



**Planning Advisory Board
Zoning Commission
Civic Center 2 Park Drive South, Great Falls, MT
Commission Chambers Room 206
December 11, 2018**

Open Meeting

- 1. Call to Order 3:00 P.M.**
- 2. Roll Call - Board Introductions**
 - Peter Fontana - Chair**
 - Michael Wedekind - Vice Chair**
 - Dave Bertelsen**
 - Scot Davis**
 - Anthony Houtz**
 - Tory Mills**
 - Charles Pankratz**
 - Patrick Sullivan**
 - Amanda Thompson**
- 3. Recognition of Staff**
- 4. Approval of Meeting Minutes -November 27, 2018**

Board Actions Requiring Public Hearing

Board Actions Not Requiring Public Hearing

- 5. Minor Subdivision - Holiday Village Mall, addressed as 1200 10th Avenue South.**

Communications

- 6. Next Meeting Agenda- Tuesday, January 8, 2019**
 - None**
- 7. Petitions & Applications Received**
 - Beehive Homes- Annexation, Establishment of Zoning, & Non-administrative Plat**

Petitions Reviewed by the City Commission

- None**

- 8. Miscellaneous Reports and Announcements from Planning Board**

Public Comment

Adjournment

(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.) Commission meetings are televised on cable channel 190. If a video recording is available it will be posted on the City's website at <https://greatfallsmt.net> after the meeting. City Commission meetings are re-aired on cable channel 190 the following Wednesday morning at 10 am, and the following Tuesday evening at 7 pm.



Item: Approval of Meeting Minutes - November 27, 2018

Concurrences:

ATTACHMENTS:

- ▢ PAB Draft Minutes 11.27.18

**MINUTES OF THE MEETING
OF THE
GREAT FALLS PLANNING ADVISORY BOARD/ZONING COMMISSION
November 27, 2018**

CALL TO ORDER

The regular meeting of the Great Falls Planning Advisory Board/Zoning Commission was called to order by Chair Pete Fontana at 3:00 p.m. in the Commission Chambers of the Civic Center.

ROLL CALL & ATTENDANCE

Planning Board Members present:

Pete Fontana, Chair
Michael Wedekind, Vice Chair
Dave Bertelsen
Tory Mills
Charles Pankratz
Patrick Sullivan
Amanda Thompson

Planning Board Members absent:

Scot Davis
Anthony Houtz

Planning Staff Members present:

Craig Raymond, Director P&CD
Thomas Micuda, Deputy Director P&CD
Andrew Finch, Sr. Transportation Planner
Erin Borland, Planner II
Alex Dachs, Planner II
Brad Eatherly, Planner I
Connie Tryon, Sr. Admin Assistant

Other Staff present:

Joseph Cik, Assistant City Attorney
Dave Dobbs, City Engineer

Mr. Raymond affirmed a quorum of the Board was present.

MINUTES

Chair Pete Fontana asked if there were any comments or corrections to the minutes of the meeting held on October 9, 2018. Mr. Fontana noted a correction, and Mr. Bertelsen moved to approve the minutes as corrected. Mr. Wedekind seconded, and all being in favor, the minutes were approved as corrected.

Recommendation to City Commission for two open positions on the Planning Advisory Board/Zoning Commission

There was discussion on the five applications submitted for the two open seats on the Board. Mr. Micuda said he found them all to be qualified. There was also discussion on the potential for the applicants not selected for the Planning Board to be considered for open positions on other Boards. Mr. Sullivan and Mr. Fontana expressed support for applicant Samantha Shinaberger.

MOTION: That the Planning Advisory Board recommend the City Commission appoint Kelly Buschmeyer to one of the two vacant seats on the Board.

Made by: Mr. Fontana
Second: Mr. Sullivan

VOTE: All in favor, the motion carried.

MOTION: That the Planning Advisory Board recommend the City Commission appoint Samantha Shinaberger to one of the two vacant seats on the Board.

Made by: Mr. Bertelsen
Second: Mr. Wedekind

VOTE: All if favor, the motion carried.

BOARD ACTIONS REQUIRING PUBLIC HEARING

Conditional Use Permit 901 9th Street North

Brad Eatherly, Planner I, said the request before the Board is to allow for a land use of "Indoor Sports and Recreation" for a property located at 901 9th Street North. He reviewed site photos, as well as the Zoning Map, and said the proposed property is zoned M-2 Mixed-use Transitional. A portion of the building is currently being used for a gymnastics training facility, and Mr. Eatherly said the remaining portions of the building are proposed to be used for a children's recreation area and laser tag.

Mr. Eatherly said strict application of the code would require the square footage of the proposed laser-tag area and children's recreation area to have 63 parking spaces. Staff does not feel that number is necessary as the number of customers using the proposed development for laser tag and recreation is low, and it will have little overlap with the existing gymnastics training center. There are currently 25 spaces and the applicant is proposing 15 additional spaces, which staff feels is adequate.

