

BK: 08104 PG: 0274/0347 #:0695 154.00  
JUDITH A GIBSON REG OF DEEDS MECK NC  
FILED FOR REGISTRATION 04/03/95 17:01

**DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
MOUNTAIN ISLAND MARKETPLACE SHOPPING CENTER**

420347.6

Mecklenburg County  
North Carolina

---

DRAWN BY AND MAIL TO:

Kennedy Covington Lobdell & Hickman, L.L.P.  
NationsBank Corporate Center  
Suite 4200  
100 North Tryon Street  
Charlotte, North Carolina 28202-4006  
Box 47 (WDF)

229347.6

*BMC*

# TABLE OF CONTENTS

PAGE

## **ARTICLE I**

	<b>DEFINITIONS</b>	
	.....	1
1.1	<u>Adjacent Tract</u> .....	1
1.2	<u>Building/Buildings</u> .....	1
1.3	<u>Collector Road</u> .....	1
1.4	<u>Coulwood Hardware</u> .....	2
1.5	<u>Coulwood Hardware Lease</u> .....	2
1.6	<u>Coulwood Premises</u> .....	2
1.7	<u>Declaration</u> .....	2
1.8	<u>Developer</u> .....	2
1.9	<u>Eckerd</u> .....	2
1.10	<u>Eckerd Lease</u> .....	2
1.11	<u>Eckerd Premises</u> .....	2
1.12	<u>Feeder Road</u> .....	2
1.13	<u>First Phase</u> .....	2
1.14	<u>Floor Area</u> .....	3
1.15	<u>Harris Teeter</u> .....	3
1.16	<u>Harris Teeter Lease</u> .....	3
1.17	<u>Harris Teeter Premises</u> .....	3
1.18	<u>Landscaping and Sidewalk Easement Areas</u> .....	3
1.19	<u>Main Entrance Drive</u> .....	3
1.20	<u>McCallister</u> .....	3
1.21	<u>McCallister Lease</u> .....	4
1.22	<u>McCallister Premises</u> .....	4
1.23	<u>Monument Sign</u> .....	4
1.24	<u>Nationwide</u> .....	4
1.25	<u>Nationwide Lease</u> .....	4
1.26	<u>Nationwide Premises</u> .....	4
1.27	<u>Occupant</u> .....	4
1.28	<u>Outparcel/Outparcels</u> .....	4
1.29	<u>Outparcels Common Area</u> .....	4
1.30	<u>Outparcels Tract</u> .....	5
1.31	<u>Owner</u> .....	5
1.32	<u>Permittee</u> .....	5
1.33	<u>Person</u> .....	5
1.34	<u>Phase/Phases</u> .....	5
1.35	<u>Plans</u> .....	5
1.36	<u>Property</u> .....	5
1.37	<u>Pizza Hut</u> .....	6
1.38	<u>Pizza Hut Lease</u> .....	6
1.39	<u>Pizza Hut Premises</u> .....	6
1.40	<u>Pylon Sign/Pylon Signs</u> .....	6
1.41	<u>Reflections</u> .....	6
1.42	<u>Reflections Lease</u> .....	6
1.43	<u>Reflections Premises</u> .....	6

2023-04-03

1.44	<u>Shopping Center</u>	6
1.45	<u>Shopping Center Common Area</u>	6
1.46	<u>Shopping Center Parcel/Shopping Center Parcels</u>	7
1.47	<u>Shopping Center Tract</u>	7
1.48	<u>Signage Easement Areas</u>	7
1.49	<u>Site Plan</u>	7
1.50	<u>Utility Line/Utility Lines</u>	7
1.51	<u>Water Detention Basin</u>	7

## ARTICLE II

	<b>EASEMENTS FOR SHOPPING CENTER PARCELS</b>	8
2.1	<u>Access and Parking Easements for Shopping Center Parcels</u>	8
2.2	<u>Utilities Easements for Shopping Center Parcels</u>	9
2.3	<u>Reserved Utility Easements Encumbering Outparcels for Benefit of Shopping Center Parcels</u>	11
2.4	<u>Storm Water Drainage Easements for Shopping Center Parcels and Adjacent Tract</u>	12
2.5	<u>Underground Support Easements for Shopping Center Parcels</u>	13
2.6	<u>Canopy Easements for Shopping Center Parcels</u>	13
2.7	<u>Signage Easements for Developer and Shopping Center Parcels</u>	14
2.8	<u>Landscaping and Sidewalk Easements for Developer and Shopping Center Parcels</u>	14
2.9	<u>Construction and Repair Encroachment Easements for Shopping Center Parcels</u>	14
2.10	<u>Restriction</u>	15

## ARTICLE III

	<b>EASEMENTS FOR OUTPARCELS</b>	15
3.1	<u>Access Easement for Outparcels</u>	15
3.2	<u>Sanitary Sewer Utility Easement for Outparcels</u>	16
3.3	<u>Storm Water Drainage Easement for Outparcels</u>	18
3.4	<u>Reserved Utility Easements Encumbering Outparcels for Benefit of Outparcels</u>	18
3.5	<u>Reserved Sidewalk Easements Encumbering Outparcels for Benefit of Outparcels</u>	19
3.6	<u>Easements to Use Fire Hydrants</u>	20
3.7	<u>Restriction</u>	20

## ARTICLE IV

	<b>IMPROVEMENTS</b>	20
4.1	<u>Buildings and Related Improvements - General Requirements and Limitations</u>	20
4.2	<u>Signage on Shopping Center Tract</u>	21
4.3	<u>Signage on Outparcels Tract</u>	22
4.4	<u>Architectural Compatibility/Submission of Plans/Developer's Approval Rights</u>	24
4.5	<u>General Requirements and Restrictions Regarding Construction</u>	27

## ARTICLE V

	<b>MAINTENANCE AND REPAIR</b>	28
5.1	<u>Utilities</u>	28
5.2	<u>Other Shopping Center Common Area and Outparcels Common Area</u>	29

5.3	<u>Common Area Maintenance Costs</u>	31
5.4	<u>Building Improvements on Shopping Center Parcels</u>	34
5.5	<u>Outparcels</u>	35

## ARTICLE VI

	<b>SHOPPING CENTER AND OUTPARCEL OPERATIONS</b>	37
6.1	<u>Use Restrictions</u>	37
6.2	<u>Harris Teeter Lease Use Restrictions</u>	39
6.3	<u>Eckerd Lease Use Restrictions</u>	40
6.4	<u>Coulwood Hardware Lease Use Restrictions</u>	40
6.5	<u>McCallister Lease Use Restrictions</u>	41
6.6	<u>Nationwide Lease Use Restrictions</u>	41
6.7	<u>Pizza Hut Lease Use Restrictions</u>	41
6.8	<u>Reflections Lease Use Restrictions</u>	42
6.9	<u>Additional Use Restrictions for the Benefit of Outparcel B</u>	42
6.10	<u>Use of Common Area</u>	43
6.11	<u>Sidewalk Displays</u>	44
6.12	<u>Insurance</u>	44
6.13	<u>Taxes and Assessments</u>	46
6.14	<u>Liens</u>	46
6.15	<u>Shopping Center Name</u>	47

## ARTICLE VII

	<b>DEFAULT</b>	47
7.1	<u>Default</u>	47
7.2	<u>Limitation of Liability</u>	49

## ARTICLE VIII

	<b>TERM</b>	49
--	-------------	----

## ARTICLE IX

	<b>MISCELLANEOUS</b>	50
9.1	<u>Interest</u>	50
9.2	<u>Estoppel Certificates</u>	50
9.3	<u>Notices</u>	50
9.4	<u>Notices to Mortgagees; Mortgagee Cure Rights</u>	51
9.5	<u>Developer's Rights Assignable</u>	51
9.6	<u>Waiver of Minor Violations</u>	52
9.7	<u>Condemnation</u>	52
9.8	<u>Consents</u>	52
9.9	<u>Covenants Run with the Land</u>	52
9.10	<u>Singular and Plural</u>	52
9.11	<u>Negation of Partnership</u>	52
9.12	<u>Not a Public Dedication</u>	53
9.13	<u>Excusable Delays</u>	53
9.14	<u>Severability</u>	53
9.15	<u>Amendments</u>	53
9.16	<u>Captions and Capitalized Terms</u>	53
9.17	<u>Minimization of Damages</u>	53

9.18	<u>Declaration Shall Continue Notwithstanding Breach</u> . . . . .	54
9.19	<u>Time</u> . . . . .	54
9.20	<u>Non-Waiver</u> . . . . .	54
9.21	<u>Governing Law</u> . . . . .	54

2025 04 16 10:43 AM

## LIST OF EXHIBITS

- A - Description of Property
- B - Description of Shopping Center Tract
- C - Description of Outparcels Tract
- D - Description of First Phase Property
- E - Copy of Site Plan
- F - Description of Adjacent Tract
- G - Description of Collector Road
- H - Description of Feeder Road
- I - Description of Main Entrance Drive
- J - Description of Landscaping and Sidewalk Easement Areas
- K - Description of Signage Easement Areas
- L - Description of Outparcels Common Area

2025-01-10 10:00 AM

**DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
MOUNTAIN ISLAND MARKETPLACE SHOPPING CENTER**

**THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN ISLAND MARKETPLACE SHOPPING CENTER** (this "Declaration") is made as of the 31st day of March, 1995, by **CRESCENT RESOURCES, INC.**, a South Carolina corporation (hereinafter referred to as the "Developer");

**WITNESSETH THAT:**

WHEREAS, Developer currently is the owner of all of the Property (as defined below); and

WHEREAS, Developer intends to develop the Property as a retail shopping center and associated outparcels, to be known as "Mountain Island Marketplace Shopping Center"; and

WHEREAS, Developer desires to establish and create certain covenants, conditions, easements, rights, obligations and restrictions to facilitate the mutually beneficial development and operation of the Property;

NOW THEREFORE, Developer, for itself, its successors and assigns, hereby declares that the Property shall be held, occupied, used, rented, enjoyed, transferred, conveyed, mortgaged or otherwise encumbered subject to the following covenants, conditions, easements, rights and restrictions:

**ARTICLE I  
DEFINITIONS**

In addition to any terms whose definitions are fixed and defined elsewhere in this Declaration, each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

1.1 Adjacent Tract. "Adjacent Tract" shall mean that certain parcel of land owned by Developer located generally to the south and southwest of the Shopping Center Tract, as more particularly described on Exhibit F attached hereto and incorporated herein by reference.

1.2 Building/Buildings. "Building" shall mean each building constructed from time to time within the Property. The plural form of this term as used in this Declaration is "Buildings."

1.3 Collector Road. "Collector Road" shall mean that roadway to be constructed by Developer within the Shopping Center Tract and, if and when deemed necessary or appropriate by Developer in the future, on the Adjacent Tract, as such roadway (including the portion thereof that may be constructed within the boundaries of the Adjacent Tract) is approximately shown and delineated on the Site Plan as the "Commercial Collector Road." The portion of the Collector Road to be constructed by Developer within the Shopping Center Tract is cross-hatched on the portion of the Site Plan that is attached hereto as Exhibit G and incorporated herein by reference. Developer

shall have no obligation under this Declaration to construct the portion of the Collector Road within the boundaries of the Adjacent Tract.

1.4 Coulwood Hardware. "Coulwood Hardware" shall mean Coulwood Tru-Value Hardware, Inc. and its successors and assigns as tenant under the Coulwood Hardware Lease.

1.5 Coulwood Hardware Lease. "Coulwood Hardware Lease" shall mean that certain lease agreement dated as of September 26, 1994, between Developer, as landlord, and Coulwood Hardware, as tenant, for the lease of the Coulwood Hardware Premises by Coulwood Hardware from Developer, as same may be amended, modified, extended or renewed from time to time.

1.6 Coulwood Premises. "Coulwood Hardware Premises" shall mean those certain premises within the First Phase that are leased by Coulwood Hardware, as tenant, from Developer, as landlord, pursuant to the Coulwood Hardware Lease.

1.7 Declaration. "Declaration" shall mean this Declaration of Easements, Covenants, Conditions and Restrictions for Mountain Island Marketplace Shopping Center, as the same may be amended from time to time.

1.8 Developer. "Developer" shall mean Crescent Resources, Inc., a South Carolina corporation, and its successors and assigns specifically with respect to such capacity as Developer pursuant to Section 9.5 below.

1.9 Eckerd. "Eckerd" shall mean Eckerd Corporation and its successors and assigns as tenant under the Eckerd Lease.

1.10 Eckerd Lease. "Eckerd Lease" shall mean that certain lease agreement dated as of March 10, 1994, between Developer, as landlord, and Eckerd, as tenant, for the lease of the Eckerd Premises by Eckerd from Developer, as same may be amended, modified, extended or renewed from time to time.

1.11 Eckerd Premises. "Eckerd Premises" shall mean those certain premises within the First Phase that are leased by Eckerd, as tenant, from Developer, as landlord, pursuant to the Eckerd Lease.

1.12 Feeder Road. "Feeder Road" shall mean that roadway to be constructed by Developer within the Shopping Center Tract in the location that is cross-hatched on the portion of the Site Plan that is attached hereto as Exhibit H and incorporated herein by reference. As shown on said Exhibit H, the Feeder Road will be constructed to connect to the eastern boundary of the Collector Road right-of-way and to the southern terminus point of the Main Entrance Drive and shall be contiguous to the Outparcels Tract along the entire southern boundary of the Outparcels Tract.

1.13 First Phase. "First Phase" shall mean the first phase of the Shopping Center, which encompasses the portion of the Shopping Center Tract that is cross-hatched on the portion of the Site Plan that is attached hereto as Exhibit D and incorporated herein by reference (the "First Phase Property"), together with the Temporary Water Detention Basin to be constructed outside of such cross-hatched area but within the Shopping Center Tract and together with any Utility Lines that will serve the First Phase but are located outside of such cross-hatched area (including Utility Lines that may be located outside the boundaries of the Property).



1.14 Floor Area. "Floor Area" shall mean the total number of square feet of enclosed, covered and heated floor space in a Building, whether or not actually occupied. The Floor Area of any Building shall be calculated from the exterior of all exterior walls and the center line of party or common walls; provided, however, any enclosed door canopy area at the exterior of any Building shall not be included within such Building's Floor Area. Each Owner shall direct its architect to make a determination of the total Floor Area of any Building on such Owner's Shopping Center Parcel or Outparcel within thirty (30) days after the date of initial completion of such Building and thereafter following completion of any additional Floor Area. Within a reasonable time thereafter, such Owner shall certify to all other Owners the Floor Area applicable to such Building. During any period of expansion, rebuilding, replacement or reconstruction of a Building, the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such expansion, rebuilding, replacement or reconstruction, the Owner upon whose Shopping Center Parcel or Outparcel such Building is located shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Owner requesting the same.

1.15 Harris Teeter. "Harris Teeter" shall mean Harris Teeter, Inc. and its successors and assigns as tenant under the Harris Teeter Lease.

1.16 Harris Teeter Lease. "Harris Teeter Lease" shall mean that certain lease agreement dated as of February 17, 1994, between Developer, as landlord, and Harris Teeter, as tenant, for the lease of the Harris Teeter Premises by Harris Teeter from Developer, as same may be amended, modified, extended or renewed from time to time.

1.17 Harris Teeter Premises. "Harris Teeter Premises" shall mean those certain premises within the First Phase that are leased by Harris Teeter, as tenant, from Developer, as landlord, pursuant to the Harris Teeter Lease.

1.18 Landscaping and Sidewalk Easement Areas. "Landscaping and Sidewalk Easement Areas" shall mean (i) the strips of land twenty (20) feet in width within the boundaries of the Outparcels Tract and contiguous with and parallel to the rights-of-way of the Main Entrance Drive and the Collector Road, (ii) a strip of land twenty-five (25) feet in width within the Outparcels Tract and contiguous with the right-of-way of Mount Holly-Huntersville Road, (iii) the strip of land twenty (20) feet in width within the boundaries of the Adjacent Tract and contiguous with and parallel to the west right-of-way boundary of the portion of the Collector Road located within the Shopping Center Tract, (iv) the strip of land twenty-five (25) feet in width within the boundaries of the Adjacent Tract and contiguous with and parallel to the right-of-way of Mount Holly-Huntersville Road, and (v) the landscaped median within the portion of the Collector Road located within the Shopping Center Tract. The Landscaping and Sidewalk Easement Areas are described on Exhibit J attached hereto and incorporated herein by reference.

1.19 Main Entrance Drive. "Main Entrance Drive" shall mean the main entrance driveway to be constructed by Developer within the Shopping Center Tract in the location that is cross-hatched on the portion of the Site Plan that is attached hereto as Exhibit I and incorporated herein by reference.

1.20 McCallister. "McCallister" shall mean James E. McCallister and his successors and assigns as tenant under the McCallister Lease.

1.21 McCallister Lease. "McCallister Lease" shall mean that certain lease agreement dated as of November 15, 1994, between Developer, as landlord, and McCallister, as tenant, for the lease of the McCallister Premises by McCallister from Developer, as same may be amended, modified, extended or renewed from time to time.

1.22 McCallister Premises. "McCallister Premises" shall mean those certain premises within the First Phase that are leased by McCallister, as tenant, from Developer, as landlord, pursuant to the McCallister Lease.

1.23 Monument Sign. "Monument Sign" shall mean the monument sign for the Shopping Center to be constructed by Developer within the First Phase near the intersection of North Carolina Highway 16 (also known as Brookshire Boulevard) and Mount Holly-Huntersville Road. The approximate location of the Monument Sign is shown and designated as "Monument Sign" on the Site Plan.

1.24 Nationwide. "Nationwide" shall mean Nationwide Mutual Insurance Company and its successors and assigns as tenant under the Nationwide Lease.

1.25 Nationwide Lease. "Nationwide Lease" shall mean that certain lease agreement dated as of December 27, 1994, between Developer, as landlord, and Nationwide, as tenant, for the lease of the Nationwide Premises by Nationwide from Developer, as same may be amended, modified, extended or renewed from time to time.

1.26 Nationwide Premises. "Nationwide Premises" shall mean those certain premises within the First Phase that are leased by Nationwide, as tenant, from Developer, as landlord, pursuant to the Nationwide Lease.

1.27 Occupant. "Occupant" shall mean any Person, including any Owner, from time to time entitled to the use and occupancy of any portion of a Building in the Property by virtue of ownership thereof or under any lease, sublease, license, concession agreement, or other similar agreement.

1.28 Outparcel/Outparcels. "Outparcel" shall mean each parcel of land currently or hereafter subdivided from the Outparcels Tract. The plural form of this term as used in this Declaration is "Outparcels."

1.29 Outparcels Common Area. "Outparcels Common Area" shall mean (i) all improvements (including, without limitation, driveways, roadways, sidewalks, lighting improvements, landscaping improvements and Utility Lines) that are substantially completed from time to time within the portion of the Shopping Center Tract cross-hatched on the portion of the Site Plan that is attached hereto as Exhibit L and incorporated herein by reference (including the Main Entrance Drive, the Feeder Road and the portion of the Collector Road that is within the boundaries of the Shopping Center Tract, (ii) the Water Detention Basin, (iii) unless and until dedicated to and accepted for public maintenance purposes by the appropriate governmental body or authority, the sanitary sewer easement areas and the Outparcels Sanitary Sewer Utility Line described in Section 3.2 below which connect the Outparcels Tract and the Shopping Center Tract to the publicly-maintained sanitary sewer Utility Line which is located generally to the southwest of the Shopping Center Tract, (iv) if and to the extent Developer elects to exercise Developer's landscaping and sidewalk easement rights from time to time in and to the Landscaping and Sidewalk Easement Areas

pursuant to Section 2.8 below, the landscaping improvements and the sidewalk improvements that are maintained by Developer within such Landscaping and Sidewalk Easement Areas, (v) if and to the extent Developer elects to exercise Developer's signage easement rights from time to time in and to the Signage Easement Areas that are located within the boundaries of the Outparcels Tract pursuant to Section 2.7 below, the signage and related improvements that are maintained by Developer within the Signage Easement Areas, and (vi) the Monument Sign and landscaping improvements and Utility Lines associated with or serving the Monument Sign. All components of the Outparcels Common Area are also components of the Shopping Center Common Area; therefore, provisions in this Declaration which refer to the Shopping Center Common Area shall be deemed and construed to include the Outparcels Common Area. Furthermore, the definition of Outparcels Common Area herein is not intended to, and shall not be construed to, bestow any use or easement rights relative to components of the Outparcels Common Area on the Outparcels and the Owners thereof; rather, Outparcels Common Area is defined herein for the purpose of establishing the areas and improvements with respect to which Outparcel Owners must bear Common Area Maintenance Costs [as defined in Section 5.3(b) below] hereunder, and easement rights created hereunder appurtenant to the Outparcels are set forth and described in Article III below.

1.30 Outparcels Tract. "Outparcels Tract" shall mean those certain parcels of land located generally to the north and northwest of the Shopping Center Tract adjacent to the right-of-way of Mount Holly-Huntersville Road, as more particularly described on Exhibit C attached hereto and incorporated herein by reference.

1.31 Owner. "Owner" shall mean, as of any time, each fee owner of any Shopping Center Parcel or any Outparcel at such time, including, without limitation, Developer.

1.32 Permittee. "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, tenants, subtenants, and concessionaires of Occupants and other persons who have business with Occupants in the Property insofar as their activities relate to the intended use of the Property.

1.33 Person. "Person" shall mean any individual, partnership, firm, association, corporation, trust, or any other form of business or government entity.

1.34 Phase/Phases. "Phase" shall mean each separate phase of the Shopping Center that is hereafter developed, including the First Phase. Notwithstanding any terms or provisions to the contrary in this Declaration, the execution of this Declaration by Developer and the recordation of this Declaration in the public real estate records in Mecklenburg County, North Carolina, shall not be deemed or construed to create any obligation, express or implied, on Developer's part to develop or construct any Phases, including, without limitation, Shopping Center Common Area improvements and Outparcels Common Area improvements; and Developer shall have no liability under this Declaration in the event one or more Phases of the Shopping Center are not developed or constructed.

1.35 Plans. "Plans" is defined in Section 4.4(a) below.

1.36 Property. "Property" shall mean certain real property located in Mecklenburg County, North Carolina, which is currently owned by Developer and which is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Property is comprised of the Shopping Center Tract and the Outparcels Tract.

1.37 Pizza Hut. "Pizza Hut" shall mean Pizza Hut of America, Inc. and its successors and assigns as tenant under the Pizza Hut Lease.

1.38 Pizza Hut Lease. "Pizza Hut Lease" shall mean that certain lease agreement dated as of September 29, 1994, between Developer, as landlord, and Pizza Hut, as tenant, for the lease of the Pizza Hut Premises by Pizza Hut from Developer, as same may be amended, modified, extended or renewed from time to time.

1.39 Pizza Hut Premises. "Pizza Hut Premises" shall mean those certain premises within the First Phase that are leased by Pizza Hut, as tenant, from Developer, as landlord, pursuant to the Pizza Hut Lease.

1.40 Pylon Sign/Pylon Signs. "Pylon Sign" and "Pylon Signs" are defined in Section 4.3(a) below.

1.41 Reflections. "Reflections" shall mean Vernon and Gloria Keziah, d/b/a Reflections Hair Design, and their successors and assigns as tenant under the Reflections Lease.

1.42 Reflections Lease. "Reflections Lease" shall mean that certain lease agreement dated as of October 24, 1994, between Developer, as landlord, and Reflections, as tenant, for the lease of the Reflections Premises by Reflections from Developer, as same may be amended, modified, extended or renewed from time to time.

1.43 Reflections Premises. "Reflections Premises" shall mean those certain premises within the First Phase that are leased by Reflections, as tenant, from Developer, as landlord, pursuant to the Reflections Lease.

1.44 Shopping Center. "Shopping Center" shall mean that certain retail shopping center to be known as Mountain Island Marketplace Shopping Center which is contemplated to be developed on the Shopping Center Tract. Developer currently intends to develop the Shopping Center in two or more Phases.

