by an Owner or Occupant until descriptive plans and specifications shall have been submitted to and approved in writing by Declarant and, to the extent required by law, by the local governmental jurisdiction. The descriptive plans and specifications shall be submitted in duplicate over the authorized signature of the Owner or Occupant, or both, of the Parcel or the authorized agent thereof to Declarant. The plans and specifications shall be in a reasonably informative and detailed form, but shall in any event include the following:

- a. A site development plan of the Parcel showing the nature, grading, scheme, kind, shape, composition and location of all structures with respect to the particular Parcel (including proposed front, rear and side setback lines), and with respect to structures on adjoining Parcels, and the number and location of all parking spaces and driveways on the Parcel.
- b. A landscaping plan for the particular Parcel.
- c. A plan for the location of signs and lighting.
- d. General building elevations and plans showing dimensions, materials, and the external color scheme.

- e. Site drainage plan showing water flows and collection and containment facilities.
- f. A utilities plan for a particular Parcel, both for Common Area utilities and for any underground utilities to be installed pursuant to the Separate Utilities Easement.

Material changes (whether at the initiative of the Owner or Occupant or to comply with applicable laws) in plans and specifications previously approved by Declarant must be similarly submitted to and approved by Declarant. For purposes of the foregoing, a "material change" shall mean any change which requires the approval of the local governmental jurisdiction or a change in exterior color or finishes, as well as any change to any Common Area Improvements or Separate Utilities Easement underground utilities to be installed or constructed or reconstructed in the Common Area. Declarant may impose upon the Owner and/or Occupant seeking approval a fee for the review of original plans and specifications submitted to Declarant, for additional plans and specifications, material changes to plans and specifications, or the resubmission of disapproved plans and specifications.

8.2 Basis for Approval. Approval shall be based upon, among other things, conformity and harmony of external design and placement with neighboring structures and streets, effect of location and use of proposed Improvements upon neighboring Parcels, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning or other rooftop installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration, provided that such plans and specifications must also be approved by all governmental agencies that have jurisdiction over approval of such plans and specifications. Disapprovals of Declarant must be specific. Upon disapproval of plans or specifications (or changes thereto) submitted to Declarant, neither Owner nor the Occupant requesting the approval shall take any further action regarding the proposed Improvement until revising, resubmitting and obtaining the approval of such revised plans and specifications by Declarant. Declarant may disapprove of project plans and specifications even if the same have previously been approved by applicable governmental authorities with jurisdiction. Declarant shall approve any plans and specifications which (i) are substantially similar to those previously approved by Declarant, and (ii) set forth Improvements which duplicate those built, or in the process of being built, under previously approved plans and specifications.

8.3 Result of Inaction. If Declarant fails to either approve or disapprove plans and specifications submitted to it within sixty (60) days after the same have been submitted, if the submission meets all the requirements of this Article 8, it shall be conclusively presumed the Declarant has approved such plans and specifications. Notwithstanding any deemed approval of plans and specifications submitted to Declarant, the Owner or Occupant seeking the approval of Declarant must comply with the provisions of this Declaration in connection with making any planned Improvements to its Parcel. Declarant shall notify the Owner and/or Occupant seeking its approval in writing upon receipt of all required plans and specifications, and the aforementioned thirty-day period

shall commence on the date all required plans and specifications and other information is received by Declarant.