Staff has received no comments involving the property. Mr. Eatherly reviewed the Basis of Decision as listed in the staff report, and reviewed some conditions required as part of the conditional use, including parking requirements and approval from the Fire Marshall to allow for low-light recreation such as laser tag. Staff supports this application and recommends approval.

PETITIONER'S PRESENTATION

Dan Bateman, 3313 5th Street NE, said he was proud of the improvements they have already made to the building, and also expressed his gratitude to the City for helping him work through the project. He said he would really like to keep the building geared towards family uses for kids, and thanked the Board for their consideration.

PUBLIC QUESTION AND ANSWER SESSION

Mr. Fontana inquired about the zoning of the building itself, and asked for clarification on why the building was zoned multiple ways. Mr. Eatherly said the building is actually zoned Mixed-use Transitional, as well as Light Industrial. Mr. Micuda said this is something that will be cleaned up in the future so the building will not be in multiple zones.

Mr. Fontana asked the applicant if he had obtained approval from the Fire Marshall. Mr. Bateman said he is in process of installing the additional requirements to obtain his signature.

PUBLIC COMMENT

Jeff Erickson, 3420 8th Avenue North, said he is a co-owner of the proposed recreation business and stated Great Falls really needs a family recreation site, which is exactly what they provide. He spoke in favor of the project.

BOARD DISCUSSION AND ACTION

MOTION: That the Zoning Commission recommend the City Commission approve the Conditional Use Permit subject to the applicant fulfilling the listed Conditions of Approval.

Made by: Mr. Sullivan
Second: Mr. Wedekind

Mr. Sullivan expressed his excitement for the proposed project.

Mr. Fontana applauded the applicants for developing the vacant building.

Mr. Bertelsen also commended City staff for working with applicants to reach a compromise to make the development work.

VOTE: All in favor, the motion carried.

Annexation and Establishment of Zoning -Talcott Construction

Erin Borland, Planner II, said Talcott Construction currently owns two properties adjacent to each other. One resides in City limits which is the office location for the company, and the other resides in County jurisdiction which contains the shop for the company. The request is to annex the portion of the property that contains the shop, approximately 6 of the 11 acres, in conjunction with a boundary line adjustment that will revise the lot configuration to have the shop and office on one lot, and leave the remaining area in County jurisdiction. Ms. Borland explained that the boundary line adjustment is an administrative review, so today the Board will only consider the annexation request, as well as a request to establish I-2 Heavy Industrial zoning.

Ms. Borland reviewed the Findings of Fact as listed in the staff report. She said staff recommends approval of the annexation and establishment of zoning.

PETITIONER'S PRESENTATION

There was no presentation.

PUBLIC QUESTION AND ANSWER SESSION

There was discussion on the boundary line adjustment, as well as the access roads to the property.

PUBLIC COMMENT

There was no public comment.

BOARD DISCUSSION AND ACTION

MOTION: That the Planning Advisory Board recommend the City Commission approve the annexation of the subject property as legally described in the staff report, the Draft Improvement Agreement, and the accompanying Findings of Fact/Basis of Decision, subject to the Conditions of Approval being fulfilled by the applicant.

Made by: Mr. Pankratz
Second: Mr. Bertelsen

VOTE: All in favor, the motion carried.

MOTION II: That the Zoning Commission recommend the City Commission approve the establishment of I-2 Heavy Industrial zoning to the subject property as legally described in the staff report, and the accompanying Findings of Fact/Basis of Decision, subject to the Conditions of Approval being fulfilled by the applicant.

Made by: Mr. Sullivan
Second: Mr. Mills

VOTE: All in favor, the motion carried.

BOARD ACTIONS NOT REQUIRING PUBLIC HEARING

Minor Subdivision- West Bank Landing

Erin Borland, Planner II, said the applicant is requesting a minor subdivision of Lot 2 in the West Bank Landing development. Six parcels make up the entire development, and Ms. Borland reviewed an Aerial Map of the development and pointed out Lot 2, where the Peak Fitness facility currently sits.

The applicant is proposing to subdivide Lot 2 at West Bank Landing into 4 individual parcels, all of which have utilities already constructed. The proposed Lot 1 is the site of the Peak Health and Wellness Center, the proposed Lot 2 is the site of the Mixed Use 2 building, the proposed Lot 3 is the site of the Mixed Use 1 building, and the proposed Lot 4 is the site of a future Quick Service Restaurant building. The proposed newly created lots conform to the M-2 Mixed Used Transitional district development standards.

Ms. Borland reviewed the Findings of Fact as listed in the staff report and said staff supports the application for a minor subdivision.

PUBLIC COMMENT

There was no public comment.

BOARD DISCUSSION AND ACTION

MOTION: That the Planning Advisory Board recommend the City Commission approve the minor subdivision of Lot 2 of West Bank Landing, as legally described in the Staff report, and the accompanying Findings of Fact, subject to the Conditions of Approval being fulfilled by the applicants.

Made by: Mr. Sullivan
Second: Mr. Pankratz

VOTE: All in favor, the motion carried.