1.45 Shopping Center Common Area. "Shopping Center Common Area" shall mean all areas and improvements (including Utility Lines) within the exterior boundaries of all Phases of the Shopping Center Tract which Phases (if any) have been substantially completed as part of the Shopping Center from time to time, exclusive of Buildings and related canopies, footings, overhangs, supports, columns and outward extensions not for the benefit of all Occupants, truck docks and/or receiving or servicing areas, dumpster, compactor or transformer pads, any outside sales or storage areas, and any areas which are publicly dedicated and accepted by the appropriate governmental body, but specifically including, without limitation, the following areas within the exterior boundaries of all Phases of the Shopping Center Tract which Phases (if any) have been substantially completed as part of the Shopping Center from time to time: (i) all parking areas, (ii) all roadways and driveways (including the Main Entrance Drive, the Feeder Road, the portion of the Collector Road that is within the boundaries of the Shopping Center Tract and any portion of the Collector Road that is constructed from time to time within the boundaries of the Shopping Center Tract) and all lighting improvements, (iii) all sidewalks and walkways, (iv) all landscaped and planted areas, and (v) all signage, including the Monument Sign and landscaping improvements and Utility Lines associated with or serving the Monument Sign. The Shopping Center Common Area also specifically shall include the following areas: (a) the Water Detention Basin, (b) unless and until dedicated to and

accepted for public maintenance purposes by the appropriate governmental body or authority, the sanitary sewer easement areas and the Outparcels Sanitary Sewer Utility Line described in Section 3.2 below which connect the Outparcels Tract and the Shopping Center Tract to the publicly-maintained sanitary sewer Utility Line which is located generally to the southwest of the Shopping Center Tract, (c) if and to the extent Developer elects to exercise Developer's landscaping and sidewalk easement rights from time to time in and to the Landscaping and Sidewalk Easement Areas pursuant to Section 2.8 below, the landscaping improvements and the sidewalk improvements that are maintained by Developer within such Landscaping and Sidewalk Easement Areas, and (d) if and to the extent Developer elects to exercise Developer's signage easement rights from time to time in and to the Signage Easement Areas that are located within the boundaries of the Outparcels Tract pursuant to Section 2.7 below, the signage and related improvements that are maintained by Developer within the Signage Easement Areas. Furthermore, the definition of Shopping Center Common Area herein is not intended to, and shall not be construed to, bestow any use or easement rights relative to components of the Shopping Center Common Area on the Shopping Center Parcels and the Owners thereof; rather, Shopping Center Common Area is defined herein for the purpose of establishing the areas and improvements with respect to which the Shopping Center Parcel Owners must bear Common Area Maintenance Costs hereunder, and easement rights created hereunder appurtenant to the Shopping Center Parcels are set forth and described in Article II below.

1.46 Shopping Center Parcel/Shopping Center Parcels. "Shopping Center Parcel" shall mean each parcel of land currently or hereafter subdivided from the Shopping Center Tract. The plural form of this term as used in this Declaration is "Shopping Center Parcels."

1.47 Shopping Center Tract. "Shopping Center Tract" shall mean that certain tract of real property currently owned by Developer located in Mecklenburg County, North Carolina, as more particularly described on Exhibit B attached hereto. Provided, however, Developer shall be entitled to hereafter add other property to the Shopping Center Tract by executing and recording a supplement to this Declaration (for such limited purpose) in the public real estate records in Mecklenburg County, North Carolina; and, notwithstanding any term or provision herein to the contrary, Developer shall be entitled, without the joinder of any other party (including other Owners) to unilaterally execute and record one or more supplements to this Declaration for the limited purpose of adding other property to the Shopping Center Tract.

1.48 Signage Easement Areas. "Signage Easement Areas" shall mean the easement areas within the boundaries of the Outparcels Tract, as such easement areas are described on Exhibit K attached hereto and incorporated herein by reference.

1.49 Site Plan. "Site Plan" shall mean that certain site plan for the Shopping Center, a complete copy of which is attached hereto as Exhibit E. The Site Plan depicts only the contemplated development of the First Phase.

1.50 Utility Line/Utility Lines. "Utility Line" and "Utility Lines" are defined in Section 2.2 below.

1.51 Water Detention Basin. "Water Detention Basin" shall mean, prior to the completion of construction of the Permanent Water Detention Basin (as defined herein), the temporary water detention basin or basins to be constructed by Developer as part of the First Phase within the Shopping Center Tract (whether one or more basins, the "Temporary Water Detention Basin"), as the Temporary Water Detention Basin is approximately shown and delineated on the Site Plan as

"Temporary Water Detention Basin," together with all associated and ancillary lines, equipment, facilities, catch basins, drop inlets, and appurtenances. Following the completion of the permanent water detention basin to be constructed by Developer in the future within the Shopping Center Tract (the "Permanent Water Detention Basin Location"), as the Permanent Water Detention Basin is approximately shown and delineated on the Site Plan as "Permanent Water Detention Basin," together with all associated and ancillary lines, equipment, facilities, catch basins, drop inlets, and appurtenances, the term "Water Detention Basin," as used in this Declaration, shall thereafter refer solely and exclusively to the Permanent Water Detention Basin (including all associated and ancillary lines, equipment, facilities, catch basins, drop inlets, and appurtenances) and shall not thereafter include the Temporary Water Detention Basin (including all associated and ancillary lines, equipment, facilities, catch basins, drop inlets, and appurtenances). The Temporary Water Detention Basin is expected to be used to serve the Property and the Adjacent Tract until such time as the portion of the Shopping Center Tract on which the Temporary Water Detention Basin is located is either sold or developed. At such time as the portion of the Shopping Center Tract on which the Temporary Water Detention Basin is located is either sold or developed, the Permanent Water Detention Basin shall be constructed and shall thereafter be used to serve the Property and the Adjacent Tract. Notwithstanding any term or provision herein to the contrary, upon the completion of construction of the Permanent Water Detention Basin, all private easement rights that are created in and to the Temporary Water Detention Basin (including all associated and ancillary lines, equipment, facilities, catch basins, drop inlets, and appurtenances) under this Declaration shall automatically and immediately terminate and expire and shall be automatically and immediately transferred to the Permanent Water Detention Basin (including all associated and ancillary lines, equipment, facilities, catch basins, drop inlets, and appurtenances), without any further documentation whatsoever.

## ARTICLE II EASEMENTS FOR SHOPPING CENTER PARCELS

2.1 Access and Parking Easements for Shopping Center Parcels. Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Shopping Center Parcel and for the benefit of the Owner of each Shopping Center Parcel from time to time and their respective Permittees, perpetual non-exclusive rights, privileges and easements for (i) the passage of vehicles and for the passage and accommodation of pedestrians over, across and through the roadways, driveways, curbcuts, aisles, walkways, and sidewalks located within the Shopping Center Common Area, as the same may from time to time be constructed and maintained for such uses, and (ii) vehicular parking within any vehicular parking spaces located within the Shopping Center Common Area, as the same may from time to time be constructed and maintained. Such easement rights shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration:

(a) Except for situations specifically provided for in the following subsections in this Section 2.1 or elsewhere in this Declaration, no fence or other barrier or structure (whether temporary or permanent) shall be erected or permitted within or across the Shopping Center Common Area; provided, however, the foregoing provision shall not prohibit the installation of landscaping improvements, lighting standards, monument and handicapped parking signs, sidewalks, medians, bumper guards, curbing, stop signs and other forms of traffic controls to the extent shown on the Site Plan or, if not shown on the Site Plan, consistent with Plans therefor approved by Developer under this Declaration from time to time and shall not result in the appearance of a segregated or

divided Shopping Center or the segregation of any Shopping Center Parcel within the Shopping Center Tract, and shall not interfere with pedestrian or vehicular ingress or egress.

(b) Subject to the terms and limitations of Section 2.9 and Section 4.5(c) below, in connection with any construction, reconstruction, repair or maintenance on its Shopping Center Parcel within the Shopping Center, an Owner shall have the right to create a staging and/or storage area in the Shopping Center Common Area on such Owner's Shopping Center Parcel, which location shall not unreasonably interfere with access between the other areas of the Shopping Center, with the use of any other Shopping Center Parcel or any Outparcel, with the operation of any business on any other Shopping Center Parcel by the Occupants thereof (such Occupants to have free and unobstructed access to their loading docks, compactors, sidewalks and entrances and exits), or with the operation of any business on any Outparcel by the Occupants thereof.

(c) Each Owner shall have the right to close off the portion of the Shopping Center Common Area located on such Owner's Shopping Center Parcel at such intervals and for such minimum period of time as may be legally necessary, in the opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, prior to closing off any portion of the Shopping Center Common Area, as herein provided, such Owner shall give written notice to Developer and to all other Owners of its intention to do so and shall attempt to coordinate such closing with Developer and each such other Owner so that no unreasonable interference with the passage of pedestrians or vehicles shall occur. Any such closing shall occur at a time or on a day when the Shopping Center is not open for business, if possible, and in any case shall be done so as to interfere as little as reasonably possible with the normal business of the Shopping Center.

(d) Each Owner shall use reasonable efforts to assure that construction traffic to and from its Shopping Center Parcel shall not interfere with the use, occupancy and enjoyment of the remainder of the Shopping Center (or any part thereof) or any Outparcel.

(e) Developer shall have the right, but not the obligation, to erect stop signs and to establish reasonable rules and regulations with respect to the Shopping Center Common Area, including, without limitation, speed limits.

(f) Developer hereby reserves the right (i) to grant private easements and easements for public use to any governmental entity in and to all or any portion of the Collector Road and/or (ii) to dedicate or deed over to any governmental entity all or any portion of the Collector Road for the purpose of use and maintenance as a public road; and if Developer desires to grant such private or public easements in and to all or any portion of the Collector Road and/or to dedicate to the public all or any portion of the Collector Road, all Owners of Shopping Center Parcels shall cooperate and assist Developer and shall join in such easement grant or dedication, if requested, at no cost, however, to such cooperating Owners.

2.2 Utilities Easements for Shopping Center Parcels. Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Shopping Center Parcel, perpetual non-exclusive rights, privileges and easements in, to, over, under, along and across the portion of the Shopping Center Common Area that is located outside the boundaries of the Outparcels Tract for the purpose of (i) installing, operating, using, maintaining, repairing, replacing, relocating, and removing lines, equipment and facilities for the delivery of utility services to each Shopping Center Parcel and the Buildings and other improvements from time to time located thereon, including, but not limited to, sanitary sewer, water (fire and domestic), gas, electrical, telephone and communications lines and

other similar facilities (hereinafter collectively referred to as "Utility Lines"; each, a "Utility Line"), and (ii) connecting and tying into the common Utility Lines for such utilities which are installed from time to time within the portion of the Shopping Center Common Area that is located outside the boundaries of the Outparcels Tract for such purpose and using such common Utility Lines in connection with the delivery of such utility services to each Shopping Center Parcel and the Buildings and other improvements from time to time located thereon. Such easement rights shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration:

(a) If any Utility Line is to be installed pursuant hereto, the location of such Utility Line shall be subject to the prior written approval of the Owner whose Shopping Center Parcel is to be burdened thereby, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, an Owner's approval may be withheld for any reason with respect to a Utility Line proposed to be located within any area on such Owner's Shopping Center Parcel where a Building either is located or is expected to be located in the future. The easement area related thereto shall be no larger than whatever is necessary to reasonably satisfy the utility company, as to an easement to a public utility, or five (5) feet on each side of the centerline of the Utility Line, as actually installed, as to a private easement. The Owner whose Shopping Center Parcel is to be burdened shall have the right to require that a copy of an as-built survey of any such Utility Line be delivered to it at the installing Owner's expense.

(b) Any Owner of a Shopping Center Parcel installing and/or connecting to a Utility Line on the Shopping Center Parcel of another party pursuant to this Section 2.2 (i) shall provide at least forty-five (45) days prior written notice to the Owner of the Shopping Center Parcel on which such Utility Line is to be located of its intention to do such work, (ii) shall pay all costs and expenses with respect to such work, (iii) shall cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the use of the Shopping Center Common Area and the conduct or operation of the business of the Owner whose Shopping Center Parcel is affected or any Occupant of such Shopping Center Parcel [and in no event shall such work result, even temporarily, in any interruption in continuous two (2) way traffic flow on the Main Entrance Drive, the Feeder Road or the portion of the Collector Road that is located within the Shopping Center Tract], (iv) shall not increase the cost of the utility services to the other parties served by such Utility Line and shall not interrupt, diminish, or otherwise interfere with the utility services to the other parties served by such Utility Line (except during periods other than during the normal business operating hours of such other parties and during such periods as otherwise approved by such other parties), (v) shall comply in all respects with all applicable governmental laws, regulations, and requirements, (vi) shall promptly, at its sole cost and expense, clean the area (as needed) and restore the affected portion of the Shopping Center Common Area and facilities therein (including, without limitation, any disturbed landscaping improvements and irrigation facilities) to a condition equal to or better than the condition which existed prior to the commencement of such work, and (vii) shall indemnify and hold the Owner of the Shopping Center Parcel on which such Utility Line is installed and any Occupants thereof harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work.

(c) Each Owner of a Shopping Center Parcel shall have the right at any time, and at its sole cost and expense, to relocate elsewhere within its Shopping Center Parcel any Utility Line serving another Shopping Center Parcel, provided such relocation shall be performed only after at



least thirty (30) days written notice of such intention to so relocate has been given to each party which is served by such Utility Line and provided such relocation:

- (1) shall not increase the cost of the utility services to the parties served by such Utility Line and shall not interrupt, diminish, or otherwise interfere with the utility services to the parties served by such Utility Line (except during periods other than during the normal business operating hours of such parties and during such periods as otherwise approved by such parties);
- (2) shall not reduce or impair the usefulness or function of such Utility Line;
- (3) shall be performed without cost or expense to the parties served by such Utility Line;
- (4) shall be completed in a good and workmanlike manner using materials (if and to the extent available) and design standards which equal or exceed those originally used; and
- (5) shall not unreasonably interfere with the use of the Shopping Center Common Area or the conduct or operation of the business of any other Owner or Occupant within the Shopping Center Tract or the conduct or operation of business on any Outparcel.

Documentation of the relocated Utility Line easement area shall be the expense of the Shopping Center Parcel Owner undertaking such relocation and shall be accomplished as soon as possible. Each party served by such relocated Utility Line shall have a right to require that an as-built survey of such relocated Utility Line be delivered to it at the relocating party's expense.

(d) The Owner of each Shopping Center Parcel shall be responsible for all connection charges, meter fees and charges, user fees, tap-on fees, impact fees, acreage fees, and similar fees and charges imposed as a result of the connection of any Utility Line to the Building(s) constructed upon its Shopping Center Parcel.

(e) Developer and/or the Owner of any Shopping Center Parcel on which such Utility Lines are located shall have the right to dedicate and convey to appropriate governmental entities and public utility companies any Utility Lines installed pursuant to this Section 2.2, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such Utility Lines by the Owners and Occupants of the Shopping Center Parcels, and to grant any other easements or licenses to such appropriate governmental entities and public utility companies as are reasonably necessary or desirable for obtaining adequate utility service for the benefit of the Shopping Center Parcels, provided such easements and licenses shall not interfere with the use and enjoyment of the encumbered Shopping Center Parcel(s) and are located outside of the areas on the Shopping Center Parcel(s) where a Building either is located or is expected to be located in the future. The Owners of the Shopping Center Parcels shall cooperate with and assist Developer and/or any such other Owner and shall join in and consent to such dedications and conveyances if requested by Developer or any such other Owner, at no cost, however, to such cooperating Owners.

**2.3 Reserved Utility Easements Encumbering Outparcels for Benefit of Shopping Center Parcels.** With respect to each Outparcel, Developer hereby establishes, creates and reserves for the benefit of, and as an appurtenance to, each Shopping Center Parcel, perpetual non-exclusive rights, privileges and easements in, to, over, under, along and across strips of land which are located con-

tiguous to and within the front, side and rear boundary lines of each Outparcel for the purpose of (i) installing, operating, using, maintaining, repairing, replacing, relocating, and removing Utility Lines and (ii) connecting and tying into Utility Lines which are installed from time to time within said strips of land, and said strips of land shall be twenty (20) feet in width except with regard to any side Outparcel boundary line that is common with the side boundary line of another Outparcel, in which case the side boundary line utility easements shall be ten (10) feet in width (within each Outparcel) along such common side Outparcel boundary lines. In addition, with regard to such easement areas contiguous to and located on each side of the Main Entrance Drive, Developer reserves for itself (as Developer hereunder) the right to install, operate, maintain, repair, replace, relocate and remove street lights and associated lines and facilities. The easement rights established, created and granted above in this Section 2.3 shall be subject to the following provisions:

(a) The Owner whose Outparcel is encumbered and affected by the exercise of said easement rights shall have the right to require that a copy of an as-built survey of any such Utility Line installed by a Shopping Center Parcel Owner be delivered to it at the installing party's expense.

(b) Any Shopping Center Parcel Owner installing and/or connecting to Utility Lines within the boundaries of an Outparcel pursuant to this Section 2.3 shall (i) pay all costs and expenses with respect to such work, (ii) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the use of the affected Outparcel, (iii) not interrupt, diminish or otherwise interfere with or increase the cost of, the utility services to the other parties served by such Utility Lines, (iv) comply in all respects with all applicable governmental laws, regulations, and requirements, (v) promptly, at its sole cost and expense, clean the area and restore the affected portion of the affected Outparcel and improvements and facilities therein (including, without limitation, any disturbed landscaping and irrigation facilities) to a condition equal to or better than the condition which existed prior to the commencement of such work, and (vi) indemnify and hold the Owner of the affected Outparcel and any Occupants thereof harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work.

2.4 Storm Water Drainage Easements for Shopping Center Parcels and Adjacent Tract. Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Shopping Center Parcel and the Adjacent Tract (and each portion thereof), with respect to, and as a burden upon, the Shopping Center Tract and the Adjacent Tract, perpetual non-exclusive rights, privileges and easements to drain storm water run-off from each Shopping Center Parcel and the Adjacent Tract (and each portion thereof), as the same hereafter may be improved, onto and across the Shopping Center Tract and the Adjacent Tract and into and through the storm water drainage lines and facilities from time to time located thereon, including the right to use and impound storm water within any storm water detention facilities (if any) now or hereafter located within the Shopping Center Tract and the Adjacent Tract and intended to and built so as to serve the Shopping Center Tract and the Adjacent Tract (including, specifically, the Water Detention Basin to be constructed on the Shopping Center Tract), so long as such drainage shall not cause any damage to the Shopping Center Parcel(s) and the portion(s) of the Adjacent Tract across which such storm water is being drained or any improvements thereon. Developer hereby reserves the right to dedicate and convey to appropriate governmental entities the storm water drainage lines and facilities (including, without limitation, the Water Detention Basin) located from time to time within the Shopping Center Tract and the Adjacent Tract, provided any such dedication or conveyance shall not adversely affect

the use and enjoyment of such storm water drainage lines and facilities by the Owners and Occupants of the Shopping Center Parcels or the owner(s) and occupant(s) of the Adjacent Tract (as the case may be). If Developer desires to so dedicate all or any portion of any such drainage lines and facilities, the Owners of the Shopping Center Parcels and the owner(s) of the Adjacent Tract (as the case may be) shall cooperate and assist Developer and shall join in and consent to such dedication, if requested, at no cost, however, to such cooperating parties. Notwithstanding any term or provision in this Section 2.4 to the contrary, all appurtenant easement rights created under this Declaration relative to the Water Detention Basin (and all associated and ancillary lines, equipment, facilities, catch basins, drop inlets, and appurtenances) shall be subject to the terms and provisions of Section 1.51 herein.

2.5 Underground Support Easements for Shopping Center Parcels. In order to accommodate the construction, reconstruction or repair of any Building which may be constructed or reconstructed immediately adjacent to the common boundary lines of any Shopping Center Parcels within the Shopping Center Tract, Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Shopping Center Parcel, and as a burden upon the other Shopping Center Parcels, non-exclusive easements for lateral support for Buildings and other improvements constructed on or near such common boundary lines, together with the right and easement to install, maintain, repair, and replace footings and underground supports for such improvements in space not theretofore occupied by any then existing Building or other structure, provided the location of such footings shall be subject to the consent and approval of the Owner of the Shopping Center Parcel to be encumbered by such easement, such approval not to be unreasonably withheld, conditioned or delayed, and provided such footings shall in no event extend more than two and one-half (2½) feet onto the servient Shopping Center Parcel from the applicable common boundary line. This easement shall continue in effect for so long as the improvements utilizing the easement exist, including a reasonable period to permit reconstruction or replacement of such improvements or to permit the construction of new improvements, and shall include the reasonable right of access necessary to exercise and enjoy such grant, provided no damage is caused to the Buildings or other improvements located on the Shopping Center Parcel encumbered by such easement or the operation of business thereon. Each Owner of a Shopping Center Parcel using a common footing shall construct its Building wall upon its Shopping Center Parcel, and no load, force or pressure shall be exerted by the Building wall of a Building on one Shopping Center Parcel upon the Building wall of a Building on an adjoining Shopping Center Parcel. When an Owner of a Shopping Center Parcel constructs its Building or other improvements along a common boundary line, it shall do so in a manner that does not result in damage or injury to the Buildings or other improvements previously placed by another Owner along such common boundary line. If a common footing is used by Owners of two adjoining Shopping Center Parcels, each shall assume and pay their reasonable share of the cost and expense of the initial construction and, so long as both Owners are benefitting therefrom, any subsequent maintenance, repair, and replacement thereof. In the event any Building utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any Building or other improvements utilizing the same located on the adjoining Shopping Center Parcel.

2.6 Canopy Easements for Shopping Center Parcels. Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Shopping Center Parcel, and as a burden upon the other Shopping Center Parcels, non-exclusive rights and easements to install, maintain, repair and replace canopies, roof flashing, roofs and other like projections and insubstantial encroachments attached to the Building and other improvements constructed on such Shopping Center Parcel which extend across a common boundary line and onto an adjacent Shopping Center Parcel;

provided, however, any such encroachments shall be subject to the prior written approval of the Owner of the Shopping Center Parcel to be affected by such encroachments (which approval shall not be unreasonably withheld, conditioned or delayed), and no such encroachments or projections shall materially or adversely interfere with the use and operation or visibility of the Shopping Center Parcel burdened by any such easement and the Buildings or other improvements located thereon. This easement shall continue in effect for the term of this Declaration and thereafter for so long as any such encroachment or projection benefitted by such easement shall continue to exist, including a reasonable period to permit reconstruction or replacement of such improvements or to permit the construction of new improvements.

**2.7 Signage Easements for Developer and Shopping Center Parcels.** Developer hereby establishes and creates for the benefit of Developer (as Developer hereunder) a non-exclusive perpetual easement for the construction, maintenance, repair and replacement of the Pylon Signs [as defined and referenced in Section 4.3(a) below], together with related underground electric lines and other appurtenances in the Signage Easement Areas. Furthermore, Developer hereby establishes and creates for the benefit of the Occupants of the Shopping Center Tract that are permitted by Developer hereunder from time to time to have a sign panel on the Pylon Signs (or either of them) non-exclusive perpetual easements for the construction, maintenance, repair and replacement of their respective individual sign panels located on the Pylon Signs (or either of them).

**2.8 Landscaping and Sidewalk Easements for Developer and Shopping Center Parcels.** Developer hereby establishes and creates for the benefit of Developer (as Developer hereunder) a non-exclusive perpetual easement for the construction, installation, maintenance, repair and replacement of landscaping and sidewalk improvements in the Landscaping and Sidewalk Easement Areas. With respect to any sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time, Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Shopping Center Parcel, with respect to, and as a burden upon, the Landscaping and Sidewalk Easement Areas (or the relevant portion thereof where sidewalk improvements are constructed from time to time), perpetual non-exclusive rights, privileges and easements for the passage of pedestrians over and across such sidewalk improvements that exist therein from time to time. Furthermore, Developer hereby reserves the right to dedicate to the public the sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time and/or to grant public easements in and to such Landscaping and Sidewalk Easement Areas for purposes of the passage of pedestrians over and across the sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time. If Developer desires to so dedicate or grant public easements relative to all or any portion of the Landscaping and Sidewalk Easement Areas, the Owners of the Shopping Center Parcels shall cooperate and assist Developer and shall join in and consent to such dedication or public easement grant, if requested, at no cost, however, to any such parties.