- 8.4 Proceeding with Work. Upon receipt of approval of the descriptive plans and specifications from Declarant, the Owner or Occupant, or both, to whom the same is given, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all approved excavation, construction, refinishing and alterations. In all cases, work shall commence within six (6) months from the date of last approval, and, if work is not so commenced, approval shall be deemed revoked unless Declarant, pursuant to written request made and received prior to the expiration of said six-month period, extends the period of time within which work must be commenced.
- 8.5 Completion of Work. Any Improvements commenced pursuant to this Declaration shall be completed in accordance with descriptive plans and specifications within two (2) years from commencement of construction of that Improvement, except that such period may be extended for so long as such completion is delayed, due to strike, fire, national emergency, natural disaster or other cause (other than financial) beyond the control of the Owner or Occupant. Declarant may, upon written request received prior to the expiration of the two-year period, extend the period of time within which work must be completed. Failure to comply with this Section shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in this Declaration.
- 8.6 Construction Without Approval. If any Improvement shall be erected, altered, placed or maintained upon any Parcel, or any new use commenced upon any Parcel other than in accordance with the approval by Declarant pursuant to the provisions of this Article 8, such alteration, erection, placement, maintenance or use shall be deemed to have been undertaken in violation of this Declaration, and upon written notice from Declarant any such Improvement so altered, erected, placed, maintained or used upon any Parcel in violation of this Declaration shall be removed or altered so as to conform to this Declaration. Should such removal, alteration or cessation or amendment of use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of this Declaration shall be subject to the enforcement procedures set forth in this Declaration.
- 8.7 Estoppel Certificate. Within thirty (30) days after written request by an Owner, Occupant or any First Mortgagee, but no more often than once per year for any Parcel, Declarant shall execute and deliver to the Owner, Occupant, Mortgagee or other person or entity requesting the same an Estoppel Certificate certifying with respect to a Parcel that as of the date of the certificate either (a) to the best of Declarant's knowledge, all Improvements and all other work within the Parcel comply with the provisions of this Article, or (b) such Improvements and work do not so comply for reasons specified in the certificate. Any lessee, purchaser or Mortgagee of a Parcel may rely on such certificates with respect to the matters set forth therein.

- 8.8 Separate Utilities Easement Construction. Any and all construction, installation, maintenance, repair and replacement of any underground utilities pursuant to the Separate Utilities Easement shall be the responsibility of the Owner whose Parcel is to be served by such underground utilities, at such Owner's sole cost and expense. Such Owner shall indemnify and hold harmless Declarant and all other Owners from and against any and all such costs and expenses, as well as from and against any and all claims, actions, damages, or liabilities arising out of such Owner's, or its agent's, construction, installation, maintenance, repair and replacement of any underground utilities pursuant to the Separate Utilities Easement. Before commencing any work pursuant to this Paragraph 8.8, an Owner shall first submit to Declarant for Declarant's approval, such plans and specifications as Declarant requests, setting forth in detail the location and type of the underground utility or utilities for which Declarant's approval is being sought, and describing and showing in detail what impact such underground utilities and their construction will have on any existing or planned Improvements in the Common Area.

ARTICLE 9 SITE DEVELOPMENT STANDARDS

9.1 Signs

- a. Sign material, colors, copy, and details shall be submitted to Declarant, as well as to any governmental authority with jurisdiction over such signs, for approval prior to installation.
- b. All signs and sign standards herein are further subject to any governmental restrictions against such signage.
- c. No free-standing advertising signs or billboards will be permitted.

ARTICLE 10 ENFORCEMENT

- 10.1 Declarant's Right to Cure Default. In addition to all of Declarant's other rights and remedies under this Declaration or at law or in equity, if any Owner fails to perform, fulfill or observe any covenant, condition, restriction or agreement contained in this Declaration to be performed, fulfilled or observed by it (the "Defaulting Owner"), which failure shall continue for thirty (30) days after Notice of such "Default", then Declarant may, at its election, cure such Default on behalf of the Defaulting Owner. The thirty (30) day cure period shall not apply (a) in the case of any emergency in which event an immediate cure shall be required and (b) where a Default is not susceptible of cure within thirty (30) days and the Defaulting Owner commences the performance, fulfillment or observance within the thirty (30) day period and diligently prosecutes the same thereafter. Any amount expended by Declarant to cure such Default, together with interest as

provided herein, shall be paid to Declarant by the Defaulting Owner on demand, without contest, upon delivery of Declarant's invoice.