**2.9 Construction and Repair Encroachment Easements for Shopping Center Parcels.** In connection with construction or repair work performed within any Shopping Center Parcel, incidental encroachments upon adjacent Shopping Center Parcels as the result of the use of ladders, scaffolding, storefront barricades, and similar facilities shall be permitted, subject to all other terms and conditions of this Declaration regarding performance of any such construction or repair work, and Developer hereby establishes and creates, for the benefit of, and as an appurtenance to, each Shopping Center Parcel, and as a burden upon the other Shopping Center Parcels, but subject to the aforesaid limitations, temporary easements for such purpose, so long as (i) such use is kept within

the reasonable requirements of construction work diligently and expeditiously pursued, (ii) such activity shall not unreasonably interfere with the conduct or operation of any business on the Shopping Center Parcel affected by such encroachment or the visibility of the Buildings or other improvements located thereon, and (iii) insurance in accordance with the requirements of this Declaration is maintained protecting Developer and the Owner of the burdened Shopping Center Parcel from the risks involved in connection therewith.

2.10 Restriction. The Owner of any Shopping Center Parcel may extend the benefits of the easements created by this Article II to each of its Permittees, subject to the limitations imposed by the terms of this Declaration. No Owner of a Shopping Center Parcel, including, without limitation, Developer, shall have the right to grant or extend the benefit of any easement set forth in this Article II for the benefit of any real property not within the Shopping Center Tract (subject, however, to Developer's right to hereafter amend the definition of Shopping Center Tract to include additional real property as otherwise provided in Section 1.47 above in this Declaration). Provided, however, the foregoing shall not prohibit (i) the granting of private or public easements or the dedicating of all or any portion of the Collector Road and any sidewalks or other improvements therein, or any Utility Lines or storm water drainage lines (including the Water Detention Basin) to governmental or quasi-governmental authorities or to public utilities pursuant to and as specifically provided for in this Declaration or (ii) the granting of private nonexclusive easements for access, utilities and drainage over, under and across the Shopping Center Tract for the benefit of the Adjacent Tract.

### ARTICLE III EASEMENTS FOR OUTPARCELS

3.1 Access Easement for Outparcels. Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Outparcel and for the benefit of the Owner of each Outparcel from time to time and their respective Permittees, perpetual non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians over, across and through the roadways, driveways, curbcuts, aisles, walkways, and sidewalks located within the Main Entrance Drive, the portion of the Collector Road within the boundaries of the Shopping Center Tract and the Feeder Road (collectively, the "Outparcels Appurtenant Access Areas"), as the same may from time to time be constructed and maintained for such uses. Such easement rights shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration:

(a) Except for situations specifically provided for in the following subsections in this Section 3.1 or elsewhere in this Declaration, no fence or other barrier or structure (whether temporary or permanent) shall be erected or permitted within or across the Outparcels Appurtenant Access Areas; provided, however, the foregoing provision shall not prohibit the installation of landscaping improvements, lighting standards, monument and handicapped parking signs, sidewalks, medians, bumper guards, curbing, stop signs and other forms of traffic controls to the extent shown on the Site Plan or, if not shown on the Site Plan, consistent with Plans therefor approved by Developer under this Declaration from time to time and shall not interfere with pedestrian or vehicular ingress or egress.

(b) Each Owner of a Shopping Center Parcel shall have the right to close off the portion of the Outparcels Appurtenant Access Areas located on such Owner's Shopping Center Parcel at such

intervals and for such minimum period of time as may be legally necessary, in the opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, prior to closing off any portion of the Outparcels Appurtenant Access Areas, as herein provided, such Owner shall give written notice to Developer and to all Outparcel Owners of its intention to do so and shall attempt to coordinate such closing with Developer and each Outparcel Owner so that no unreasonable interference with the passage of pedestrians or vehicles shall occur. Any such closing shall occur at a time or on a day when the Shopping Center is not open for business, if possible, and in any case shall be done so as to interfere as little as reasonably possible with the normal business of the Shopping Center and the Outparcels.

(c) Each Outparcel Owner shall use reasonable efforts to assure that construction traffic to and from its Outparcel shall not interfere with the use, occupancy and enjoyment of the Shopping Center (or any part thereof) or any other Outparcel.

(d) Developer shall have the right, but not the obligation, to erect stop signs and to establish reasonable rules and regulations with respect to the Outparcels Appurtenant Access Areas, including, without limitation, speed limits.

(e) Developer hereby reserves the right (i) to grant private easements and easements for public use to any governmental entity in and to all or any portion of the Collector Road and/or (ii) to dedicate or deed over to any governmental entity all or any portion of the Collector Road for the purpose of use and maintenance as a public road; and if Developer desires to grant such private or public easements in and to all or any portion of the Collector Road and/or to dedicate to the public all or any portion of the Collector Road, all Owners of Outparcels shall cooperate and assist Developer and shall join in such easement grant or dedication, if requested, at no cost, however, to the Outparcel Owners.

3.2 Sanitary Sewer Utility Easement for Outparcels. The First Phase includes a sanitary sewer Utility Line to serve the Outparcels; and such sanitary sewer Utility Line (the "Outparcels Sanitary Sewer Utility Line") will be located within the Feeder Road at locations that will allow direct connection of each Outparcel to the Outparcels Sanitary Sewer Utility Line and will run from the Feeder Road through the Shopping Center Tract and through property owned by third parties adjacent to and in the vicinity of the Shopping Center Tract (within the boundaries of existing appurtenant easements recorded in Book 6597 at Page 873, Book 6597 at Page 883, Book 6454 at Page 262, Book 6454 at Page 269, Book 6758 at Page 776, Book 6763 at Page 803 and Book 6750 at Page 372 in the public real estate records in Mecklenburg County, North Carolina) and shall be connected to the publicly-maintained sanitary sewer Utility Line which is located generally to the southwest of the Shopping Center Tract. The location of the Outparcels Sanitary Sewer Utility Line through the Shopping Center Tract shall be determined by Developer, in Developer's discretion. Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Outparcel, as a burden upon the Outparcels Sanitary Sewer Utility Line (as actually installed) and as a burden upon the strip of land within the Shopping Center Tract which is five (5) feet on each side of the Outparcels Sanitary Sewer Utility Line (as actually installed), perpetual non-exclusive rights, privileges and easements in and to the Outparcels Sanitary Sewer Utility Line and in, to, over, under, along and across such ten (10) foot wide strip of land within the Shopping Center Tract for the purpose of using the Outparcels Sanitary Sewer Utility Line to provide sanitary sewer service for the benefit of the Outparcels. Additionally, Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Outparcel, as a burden upon the Feeder Road, the right to connect and tie each Outparcel into the Outparcels Sanitary Sewer Utility Line located adjacent to

each such Outparcel within the Feeder Road. Such easement rights shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration:

(a) As set forth above, the easement rights hereunder in favor of the Outparcels in and to the Outparcels Sanitary Sewer Utility Line and the strip of the Shopping Center Tract which is five (5) feet on each side of the Outparcels Sanitary Sewer Utility Line is non-exclusive in nature. Accordingly, some or all of the Shopping Center Tract also may be served by the Outparcels Sanitary Sewer Utility Line.

(b) Any Outparcel Owner connecting to the Outparcels Sanitary Sewer Utility Line within the Feeder Road pursuant to this Section 3.2 (i) shall provide at least fifteen (15) days prior written notice to Developer of its intention to do such work, (ii) shall pay all costs and expenses with respect to such work, (iii) shall cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the use of the Feeder Road and the conduct of business within the Shopping Center Parcels and other Outparcels [and in no event shall such work result, even temporarily, in any interruption in continuous two (2) way traffic flow on the Feeder Road], (iv) shall not interrupt, diminish, or otherwise interfere with the sanitary sewer services to the other parties served by the Outparcels Sanitary Sewer Utility Line (except during periods other than during the normal business operating hours of such other parties and during such periods as otherwise approved by such other parties), (v) shall comply in all respects with all applicable governmental laws, regulations, and requirements, (vi) shall promptly, at its sole cost and expense, clean the area (as needed) and restore the affected portion of the Feeder Road (including, without limitation, any disturbed landscaping improvements and irrigation facilities) to a condition equal to or better than the condition which existed prior to the commencement of such work, and (vii) shall indemnify and hold Developer harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work.

(c) Each Owner of a Shopping Center Parcel shall have the right at any time, and at its sole cost and expense, to relocate elsewhere within its Shopping Center Parcel the portion of the Outparcels Sanitary Sewer Utility Line (and the associated easement for the benefit of the Outparcels) crossing such Shopping Center Parcel, provided such relocation shall be performed only after at least thirty (30) days written notice of such intention to so relocate has been given to each Outparcel Owner and provided such relocation:

(1) shall not increase the cost of the utility services to the Outparcels and shall not interrupt, diminish, or otherwise interfere with the sanitary sewer utility service to the Outparcels (except during periods other than during the normal business operating hours of businesses on the Outparcels and during such periods as otherwise approved by the Outparcel Owners);

(2) shall not reduce or impair the usefulness or function of the Outparcels Sanitary Sewer Utility Line;

(3) shall be performed without cost or expense to the Outparcel Owners;

(4) shall be completed in a good and workmanlike manner using materials (if and to the extent available) and design standards which equal or exceed those originally used; and

(5) shall not unreasonably interfere with the use of the Outparcels Appurtenant Access Areas or the conduct or operation of business on any Outparcel.

Documentation of the relocated Outparcels Sanitary Sewer Utility Line and the associated easement area shall be the expense of the Shopping Center Parcel Owner undertaking such relocation and shall be accomplished as soon as possible.

(d) The Owner of each Outparcel shall be responsible for all connection charges, meter fees and charges, user fees, tap-on fees, impact fees, acreage fees, and similar fees and charges imposed as a result of the connection of any Building(s) constructed upon its Outparcel to the Outparcels Sanitary Sewer Utility Line or any other Utility Line.

(e) Developer and/or the Owner of any Shopping Center Parcel on which the Outparcels Sanitary Sewer Utility Line is located shall have the right to dedicate and convey to appropriate governmental entities and public utility companies the Outparcels Sanitary Sewer Utility Line installed pursuant to this Section 3.2, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of the Outparcel Sanitary Sewer Utility Line by the Owners and Occupants of the Outparcels. The Owners of the Outparcels shall cooperate with and assist Developer and/or any such Owner of any Shopping Center Parcel on which the Outparcels Sanitary Sewer Utility Line is located and shall join in and consent to such dedications and conveyances if requested by Developer or any such Owner of any Shopping Center Parcel, at no cost, however, to the Outparcel Owners.

**3.3 Storm Water Drainage Easement for Outparcels.** Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Outparcel, with respect to, and as a burden upon, the Shopping Center Tract and the Adjacent Tract, perpetual non-exclusive rights, privileges and easements to drain storm water run-off from each Outparcel, as the same hereafter may be improved, onto and across the Shopping Center Tract and the Adjacent Tract and into and through the storm water drainage lines and facilities from time to time located thereon, including the right to use and impound storm water within any storm water detention facilities (if any) now or hereafter located within the Shopping Center Tract and the Adjacent Tract and intended to and built so as to serve the Outparcels (including, specifically, the Water Detention Basin to be constructed on the Shopping Center Tract), so long as such drainage shall not cause any damage to the Shopping Center Parcel(s) and the portion(s) of the Adjacent Tract across which such storm water is being drained or any improvements thereon. Developer hereby reserves the right to dedicate and convey to appropriate governmental entities the storm water drainage lines and facilities (including, without limitation, the Water Detention Basin) located from time to time within the Shopping Center Tract and the Adjacent Tract, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such storm water drainage lines and facilities by the Owners and Occupants of the Outparcels. If Developer desires to so dedicate all or any portion of any such drainage lines and facilities, the Owners of the Outparcels shall cooperate and assist Developer and shall join in and consent to such dedication, if requested, at no cost, however, to such Outparcel Owners. Notwithstanding any term or provision in this Section 3.3 to the contrary, all appurtenant easement rights created under this Declaration relative to the Water Detention Basin (and all associated and ancillary lines, equipment, facilities, catch basins, drop inlets, and appurtenances) shall be subject to the terms and provisions of Section 1.51 herein.

**3.4 Reserved Utility Easements Encumbering Outparcels for Benefit of Outparcels.** With respect to each Outparcel, Developer hereby establishes, creates and reserves for the benefit of, and



as an appurtenance to, the other Outparcels, perpetual non-exclusive rights, privileges and easements in, to, over, under, along and across strips of land which are located contiguous to and within the front, side and rear boundary lines of each Outparcel for the purpose of (i) installing, operating, using, maintaining, repairing, replacing, relocating, and removing Utility Lines and (ii) connecting and tying into Utility Lines which are installed from time to time within said strips of land, and said strips of land shall be twenty (20) feet in width except with regard to side Outparcel boundary lines that are common with the side boundary line of another Outparcel, in which case the side boundary line utility easements shall be ten (10) feet in width (within each Outparcel) along such common side Outparcel boundary lines. The easement rights established, created and granted above in this Section 3.4 shall be subject to the following provisions:

(a) The Owner whose Outparcel is encumbered and affected by the exercise of said easement rights shall have the right to require that a copy of an as-built survey of any such Utility Line installed by another Outparcel Owner be delivered to it at the installing party's expense.

(b) Any Outparcel Owner installing and/or connecting to Utility Lines within the boundaries of another Owner's Outparcel pursuant to this Section 3.4 shall (i) pay all costs and expenses with respect to such work, (ii) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the use of the affected Outparcel, (iii) not interrupt, diminish or otherwise interfere with or increase the cost of, the utility services to the other parties served by such Utility Lines, (iv) comply in all respects with all applicable governmental laws, regulations, and requirements, (v) promptly, at its sole cost and expense, clean the area and restore the affected portion of the affected Outparcel and improvements and facilities therein (including, without limitation, any disturbed landscaping and irrigation facilities) to a condition equal to or better than the condition which existed prior to the commencement of such work, and (vi) indemnify and hold the Owner of the affected Outparcel and any Occupants thereof harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work.

### 3.5 Reserved Sidewalk Easements Encumbering Outparcels for Benefit of Outparcels.

With respect to any sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time pursuant to Developer's easement rights reserved under Section 2.8 above, Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Outparcel, with respect to, and as a burden upon, the Landscaping and Sidewalk Easement Areas (or the relevant portion thereof where sidewalk improvements are constructed from time to time), perpetual non-exclusive rights, privileges and easements for the passage of pedestrians over and across such sidewalk improvements that exist therein from time to time. Developer hereby reserves the right to dedicate to the public the sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time and/or to grant public easements in and to such Landscaping and Sidewalk Easement Areas for purposes of the passage of pedestrians over and across the sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time. If Developer desires to so dedicate or grant public easements relative to all or any portion of the Landscaping and Sidewalk Easement Areas, the Owners of the Outparcels shall cooperate and assist Developer and shall join in and consent to such dedication or public easement grant, if requested, at no cost, however, to any such parties.

3.6 Easements to Use Fire Hydrants. Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Outparcel, with respect to, and as a burden upon, other Outparcels and the Shopping Center Tract, a non-exclusive right, privilege and easement to enter upon and cross over such other Outparcel(s) and the Shopping Center Tract as reasonably required in cases of emergency (i) to gain access to and to use any fire hydrant that may be located within such other Outparcel(s) or within the Shopping Center Tract and (ii) to gain access to and use any fire hydrant that may be located in a location other than within such other Outparcel(s) or within the Shopping Center Tract.

3.7 Restriction. The Owner of any Outparcel may extend the benefits of the easements created by this Article III to each of its Permittees, subject to the limitations imposed by the terms of this Declaration. No Owner of an Outparcel, including, without limitation, Developer, shall have the right to grant or extend the benefit of any easement set forth in this Article III for the benefit of any real property not within the Outparcel Tract. Provided, however, the foregoing shall not prohibit (i) the granting of private or public easements or the dedicating of all or any portion of the Collector Road and any sidewalks or other improvements therein, or any Utility Lines or storm water drainage lines (including the Water Detention Basin) to governmental or quasi-governmental authorities or to public utilities pursuant to and as specifically provided for in this Declaration or (ii) the granting of private nonexclusive easements for access, utilities and drainage over, under and across the Shopping Center Tract for the benefit of the Adjacent Tract.

#### ARTICLE IV IMPROVEMENTS

4.1 Buildings and Related Improvements - General Requirements and Limitations.

(a) No parking decks shall be erected within the Property.

(b) The Owners of the Shopping Center Parcels and of the Outparcels shall not subdivide their respective Shopping Center Parcels or Outparcels (as the case may be) into separate parcels without the prior written consent of Developer; provided, however, nothing in this Section 4.1(b) shall be construed as prohibiting any Owner from dividing, separating or partitioning the space within any Building located upon its Shopping Center Parcel or Outparcel (as the case may be).

(c) The Owners of the Shopping Center Parcels and of the Outparcels shall not rezone their respective Shopping Center Parcels or Outparcels (as the case may be) or obtain any zoning variance or waiver which would be inconsistent with the use of the Property as contemplated in this Declaration without the prior written consent of Developer and the Owners of all other Shopping Center Parcels and Outparcels. In addition, no Shopping Center Parcel Owner or Occupant or Outparcel Owner or Occupant shall seek or obtain any variance or other waiver from applicable zoning ordinance, signage ordinance or other governmental requirements for such Owner's or Occupant's Shopping Center Parcel or Outparcel without the prior written consent of Developer (which Developer may grant or deny in Developer's sole discretion).

(d) No Building or other structure or improvement now or hereafter constructed upon any Outparcel shall contain more than one story (provided non-sales mezzanines shall be permitted) or have a height in excess of twenty-four (24) feet; provided, however, any Pylon Signs installed within the Signage Easement Areas and any light standards and poles installed on Outparcels shall not be

deemed to be in violation of the foregoing restriction. For purposes of determining the height of a Building or other structure or improvement pursuant to this Section 4.1(d), the height of such Building or other structure or improvement shall be measured from the ground level up to and including the highest protrusion or other appurtenance of the Building or other structure or improvement, including air conditioning units and equipment, parapets, other architectural features and other similar items located on the roof or top of such Building or other structure or improvement.

(e) Decorative screening and/or landscaping screening (which shall be included in the Plans to be submitted to Developer for review as provided in this Declaration) shall be installed and maintained so as to obscure from public view all trash receptacles, trash compactors, and service areas, mechanical and electrical equipment, or other unsightly Building appurtenances. In addition, appropriate screening (which shall be included in the Plans to be submitted to Developer for review as provided in this Declaration) shall be provided and maintained to obscure all roof-mounted equipment and appurtenances from public view.

(f) Each Outparcel shall contain an adequate number of parking spaces to comply with all applicable zoning ordinances and other governmental laws, ordinances and regulations relative to such Outparcel, without any variance and without including or relying on any parking spaces located outside the boundaries of such Outparcel.

(g) Without limiting the Landscaping and Sidewalk Easement Areas reserved by Developer under this Declaration over portions of the Outparcels Tract, a ten (10) foot wide landscape buffer shall be maintained by each respective Outparcel Owner around the perimeter of each Outparcel contiguous with and inside all boundary lines of each Outparcel, excluding curb cut areas along the Feeder Road, the Main Entrance Drive (if applicable) and the Collector Road (if applicable). In addition to landscaping required within such area pursuant to the landscaping aspects of the Plans which are approved by Developer, each Outparcel Owner shall be required to install and maintain within such landscape buffer such landscaping (if any) as is required by local governmental authorities.

(h) All Utility Lines and storm drainage lines and facilities installed on the Property shall be located and installed underground. Provided, however, this provision shall not prohibit above-ground light standards, poles and fixtures.

(i) Each Outparcel Owner shall be required to install, maintain and operate an underground irrigation sprinkler system within the boundaries of such Owner's Outparcel (the plans and specifications for such sprinkler system to be included in the Plans to be submitted to Developer for review as provided in this Declaration), which sprinkler system shall be capable of providing, and shall be used to provide, irrigation coverage to the back of the curb of all roadways and driveways adjacent to such Outparcel (excluding roadways and driveways in other Outparcels).

#### 4.2 Signage on Shopping Center Tract.

(a) Unless approved in advance by Developer in writing, no freestanding signs shall be permitted within the Shopping Center Tract except for (i) the Monument Sign and (ii) traffic and handicapped parking signs.

(b) Developer shall be responsible for the maintenance, repair, replacement and illumination of the Monument Sign and all traffic and handicapped parking signs that are located

within the Shopping Center Tract from time to time. Notwithstanding any term or provision in this Declaration to the contrary, including Article V below, the cost and expenses incurred by Developer in connection with the maintenance, repair, replacement and illumination of the Monument Sign and the traffic and handicapped parking signs within the Shopping Center Tract shall be included in Common Area Maintenance Costs as provided in Section 5.3 below.

(c) No exterior identification signs attached to Buildings within the Shopping Center (and no interior signs that are located within any windows or doors) shall be of the type or possess any of the characteristics set forth below:

(1) extending above the Building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy, or top of the wall upon which it is mounted;

(2) placed at any angle to any Building; provided, however, the foregoing shall not apply to signs identifying customer pick-up areas at the rear of Buildings or to any signs located under a sidewalk canopy, if such signs are approved by Developer for use within the Shopping Center;

(3) painted on the surface of any Building;

(4) flashing, moving, rotating or audible signs or markers of any type, or signs advertising businesses other than those carried on within the Shopping Center; or

(5) signs employing exposed raceways, exposed ballast boxes, or exposed transformers.

4.3 Signage on Outparcels Tract. Subject to any more stringent limitations and requirements that may be imposed by the City of Charlotte, Mecklenburg County or any other governmental authority having jurisdiction with respect to the Outparcels, the following restrictions and requirements shall apply with regard to signage that may be installed and maintained on Outparcels:

(a) In addition to the two (2) pylon signs that Developer is entitled to install within the Signage Easement Areas (together the "Pylon Signs"; each a "Pylon Sign"), signage installed on Outparcels must comply with all applicable zoning ordinance, signage ordinance and other governmental requirements; and no Outparcel Owner or Occupant shall seek or obtain any variance or other waiver from applicable zoning ordinance, signage ordinance or other governmental requirements relating to signage without the prior written consent of Developer (which Developer may grant or deny in Developer's sole discretion). The Plans for Outparcel signage are subject to Developer's review and approval as set forth in Section 4.4 below. The Pylon Signs (if and when installed) shall be used to identify the Shopping Center name and, subject to the approval of all governmental authorities having jurisdiction, may, at Developer's option, include individual sign panels to identify certain Occupants of Buildings located on the Shopping Center Tract, as selected by Developer. Each Occupant that is specifically allowed by Developer to have an individual sign panel on one or both of the Pylon Signs shall be responsible for the construction, installation, maintenance, repair and replacement of its Pylon Sign panel(s); and an easement for this purpose has been granted and established in Section 2.7 above.

(b) Except as otherwise provided in Section 4.3(a) above, Developer shall be responsible for the maintenance, repair, replacement, and illumination of the Pylon Signs that are located within the Signage Easement Areas from time to time. Further, as set forth in Section 4.3(a) above, to the extent any individual Pylon Sign panel for an Occupant requires repair or replacement in order to remain in first-class condition and in accordance with all governmental requirements, the Occupant represented on such Pylon Sign panel shall, at its sole cost and expense, repair such panel. Notwithstanding any term or provision in this Declaration to the contrary, including Article V below, the costs and expenses incurred by Developer in connection with the maintenance, repair, replacement and illumination of the Pylon Signs [except as otherwise provided in Section 4.3(a) above and in this Section 4.3(b) with respect to individual Occupant Pylon Sign panels] shall be included in Common Area Maintenance Costs as provided in Section 5.3 below.

(c) Other than the Pylon Signs (if and when installed by Developer), all freestanding signs installed on Outparcels shall be monument signs.

(d) The primary freestanding identification sign on each Outparcel shall be located on the front portion of each Outparcel (i.e., on that portion of each Outparcel near the right-of-way of Mount Holly-Huntersville Road) and may be situated so that a side of the sign will be visible to passengers in automobiles traveling in each direction on Mount Holly-Huntersville Road.

(e) Each Outparcel Owner shall be responsible for obtaining all necessary governmental permits and approvals for signage to be installed on such Owner's Outparcel, and approval by Developer pursuant to Section 4.4 below of the Plans for such signage shall not be deemed or construed as a representation or warranty by Developer that such signage complies with applicable governmental requirements and rules. Signs to be installed by an Outparcel Owner on such Owner's Outparcel shall be fabricated, installed, operated and maintained by such Owner; and such signs shall be maintained in good working order with all letters and logos steadily illuminated and all boxing and covers in good repair.

(f) Promotional or temporary signs must be professionally printed.

(g) No sign installed and maintained by Outparcel Owners and Occupants shall be of the type or possess any of the characteristics set forth below:

(1) extending above the Building roof or placed so as to project above the parapet, canopy, or top of the wall upon which it is mounted;

(2) no building-mounted sign shall be placed at any angle to any Building;

(3) painted on the surface of any Building;

(4) flashing, moving, rotating or audible signs or markers of any type, or signs advertising businesses other than those carried on within the applicable Outparcel; or

(5) signs employing exposed raceways, exposed ballast boxes, or exposed transformers.

4.4 Architectural Compatibility/Submission of Plans/Developer's Approval Rights.

(a) Architectural Compatibility/Content of Plans/Procedure. It is the intention of Developer that all Buildings and other improvements within the Property be constructed, installed, erected, operated and maintained so that the Property shall be aesthetically and architecturally harmonious. Accordingly, except as otherwise provided herein, all Buildings and related improvements within the Property, including the initial construction and any alterations, additions, exterior remodeling or reconstruction of any Buildings or other improvements following the initial construction thereof, shall be performed only in accordance with Plans (as hereinafter defined) approved by Developer for such work as provided herein. With respect to each Shopping Center Parcel and each Outparcel, prior to the commencement of the construction and installation of any Building(s) and other improvements whatsoever on said Shopping Center Parcel or such Outparcel, or any part thereof, by an Owner or Occupant thereof, such Owner or Occupant shall deliver to Developer, in triplicate, detailed plans and specifications for such proposed Building(s) and other improvements (collectively, the "Plans"), including and encompassing (at a minimum) the following:

(1) scaled elevations [including all architectural details and showing all sides and accurate grade at a scale of one-fourth ( $\frac{1}{4}$ ) inch equals one (1) foot], exterior design concepts and specifications, material selections and specifications (including samples) and color (including samples) for the exterior surfaces of the proposed Building(s) and other improvements;

(2) a complete site plan and specifications [which shall be dimensional and based on a scale of one (1) inch equals forty (40) feet or larger] (a) showing the location and size of the proposed Building(s) and all other improvements on the Shopping Center Parcel or the Outparcel, including, without limitation, trash receptacles, trash compactors, service areas, storage areas, mechanical and electrical equipment, fencing, structural screening, landscaping screening and other Building appurtenances, loading areas, walks, walkways, sidewalks, roadways, driveways, curbs and gutters and other improvements, and (b) providing details as to the location, size and type of all pipes, lines, conduits, and appurtenant equipment and facilities for the provision of sanitary sewage, storm water, water, electricity, gas, telephone, steam and other utility services to serve such Shopping Center Parcel or such Outparcel (as the case may be);

(3) a signage plan and specifications showing the scaled elevations, design concepts, lighting fixture type (if applicable), lighting method (if applicable), material selections (including samples), color (including samples), configuration, location, height, size, and verbiage for all signage to be located by the Owner on such Shopping Center Parcel or Outparcel;

(4) a landscaping plan and specifications showing the proposed landscaping, including detailed information regarding the species, type, height, caliper and spacing of all trees, shrubs and other landscaping, reflecting the locations of all berms, providing the height and toe of all berms and including plans and specifications for the landscaping irrigation facilities to be installed;

(5) a lighting plan and specifications reflecting the plans and specifications for all exterior lighting fixtures, poles and facilities (including, without limitation, the location, height, size, fixture type, fixture shape, fixture and lighting color, fixture material and

lighting method) to be installed on the Shopping Center Parcel or Outparcel, including, without limitation, the lighting facilities to be installed in or near parking and driveway areas (and, to create a uniform lighting effect, Developer may require the lighting plans and specifications for each Shopping Center Parcel and each Outparcel to be the standard used by Developer in connection with the First Phase);

(6) a detailed grading and drainage plan and specifications for the Shopping Center Parcel or the Outparcel (as the case may be), providing, without limitation, all relevant data and calculations with regard to the quantity and direction of storm water runoff from the Shopping Center Parcel or the Outparcel (as the case may be) and the size, location and material types for all pipes, catch basins, headwalls, ditches, swales, and other drainage structures and improvements; and

(7) relevant information and documentation with respect to the finished grade elevation and topography [which shall show topography at two (2) foot contours and shall be based on a scale of one (1) inch equals forty (40) feet or larger] of the Shopping Center Parcel or the Outparcel (as the case may be).

In addition to samples of materials and colors specifically required to be submitted as part of the Plans (as described above), Developer is entitled to request and require the submitting party to submit samples of other materials and colors identified or referenced in the Plans (for which samples may not be specifically required as part of the Plans submission described above). Except as otherwise provided below, Developer may disapprove Plans for any reason, including purely aesthetic reasons, which in the sole discretion of Developer shall be deemed sufficient. Developer shall either approve or disapprove Plans within thirty (30) days of the receipt thereof, although Developer's approval of Plans may in some cases be contingent upon the approval of such Plans by one or more third parties, including other Owners and tenants in the Property. If Developer approves Plans as submitted, one (1) complete set of the Plans shall be marked "Approved" and signed by Developer and returned to the submitting party; and the remaining two (2) sets of the Plans shall be filed in Developer's office. If Developer disapproves the Plans, one (1) complete set of the Plans shall be marked "Disapproved" and signed by Developer and returned to the submitting party, accompanied by a reasonably detailed statement of items in the Plans found by Developer not to be acceptable. If Developer approves Plans for a Shopping Center Parcel or an Outparcel, any modification or change in the approved Plans must be submitted in triplicate to Developer for review and approval in accordance with the procedure specified above. If Developer disapproves Plans for a Shopping Center Parcel or an Outparcel, upon the resubmission to Developer of the Plans (with revisions) in triplicate, Developer shall either approve or disapprove the resubmitted Plans within twenty (20) days of the receipt thereof. Once Developer has approved the Plans for a Shopping Center Parcel or an Outparcel, the construction of the Building(s) and other improvements on said Shopping Center Parcel or Outparcel as described in said Plans shall be promptly commenced and diligently pursued to completion; and, unless Developer agrees in writing to a different time schedule, if such construction is not commenced within eighteen (18) months following the date of Developer's initial approval of the Plans therefor, such approval shall be deemed automatically rescinded, and before construction of Building(s) and other improvements on said Shopping Center Parcel or Outparcel may be thereafter commenced, the Plans therefor must again be submitted to and approved by Developer pursuant to the terms and procedures set forth above for an initial submission of Plans. Upon the completion of the initial construction and installation of any such Building(s) and other improvements on a Shopping Center Parcel or an Outparcel in accordance with approved Plans, the same shall not thereafter be changed or altered without the prior written approval of Developer

(although Developer's approval of such changes or alterations may in some cases be contingent upon the approval of such changes or alterations by one or more third parties, including other Owners and tenants in the Property) if such changes or alterations would materially modify the exterior appearance of such Building(s) and other improvements, which approval shall be sought pursuant to the terms and procedures set forth above for an initial submission of Plans and, notwithstanding the terms above, shall not be unreasonably withheld, conditioned or delayed by Developer (in accordance with the criteria set forth above). Further, Developer shall not unreasonably withhold, condition or delay its approval of any proposed changes or alterations to any existing Building(s) and other improvements (which were constructed in accordance with approved Plans therefor) which are consistent with the architectural design, aesthetic quality, and exterior materials and colors of the existing Building(s) and improvements on the Shopping Center Tract, although (as described above) Developer's approval of proposed changes or alterations may in some cases be contingent upon the approval of such changes or alterations by one or more third parties, including other Owners and tenants in the Property. Provided, however, and notwithstanding the foregoing or any other term or provision in this Declaration to the contrary, Developer's disapproval of any proposed expansion of a Building shall be conclusively deemed reasonable if such expansion would (i) impair, obstruct or deny access to service and loading areas (including, without limitation, any service access road), (ii) reduce the number of parking spaces in the Shopping Center Tract or (iii) interfere with, impair or obstruct the flow of pedestrian and/or vehicular traffic within the Shopping Center Tract. Nothing herein shall require that Developer's approval be obtained with respect to the interior designs or interior floor plans of the Buildings located on Shopping Center Parcels and Outparcels.

(b) Developer's Failure to Respond to Plans. If Developer fails to approve or disapprove any Plans within thirty (30) days after receipt thereof by Developer (in the case of an initial submittal of such Plans) or within twenty (20) days after receipt thereof by Developer (in the case of any resubmittal of Plans) and (i) provided the Plans were complete (according to the requirements and standards set forth in Section 4.4(a) above), (ii) provided the Plans describe Building(s) and other improvements which comply with and conform to all of the requirements of this Declaration, and (iii) provided Developer shall again fail to approve or disapprove such Plans within ten (10) days after an additional written request to respond to such Plans is delivered to Developer by the submitting party [such additional written request shall conspicuously state on a separate cover sheet that Developer's approval rights under this Declaration will expire if no response is given by Developer within the specified ten (10) day period and shall be delivered to Developer by the submitting party following the expiration of the initial thirty (30) day or twenty (20) day response period (as the case may be) specified in Section 4.4(a) above], such Plans shall be conclusively presumed to have been approved by Developer pursuant to this Declaration. Provided, however, and notwithstanding the generality of the foregoing, Developer has no right or power under this Section 4.4(b), by its failure to respond with respect to any Plans submitted to it within the applicable time period specified herein, to waive or grant any variances relating to any requirements or standards set forth in this Declaration.

(c) Non-Conforming or Unapproved Improvements. In addition to any remedies contemplated or permitted pursuant to other provisions in this Declaration, Developer may require any Owner to restore, at the Owner's sole cost and expense, such Owner's Shopping Center Parcel or Outparcel (as the case may be) to the condition that existed prior to the installation or construction of Building(s) and/or other improvements thereon ("restoration," for purposes of this Section 4.4(c), to include, without limitation, the demolition and removal of any unapproved Building(s) and/or other improvements) if such Building(s) and/or other improvements were commenced or constructed in violation of Section 4.4(a) above. In addition, Developer may, but is not obligated to, cause such



restoration to be performed and shall be entitled to all of the rights and remedies provided in Article VII below with respect to the recovery of the costs of such restoration from the responsible Owner.

(d) Limitation of Liability. Neither Developer nor the partners, officers, directors, employees and/or agents of Developer shall be liable in damages or otherwise to any Owner or Occupant by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal or resubmittal of Plans for review and approval under this Declaration. Without the prior written consent of Developer, no Owner, Occupant or other party who submits or resubmits Plans on behalf of an Owner or Occupant may bring an action or suit against Developer or Developer's partners, officers, directors, employees and/or agents to recover any such damages, and such parties hereby release, remise and quitclaim all claims, demands and causes of action for damages arising out of or in connection with any mistake of judgment, negligence or nonfeasance of Developer or Developer's partners, officers, directors, employees and/or agents relating to the review and approval, disapproval or failure to respond with respect to any Plans which are submitted or resubmitted under this Declaration; and such parties hereby waive all rights and entitlements they may have under any provision or principle of law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

(e) No Liability for Design or Other Defects. The approval of any Plans under this Declaration by Developer shall not impose any liability or responsibility whatsoever upon Developer or its partners, officers, directors, employees and/or agents (i) with respect to the compliance or non-compliance of any such Plans, or any Building(s) and other improvements erected or installed in accordance therewith, with applicable zoning ordinances, building codes, signage ordinances, or other applicable governmental laws, ordinances or regulations or (ii) with respect to defects in or relating to the Plans, including, without limitation, defects relating to engineering matters, structural design matters and the quality or suitability of materials.

#### 4.5 General Requirements and Restrictions Regarding Construction.

(a) All construction activities within the Property shall be performed in a good and workmanlike manner, using first-class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Property.

(b) All construction activities within the Property shall be performed in accordance with the following provisions:

(1) so as not to unreasonably interfere with any construction work being performed on the remainder of the Property (or any part thereof); and

(2) so as not to unreasonably interfere with the use, occupancy or enjoyment of any other portion of the Property (or any part thereof) or the business conducted on any other portion of the Property or by any other Owner or the Permittees of any such other Owner.

(c) Subject to the provisions of Section 2.1(b) above, when a Shopping Center Parcel Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Shopping Center Parcel, such Owner shall establish a staging and storage area on its Shopping Center Parcel prior to commencing such work. If substantial work is to be performed, such Owner, at the request of Developer or any other Owner of a Shopping Center

Parcel in the vicinity of such Shopping Center Parcel, shall fence off such staging and storage area. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work.

(d) Each Owner shall diligently complete all construction activities within its Shopping Center Parcel or Outparcel (as the case may be) as quickly as feasible, shall regularly (as needed) clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris and, upon completion of all construction activities, shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

## ARTICLE V MAINTENANCE AND REPAIR

### 5.1 Utilities.

(a) Each Shopping Center Parcel Owner shall maintain and repair at its sole cost and expense any Utility Lines and facilities, not including storm water drainage lines and facilities, located on such Owner's Shopping Center Parcel and exclusively servicing such Owner's Shopping Center Parcel, unless the same is dedicated to and accepted for public maintenance purposes by a public utility company and/or governmental authority having jurisdiction. To the extent any Utility Lines and facilities, not including storm water drainage lines and facilities, exclusively servicing any Shopping Center Parcel cross another Shopping Center Parcel or an Outparcel, the Owner of the Shopping Center Parcel that is exclusively served by such Utility Lines and facilities shall maintain and repair at its sole cost and expense such Utility Lines and facilities, unless the same are dedicated to and accepted for public maintenance purposes by a public utility company and/or a governmental authority having jurisdiction. Any maintenance and repair under this Section 5.1(a) of any such non-dedicated Utility Lines and facilities located on another Shopping Center Parcel or on an Outparcel shall be performed only after thirty (30) days notice to the Owner of such other Shopping Center Parcel or such Outparcel (except in an emergency the work may be initiated with reasonable notice under the circumstances) and shall be performed after normal business hours whenever possible and otherwise in such manner as to cause as little disturbance in the use of such other Shopping Center Parcel or such Outparcel and the business or businesses operated thereon as is practicable under the circumstances. Any party performing or causing to be performed maintenance or repair work under this Section 5.1(a) agrees to promptly pay all costs and expenses associated therewith, to diligently complete such work as quickly as possible, to comply in all respects with all applicable governmental laws, regulations and requirements, to promptly clean the area (as needed) and restore the affected area to a condition equal to or better than the condition which existed prior to the commencement of such work, and to indemnify and hold the Owner of the other Shopping Center Parcel or the Outparcel on which such Utility Lines and facilities are located and any Occupants thereof harmless from and against any claims, actions, demands, damages, losses, inquiries or expenses (including, without limitation, reasonable attorneys' fees) which may result from any such activities.

(b) Each Outparcel Owner shall maintain and repair at its sole cost and expense (except as otherwise provided below) any Utility Lines and facilities, including storm water drainage lines and facilities, located on such Owner's Outparcel and servicing such Owner's Outparcel, unless the same are dedicated to and accepted for public maintenance purposes by a public utility company and/or governmental authority having jurisdiction. Notwithstanding the foregoing, to the extent any

Utility Lines and facilities, including storm water drainage lines and facilities, cross an Outparcel and jointly serve such Outparcel as well as one or more other Outparcels or one or more Shopping Center Parcels, the Owner or Owners of the other Outparcel(s) and the Shopping Center Parcel(s) that are also served by such Utility Lines and facilities shall bear their equitable share of the costs of maintaining and repairing such Utility Lines and facilities, unless the same are dedicated to and accepted for public maintenance purposes by a public utility company and/or governmental authority having jurisdiction. To the extent any Utility Lines and facilities, including storm water drainage lines, exclusively servicing any Outparcel cross another Outparcel, the Owner of the Outparcel that is exclusively served by such Utility Lines or facilities shall maintain and repair at its sole cost and expense such Utility Lines or facilities, unless the same are dedicated to and accepted for public maintenance purposes by a public utility company and/or a governmental authority having jurisdiction. Any maintenance and repair under this Section 5.1(b) of any such non-dedicated Utility Lines and facilities located on another Outparcel shall be performed only after thirty (30) days notice to the Owner of such other Outparcel (except in an emergency the work may be initiated with reasonable notice under the circumstances) and shall be performed after normal business hours whenever possible and otherwise in such manner as to cause as little disturbance in the use of such other Outparcel and the business or businesses operated thereon as is practicable under the circumstances. Any party performing or causing to be performed maintenance or repair work under this Section 5.1(b) agrees to promptly pay all costs and expenses associated therewith, to diligently complete such work as quickly as possible, to comply in all respects with all applicable governmental laws, regulations and requirements, to promptly clean the area (as needed) and restore the affected area to a condition equal to or better than the condition which existed prior to the commencement of such work, and to indemnify and hold the Owner of the Outparcel on which such Utility Lines and facilities are located and any Occupants thereof harmless from and against any claims, actions, demands, damages, losses, inquiries or expenses (including, without limitation, reasonable attorneys' fees) which may result from any such activities.

(c) During the term of this Declaration, Developer shall maintain and repair all of the following which are not dedicated to and accepted for public maintenance purposes by the appropriate public utility and/or governmental authority having jurisdiction: (i) all Utility Lines and facilities that are not required to be maintained and repaired by Owners of Shopping Center Parcels and Outparcels pursuant to Section 5.1(a) above and Section 5.1(b) above, including, without limitation, the water lines which serve the sprinkler system for fire protection to the Buildings within the Shopping Center Tract (to the extent such water lines are located in the Shopping Center Common Area) and all storm water drainage and detention facilities located within the Shopping Center Tract (including the Water Detention Basin) and (ii) the Outparcels Sanitary Sewer Utility Line (including the portion thereof that is outside the boundaries of the Shopping Center Tract). Any and all costs incurred by Developer in maintaining, repairing, replacing, complying with governmental requirements and operating such Utility Lines and facilities pursuant to this Section 5.1(c) shall be considered Common Area Maintenance Costs under Section 5.3 below, except for any such costs resulting from defects in design and construction (if and to the extent actually covered by a contractor's warranty or guarantee) and except for costs resulting from the negligent acts or omissions of any Owner or any Owner's Occupant, for which costs such Owner shall be solely responsible.

## 5.2 Other Shopping Center Common Area and Outparcels Common Area.

(a) Except as otherwise provided in Section 5.1 above relative to Utility Lines and facilities, all portions of the Shopping Center Common Area and the Outparcels Common Area

(collectively, the "Common Area") that are not dedicated to and accepted for public maintenance purposes by the appropriate public utility and/or governmental authority having jurisdiction shall at all times be maintained by Developer in a safe, clean, sightly, good and functional condition and state of repair, and in compliance with all applicable laws, rules, regulations, orders, and ordinances of governmental bodies and agencies exercising jurisdiction thereover and in compliance with the provisions of this Declaration. The maintenance and repair obligations of Developer hereunder relative to the Common Area (except for Utility Lines and facilities, the maintenance of which are addressed in Section 5.1 above) shall include, but not be limited to, the following:

(1) General maintenance and repair of all paved surfaces, including all driveway, roadway, sidewalk and parking areas, and all curbing related thereto, in good order and repair and in a safe condition, patching, re-striping, repairing, and resurfacing such areas when appropriate;

(2) Removing papers, debris, filth, and refuse from the Common Area and sweeping and removing ice and snow from the paved portions of the Common Area, all to the extent necessary to keep the Common Area within the Property in a clean, neat and orderly condition;

(3) Placing, keeping in repair, and replacing appropriate traffic signs and markers and all handicapped parking signs and markers in the Common Area;

(4) Maintaining and repairing the lighting system which shall illuminate the Common Area within the Shopping Center Tract, including the maintenance and repair of all lighting facilities and standards and replacement of light bulbs;

(5) Maintaining, repairing, replacing and operating the automatic sprinkler system in the Common Area within the Shopping Center Tract, which shall be utilized to regularly water the landscaped areas in the Common Area within the Shopping Center Tract (unless prohibited by governmental authorities), mowing and otherwise maintaining and tending all landscaped areas, and promptly removing and replacing diseased or dead shrubs and other landscaping as necessary;

(6) Illuminating, maintaining, and repairing the Pylon Signs (but not including sign panels thereon, which are to be maintained as provided in Section 4.3(a) above) and the Monument Sign; and

(7) Maintaining security services for the Common Area.

All repairs, replacements and improvements necessary to maintain the Common Area in the condition required by this Declaration shall (if and to the extent available) be of a like-kind nature and scope, and Developer shall use new materials of a quality similar to those used initially to construct the Common Area (if and to the extent available) to make such repairs or replacements. Developer shall perform its obligations under this Section 5.2(a) in a good and workmanlike manner and so as not to unreasonably interfere with pedestrian and vehicular traffic and the conducting of business within the Property.

(b) Prior to making any material repairs and/or replacements to the Common Area, Developer shall give the Owner of each Shopping Center Parcel or Outparcel on which such material

repair and/or replacement work is to be performed at least ten (10) days advance written notice that such work will be performed; provided, however, such work may be performed in emergency situations after giving only such advance notice as is reasonable under the circumstances. To the extent feasible, Developer shall attempt to coordinate the timing and manner of such material repair and/or replacement work with the Owner of each Shopping Center Parcel or Outparcel on which such work will occur in an effort to avoid unreasonably interfering with pedestrian and vehicular traffic and the conducting of business on such Owner's Shopping Center Parcel or Outparcel.

(c) In the event any of the Common Area improvements within the boundaries of the Shopping Center Tract are damaged or destroyed by fire or any other casualty, the Owner of the Shopping Center Parcel on which the affected Common Area improvements are located shall, at its sole cost and expense, repair or restore, or cause to be repaired or restored, such Common Area improvements to their prior condition with all due diligence. In the event any of the Common Area (or any improvements located therein) within the boundaries of the Shopping Center Tract is taken by condemnation or conveyance in lieu thereof, the Owner of the Shopping Center Parcel on which such affected Common Area (including any improvements located therein) is located shall, with all due diligence and at its sole cost and expense, restore the remaining Common Area (and improvements therein) located within its Shopping Center Parcel to a functional condition, compatible and integrated with and complementary to the remaining Common Area (including improvements therein) within the Shopping Center.

(d) In the event any of the Common Area improvements outside the boundaries of the Shopping Center Tract are damaged or destroyed by fire or any other casualty, Developer shall repair or restore, or cause to be repaired or restored, such Common Area improvements to their prior condition with all due diligence. In the event any of the Common Area improvements outside the boundaries of the Shopping Center Tract are taken by condemnation or conveyance in lieu thereof, Developer shall, with all due diligence, restore such Common Area improvements to a functional condition, compatible and integrated with and complementary to the remaining Common Areas improvements within the Shopping Center. All costs incurred by Developer pursuant to this Section 5.2(d) shall be included as part of Common Area Maintenance Costs under Section 5.3 below.

### 5.3 Common Area Maintenance Costs.

(a) The Owners shall each reimburse Developer for their respective pro-rata shares of Common Area Maintenance Costs (as defined below).

(1) Outparcels Common Area. The portion of the Common Area Maintenance Costs attributable to the Outparcels Common Area to be borne by the Outparcels Tract shall be computed by multiplying the total Common Area Maintenance Costs attributable to the Outparcels Common Area by a fraction, the numerator of which is the gross acreage within the boundaries of the Outparcels Tract and the denominator of which is the gross acreage within the boundaries of the entire Property. Once the total Common Area Maintenance Costs figure that is allocable to the Outparcels Tract is determined pursuant to the immediately preceding sentence, the share thereof to be borne by each individual Outparcel shall be determined by multiplying such figure by a fraction, the numerator of which is the gross acreage within the boundaries of the individual Outparcel and the denominator of which is the gross acreage within the boundaries of the entire Outparcels Tract.

(2) Shopping Center Common Area. All Common Area Maintenance Costs attributable to the Shopping Center Common Area (which includes the Outparcels Common Area) shall be borne by the Shopping Center Tract, except for the portion of the Common Area Maintenance Costs that are attributable to the Outparcels Common Area and that are allocated to the Outparcels Tract (and to the individual Outparcels) pursuant to Section 5.3(a)(1) above. Once the residual Common Area Maintenance Costs figure [i.e., the total Common Area Maintenance Costs minus the portion of the Common Area Maintenance Costs that are attributable to the Outparcels Common Area and that are allocated to the Outparcels Tract (and to the individual Outparcels) pursuant to Section 5.3(a)(1) above] is determined, the share thereof to be borne by each individual Shopping Center Parcel shall be determined by multiplying such figure by a fraction, the numerator of which is the Floor Area in the Building(s) on such Shopping Center Parcel and the denominator of which is the Floor Area in all Building(s) within the Shopping Center Tract.