- 10.2 Right to Enforce Declaration. Declarant shall have the right, but not the obligation, to enforce, by any appropriate proceeding at law or in equity, any or all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure or forbearance by Declarant to enforce the provisions of this Declaration, or to pursue such enforcement, shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding the foregoing, any Owner other than Declarant shall only be entitled to enforce another Owner's non-compliance with the terms of Article 6 herein, where such non-compliance is detrimental to the enforcing Owner; however, such enforcement hereunder by an Owner other than Declarant, shall be sought solely against the Owner of a Parcel alleged to be in non-compliance with the terms of Article 6 herein.
- 10.3 Remedies Cumulative. The remedies provided for in this Declaration shall not be exclusive and are in addition to all other remedies available at law or in equity. Declarant agrees the obligations of the Owners and Occupants under this Declaration are unique and any remedy at law (such as damages) is inadequate. In the event of a breach or violation or an attempted breach or violation of this Declaration, the party seeking to enforce this Declaration shall be entitled to an injunction or specific performance, in addition to any other rights, remedies and awards available under this Declaration, at law or in equity.
- 10.4 No Liability. Neither Declarant nor its trustees, partners, members, shareholders, directors, officers, employees, agents, successors and assigns, nor any entity affiliated with any of the foregoing, shall be liable for damages to anyone with regard to any restrictions, standards or requirements contained in this Declaration, nor to any Owner or Occupant affected by this Declaration by reason of mistake or difference in judgment, negligence or nonfeasance arising out of or in connection with Declarant's actions or inactions under this Declaration, or failure to approve or disapprove any items under this Declaration.
- 10.5 Covenants Running with the Land. Except for the perpetual easements declared or granted in this Declaration, which perpetual easements shall continue in perpetuity, the covenants, conditions, restrictions, liens, easements, enjoyment rights and other provisions contained herein are intended to and shall run with the land for a term of ninety-nine (99) years from the date of this Declaration, and shall be binding upon each of the Parcels and upon all persons purchasing, leasing, subleasing or otherwise occupying or having an interest in any Parcel or portion of the Property, their heirs, executors, administrators, successors, grantees, assigns and tenants, and the customers, employees and invitees of such parties, for such ninety-nine (99) year term. All instruments granting or conveying any interest in any Parcel and all leases or subleases shall refer to this Declaration and shall recite that it is subject to the terms hereof as if fully set forth therein; provided, however, all terms and provisions of this Declaration are

binding upon all successors in interest despite an absence of reference thereto in the instrument of conveyance, lease or sublease.

ARTICLE 11 AMENDMENT AND REVOCATION

- 11.1 Amendment by Declarant. Declarant, in its sole and absolute discretion, is entitled to unilaterally amend this Declaration at any time and from time to time, and any provision or provisions herein, including without limitation, any exhibits hereto, by notifying all Parcel Owners thereof and recording a Supplemental Declaration thereof in the real property records of Bonner County, Idaho.
- 11.2 Effective Date. Any amendments to this Declaration shall take effect upon the recording thereof as a Supplemental Declaration in the real property records of Bonner County, Idaho.

ARTICLE 12 GENERAL PROVISIONS

- 12.1 Taxes. Each Owner shall pay without abatement, deduction or offset, all real and personal property taxes, general and special assessments, including local improvement assessments and other charges of every description, levied on or assessed against his, her or its Parcel and on personal property located on or in the Parcel, including without limitation any Common Area or Common Area Improvements thereon.
- 12.2 Non-Waiver. No waiver of any breach of this Declaration shall constitute a waiver of any other breach, whether of the same or any other covenants, condition or restriction.
- 12.3 Attorneys' Fees. In the event of a suit or other action or legal proceeding brought by Declarant to enforce any provision of this Declaration or to collect any money due hereunder or to foreclose a lien, the Owner against whom such suit, action or legal proceeding is brought, shall pay to Declarant all costs and expenses, including title reports and all attorneys' fees that Declarant has incurred in connection with the suit or action (including without limitation proceedings in bankruptcy court), in such amounts as the court or arbitrator may deem to be reasonable therein, and also including all costs, expenses and attorneys' fees incurred in connection with any appeal from the decision of a trial court or any intermediate appellate court.
- 12.4 Interpretation. The captions of the various articles, sections and paragraphs of this Declaration are for convenience of use and reference only and do not define, limit, augment or describe the scope, content or intent of this Declaration or any parts of this Declaration. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter,

and each includes a legal entity when the context so requires. The singular includes the plural whenever the context so requires.