(b) Except as otherwise specifically provided herein, the costs of maintaining, repairing, replacing, operating and managing the Common Area and common Utility Lines and facilities for which Developer shall be reimbursed (collectively, the "Common Area Maintenance Costs") shall include all costs and expenses incurred by Developer in performing the services set forth in Section 5.1(c) and Section 5.2 above, including, without limitation, (i) fees for permits, licenses and approvals required with respect to the Common Area (except any permits, licenses, or fees in connection with the initial construction of the Common Area by Developer), (ii) the cost of supplies, (iii) the cost of renting moveable equipment used in providing such services, with proper cost allocations to the extent any such equipment is used to provide services other than for the Common Area, (iv) the verifiable salaries, wages, benefits and other compensation for personnel providing such services, with proper cost allocations to the extent any such personnel provide services other than for the Common Area, (v) the verifiable compensation for a property manager, with proper cost allocations to the extent such property manager provides management services other than for the Property, (vi) payments to outside contractors and personnel in connection with providing such services, and (vii) subject to the limitation set forth below in this Section 5.3(b) relative to capital expenditures, the cost of complying with governmental laws, statutes, rules, regulations, and ordinances affecting the maintenance and operation of the Common Area, including, without limitation, environmental laws for the purpose of protecting the environment and any such laws, statutes, rules, regulations, and ordinances requiring any modification, reconstruction, reconfiguration or upgrading of all or any portion of the Common Area. Common Area Maintenance Costs shall also include the cost of electric lighting for illumination of the Shopping Center Common Areas within the boundaries of the Shopping Center Tract in accordance with the requirements of this Declaration and other utility charges related to the operation and maintenance of the Common Area. Further, Developer shall be entitled, at Developer's option, (a) to continue to maintain all or any of the improvements included in the definition of Common Area even after such improvements are dedicated to and accepted for public use and maintenance purposes by the appropriate public utility company or governmental authority having jurisdiction (including the mowing of grassed areas, the maintenance of landscaped areas and the cleaning of such areas and the removal of debris and trash therefrom) and (b) to maintain public road rights-of-way in the vicinity of or adjacent to the Shopping Center Tract and/or the Outparcels Tract (including the mowing of grassed areas, the maintenance of landscaped areas and the cleaning of such areas and the removal of debris and trash therefrom); and all costs (if any) incurred by Developer in connection with maintenance activities pursuant to such clauses (a) and/or (b) shall be included as part of Common Area Maintenance Costs. Developer shall use its good faith efforts to minimize the costs of all of such services and materials consistent with the terms of this Declaration and with the maintenance of the Shopping Center as a first-class

community-oriented retail shopping center development. All applicable rebates and discounts received by Developer shall be deducted from Common Area Maintenance Costs. Common Area Maintenance Costs shall exclude (i) the cost of repairing or replacing any portion of the Common Area, where the need for such repair or replacement is due to defects of design and/or construction (if and to the extent such defects are actually covered by a contractor's warranty or guarantee), or any such costs as are subject to any guarantees, warranties, or extended warranties given to Developer by Developer's contractors or materialmen (if and to the extent such costs are actually covered by and paid by such guarantees, warranties, or extended warranties given to Developer by Developer's contractors or materialmen); (ii) the cost of any repair, replacement, modification, reconstruction, reconfiguration or upgrading of the Common Area and the cost of any machinery or equipment used exclusively for maintenance of the Common Area, provided such cost could be properly capitalized under generally accepted accounting principles, except that there shall be permitted in Common Area Maintenance Costs in such case a charge for depreciation calculated on a straight-line basis over the normal useful life [but in any event not to exceed fifteen (15) years] of such improvement, repair, replacement, modification, reconstruction, reconfiguration, or upgrading of the Common Area or of such machinery or equipment, as the case may be [provided, however, in all events no fees, charges, costs or expenses applicable to improvements, replacements and repairs to a portion of the Common Area made or contracted for during the period of any contractor's warranty or guarantee specifically relating to such portion or component of the Common Area shall be included in Common Area Maintenance Costs, except minor, normal periodic maintenance, such as minor patching and similar minor work and except for any improvement, repair, replacement, modification, reconstruction, reconfiguration, or upgrading of any portion of the Common Area which is required by any governmental law, statute, rule, regulation, or ordinance which law, statute, rule, regulation, or ordinance was not applicable at the time of the initial construction of the relevant portion(s) or component(s) of the Common Area], (iii) except as otherwise specifically provided in this Section 5.3(b), any fee to or charge by Developer (or any Person and/or entity related to or connected with Developer) for management, supervision, administration, profit and/or general overhead, or otherwise in connection with the performance by Developer of its duties under this Article V, (iv) any such costs which are the sole responsibility of any Owner or Occupant of the Property (or any portion thereof) pursuant to any other provision of this Declaration, (v) merchant association or promotional fund fees, (vi) any cost which is the responsibility of any utility company, governmental agency, or other third party [except as otherwise provided above in this Section 5.3(b)], (vii) any items for which Developer is reimbursed by insurance proceeds or otherwise reimbursed or compensated other than pursuant to the terms of this Section 5.3, and (viii) all interest or penalties incurred as a result of Developer's failure to pay bills as the same shall become due.

(c) An Owner's obligation for the payment of its share of Common Area Maintenance Costs (including Developer's administrative fee) shall commence on the earlier to occur of (i) the date such Owner opens its Building improvements to the public for business or (ii) the date that is ninety (90) days after such Owner acquires title to such Owner's Shopping Center Parcel or Outparcel (as the case may be). Thereafter, each Owner shall pay its respective share of such Common Area Maintenance Costs (including Developer's administrative fee) incurred from and after such date in monthly installments in advance of the first (1st) day of each calendar month based upon the good faith estimates of such Common Area Maintenance Costs made by Developer. Such estimates shall be based upon an annual (calendar year) budget prepared by Developer in accordance with the requirements and limitations of this Section 5.3. Such estimates shall be revised annually (on a calendar year basis) by Developer to reflect the preceding calendar year's expenditures and anticipated increases or decreases in Common Area Maintenance Costs or changes in the nature of

such Common Area services. Notwithstanding the foregoing, Developer shall not reserve for capital expenditures in advance of incurring such expenditures. Accordingly, after any such capital expenditure is incurred, each Owner's monthly contribution with respect to Common Area Maintenance Costs shall be adjusted to reflect such expenditure. Within ninety (90) days after the end of each calendar year, Developer shall furnish the Owners with a written statement executed by a partner or officer of Developer setting forth in reasonable detail the actual Common Area Maintenance Costs paid or incurred by Developer during the preceding calendar year and showing the calculation of such Owner's pro-rata share thereof. In addition, upon the written request of any Owner, Developer shall furnish to such Owner a copy of any bills for said costs and expenses and evidence reasonably satisfactory to such Owner that said bills have been paid by Developer. Such statement to each Owner shall be accompanied by any refund of any overpayments of such Owner's share of such Common Area Maintenance Costs as may be reflected in said statement. Any deficiency in the total monthly payments for the year in relation to an Owner's share of actual Common Area Maintenance Costs shall be paid by such Owner to Developer within thirty (30) days after such Owner's receipt of the annual statement and copies of any requested bills and evidence of payment. Developer shall establish and maintain, in accordance with sound accounting practices applied on a consistent basis, adequate books and records of the receipts and disbursements arising in connection with providing such Common Area services. Developer shall maintain its books and records relating to the maintenance of the Common Area for any particular calendar year for a period of three (3) years from and after such calendar year. The Owners and their respective authorized agents and representatives shall have the right to inspect or audit such books and records at Developer's office at any reasonable time during normal business hours and to make copies thereof. In the event there is an overpayment discrepancy in the Common Area Maintenance Costs set forth in Developer's annual statement delivered pursuant to the terms hereof, Developer shall promptly reimburse the Owners for the amount of the overpayment.

#### 5.4 Building Improvements on Shopping Center Parcels.

(a) After completion of construction of any Building improvements on any Shopping Center Parcel, the Owner of such Shopping Center Parcel shall maintain and keep, or cause to be maintained and kept, the exterior portions of such improvements, including service areas and loading docks, any outside sales or storage areas, canopies, and signage in a first-class, safe, and slightly condition and state of repair, in compliance with all laws, rules, regulations, orders, and ordinances of any governmental agency exercising jurisdiction thereover, and in compliance with the provisions of this Declaration, provided, however, as set forth in Section 5.4(b) below, no Owner shall be required to rebuild the Building improvements located on its Shopping Center Parcel in the event such Building improvements are damaged or destroyed by casualty or condemnation. All trash and garbage from the operation of business upon any Shopping Center Parcel shall be stored in adequate containers, which containers shall be located so that they are not visible from the parking areas located in front of the Building(s) on such Shopping Center Parcel, and areas near trash containers (including, without limitation, all Common Area near trash containers) shall be maintained in a clean, neat and safe condition. Each Shopping Center Parcel Owner shall cause compliance with the foregoing requirements by its respective Occupant(s). Each Shopping Center Parcel Owner shall arrange or cause its Occupants to arrange for regular removal of such trash or garbage from its Shopping Center Parcel.

(b) In the event any of the Building improvements on a Shopping Center Parcel are damaged by fire or other casualty (whether insured or not), the Owner upon whose Shopping Center Parcel such improvements are located shall promptly remove the debris resulting from such event



and provide a sightly barrier and within a reasonable time thereafter shall either (i) repair or restore the improvements so damaged, such repair or restoration to be performed in accordance with all provisions of this Declaration (including, without limitation, Developer's review and approval of Plans therefor), or (ii) erect other improvements in such location, provided all provisions of this Declaration are complied with (including, without limitation, Developer's review and approval of Plans therefor), or (iii) demolish the damaged portion of such improvements, restore any remaining improvements (if any) to an architectural whole (subject to Developer's review and approval of Plans therefor), remove all rubbish, and pave or grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Each Shopping Center Parcel Owner shall have the option to choose among the aforesaid alternatives, but each Shopping Center Parcel Owner shall be obligated to perform one of such alternatives within a reasonable time. The Owner of any Building improvements on a Shopping Center Parcel so damaged by fire or other casualty shall give notice to each other Shopping Center Parcel Owner within a reasonable time of which alternative it elects. Developer's review and approval of the Plans pursuant to this Section 5.4(b) shall (a) not be required to the extent such repair, restoration or erection of other improvements replicates as nearly as possible (given current construction techniques and availability of building materials) the improvements existing prior to such damage or destruction, and (b) not be unreasonably withheld if such repair, restoration or erection of other improvements is architecturally and aesthetically comparable with the remainder of the Shopping Center.

#### 5.5 Outparcels.

(a) Prior to the construction of improvements on an Outparcel, the Owner of such Outparcel shall maintain and keep, or cause to be maintained and kept, such Outparcel in a good, safe, clean and sightly first-class condition, in compliance with all laws, rules, regulations, orders, and ordinances of any governmental agency exercising jurisdiction thereover, and in compliance with the provisions of this Declaration. In particular, and without limiting the generality of the foregoing, the Owner of each Outparcel shall be responsible for keeping such Outparcel mowed regularly (except for landscaped areas that are maintained as part of the Common Area hereunder) and for promptly removing diseased or dead trees (except for trees within landscaped areas that are maintained as part of the Common Area hereunder) within the Outparcel as necessary.

(b) After the construction of improvements on an Outparcel, the Owner of such Outparcel shall maintain and keep, or cause to be maintained and kept, the exterior portions of such improvements, including service areas and loading docks, any outside sales or storage area, canopies, landscaping and signage (except for landscaping and signage that are maintained as part of the Common Area hereunder) in a good, safe, clean and sightly first-class condition and state of repair, in compliance with all laws, rules, regulations, orders, and ordinances of any governmental agency exercising jurisdiction thereover, and in compliance with the provisions of this Declaration. In particular, and without limiting the generality of the foregoing, the Owner of each Outparcel shall be responsible for the following:

(1) General maintenance and repair of all paved surfaces, including all driveway, sidewalk and parking areas, and all curbing relating thereto, in good order and repair and in a safe condition, sweeping and cleaning, patching, re-striping, repairing and resurfacing such areas when appropriate;

(2) Maintaining and repairing the lighting system which shall illuminate the Outparcel, including the maintenance and repair of all lighting facilities and standards and replacement of light bulbs; and

(3) Maintaining, repairing, replacing and operating the automatic sprinkler irrigation system on the Outparcel, which shall be utilized to regularly water (as needed) the landscaped areas between the external boundaries of the Outparcel and the back of the curb of all roadways and driveways adjacent to such Outparcel (excluding roadways and driveways in other Outparcels), mowing and otherwise maintaining and tending all landscaped areas (except for landscaped areas that are maintained as part of the Common Area hereunder) and promptly removing and replacing diseased or dead trees, shrubs, and other landscaping (except for landscaped areas that are maintained as part of the Common Area hereunder) within the Outparcel as necessary.

All repairs, replacements and improvements necessary to maintain the Outparcel and the improvements thereon in the condition required by this Declaration shall (if and to the extent available) be of a like-kind nature and scope and the Owner of such Outparcel shall use new materials of a first-class quality similar to those used initially to develop and improve the Outparcel (if and to the extent available) to make such repairs or replacements. The Owner of the Outparcel shall perform its obligations under this Section 5.5 in a good and workmanlike manner. Provided, however, no Outparcel Owner shall be required to rebuild the improvements located on such Owner's Outparcel in the event said improvements are damaged or destroyed by casualty or condemnation [subject to the terms of Section 5.5(c) below]. All trash and garbage from the operation of business upon any Outparcel shall be stored in adequate containers, which containers shall be located as approved by Developer in connection with Developer's review and approval of the Plans, and areas near trash containers shall be maintained in a clean, neat and safe condition. Each Outparcel Owner shall cause compliance with the foregoing requirements by its respective Occupants. Each Outparcel Owner shall arrange or cause its Occupants to arrange for regular removal of such trash or garbage from its Outparcel.

(c) In the event any of the improvements on an Outparcel are damaged by fire or other casualty (whether insured or not), the Owner upon whose Outparcel such improvements are located shall promptly remove the debris resulting from such event, and within a reasonable time thereafter shall either (i) repair or restore the improvements so damaged, such repair or restoration to be performed in accordance with all provisions of this Declaration (including, without limitation, Developer's review and approval of Plans therefor), or (ii) erect other improvements in such location, provided all provisions of this Declaration are complied with (including, without limitation, Developer's review and approval of Plans therefor), or (iii) demolish the damaged portion of such improvements, restore any remaining improvements (if any) to an architectural whole (subject to Developer's review and approval of Plans therefor), remove all rubbish, and pave or grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Each Outparcel Owner shall have the option to choose among the aforesaid alternatives, but each Outparcel Owner shall be obligated to perform one of such alternatives. The Owner of any building improvements on an Outparcel that are so damaged by fire or other casualty shall give notice to Developer within a reasonable time of which alternative it elects.

**ARTICLE VI  
SHOPPING CENTER AND OUTPARCEL OPERATIONS**

6.1 Use Restrictions. During the term of this Declaration, no part of the Property shall be used for other than (i) retail sales or services (retail services to include, for illustrative purposes only and without limitation, dry cleaners, beauty parlors, florists and shoe repair shops), (ii) office uses that are normally found in community-oriented retail shopping centers (such as, but not limited to, offices of dentists, accountants, attorneys, and doctors; insurance agency and real estate brokerage offices; and offices of travel agencies, banks and other financial institutions), (iii) restaurants (including fast food restaurants), (iv) movie theaters and cinemas (provided such movie theaters and cinemas show films commonly shown by national or regional movie theater chains and are not operated as what is commonly referred to as an "adult movie theater"), (v) video stores, (vi) health clubs, exercise clubs or studios, and health spas, and (vii) service stations and automobile supply, service and repair facilities (such as Goodyear, Western Auto, etc.). In addition, the following shall not be permitted on any part of the Property during the term of this Declaration:

(a) Any use which is a public or private nuisance, or any use which creates vibrations or offensive odors, fumes, dust or vapors which are noticeable outside of any Building within the Property, or any noise or sound which can be heard outside of any Building within the Property and which is offensive due to intermittency, beat, frequency, shrillness or loudness, provided any usual paging system shall be allowed;

(b) Any exterior flashing lights, strobe lights, search lights, or video screens (provided interior video screens not visible from the exterior shall not be restricted);

(c) Any operation primarily used as a warehouse operation (which shall not include storage incidental to a retail operation conducted on the same premises, or, in the case of any home improvement store or hardware store, storage incidental to a wholesale operation conducted on the same premises), any manufacturing or industrial operation, any processing or rendering plant, or any lumber yard (except in connection with the operation of hardware stores or home improvement stores);

(d) The storage of explosives or other unusually hazardous materials (other than materials sold or used in the normal course of an Occupant's business, provided the same are handled in accordance with all governmental rules, regulations and requirements applicable thereto);

(e) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(f) Any dumping, disposing, incineration, or reduction of garbage, waste, hazardous waste or hazardous substances (exclusive of garbage compactors which are screened from public view and approved by Developer as contemplated herein);

(g) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an Owner or Occupant to determine its own selling prices, nor shall it preclude the conduct of periodic seasonal, promotional or clearance sales or legitimate "going out of business" sales);

(h) Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities;

(i) Any living quarters, sleeping apartments, or lodging rooms;

(j) Any veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops);

(k) Any adult book store or establishment selling or exhibiting pornographic materials. As used herein, an "adult book store or establishment selling or exhibiting pornographic materials" shall include, without limitation, a store displaying for sale or exhibit books, magazines or other publications containing any combination of photographs, drawings, or sketches of a sexual nature which are not primarily scientific or educational (collectively, "Sex Magazines") (it being acknowledged, however, that "Playboy," "Playgirl," and "Penthouse" are not deemed to be Sex Magazines), or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which is pornographic [provided the sale or rental of devices, machines and equipment capable of projecting, transmitting or reproducing images is not prohibited]; provided, however, the foregoing shall not be deemed to prohibit (i) the sale or rental of video tapes of adult nature so long as such sale or rental is incidental to the operation of a full line video store or full line video department within a store and provided same are not openly displayed and are access controlled or (ii) the operation of a movie theater so long as such theater shows films commonly shown by national or regional movie theater chains and is not operated as what is commonly referred to as an "adult movie theater";

(l) Any funeral parlor or mortuary;

(m) Any massage parlor or so-called "head shop";

(n) Any flea market, amusement park, carnival, bingo parlor, shooting gallery, gun club, shooting range or off-track betting parlor or other gambling establishment;

(o) Any auditorium, social club, meeting hall, church or other house of worship, or similar place of general public assembly, provided the foregoing shall not be deemed to prohibit the operation of a cinema or movie theater to the extent the same is otherwise permitted herein;

(p) Pool or billiard halls, bowling alleys, ice or roller skating rinks, miniature golf courses, or other entertainment facilities, provided the foregoing shall not be deemed to prohibit the operation of a movie theater to the extent the same is otherwise permitted herein;

(q) Dance or music halls, dancing ballrooms or establishments, banquet halls, night clubs, or discotheques;

(r) Bars, pubs, taverns, or any establishment serving alcoholic beverages for on-premises consumption, except as ancillary to a restaurant which derives more than fifty percent (50%) of its gross receipts from the sale of food and non-alcoholic beverages;

(s) Video or game centers, amusement centers, or arcades, provided the foregoing shall not be deemed to limit or restrict pinball machines, electronic games, and other similar coin-operated amusement machines which are incidental to the operation of any other permitted use; and

(t) Sporting events or other sports facilities (except in connection with the operation of a health club, exercise club or studio, or health spa).

**6.2 Harris Teeter Lease Use Restrictions.** Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable so long as the Harris Teeter Lease is in force and in such case shall be enforceable only by Developer and Harris Teeter:

(a) Subject to the terms of the Harris Teeter Lease, the Harris Teeter Premises may be used for any lawful purpose, other than as a theater, bowling alley, tavern, lounge, or flea market and no more than twenty-five percent (25%) of the Harris Teeter Premises may be used as offices, warehouse space or training facilities.

(b) No portion of the Shopping Center Tract, the Adjacent Tract or the Outparcels Tract may be leased, rented, occupied, or used for a supermarket, a convenience food store with a selling area in excess of eight hundred (800) square feet, a florist [unless the sale of flowers does not exceed five percent (5%) of such store's gross sales], or a store selling packaged or fresh seafood, meat or poultry for off-premises consumption, produce or vegetables for off-premises consumption, dairy products (excluding cone ice cream) for off-premises consumption, packaged or fresh bakery products for off-premises consumption or grocery items.

(c) Without obtaining the prior written consent of Harris Teeter, none of the following shall be allowed to operate at any location that is both (A) within the Shopping Center Tract or within the Outparcels Tract and (B) within three hundred (300) linear feet from the front entrance of the Harris Teeter Premises: a restaurant, a theater, a health spa, a child care center, an establishment that sells alcoholic beverages for on-premises consumption, or any other health, recreational or entertainment-type activity.

(d) Without obtaining the prior written consent of Harris Teeter, no skating rink, bowling alley or dairy store shall be allowed to operate at any location within the Shopping Center Tract or the Outparcels Tract. Provided, however, (i) shop spaces [not to exceed two thousand four hundred (2,400) square feet per store] may be leased in the Shopping Center Tract for use as ice cream or yogurt stores (such as a Ben & Jerry's store or a TCBY store), as pizza restaurants or as other types of restaurants selling prepared and pre-cooked food for "take-out" and (ii) the Outparcels may be leased or sold to nationally-known fast food restaurants (such as McDonald's, Arby's, Wendy's or Pizza Hut) so long as such restaurants (A) do not exceed twenty-four (24) feet or one (1) story in height, (B) have and maintain on-site parking for at least five (5) automobiles for each one thousand (1,000) square feet of building space, (C) are not granted any parking rights or easements within the boundaries of the Shopping Center Tract, and (D) sell alcoholic beverages only for on-premises consumption (if at all) and such sales of alcoholic beverages must be ancillary to the sale of food products and must not exceed fifty percent (50%) of the business conducted therein (and the owner or operator of each such restaurant must be willing to warrant and represent such fact relating to sales of alcoholic beverages to Harris Teeter and Developer from time to time if so requested).

(e) No kiosks shall be permitted in the Shopping Center Tract, except in the location shown on the Site Plan.

**6.3 Eckerd Lease Use Restrictions.** Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable so long as the Eckerd Lease is in force and in such case shall be enforceable only by Developer and Eckerd:

(a) Subject to the terms of the Eckerd Lease, the Eckerd Premises may be used for the operation of a drug store or for any other lawful purpose or purposes, including, but not limited to, an Express Photo store or a photo processing center, a postal substation or package mailing center and an optical center for the practice of opticianry and optometry. The Eckerd Premises also may be used for the sale of alcoholic beverages for off-premises consumption.

(b) Eckerd shall have, as an appurtenance to the Eckerd Premises under the Eckerd Lease, the exclusive right to sell or dispense prescription drugs in the Shopping Center Tract, except for (i) one (1) grocery store operator operating a grocery store in the Harris Teeter Premises and (ii) one (1) discount department store operator operating in a store space of at least eighty thousand (80,000) leasable square feet.

(c) No portion of the Shopping Center Tract shall, without the express written consent of Eckerd, be used or operated as (i) a store commonly known as an army-navy store, (ii) a surplus store, or (iii) a store or business (other than a grocery store operator, a department store operator or a discount department store operator) which devotes more than one thousand two hundred (1,200) square feet of its retail floor area to the sale of cosmetics, health and beauty aids and related items.

(d) Except for a lease, rental, or sale to (i) one (1) grocery store operator operating a grocery store in the Harris Teeter Premises and (ii) one (1) discount department store operator operating in a store space of at least eighty thousand (80,000) leasable square feet, no portion of the Shopping Center Tract or any other property owned by Developer within one thousand (1,000) square feet of any exterior boundary of the Shopping Center Tract [including, without limitation, any portion or all, as the case may be, of the Adjacent Tract and the Outparcels Tract that is located within one thousand (1,000) square feet of any exterior boundary of the Shopping Center Tract] shall, without the written permission of Eckerd, be directly or indirectly leased, rented, sold or otherwise permitted to be used as (i) a drug store or (ii) a business which sells or dispenses prescription drugs. Further, no property in which Developer has any interest (direct or indirect) located within the Shopping Center Tract or within one thousand (1,000) feet of any exterior boundary of the Shopping Center Tract shall, without the written permission of Eckerd, be directly or indirectly leased, rented, sold or otherwise permitted to be used as (i) a store commonly known as an army-navy store, (ii) a surplus store, or (iii) a store or business (other than a grocery store operator, a department store operator or a discount department store operator) which devotes more than one thousand two hundred (1,200) square feet of its retail floor area to the sale of cosmetics, health and beauty aids and related items.

**6.4 Coulwood Hardware Lease Use Restrictions.** Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and

provisions shall be applicable so long as the Coulwood Hardware Lease is in force and in such case shall be enforceable only by Developer and Coulwood Hardware:

(a) Subject to the terms of the Coulwood Hardware Lease, the Coulwood Hardware Premises may be used for the operation of a typical hardware store.

(b) Coulwood Hardware shall have, as an appurtenance to the Coulwood Hardware Premises under the Coulwood Hardware Lease, the exclusive right to operate a hardware store within the Property and the Adjacent Tract. Provided, however, and notwithstanding the foregoing, Developer shall be permitted to lease or sell any portion of the Property and/or any portion of the Adjacent Tract to Wal-Mart, Home Depot, Builders Square, HQ, Lowe's, K-Mart, Target and similar businesses that engage in hardware sales (subject to Coulwood Hardware's termination rights under the Coulwood Hardware Lease).

6.5 McCallister Lease Use Restrictions. Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable so long as the McCallister Lease is in force and in such case shall be enforceable only by Developer and McCallister:

(a) Subject to the terms of the McCallister Lease, the McCallister Premises may be used for the operation of a laundry and dry cleaning pick-up station.

(b) McCallister shall have, as an appurtenance to the McCallister Premises under the McCallister Lease, the exclusive right to operate a laundry and dry cleaning business within the Shopping Center Tract. Provided, however, and notwithstanding the foregoing, any tenant within the Shopping Center Tract operating in premises containing more than 25,000 square feet of space shall be permitted to operate a laundry and/or dry cleaning business.

6.6 Nationwide Lease Use Restrictions. Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable so long as the Nationwide Lease is in force and in such case shall be enforceable only by Developer and Nationwide:

(a) Subject to the terms of the Nationwide Lease, the Nationwide Premises may be used for general office purposes and for purposes of claim inspections by (i) Nationwide and its subsidiaries, affiliates or associated companies and (ii) members of Nationwide's agency force.

(b) Nationwide shall have, as an appurtenance to the Nationwide Premises under the Nationwide Lease, the exclusive right to perform insurance sales services and insurance-related claim inspection services within the Shopping Center Tract.

6.7 Pizza Hut Lease Use Restrictions. Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable so long as the Pizza Hut Lease is in force and in such case shall be enforceable only by Developer and Pizza Hut:

(a) Subject to the terms of the Pizza Hut Lease, the Pizza Hut Premises may be used for the operation of a Pizza Hut system restaurant.

(b) Subject to the rights of Harris Teeter under the Harris Teeter Lease and the rights of Eckerd under the Eckerd Lease, Pizza Hut shall have, as an appurtenance to the Pizza Hut Premises under the Pizza Hut Lease, the exclusive right to operate a restaurant, delivery business or carry out business engaged in the sale of pizza, pasta, or other Italian food products within the Shopping Center Tract and the Adjacent Tract.

6.8 Reflections Lease Use Restrictions. Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable so long as the Reflections Lease is in force and in such case shall be enforceable only by Developer and Reflections:

(a) Subject to the terms of the Reflections Lease, the Reflections Premises may be used for the operation of a hair salon and tanning booths, the provision of manicure services, and the retail sale of professional beauty products.

(b) -Subject to (i) the rights, if any such rights are applicable, of Pizza Hut under the Pizza Hut Lease and (ii) the rights of any other current or future tenant (under the terms of such tenant's lease) operating a major discount store in any portion of the Shopping Center Tract other than the First Phase Property, Reflections shall have, as an appurtenance to the Reflections Premises under the Reflections Lease, the exclusive right within the Shopping Center Tract to operate a beauty salon and barber shop and to provide tanning facilities and manicure services. Notwithstanding the foregoing, such exclusive right shall not be applicable with respect to the Coulwood Hardware Premises, the Harris Teeter Premises and the Eckerd Premises.

6.9 Additional Use Restrictions for the Benefit of Outparcel B. Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable for the time period specified below in this Section 6.9 and in such case shall be enforceable only by Developer and the Owner of that certain Outparcel identified as "Outparcel 'B'" on the Site Plan ("Outparcel B"):

(a) Subject to the rights of Harris Teeter under the Harris Teeter Lease and the rights of Eckerd under the Eckerd Lease, no Burger King restaurant, Hardee's restaurant or McDonald's restaurant shall operate within the First Phase Property or the Outparcels Tract until the earliest to occur of any of the following dates (the "Outparcel B Restriction Termination Date"): (i) the date that a Wendy's restaurant ceases to operate on Outparcel B (after a Wendy's restaurant has begun operating on Outparcel B); (ii) the date that the Owner of Outparcel B conveys Outparcel B to a person or entity that does not intend to operate a Wendy's restaurant on Outparcel B; (iii) December 31, 1999; and (iv) the date which is nine (9) months after the date of the initial conveyance of Outparcel B by Developer to a third party, if a Wendy's restaurant has not opened for business on Outparcel B on or before the date which is nine (9) months after the date of such initial conveyance.

(b) From and after the Outparcel B Restriction Termination Date, the provisions and restrictions in this Section 6.9 shall be deemed null and void and of no further force and effect, and this Declaration shall thereafter be construed as if all of the text in this Section 6.9 were stricken in its entirety from this Declaration. Although no additional documentation shall be required to be executed or recorded to give effect to the terms of this Section 6.9(b), if requested by Developer, following the occurrence of the Outparcel B Restriction Termination Date, the then-current owner of Outparcel B shall promptly execute and deliver to Developer an instrument in recordable form (to be prepared by Developer) acknowledging that the provisions and restrictions in this Section 6.9 are



null and void and of no further force and effect, and Developer shall be entitled to record such acknowledgement instrument in the public real estate records in Mecklenburg County, North Carolina.

(c) Notwithstanding any term or provision in this Declaration to the contrary, the terms and provisions in this Section 6.9 may be terminated at any time by an appropriate instrument executed both by Developer and the then-current Owner of Outparcel B, and such termination shall be effective from and after the date and time of the recordation of such instrument in the public real estate records in Mecklenburg County, North Carolina.

#### 6.10 Use of Common Area.

(a) No Owner and no Occupant shall be entitled to place, distribute or display any signs, handbills, bumper stickers, or other advertising devices within the Common Area or on any vehicle parked in the parking areas of the Shopping Center Tract, and each Shopping Center Parcel Owner shall use its reasonable efforts to prevent the Common Area on its Shopping Center Parcel from being used by others for (i) distribution of any circulars, handbills, placards, or booklets, (ii) solicitation of memberships or contributions, or (iii) parading, picketing or demonstrating. Further, the Common Area shall not be used for (i) carnivals, circuses, fairs, (ii) any show, tournament, sporting event or exhibition, or (iii) auctions. Any Shopping Center Parcel Owner or Occupant desiring to use a portion of the Common Area on such Owner's or Occupant's Shopping Center Parcel for purposes of displaying and selling merchandise must obtain Developer's prior written consent for such activity, and Developer may withhold or condition such consent as Developer deems appropriate. In addition to any other conditions imposed by Developer in connection with Developer's granting of consent for the displaying and selling of merchandise by a Shopping Center Parcel Owner or Occupant on a portion of the Common Area within such Owner's or Occupant's Shopping Center Parcel, the following limitations and restrictions shall apply: (A) such displays shall not unreasonably impede the normal flow of pedestrian traffic on sidewalks or the normal flow of vehicular traffic within the Common Area, (B) there shall be no displays of sheds or portable buildings for a period of more than three (3) consecutive days, (C) all such displays shall be maintained in a neat, clean and orderly condition, (D) all sales of such display items shall be conducted and made solely within the Building on such Shopping Center Parcel or in any permitted outdoor sales and service area (but not on the sidewalk), and (E) there shall be no exterior signs or banners relating to such displays, except for normal and customary signs identifying goods and prices and except for temporary promotional signs or banners which are professionally prepared. Pursuant to the terms of the Harris Teeter Lease and as contemplated above in this Section 6.10(a), Developer has agreed that Harris Teeter shall be entitled to merchandise plants, Christmas trees, vegetables, agricultural products, fertilizer, mulch, firewood, stakes and similar products and to erect such display racks as are necessary to adequately display such merchandise and to hang plants on the sidewalk in front of the Harris Teeter Premises. Additionally, Harris Teeter shall be entitled to install and maintain two (2) soft drink dispensing machines on the sidewalk in front of the Harris Teeter Premises (provided such machines are located so as not to unreasonably impede the normal flow of pedestrian traffic on such sidewalks), and Harris Teeter shall be entitled to store shopping carts and to erect and maintain shopping cart corrals and shopping cart stands on the sidewalk and parking lot in front of the Harris Teeter Premises (provided such shopping cart storage areas, corrals, and stands are located so as not to unreasonably impede the normal flow of pedestrian and vehicular traffic). Developer reserves the right (in Developer's sole discretion) to hereafter grant other Occupants in the Shopping Center Tract rights similar to those granted to Harris Teeter [as described above in this Section 6.10(a)].

(b) No Owner, Occupant, or Permittee shall be charged for the right to use the Common Area, including, without limitation, any parking area or parking spaces therein.

(c) Each Shopping Center Parcel Owner shall use its reasonable efforts to require its suppliers and the suppliers of any Occupants of its Shopping Center Parcel to use only rear and side service entrances to Buildings on such Owner's Shopping Center Parcel for pick-ups and/or deliveries, although it is acknowledged that it may be necessary on an infrequent basis for an Occupant's delivery trucks to be parked in front of its premises within the Shopping Center Tract. In any event, the parking of trucks and delivery vehicles within the Shopping Center Tract shall not unreasonably interfere with the use of any driveways, walkways, parking areas, or other Common Area or loading docks. Any Occupant in the Shopping Center Parcel with a customer pick-up station located outside of its Building shall administer the use of such station so as to ensure that the flow of traffic within the Common Area is not materially impeded or interrupted.

6.11 Sidewalk Displays. Except as otherwise provided in Section 6.10(a) above, displays of merchandise on the sidewalk area adjoining any Building shall be prohibited within the Shopping Center Tract.

6.12 Insurance.

(a) Each Owner shall maintain or cause to be maintained in full force and effect comprehensive public liability insurance with a financially responsible insurance company or companies licensed to do business in the State of North Carolina insuring against claims on account of loss of life, bodily injury, or property damage that may arise from, or be occasioned by, the condition, use or occupancy of such Owner's Shopping Center Parcel or Outparcel or the improvements located thereon, including the Common Area located within such Shopping Center Parcel or Outparcel; and such insurance shall provide for a limit of not less than Two Million Dollars (\$2,000,000.00) for personal or bodily injury or death to any one person, a limit of not less than Two Million Dollars (\$2,000,000.00) for personal or bodily injury or death to any number of persons arising out of any one occurrence, and a limit of not less than One Million Dollars (\$1,000,000.00) in respect of any instance of property damage. Such insurance shall extend to the contractual obligation of the insured party arising out of the indemnification obligations set forth in this Declaration. Each Owner shall furnish to any other Owner requesting the same evidence that the insurance described above is in full force and effect. All policies of insurance carried by any Owner pursuant hereto (i) shall name Developer as an additional insured and (ii) shall provide that the same may not be canceled (including, without limitation, a non-renewal) or amended without at least thirty (30) days prior written notice being given by the insurer to Developer.

(b) Effective upon the commencement of construction of Building improvements on a Shopping Center Parcel or an Outparcel, the Owner of such Shopping Center Parcel or Outparcel shall carry, or cause to be carried, with a financially responsible insurance company or companies licensed to do business in the State of North Carolina fire insurance (with an extended coverage endorsement) in an amount at least equal to eighty percent (80%) of the replacement cost (exclusive of the cost of excavation, foundations, and footings) of the Buildings and improvements constructed on its Shopping Center Parcel or Outparcel, insuring against causes or events which from time to time are included as covered risks under standard insurance industry practices within the classification of fire insurance with an extended coverage or "all risk" endorsement, and specifically against at least the following perils: loss or damage by fire, windstorm, tornado, hail, explosion, malicious mischief, vandalism, aircraft, vehicle, and smoke damage.

(c) Each Shopping Center Parcel Owner shall at all times maintain with a financially responsible insurance company licensed to do business in the State of North Carolina fire insurance (with an extended coverage or "all risk" endorsement) in an amount equal to one hundred percent (100%) of the insurable replacement cost of the improvements constructed within the Common Area on its Shopping Center Parcel, with such improvements insured (to the extent such improvements are insurable) against such causes or events which from time to time are included as covered risks under standard insurance industry practices within the classification of fire insurance with an extended coverage endorsement. Each Shopping Center Parcel Owner shall furnish to any other Owner requesting the same a certificate (or other document or instrument) evidencing such coverage and that such coverage is in force and effect. Said certificate and policy shall provide that such policy shall not be canceled (including, without limitation, a non-renewal) or materially changed without at least thirty (30) days prior written notice to Developer. Renewal certificates or policies shall be delivered to Developer not less than fifteen (15) days prior to the expiration date of any expiring policy theretofore furnished.

(d) Prior to commencing any construction activities within the Property, the Owner performing or causing to be performed such construction activities shall maintain, or cause to be maintained, so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

(1) Workers' Compensation - statutory limits

(2) Employer's Liability - \$500,000

(3) Comprehensive General Liability on an occurrence basis with personal injury coverage and broad form property damage (said policy shall be endorsed to remove the XCU exclusion relating to explosion, collapse, and underground property damage) as follows:

(A) Bodily Injury - \$2,000,000 per person, \$2,000,000 per occurrence

(B) Property Damage - \$1,000,000 per occurrence, \$2,000,000 aggregate

(4) Comprehensive Automobile Liability, including Non-Ownership and Hired Car Coverage as well as owned vehicles with at least the following limits:

(A) Bodily Injury - \$500,000 per person, \$1,000,000 per occurrence

(B) Property Damage - \$250,000 per occurrence

If the construction activity involves the use of another Owner's Shopping Center Parcel or Outparcel (as specifically contemplated and permitted herein), then the Owner of any such Shopping Center Parcel or Outparcel which shall be used for such construction activity shall be named as an additional insured and such insurance shall provide that the same shall not be canceled without at least thirty (30) days prior written notice to the named insureds (it being understood that if such insurance is canceled or expires, then the constructing Owner shall immediately stop all work on or use of

another Owner's Shopping Center Parcel until either the required insurance is reinstated or replacement insurance is obtained).

(e) The insurance described in this Section 6.12 may be carried under (i) an individual policy covering only the location of the Owner within the Shopping Center, (ii) a blanket or umbrella policy or policies which cover(s) other liabilities, properties and locations of an Owner, so long as no occurrence with respect to other property covered by such blanket policy will impair the coverage required hereunder, (iii) a plan of self-insurance, provided the Owner so self-insuring, together with any parent, subsidiary and/or affiliated entities whose assets are subject to the liabilities described in this Section 6.12, has and maintains \$50,000,000.00 or more of net worth (based upon generally accepted accounting principals consistently applied by such Owner and as determined by an independent certified public accountant), or (iv) a combination of any of the foregoing insurance programs. All such insurance shall include a waiver of subrogation by the insurer against the other Owners so long as the same is obtainable without extra cost. If extra cost shall be chargeable therefor, each party shall advise the other thereof and the amount of the extra cost; and the other party, at its election, may pay the same but shall not be obligated to do so. Each Owner hereby waives any rights of recovery against any other Owner, its directors, officers, members, employees, agents, tenants and Occupants for any damage or consequential loss which is covered by or would be covered by the policies required to be carried by such Owner hereunder, to the extent of the proceeds payable under such policies. The foregoing waivers shall apply equally to any Owner which elects to be self-insured, in whole or in part, as hereinabove provided, as if such Owner were independently insured to the extent required hereunder.

6.13 Taxes and Assessments. Each Owner shall pay, or cause to be paid, prior to delinquency, all taxes and assessments with respect to its Shopping Center Parcel or Outparcel, the Buildings and other improvements located thereon and any personal property owned or leased by such Owner in the Property; provided, however, if the taxes or assessments (or any part thereof) may be paid in installments, whether or not interest or penalties are imposed for installment payments, the Owner may pay each such installment as and when the same becomes due and payable and, in any event, prior to the delinquency thereof. Nothing contained in this Section 6.13 shall prevent any Owner from contesting, at its cost and expense, any such taxes and assessments with respect to its Shopping Center Parcel or Outparcel in any manner such Owner elects, so long as (i) such Owner provides prior written notice to the other Owners of its intention to contest, (ii) such contest is maintained with reasonable diligence and in good faith, (iii) at the time such contest is concluded (allowing for appeal to the highest court of appeals), the contesting Owner promptly pays all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon, and (iv) such Parcel is never subjected to the threat of forfeiture as a result of any such non-payment.

6.14 Liens. In the event any mechanic's lien, materialmen's lien, or other lien is filed against the Shopping Center Parcel or Outparcel of one Owner as a result of services performed or materials furnished by a third party to another Shopping Center Owner, the Owner permitting or causing such lien to be so filed shall cause such lien to be released and discharged of record within thirty (30) days after notification from the Owner whose Shopping Center Parcel or Outparcel is subject to such claim of lien, either by paying the indebtedness which gave rise to such lien or by posting a bond or other security as required by law to obtain such release and discharge, and the Owner permitting or causing such lien to be so filed shall indemnify, defend, and hold harmless the other Owner and its Shopping Center Parcel or Outparcel against liability, loss, damage, costs and expenses (including reasonable attorneys' fees and costs of suit) on account of such claim of lien.

6.15 Shopping Center Name. The Shopping Center shall initially be known as "Mountain Island Marketplace Shopping Center." Such name shall not be changed without the prior written consent of Developer and all of the Owners, such consent not to be unreasonably withheld, conditioned or delayed, so long as the Shopping Center is not named after any Occupant in the Shopping Center. Only Developer shall have the right to initiate such a name change. No such name change shall be effective for a period of twelve (12) months after the agreement of Developer and all of the Owners to make such change.

## ARTICLE VII DEFAULT

### 7.1 Default.

(a) If the Owner of any Shopping Center Parcel or Outparcel fails to comply or fails to cause any Occupant of its Shopping Center Parcel or Outparcel to comply with any provision herein (a "Defaulting Owner"), including, without limitation, the payment of any sum of money or the performance of any other obligation pursuant to the terms of this Declaration, then Developer or any other Owner (an "Affected Party") at its option and with thirty (30) days prior written notice to the Defaulting Owner, in addition to any other remedies such Affected Party may have in law or equity (subject to the limitations in Section 7.1(e) below and in Section 7.2 below), may proceed to perform such defaulted obligation on behalf of such Defaulting Owner (and shall have a license to do so) by the payment of money or other action for the account of the Defaulting Owner. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) the Defaulting Owner cures the default, or (ii) if curable, the default cannot be reasonably cured within that time period but the Defaulting Owner begins to cure such default within such time period and thereafter diligently and continuously pursues such action to completion. The thirty (30) day notice period shall not be required if an emergency exists or if such default causes interference with the construction, operation or use of the Affected Party's Shopping Center Parcel or Outparcel which requires immediate attention; and in such event, the Affected Party shall give such notice (if any) to the Defaulting Owner as is reasonable under the circumstances.

(b) Within ten (10) days of written demand therefor (including providing copies of invoices reflecting costs) the Defaulting Owner shall reimburse the Affected Party for any sum reasonably expended by the Affected Party due to the default or in correcting the same, together with interest thereon and, if such reimbursement is not paid within said ten (10) days and collection is required, the Affected Party's reasonable costs of collection, including, without limitation, reasonable attorneys' fees.

(c) Any claim of an Affected Party for reimbursement, together with interest accrued thereon and collection costs as set forth in Section 7.1(b) above, shall constitute a personal obligation and liability of the Defaulting Owner and shall be secured by an equitable charge and lien on the Shopping Center Parcel or Outparcel of the Defaulting Owner and all improvements located thereon. Such lien shall attach and be effective from the date of recording of the Lien Notice hereinafter described. Upon such recording, such lien shall be superior and prior to all other liens encumbering the Shopping Center Parcel or Outparcel involved, except that such lien shall not be prior and superior to (i) any mortgages or deeds of trust of record prior to the recording of such Lien Notice or any renewal, extension or modification (including increases) of previously recorded mortgages or deeds of trust, or (ii) the interest of any party which has, prior to the recording of such Lien Notice,

purchased the Shopping Center Parcel or Outparcel and leased it back to the preceding owner, or the preceding owner's subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale-leaseback" transaction; and any purchaser at any foreclosure sale (as well as any grantee by deed in lieu of foreclosure) under any such mortgage or deed of trust shall take title subject only to liens accruing pursuant to this Section 7.1(c) after the date of such foreclosure sale or conveyance in lieu of foreclosure. Furthermore, the right of possession and leasehold interest or tenancy of any tenant or subtenant of any Shopping Center Parcel or Outparcel encumbered by any lien accruing pursuant to this Section 7.1 shall not be terminated, affected or disturbed by such lien or any foreclosure thereof. To evidence a lien accruing pursuant to this Section 7.1(c), the Affected Party curing the default of a Defaulting Owner or the Affected Party performing such maintenance, as the case may be, shall prepare a written notice (a "Lien Notice") setting forth (i) the amount owing and a brief statement of the nature thereof; (ii) the Shopping Center Parcel or Outparcel to which the payment(s) relate; (iii) the name of the Owner or reputed Owner owning the Shopping Center Parcel or Outparcel involved; and (iv) reference to this Declaration as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by the Affected Party desiring to file the same and shall be recorded in the public real estate records in Mecklenburg County, North Carolina. A copy of such Lien Notice shall be mailed to the Defaulting Owner within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon the Shopping Center Parcel or Outparcel to which the lien attached in like manner as a mortgage or deed of trust on real property is judicially foreclosed under the laws of North Carolina. In any foreclosure, the Owner whose Shopping Center Parcel or Outparcel is being foreclosed shall be required to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice, as provided herein, and all reasonable costs, expenses and attorneys' fees in connection with the foreclosure. The Affected Party filing such Lien Notice shall notify any mortgagee of the Shopping Center Parcel or Outparcel being foreclosed if such Affected Party has been notified (in the manner herein provided) of such mortgagee's interest and of its name and address.

(d) In the event any Affected Party shall institute any action or proceeding against another Owner relating to the provisions of this Declaration or any default hereunder or to collect any amounts owing hereunder or in the event an arbitration proceeding is commenced hereunder by agreement of the parties to any dispute, then and in such event the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for such reasonable costs and expenses incurred in connection with any such action or proceeding and any appeals therefrom, including attorneys' fees and court costs, to the extent permitted by the terms of any final order, decree, or judgment.

(e) Notwithstanding the foregoing terms and provisions in this Section 7.1 to the contrary, with respect to restrictions and provisions in this Declaration which expressly contemplate that only Developer and/or Harris Teeter and/or Eckerd shall have enforcement rights, no other parties (including other Owners) shall be entitled to exercise enforcement rights hereunder relative to such restrictions and provisions (subject, however, to any assignment of Developer's enforcement rights pursuant to Section 9.5 below).

(f) Except as provided in Section 7.2 below, any remedies provided for in this Section 7.1 are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity and shall include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Declaration

and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

7.2 Limitation of Liability. Notwithstanding anything contained in this Declaration to the contrary, in any action brought to enforce the obligations of the Owner of any Shopping Center Parcel or Outparcel, any money judgment or decree entered in any such action shall, to the extent provided by law, be a lien upon and shall be enforced against and satisfied only out of (i) the proceeds of sale produced upon execution of such judgment and levy thereon against such Owner's interest in its Shopping Center Parcel or Outparcel and the improvements thereon, (ii) the rents, issues or other income receivable from such Owner's Shopping Center Parcel or Outparcel, and (iii) insurance and condemnation proceeds with respect to such Owner's Shopping Center Parcel or Outparcel, and no Owner shall have personal or corporate financial liability for any deficiency; provided, however, and notwithstanding the foregoing to the contrary, the limitations in this Section 7.2 shall not apply to claims based upon intentional torts (including, without limitation, fraud or misrepresentation) committed by any party; and provided, further, all Owners of Shopping Center Parcels or Outparcels shall be entitled to obtain equitable relief and personal judgment necessary to implement the relief (as used here, "equitable relief" does not include a claim for damages even if based on equitable grounds).