- 12.5 Severability. Invalidation of any one of these covenants, conditions, restrictions, easements or provisions by judgment or court order shall in no way affect any other of the same, all of which shall remain in full force and effect.
- 12.6 Notices. All notices, demands or other communications ("**Notices**") required or otherwise given pursuant to this Declaration shall be in writing. Notices given by mail shall be sent postage prepaid by certified or registered U.S. mail, return receipt requested, and shall be deemed given three (3) days after the date of mailing thereof, or on the date of actual receipt, if sooner, or by Federal Express or United Parcel Service marked for the following day delivery with proof of signature receipt required. Notices shall be addressed to the last known address of the addressees. Notice to any Owner may be given at any Parcel owned by such Owner; provided, however, that an Owner may from time to time by Notice to Declarant, designate such other place or places or individuals for the receipt of future Notices. If there is more than one Owner of a Parcel, Notice to any one such Owner shall be sufficient. The address of Declarant shall be given to each Owner at or before the time he becomes an Owner.

The address for Notices to Declarant shall be 810 East 28th Avenue, Spokane, WA 99203, with copy to 1915-A E. Katella Avenue, Orange, CA 92867. If the address of Declarant shall be changed, Notice shall be given to all Owners.

- 12.7 Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or approvals required or permitted by or from Declarant under this Declaration, Declarant shall not be liable to any Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such review, acceptance, inspection, permission, consent or approval, whether given, granted, withheld or denied.
- 12.8 Computation of Time. The word "**day**" means "**calendar day**" herein, and the computation of time under this Declaration shall include all Saturdays, Sundays and holidays for purposes of determining time period specified herein. Time is of the essence under this Agreement.
- 12.9 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use, except as may be specifically set forth on any recorded final plat or subdivision map.
- 12.10 Applicable Law. This Declaration shall be construed in all respects in accordance with the laws of the State of Idaho.
- 12.11 Compliance with Declaration. All present and future Owners acknowledge that all Parcels comprising the Property are subject to this Declaration as the same may be

amended from time to time, and all agreements executed in substitution therefore or in re-statement thereof, so long as such future amendments, substitutions or re-statements do not materially effect an Owner's operation as its permitted use hereunder on its Parcel. All Owners acknowledge and agree that by accepting a deed to a Parcel, such Owner is purchasing such Parcel subject and subordinate to this Declaration. Notwithstanding anything else stated or implied to the contrary anywhere else in this Declaration, each and every Parcel Owner hereunder shall abide by, be responsible for, and timely perform at such Owner's sole cost and expense, any and all duties, covenants, conditions and restrictions, in this Declaration as they pertain to such Owner's Parcel.

- 12.12 Owner's Transfer. Within fifteen (15) days of the transfer of fee title to a Parcel, such Parcel's new Owner shall give Declarant written notice of such transfer, including the address for notices of such new Owner, and a copy of the deed evidencing the transfer.
- 12.13 No Third Party Beneficiary. Any and all restrictions on the use of any Parcel or Parcels within the Property, are for the sole benefit of Declarant and shall not be construed to benefit any of Declarant's Occupants or any other Parcel Owner or Owners or their Occupants within the Property or the Adjacent Property, and as such, Declarant may unilaterally change any such use restrictions at any time, in Declarant's sole and absolute discretion, without any liability to any such Parcel Owner or Occupant.
- 12.14 Waiver of Trial by Jury. The parties hereto hereby waive trial by jury in any action or proceeding brought by either against the other on any matters connected with this Declaration.

[signature page to follow]

EXHIBIT "A"

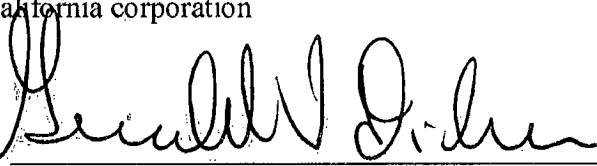
LEGAL DESCRIPTION OF THE PROPERTY

[see attached sheets]

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

GVD COMMERCIAL PROPERTIES, INC.,
a California corporation

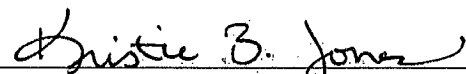
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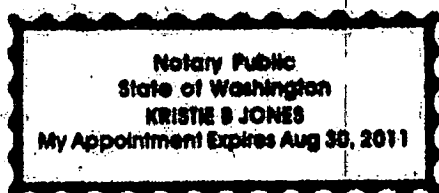
Gerald V. Dicker, President

State of Washington)
) ss
County of Spokane)

On this day personally appeared before me, Gerald V. Dicker, President of GVD Commercial Properties, Inc., Declarant hereunder, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 30th day of September 2010.


NOTARY PUBLIC in and for the State of Washington
Residing at Spokane
My Commission expires August 30, 2011



PARCEL 1

A tract of land in a portion of the Southwest Quarter of the Southwest Quarter of Section 2, a portion of Block 4 of Starr's Acreage, according to the official plat thereof, filed in Book 1 of Plats at Page 88 Official Records of Bonner County; and a portion of the Northwest Quarter of the Northwest Quarter of Section 11, all in Township 57 North, Range 2 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

Commencing at the Southwest corner of said Section 2;

Thence North $89^{\circ} 37' 22''$ East, along the South line of said Section a distance of 100.00 feet;

Thence North $00^{\circ} 33' 46''$ West, a distance of 140.00 feet to the true point of beginning;

Thence continuing North $00^{\circ} 33' 46''$ West, a distance of 529.42 feet;

Thence North $89^{\circ} 35' 30''$ East, a distance of 179.00 feet;

Thence South $00^{\circ} 33' 46''$ East, a distance of 100.10 feet;

Thence North $89^{\circ} 35' 30''$ East, a distance of 99.00 feet;

Thence South $00^{\circ} 33' 46''$ East, a distance of 59.00 feet;

Thence North $89^{\circ} 26' 50''$ East, a distance of 188.47 feet;

Thence North $00^{\circ} 33' 46''$ West, a distance of 75.00 feet;

Thence North $89^{\circ} 35' 30''$ East, a distance of 102.79 feet to the East line of said Block 4;

Thence South $00^{\circ} 35' 49''$ East, along said East line a distance of 556.11 feet to the Southeast corner of said Block 4 and the Northerly right of way line of the existing Kootenai Cut-Off Road;

Thence along said Northerly right of way line the following two courses:

- 1) South $89^{\circ} 37' 22''$ West, a distance of 202.15 feet;
- 2) South $74^{\circ} 59' 35''$ West, a distance of 201.81 feet;

Thence leaving said Northerly right of way line, North $00^{\circ} 33' 46''$ West, a distance of 160.97 feet;

Thence South $89^{\circ} 37' 22''$ West, a distance of 172.00 feet to the true point of beginning.

EXCEPTING therefrom that portion of said land set forth in the Deed to the State of Idaho Transportation Department filed for record March 13, 2003, a Instrument No. 620441, records of Bonner County, Idaho.

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TOGETHER with easements for ingress, egress and utilities lying within a tract of land in a portion of the Southwest quarter of the Southwest Quarter of Section 2, a portion of Block 4 of Starr's Acreage, a plat recorded in Book 1 of Plats, Page 88, in the records of Bonner County; and a portion of the Northwest Quarter of the Northwest Quarter of Section 11, all in Township 57 North, Range 2 West, Boise Meridian, Bonner County, Idaho, said tract more specifically described as follows:

Commencing at the Southwest corner of said Section 2;