#### **ARTICLE VIII TERM**

This Declaration shall be effective as of the date first above written and shall continue in full force and effect for the lesser of (i) ninety-nine (99) years and (ii) the maximum period as may be permitted under the laws of the State of North Carolina, except as otherwise expressly provided herein relative to restrictions and provisions that shall terminate at an earlier date (including, without limitation, restrictions and provisions herein that will, by their express terms, terminate at such time as the Harris Teeter Lease is no longer in force or at such time as the Eckerd Lease is no longer in force). Provided, however, with respect to the easements which are created and described herein as being perpetual or as continuing beyond the term of this Declaration, such easements shall survive the termination of this Declaration as provided herein. Upon the termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except as contained in or otherwise relating to the easement provisions mentioned above, shall terminate and have no further force or effect; provided, however, the termination of this Declaration shall not limit or affect any remedy at law or in equity of any party against any other party with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination. In no event shall a breach or default under the provisions of this Declaration result in the termination hereof.

**ARTICLE IX  
MISCELLANEOUS**

9.1 Interest. Wherever in this Declaration it is provided that any party is to pay to any other party a sum of money with interest, the amount of interest to be paid shall be calculated upon the sum advanced or due from the time advanced or due until the time paid at the lesser of:

- (a) The highest rate permitted by law to be paid on such type of obligation by the party obligated to make such payment or the party to whom such payment is due, whichever is less; or
- (b) Two percent (2%) per annum in excess of the prime rate from time to time publicly announced by First Union National Bank of North Carolina.

9.2 Estoppel Certificates. Upon written request (which shall not be made more frequently than three (3) times during any calendar year and shall be made only (i) in connection with a sale, leasing, financing or similar transaction, (ii) at the request of the lender of any Owner or (iii) for any other reasonable purpose) from time to time by any Owner, each other Owner shall issue to such requesting Owner or to a prospective or existing lender of such requesting Owner or to a prospective successor in title to such requesting Owner, an estoppel certificate stating:

- (a) whether the Owner to whom the request has been directed has given any notice to the requesting Owner of any default by such requesting Owner under this Declaration which remains uncured, and if there are such defaults of which notice has been given and which remain uncured, specifying the nature thereof;
- (b) whether to such Owner's knowledge, as between the Owner to whom the request has been directed and the requesting Owner, this Declaration has been supplemented, modified or amended in any way (and if it has, stating the nature thereof); and
- (c) that to such Owner's knowledge this Declaration as of that date is in full force and effect (if and to the extent such statement can be truthfully made).

9.3 Notices. All notices, demands, statements, and requests required or permitted to be given under this Declaration must be in writing and given, delivered, or served, either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address of which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof. In the event of a sale of any Shopping Center Parcel or Outparcel, either the Owner selling such Shopping Center Parcel or Outparcel or the new Owner of such Shopping Center Parcel or Outparcel shall give written notice to the Owners of each other Shopping Center Parcel and Outparcel of the name and address of the new Owner. Until such time as any Owner shall receive such a notice of the address of a new Owner, the previous Owner (or, if no such previous Owner is known, Developer) shall be deemed to be the agent for any such new



Owner for purposes of notices hereunder. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the following addresses:

If to Developer: Post Office Box 1003 [zip code 28201-1003] (if delivered by certified or registered mail)  
400 South Tryon Street, Suite 1300 [zip code 28202] (if personally delivered or delivered by overnight courier service)  
Charlotte, North Carolina

Each Owner of a Shopping Center Parcel or an Outparcel shall have the right from time to time and at any time, upon at least ten (10) days prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America; provided, however, such address may not be a post office box.

9.4 Notices to Mortgagees; Mortgagee Cure Rights. In the event the Owner of any Shopping Center Parcel or Outparcel provides any other Owner with notice of the name and address of the holder or beneficiary of any mortgage or deed of trust on all or any part of such Owner's Shopping Center Parcel or Outparcel, such other Owner, when giving notice or demand of any matter hereunder, shall provide a copy of such notice or demand to such holder or beneficiary of said mortgage or deed of trust and, in the case of any default by the Owner whose Shopping Center Parcel or Outparcel is subject to such mortgage or deed of trust, the non-defaulting Owner(s) shall allow said holder or beneficiary the same period of time as the Defaulting Owner is allowed under the terms of this Declaration to cure such default, and the non-defaulting Owner(s) shall not exercise any right which it or they may have hereunder until such cure period for said holder or beneficiary shall have lapsed.

9.5 Developer's Rights Assignable. All rights, powers, privileges, and reservations of Developer herein contained may be assigned to any Person provided such Person must be an Owner of one or more Shopping Center Parcels which will and does assume the duties and responsibilities of Developer pertaining to the particular Developer's rights, powers, privileges and reservations assigned; and upon any such Person evidencing its consent in writing to accept such assignment and assume such duties and responsibilities, he, she or it shall, to the extent of such assignment, have the same rights, powers, privileges and reservations and be subject to the same obligations and duties as are given to and apply to Developer herein. However, the mere sale, ground lease or other conveyance of Shopping Center Parcels by Developer shall not constitute an assignment to the purchaser(s), lessee(s) or transferees thereof of the rights, powers and reservations of Developer hereunder unless expressly stated otherwise in any such instrument of sale, ground lease or conveyance. Any assignment or appointment made under this Section 9.5 shall be in recordable form and shall be recorded in the public real estate records in Mecklenburg County, North Carolina. With respect to any rights, powers, privileges and reservations of Developer which are hereafter exclusively assigned to (and assumed by) any Person by Developer hereunder pursuant to the terms of this Section 9.5, such assignee shall thereafter be deemed to be the Developer under this Declaration; and the Owners shall then look solely to such assignee in connection with the performance of any responsibilities and obligations of Developer encompassed by such rights, powers, privileges and reservations so assigned. Provided, however, the assignor shall remain liable for a period of two (2) years after the effective date of assignment with regard to the performance by Developer of any obligations under this Declaration that matured and were required (by the terms of this Declaration) to be performed prior to the effective date of assignment. Notice of any such assignment shall be given to all Owners.

9.6 Waiver of Minor Violations. Developer shall have the right to waive minor violations of the terms of this Declaration and to allow minor variances relative to the terms of this Declaration where the same resulted unintentionally or without gross carelessness on the part of any Owner and are not materially harmful to the Shopping Center. If any such waiver or variance is granted in writing, then thereafter such matters "cured" by such waiver or variance shall no longer be deemed a violation of this Declaration. No waiver or variance granted pursuant to the authority herein contained shall constitute a waiver or variance relative to any provisions of this Declaration as applied to any other situation, Person, Owner or Shopping Center Parcel or Outparcel.

9.7 Condemnation. In the event of a condemnation or a sale in lieu thereof concerning a portion or all of the Property or any Shopping Center Parcel or Outparcel therein, the award or purchase price paid for such taking shall be paid to the Owner of the land so taken (or to such Owner's mortgagees or tenants, as their interests may appear), it being the intent of any other Owner who might have an easement or other property interest or right under this Declaration in the land so taken to release and/or waive such property interest or right with respect to such award or purchase price; provided, however, such other Owner(s) shall have the right to seek an award or compensation for the loss of its or their easement rights to the extent such award or compensation paid or allocated for such loss does not reduce or diminish the amount paid to the Owner owning such land. Furthermore, in the event of a condemnation or a sale in lieu thereof concerning a portion of the Property or the Adjacent Tract, all defined terms in this Declaration which include the portion of the Property or the Adjacent Tract being condemned or sold in lieu of condemnation shall be deemed automatically amended (as of the effective date of such condemnation or sale in lieu thereof) for all purposes under this Declaration to exclude such area condemned or sold in lieu thereof.

9.8 Consents. Whenever Developer's or an Owner's consent or approval is required under or pursuant to this Declaration, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval shall be made based on a standard of reasonableness.

9.9 Covenants Run with the Land. The terms of this Declaration and all easements established by this Declaration shall constitute covenants running with, and shall be appurtenant to, the land affected. All terms of this Declaration and all easements established by this Declaration shall inure to the benefit of and be binding upon the parties which have an interest in the benefitted or burdened land and their respective successors and assigns in title. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

9.10 Singular and Plural. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

9.11 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

9.12 Not a Public Dedication. Nothing herein contained (including, without limitation, the attachment of the Site Plan and portions of the Site Plan as exhibits hereto) shall be deemed to be a gift or dedication of any portion of the Property or of any Shopping Center Parcel or Outparcel (or portion thereof) to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Owner of any Shopping Center Parcel or Outparcel shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

9.13 Excusable Delays. Whenever performance is required of the Owner of any Shopping Center Parcel or Outparcel hereunder, that Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, if completion of performance shall be delayed at any time by reason of weather of unusual severity and/or duration; acts of God; war (declared or undeclared); civil commotion; riots, strikes, lockouts, picketing or other labor disputes; mob violence; sabotage; malicious mischief; failure of transportation; unavailability or shortage of labor, equipment or materials; fire or other casualty; condemnation or public requisition; governmental delays, restrictions or controls; or other causes beyond the reasonable control of the party responsible for such performance, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. Notwithstanding the foregoing, unless the party entitled to such extension shall give notice to the other interested party(s) of its claim to such extension within thirty (30) days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice. Lack of adequate funds or financial inability to perform shall not be deemed a cause beyond a party's reasonable control for purposes of this Section 9.13.

9.14 Severability. Invalidation of any of the provisions contained in this Declaration or of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person, and the same shall remain in full force and effect.

9.15 Amendments. This Declaration may be amended by, and only by, a written agreement which shall be deemed effective only when recorded in the public real estate records in Mecklenburg County, North Carolina, and executed by the Owner of each Shopping Center Parcel and each Outparcel. In addition, no amendment shall be binding upon any party holding any mortgage or deed of trust with respect to a Shopping Center Parcel or an Outparcel until such holder has consented to such amendment. Nothing herein shall prohibit or restrict the Owners of any Shopping Center Parcels and/or Outparcels from entering into separate agreements which, as between such parties only, modify their respective rights and obligations under this Declaration.

9.16 Captions and Capitalized Terms. The captions preceding the text of each article and section herein are included for convenience of reference only. Captions shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

9.17 Minimization of Damages. In all situations arising out of this Declaration, all parties shall attempt to avoid and minimize the damages resulting from the conduct of any other party. The

Owner of each Shopping Center Parcel and each Outparcel shall take all reasonable measures to effectuate the provisions of this Declaration.

9.18 Declaration Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Declaration shall entitle any party to cancel, rescind, or otherwise terminate this Declaration. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

9.19 Time. Time is of the essence respecting this Declaration.

9.20 Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

9.21 Governing Law. This Declaration shall be construed in accordance with the laws of the State of North Carolina.

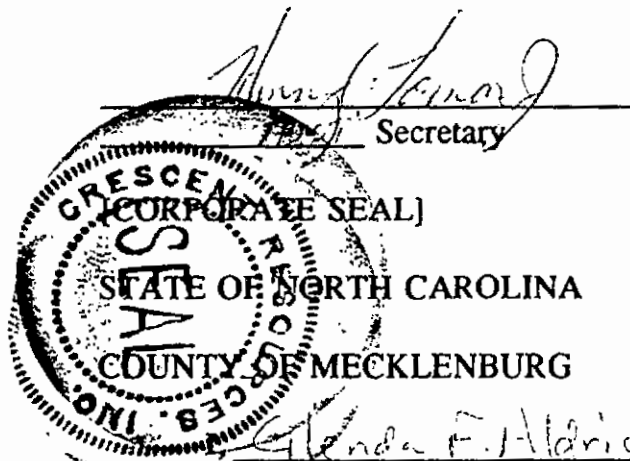
IN WITNESS WHEREOF, Developer has caused this Declaration to be executed effective as of the day and year first above written.

DEVELOPER:

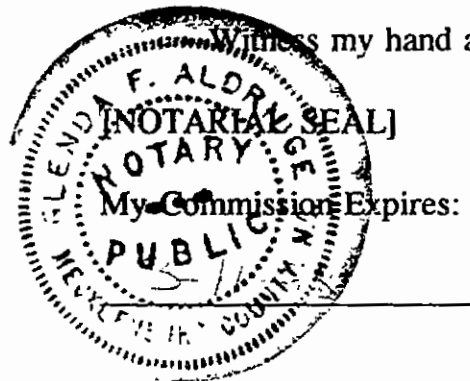
CRESCENT RESOURCES, INC., a South Carolina corporation

By: [Signature]  
President

ATTEST:



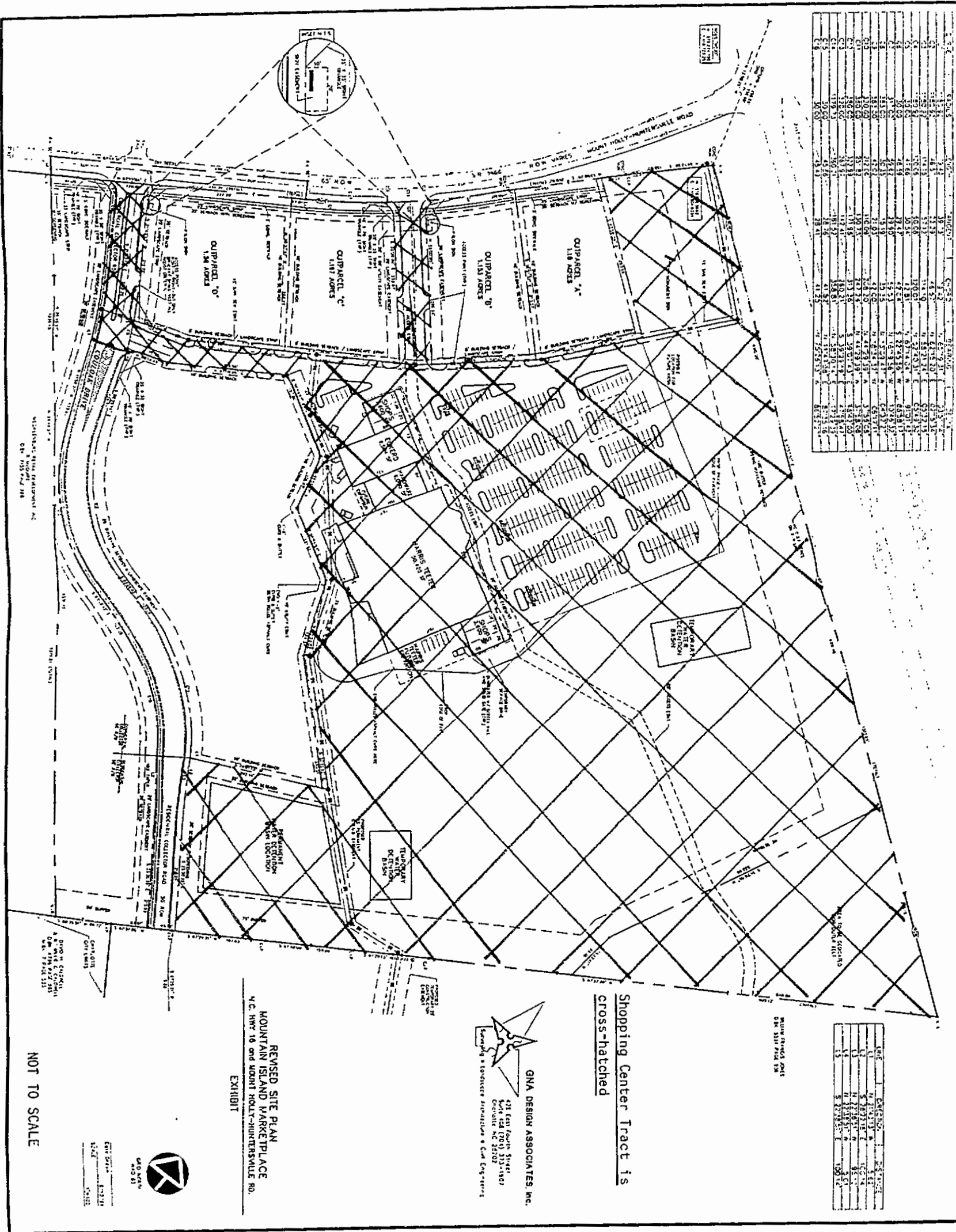
Glenda F. Aldridge Notary Public of Mecklenburg County, North Carolina, do hereby certify that Henry C. Lumar, Jr. personally came before me this day and acknowledged that [s]he is the Asst Secretary of Crescent Resources, Inc. (the "Corporation"), and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed by Fred A. Byers as Vice President of the Corporation, sealed with its corporate seal and attested by himself/herself as its Asst Secretary.



[Signature]  
NOTARY PUBLIC



**Exhibit B**  
**Shopping Center Tract**



NO.	DESCRIPTION	AREA	PERCENTAGE	ACRES
1	Parcel A	118.00	62.50	118.00
2	Parcel B	11.00	6.11	11.00
3	Parcel C	1.00	0.56	1.00
4	Parcel D	1.00	0.56	1.00
5	Parcel E	1.00	0.56	1.00
6	Parcel F	1.00	0.56	1.00
7	Parking Area	1.00	0.56	1.00
8	Building	1.00	0.56	1.00
9	Utility Lines	1.00	0.56	1.00
10	Easements	1.00	0.56	1.00
11	Other	1.00	0.56	1.00
12	Total	139.00	76.07	139.00

LINE	DESCRIPTION	AREA
1	Parcel A	118.00
2	Parcel B	11.00
3	Parcel C	1.00
4	Parcel D	1.00
5	Parcel E	1.00
6	Parcel F	1.00
7	Parking Area	1.00
8	Building	1.00
9	Utility Lines	1.00
10	Easements	1.00
11	Other	1.00
12	Total	139.00

**Shopping Center Tract is**  
**cross-hatched**

**GNA DESIGN ASSOCIATES, INC.**  
131 East Park Street  
Suite 404 (704) 333-1807  
Charlotte, NC 28202  
Planning & Landmarks Architecture & Civil Engineering

**REVISED SITE PLAN**  
**MOUNTAIN ISLAND MARKETPLACE**  
N.C. HWY 16 and MOUNT HOLLY-HUNTERSVALE RD.  
**EXHIBIT**

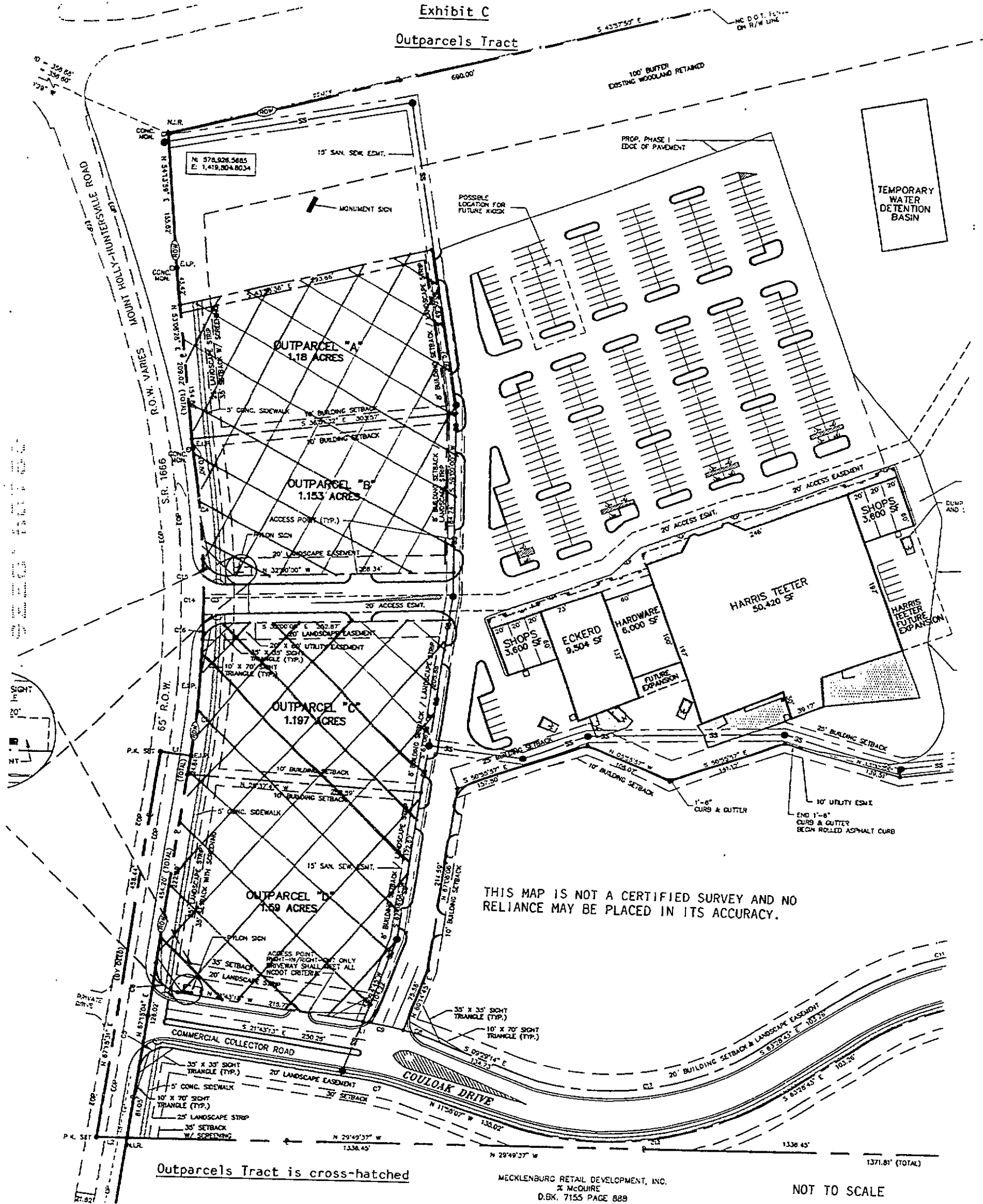
**NOT TO SCALE**

**THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY.**

DATE: 05/14/2014  
BY: GNA

Exhibit C

Outparcels Tract



THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY.