Thence North $89^{\circ} 37' 22''$ East, along the South line of said Section a distance of 40.00 feet to a point on the Easterly right of way line of the existing U.S. Highway No. 95, which point is the true point of beginning;

Thence North $00^{\circ} 33' 46''$ West along said Easterly right of way line a distance of 669.39 feet;

Thence leaving said right of way line, North $89^{\circ} 35' 30''$ East, a distance of 60.00 feet;

Thence South $00^{\circ} 33' 46''$ East, a distance of 699.42 feet to the Northerly right of way line of the existing Kootenai Cut-Off Road;

Thence South $89^{\circ} 37' 22''$ West, along the Northerly right of way line a distance of 60.08 feet to said Easterly right of way line of U.S. Highway No. 95;

Thence North $00^{\circ} 24' 35''$ West, a distance of 30.00 feet to the true point of beginning;

TOGETHER with a non-building easement more particularly described as follows:

The West 27.00 feet of Block 3 of Starr's Acreage, a plat recorded in Book 1 of Plats, Page 88, in the records of Bonner County, Idaho, as set forth in the Deed recorded October 30, 1989 as Instrument No. 368311, more specifically described as follows:

Beginning at the Southwest corner of said Block 3;

Thence North $00^{\circ} 35' 49''$ West, along the West line of said Block 3, a distance of 619.74 feet to the Northwest corner of said Block 3;

Thence North $89^{\circ} 35' 30''$ East, along the North line of said Block 3, a distance of 27.00 feet;

Thence South $00^{\circ} 35' 49''$ East, a distance of 619.75 feet to the South line of said Block 3;

Thence South $89^{\circ} 37' 22''$ West, along said South line a distance of 27.00 feet to the point of beginning.

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PARCEL 2

A tract of land in a portion of the Southwest quarter of the Southwest quarter of Section 2;

A portion of Block 4 of Starr's Acreage, a plat recorded in Book 1 of Plats, Page 88 in the records of Bonner County; and a portion of the Northwest quarter of the Northwest quarter of Section 11, all in Township S7 North, Range 2 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the Southwest corner of said Section 2;

Thence North $89^{\circ}37'22''$ East along the South line of said Section a distance of 100.00 feet to the true point of beginning;

Thence North $00^{\circ}33'46''$ West a distance of 140.00 feet;

Thence North $89^{\circ}37'22''$ East a distance of 172.00 feet;

Thence South $00^{\circ}33'46''$ East a distance of 160.97 feet to the Northerly right of way line of the existing Kootenai Cut-Off Road;

Thence along said Northerly right of way line the following two courses:

1) South $74^{\circ}59'35''$ West a distance of 35.75 feet;

2) South $89^{\circ}37'22''$ West a distance of 137.38 feet;

Thence leaving said Northerly right of way line, North $00^{\circ}33'46''$ West a distance of 30.00 feet to the True Point of Beginning.

PARCEL 3

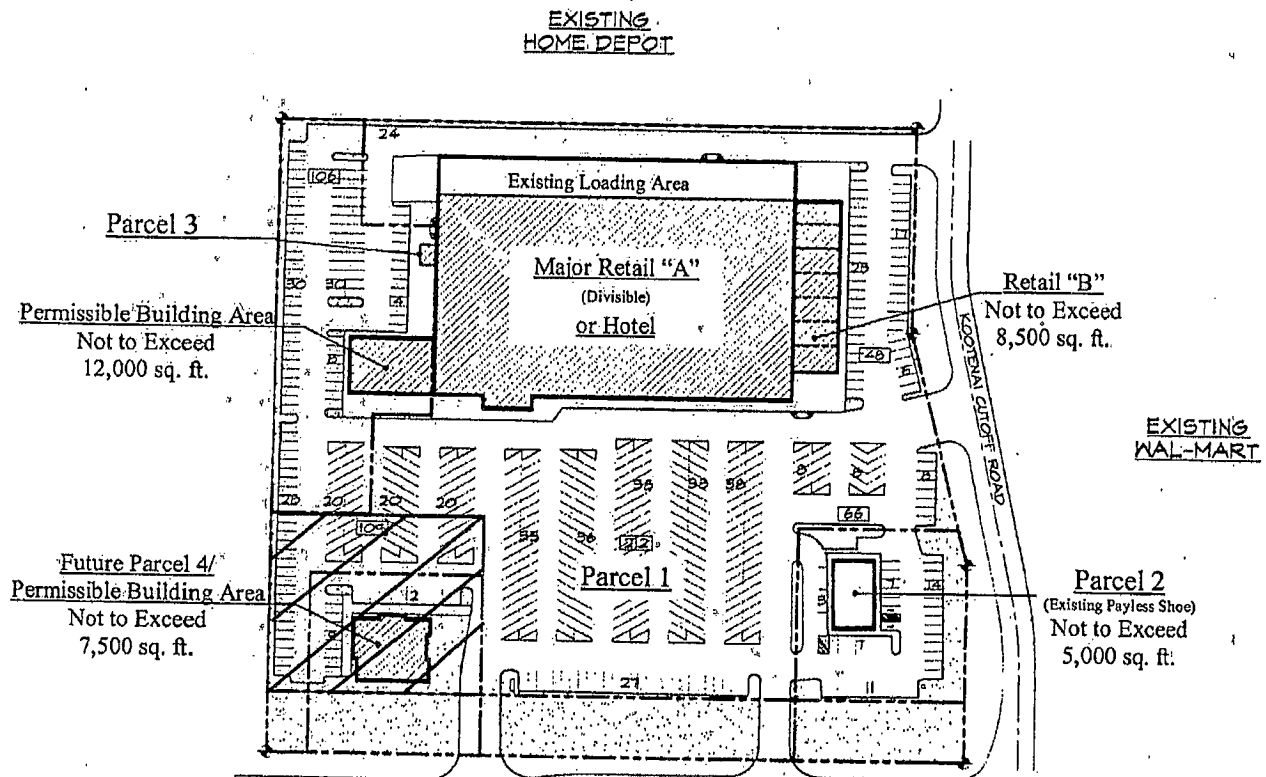
Real property in the County of Bonner, State of Idaho, described as follows:

A tract of land in a portion of the Southwest quarter of the Southwest quarter of Section 2; and a portion of Block 4 of Starr's Acreage, a plat recorded in Book 1 of Plats, Page 88, in the records of Bonner County, all in Township 57 North, Range 2 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the Southwest corner of said Section 2; thence North $89^{\circ} 37' 22''$ East along the South line of said Section, a distance of 100.00 feet; thence North $00^{\circ} 33' 46''$ West, a distance of 669.42 feet; thence North $89^{\circ} 35' 30''$ East, a distance of 179.00 feet to the true point of beginning; thence South $00^{\circ} 33' 46''$ East, a distance of 101.00 feet, (also shown of record as 100.10 feet); thence North $89^{\circ} 35' 30''$ East, a distance of 99.00 feet; thence South $00^{\circ} 33' 46''$ East, a distance of 59.00 feet; thence North $89^{\circ} 35' 30''$ East, a distance of 188.46 feet; thence North $00^{\circ} 33' 46''$ West, a distance of 75.00 feet; thence North $89^{\circ} 35' 30''$ East, a distance of 102.79 feet to the East line of said Block 4; thence North $00^{\circ} 35' 49''$ West, a distance of 85.00 feet; thence South $89^{\circ} 35' 30''$ West, a distance of 390.20 feet to the true point of beginning.

EXHIBIT "B"

SITE PLAN



The site plan sets forth a general layout of the Parcels within the Property as of the date of this Declaration, and shall not be deemed a representation, warranty or covenant by Declarant that such Parcels shall be constructed as shown thereon, or that any tenants or occupants designated thereon by name or nature of business shall conduct business in such Parcels during the term of this Declaration. The Owners of such Parcels may, subject to the terms of this Declaration, change the number, locations and dimensions of the buildings, the premises therein, the drive lanes, driveways, walkways, parking spaces and other improvements.