Outparcels Tract is cross-hatched

MECKLENBURG RETAIL DEVELOPMENT, INC. & McQUIRE D.B.K. 7155 PAGE 888

NOT TO SCALE

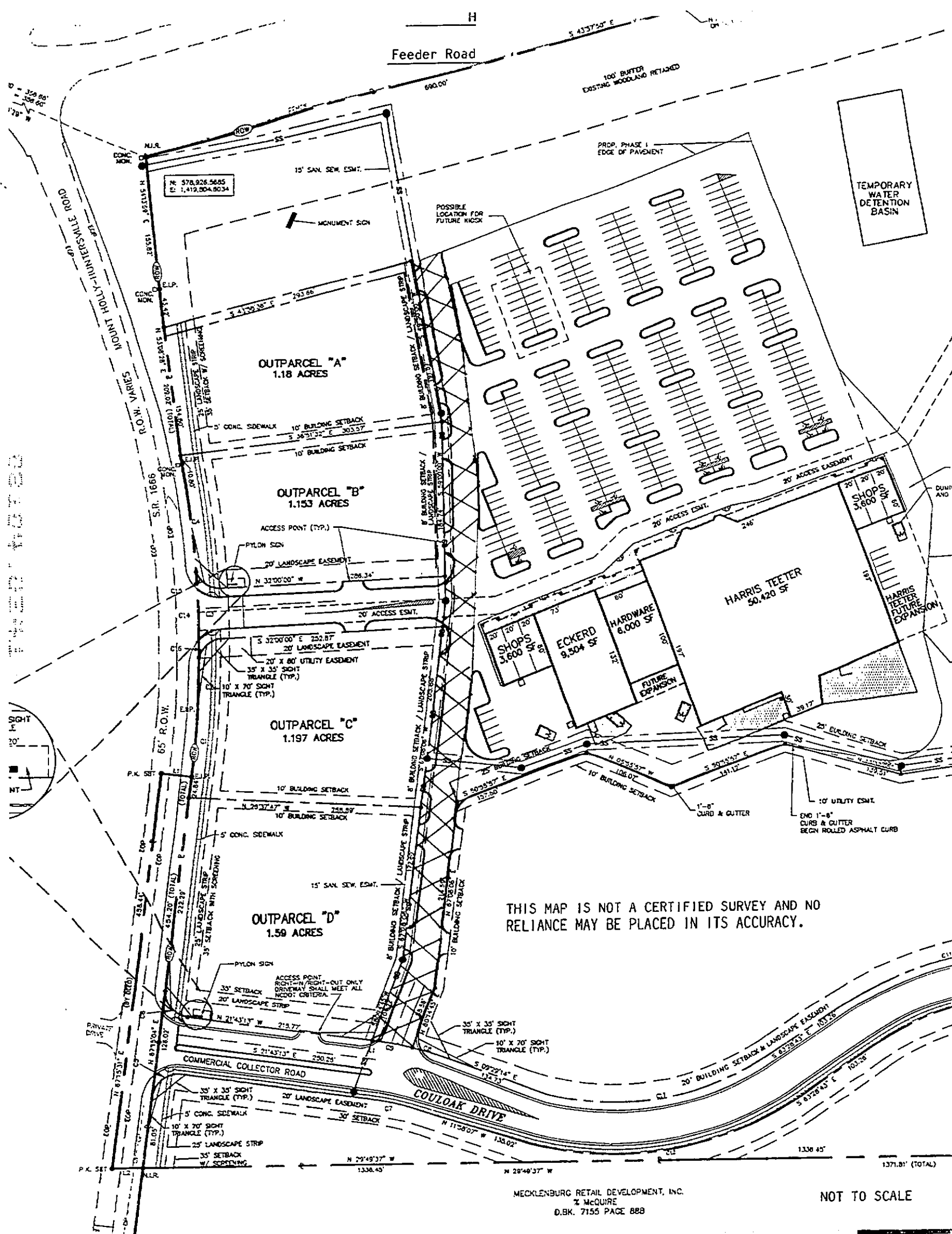












Feeder Road

S 43°37'50" E  
100' BUFFER  
EXISTING WOODLAND RETAINED

TEMPORARY  
WATER  
DETENTION  
BASIN

OUTPARCEL "A"  
1.18 ACRES

OUTPARCEL "B"  
1.153 ACRES

OUTPARCEL "C"  
1.197 ACRES

OUTPARCEL "D"  
1.59 ACRES

HARRIS TEETER  
50,420 SF

SHOPS  
3,600 SF

ECKERD  
9,504 SF

HARDWARE  
6,000 SF

SHOPS  
3,600 SF

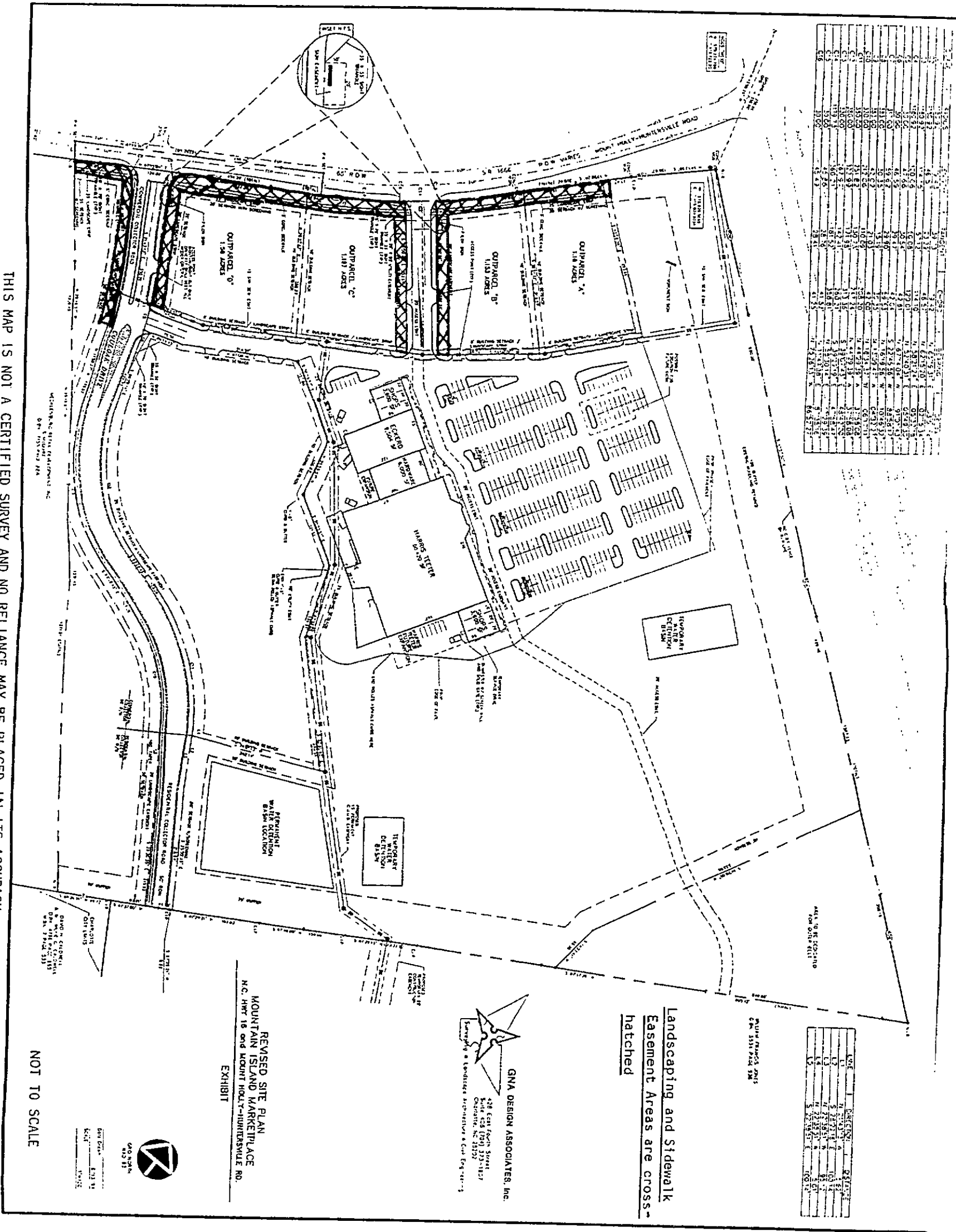
HARRIS  
TEETER  
FUTURE  
EXPANSION

THIS MAP IS NOT A CERTIFIED SURVEY AND NO  
RELIANCE MAY BE PLACED IN ITS ACCURACY.



Exhibit J

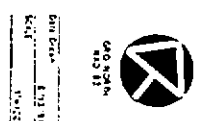
Landscaping and Sidewalk Easement Areas



NO.	AREA	AREA (SQ. FT.)	AREA (SQ. YD.)	PERCENT
1	OUTPARCEL A	118,000	13,444	1.12
2	OUTPARCEL B	113,000	12,811	1.10
3	OUTPARCEL C	118,000	13,444	1.12
4	OUTPARCEL D	118,000	13,444	1.12
5	LANDSCAPING AND SIDEWALK EASEMENT AREAS	1,000,000	113,778	9.88
6	RESERVED	1,000,000	113,778	9.88
7	RESERVED	1,000,000	113,778	9.88
8	RESERVED	1,000,000	113,778	9.88
9	RESERVED	1,000,000	113,778	9.88
10	RESERVED	1,000,000	113,778	9.88
11	RESERVED	1,000,000	113,778	9.88
12	RESERVED	1,000,000	113,778	9.88
13	RESERVED	1,000,000	113,778	9.88
14	RESERVED	1,000,000	113,778	9.88
15	RESERVED	1,000,000	113,778	9.88
16	RESERVED	1,000,000	113,778	9.88
17	RESERVED	1,000,000	113,778	9.88
18	RESERVED	1,000,000	113,778	9.88
19	RESERVED	1,000,000	113,778	9.88
20	RESERVED	1,000,000	113,778	9.88
21	RESERVED	1,000,000	113,778	9.88
22	RESERVED	1,000,000	113,778	9.88
23	RESERVED	1,000,000	113,778	9.88
24	RESERVED	1,000,000	113,778	9.88
25	RESERVED	1,000,000	113,778	9.88
26	RESERVED	1,000,000	113,778	9.88
27	RESERVED	1,000,000	113,778	9.88
28	RESERVED	1,000,000	113,778	9.88
29	RESERVED	1,000,000	113,778	9.88
30	RESERVED	1,000,000	113,778	9.88
31	RESERVED	1,000,000	113,778	9.88
32	RESERVED	1,000,000	113,778	9.88
33	RESERVED	1,000,000	113,778	9.88
34	RESERVED	1,000,000	113,778	9.88
35	RESERVED	1,000,000	113,778	9.88
36	RESERVED	1,000,000	113,778	9.88
37	RESERVED	1,000,000	113,778	9.88
38	RESERVED	1,000,000	113,778	9.88
39	RESERVED	1,000,000	113,778	9.88
40	RESERVED	1,000,000	113,778	9.88
41	RESERVED	1,000,000	113,778	9.88
42	RESERVED	1,000,000	113,778	9.88
43	RESERVED	1,000,000	113,778	9.88
44	RESERVED	1,000,000	113,778	9.88
45	RESERVED	1,000,000	113,778	9.88
46	RESERVED	1,000,000	113,778	9.88
47	RESERVED	1,000,000	113,778	9.88
48	RESERVED	1,000,000	113,778	9.88
49	RESERVED	1,000,000	113,778	9.88
50	RESERVED	1,000,000	113,778	9.88
51	RESERVED	1,000,000	113,778	9.88
52	RESERVED	1,000,000	113,778	9.88
53	RESERVED	1,000,000	113,778	9.88
54	RESERVED	1,000,000	113,778	9.88
55	RESERVED	1,000,000	113,778	9.88
56	RESERVED	1,000,000	113,778	9.88
57	RESERVED	1,000,000	113,778	9.88
58	RESERVED	1,000,000	113,778	9.88
59	RESERVED	1,000,000	113,778	9.88
60	RESERVED	1,000,000	113,778	9.88
61	RESERVED	1,000,000	113,778	9.88
62	RESERVED	1,000,000	113,778	9.88
63	RESERVED	1,000,000	113,778	9.88
64	RESERVED	1,000,000	113,778	9.88
65	RESERVED	1,000,000	113,778	9.88
66	RESERVED	1,000,000	113,778	9.88
67	RESERVED	1,000,000	113,778	9.88
68	RESERVED	1,000,000	113,778	9.88
69	RESERVED	1,000,000	113,778	9.88
70	RESERVED	1,000,000	113,778	9.88
71	RESERVED	1,000,000	113,778	9.88
72	RESERVED	1,000,000	113,778	9.88
73	RESERVED	1,000,000	113,778	9.88
74	RESERVED	1,000,000	113,778	9.88
75	RESERVED	1,000,000	113,778	9.88
76	RESERVED	1,000,000	113,778	9.88
77	RESERVED	1,000,000	113,778	9.88
78	RESERVED	1,000,000	113,778	9.88
79	RESERVED	1,000,000	113,778	9.88
80	RESERVED	1,000,000	113,778	9.88
81	RESERVED	1,000,000	113,778	9.88
82	RESERVED	1,000,000	113,778	9.88
83	RESERVED	1,000,000	113,778	9.88
84	RESERVED	1,000,000	113,778	9.88
85	RESERVED	1,000,000	113,778	9.88
86	RESERVED	1,000,000	113,778	9.88
87	RESERVED	1,000,000	113,778	9.88
88	RESERVED	1,000,000	113,778	9.88
89	RESERVED	1,000,000	113,778	9.88
90	RESERVED	1,000,000	113,778	9.88
91	RESERVED	1,000,000	113,778	9.88
92	RESERVED	1,000,000	113,778	9.88
93	RESERVED	1,000,000	113,778	9.88
94	RESERVED	1,000,000	113,778	9.88
95	RESERVED	1,000,000	113,778	9.88
96	RESERVED	1,000,000	113,778	9.88
97	RESERVED	1,000,000	113,778	9.88
98	RESERVED	1,000,000	113,778	9.88
99	RESERVED	1,000,000	113,778	9.88
100	RESERVED	1,000,000	113,778	9.88

THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY.

NOT TO SCALE



REVISED SITE PLAN  
MOUNTAIN ISLAND MARKETPLACE  
N.C. HWY 18 AND MOUNT HOLY-HUNTERSVILLE RD.  
EXHIBIT

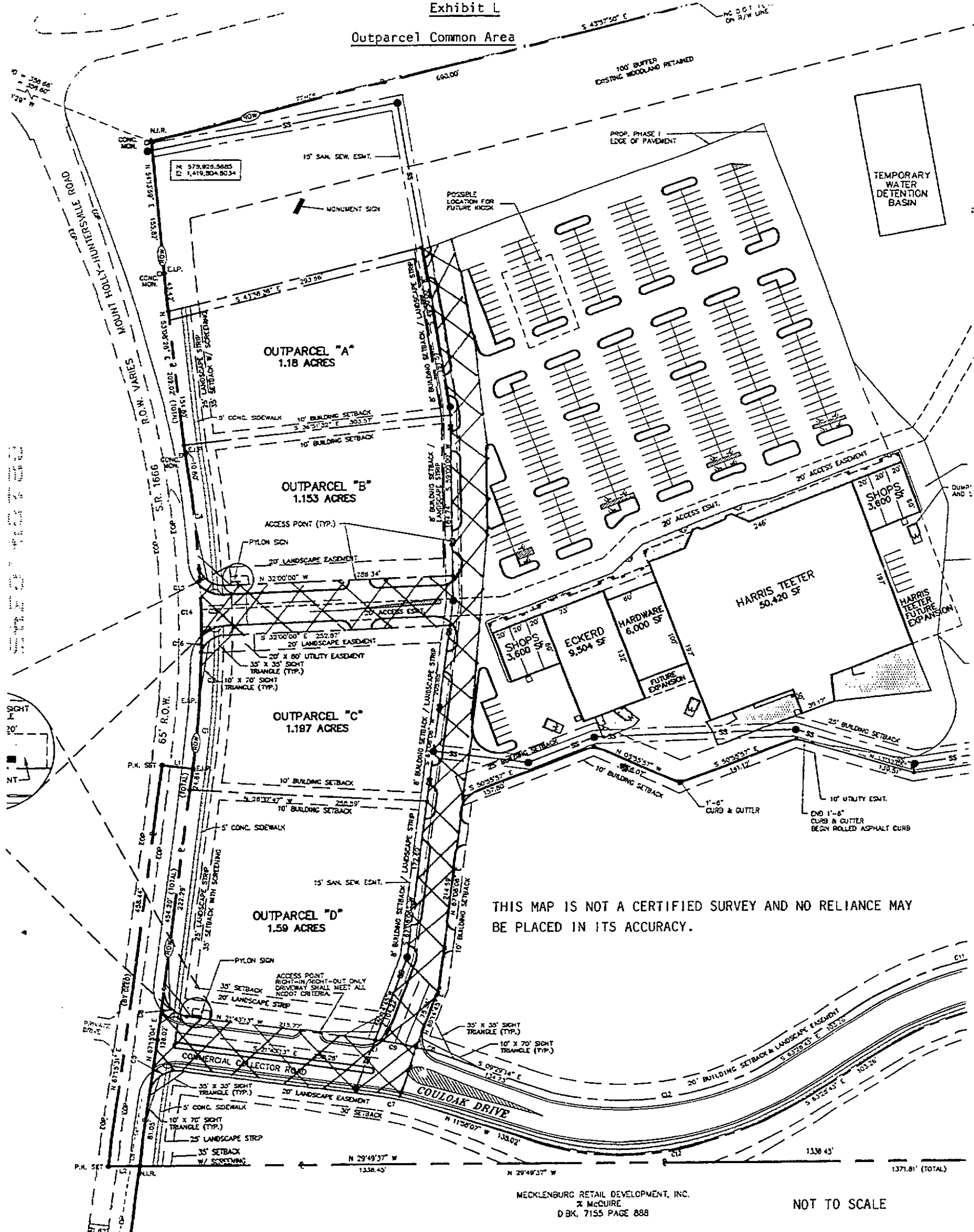
GMA DESIGN ASSOCIATES, INC.  
428 East Fern Street  
Suite 108 (204) 375-1827  
Charlotte, NC 28202  
Landscape & Landmarks Architecture & Civil Engineering

Landscaping and Sidewalk  
Easement Areas are cross-  
hatched

USE	AREA (SQ. FT.)	AREA (SQ. YD.)	PERCENT
1	118,000	13,444	1.12
2	113,000	12,811	1.10
3	118,000	13,444	1.12
4	118,000	13,444	1.12
5	1,000,000	113,778	9.88
6	1,000,000	113,778	9.88
7	1,000,000	113,778	9.88
8	1,000,000	113,778	9.88
9	1,000,000	113,778	9.88
10	1,000,000	113,778	9.88
11	1,000,000	113,778	9.88
12	1,000,000	113,778	9.88
13	1,000,000	113,778	9.88
14	1,000,000	113,778	9.88
15	1,000,000	113,778	9.88
16	1,000,000	113,778	9.88
17	1,000,000	113,778	9.88
18	1,000,000	113,778	9.88
19	1,000,000	113,778	9.88
20	1,000,000	113,778	9.88
21	1,000,000	113,778	9.88
22	1,000,000	113,778	9.88
23	1,000,000	113,778	9.88
24	1,000,000	113,778	9.88
25	1,000,000	113,778	9.88
26	1,000,000	113,778	9.88
27	1,000,000	113,778	9.88
28	1,000,000	113,778	9.88
29	1,000,000	113,778	9.88
30	1,000,000	113,778	9.88
31	1,000,000	113,778	9.88
32	1,000,000	113,778	9.88
33	1,000,000	113,778	9.88
34	1,000,000	113,778	9.88
35	1,000,000	113,778	9.88
36	1,000,000	113,778	9.88
37	1,000,000	113,778	9.88
38	1,000,000	113,778	9.88
39	1,000,000	113,778	9.88
40	1,000,000	113,778	9.88
41	1,000,000	113,778	9.88
42	1,000,000	113,778	9.88
43	1,000,000	113,778	9.88
44	1,000,000	113,778	9.88
45	1,000,000	113,778	9.88
46	1,000,000	113,778	9.88
47	1,000,000	113,778	9.88
48	1,000,000	113,778	9.88
49	1,000,000	113,778	9.88
50	1,000,000	113,778	9.88
51	1,000,000	113,778	9.88
52	1,000,000	113,778	9.88
53	1,000,000	113,778	9.88
54	1,000,000	113,778	9.88
55	1,000,000	113,778	9.88
56	1,000,000	113,778	9.88
57	1,000,000	113,778	9.88
58	1,000,000	113,778	9.88
59	1,000,000	113,778	9.88
60	1,000,000	113,778	9.88
61	1,000,000	113,778	9.88
62	1,000,000	113,778	9.88
63	1,000,000	113,778	9.88
64	1,000,000	113,778	9.88
65	1,000,000	113,778	9.88
66	1,000,000	113,778	9.88
67	1,000,000	113,778	9.88
68	1,000,000	113,778	9.88
69	1,000,000	113,778	9.88
70	1,000,000	113,778	9.88
71	1,000,000	113,778	9.88
72	1,000,000	113,778	9.88
73	1,000,000	113,778	9.88
74	1,000,000	113,778	9.88
75	1,000,000	113,778	9.88
76	1,000,000	113,778	9.88
77	1,000,000	113,778	9.88
78	1,000,000	113,778	9.88
79	1,000,000	113,778	9.88
80	1,000,000	113,778	9.88
81	1,000,000	113,778	9.88
82	1,000,000	113,778	9.88
83	1,000,000	113,778	9.88
84	1,000,000	113,778	9.88
85	1,000,000	113,778	9.88
86	1,000,000	113,778	9.88
87	1,000,000	113,778	9.88
88	1,000,000	113,778	9.88
89	1,000,000	113,778	9.88
90	1,000,000	113,778	9.88
91	1,000,000	113,778	9.88
92	1,000,000	113,778	9.88
93	1,000,000	113,778	9.88
94	1,000,000	113,778	9.88
95	1,000,000	113,778	9.88
96	1,000,000	113,778	9.88
97	1,000,000	113,778	9.88
98	1,000,000	113,778	9.88
99	1,000,000	113,778	9.88
100	1,000,000	113,778	9.88



Outparcel Common Area



THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY.



CONSENT AND SUBORDINATION OF MORTGAGEE

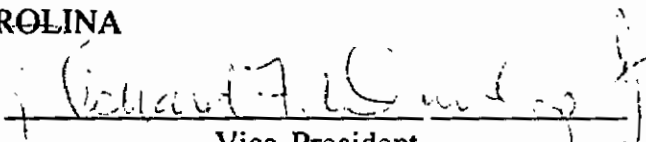
First Union National Bank of North Carolina ("First Union"), being the Beneficiary under that certain Deed of Trust (the "Deed of Trust") from Crescent Resources, Inc. to Richard F. Dunlap, Jr., as Trustee, recorded in Book 7979 at Page 989 in the public records of Mecklenburg County, North Carolina, does hereby consent to the recordation of the foregoing Declaration of Easements, Covenants, Conditions and Restrictions (the "Declaration") and to the terms and provisions thereof; and First Union does hereby consent to the subordination of the lien of the Deed of Trust to the provisions of the Declaration. The execution of this Consent and Subordination of Mortgagee by First Union shall not be deemed or construed to have the effect of creating between First Union and Crescent Resources, Inc. the relationship of partnership or of joint venture nor shall anything contained hereunder be deemed to impose upon First Union any of the liabilities, duties or obligations of Crescent Resources, Inc. under the Declaration. First Union executes this Consent and Subordination of Mortgagee solely for the purposes set forth herein. The said Trustee under the Deed of Trust also joins in and executes this Consent and Subordination as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

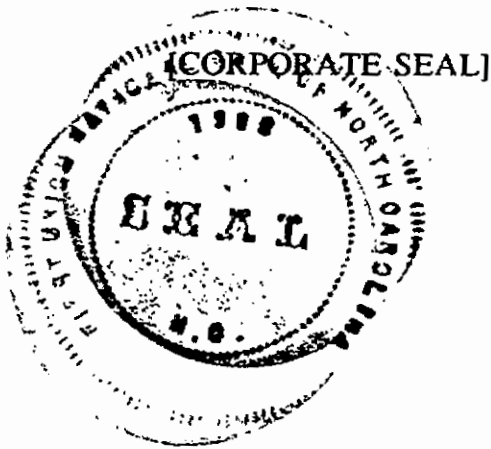
ATTEST:

  
Assistant Secretary

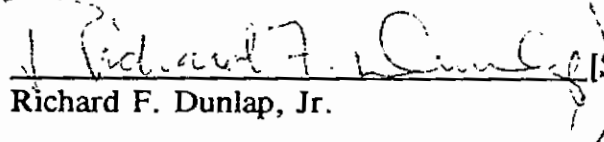
BENEFICIARY:

FIRST UNION NATIONAL BANK OF NORTH  
CAROLINA

By:   
Vice President



TRUSTEE:

 [SEAL]  
Richard F. Dunlap, Jr. [SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 31<sup>st</sup> day of March, 1995, personally came before me Richard F. Dunlap, Jr., who, being by me duly sworn, says that s/he is \_\_\_\_\_ Vice President of FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association, that the seal affixed to the foregoing instrument in writing is the corporate seal of the Association, and that said writing was signed and sealed by him/her in behalf of said Association by its authority duly given. And the said \_\_\_\_\_ Vice President acknowledged the said writing to be the act and deed of said Association.

Witness my hand and notarial seal, this 31<sup>st</sup> day of March, 1995.



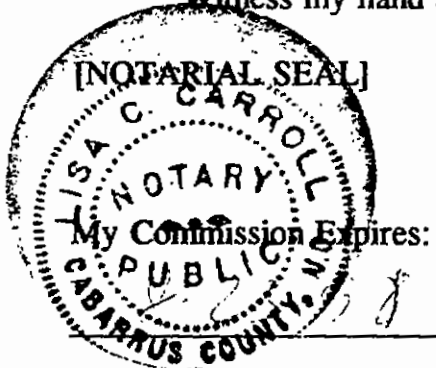
Lisa C. Carroll  
NOTARY PUBLIC

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Lisa C. Carroll, a Notary Public for said County and State, do hereby certify that Richard F. Dunlap, Jr., Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this 31<sup>st</sup> day of March, 1995.



Lisa C. Carroll  
NOTARY PUBLIC

State of North Carolina, County of Mecklenburg

The foregoing certificate(s) of Gleson G. Aldridge and Lisa C. Carroll

Notary(ies) Public is/are certified to be correct. This 31<sup>st</sup> day of April, 1995.

JUDITH A. GIBSON, REGISTER OF DEEDS By: Mary A. Poay Deputy Register of Deeds

REC-111-2