2018 Memorandum of Agreement for Great Falls Metropolitan Transportation Planning Process

Andrew Finch, Senior Transportation Planner, said the agreement is federally mandated and changes are required periodically due to changes in membership on the MPO committees or changes to comply with federal law. The Montana Department of Transportation (MDT) has initiated a revision to the agreement, and the last time the agreement was signed was in 2005. The agreement would add provisions to allow for more flexibility in committee membership. He also pointed out a change regarding the use of performance measures. This language was added to comply with federal law.

BOARD DISCUSSION AND ACTION

There was discussion on transportation planning within the City, road developments, and the way funding affects those decisions. Mr. Sullivan asked why so many buses need to use neighborhood streets, including the one near his home. Mr. Finch noted that this was because the community does not have enough funding to construct the arterial streets needed to assist with carrying this traffic.

MOTION: That the Planning Advisory Board approve the 2018 Memorandum of Agreement for the Great Falls Metropolitan Transportation Planning Process.

Made by: Mr. Bertelsen
Second: Mr. Wedekind

VOTE: All in favor, the motion carried.

Section 5303 FTA Funding Contracts with MDT and the Great Falls Transit District

Mr. Finch said these funding contracts are done yearly in order to pass through funds to the Transit District. The Unified Planning Work Program does include work activities for the Great Falls Transit District. Mr. Finch reviewed what the Transit District will use the allocated funds for during the year.

BOARD DISCUSSION AND ACTION

MOTION: That the Planning Advisory Board approve the current year Section 5303 Contracts with the State of Montana and the Great Falls Transit District.

Made by: Mr. Wedekind
Second: Mr. Mills

VOTE: All in favor, the motion carried.

COMMUNICATIONS

Next Meeting Agenda – Tuesday December 11, 2018

- None

Petitions & Applications Received:

- None

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further business, Chair Pete Fontana adjourned the meeting at 4:15 p.m.

CHAIRMAN

SECRETARY



Date: December 11, 2018

**City of Great Falls
Planning Advisory Board/Zoning Commission Agenda Report**

Item: Minor Subdivision - Holiday Village Mall, addressed as 1200 10th Avenue South.

Initiated By: Holiday Village Partners, LLC

Presented By: Erin Borland, Planner II, Planning and Community Development

Action Requested: Recommendation to the City Commission.

Suggested Motion:

1. Board Member moves:

"I move that the Planning Advisory Board recommend the City Commission (approve/deny) the minor subdivision of Holiday Village Mall, as legally described in the Staff report, and the accompanying Findings of Fact, subject to the Conditions of Approval being fulfilled by the applicant."

2. Board Member calls for a second, discussion, public comment, and calls for the vote.

Staff Recommendation:

Staff recommends approval of the Holiday Village Mall minor subdivision of Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2 and 3, Hillcrest First Addition located in the NE1/4 of Section 13, Township 20 North, Range 3 East, PMM, City of Great Falls, Cascade County, MT, with the following conditions:

Conditions of Approval:

1. The proposed project shall be developed consistent with the conditions in this report, and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. The applicant shall provide an Amended Plat of the subject property which shall incorporate corrections of any errors or omissions noted by Staff.
3. The applicant shall provide an Reciprocal Easement Agreement for the subject property which shall incorporate corrections of any errors or omissions noted by Staff. In addition, a Declaration of Covenants, Conditions and Restrictions is required to be provided that addresses shared parking, access, landscaping, and maintenance. This information can also be submitted as a portion of the Reciprocal

Summary:

The Holiday Village Mall is located on 10th Avenue South on a 30.074 acre parcel. The mall contains several anchor stores as well as many smaller stores. The applicant is proposing to subdivide the property into five lots. This will enable the owner to separate the various existing building ownership groups. The reasons for the subdivision request from the applicant are as follows and have been provided in an attached narrative document:

1. The creation of separate lots for the anchor buildings and outparcel will allow investment in these parcels by new owners.
2. This will allow capital to be reinvested in the interior mall building which is necessary to meet changing needs in a dynamic retail environment and insure the long-term viability of the property.
3. Management and operation of the property as a shopping center will continue to be carried out in a cohesive manner by the mall owner under a Reciprocal Easement Agreement (REA) between the parties.

Background:

Minor Subdivision Request:

The minor subdivision that the applicant is requesting consists of the following:

Lot A-1A: 4.253 Acres
Lot A-1B: 5.538 Acres
Lot A-1C: 0.801 Acres
Lot A-1D: 14.299 Acres
Lot A-1E: 5.1083 Acres

The proposed newly created lots conform to the C-2 General Commercial zoning district development standards outlined in the Land Development Code, which is attached. Demonstration of compliance with these standards has been provided by the applicant in a narrative which has been reviewed by staff and is attached.

The proposed subdivision will create lots where buildings have no setback from property lines. Typically, a zero lot line configuration would require fire separation per the 2012 International Building Code:

706.1.1 Party walls.

Any wall located on a lot line between adjacent buildings, which is used or adapted for joint service between the two buildings, shall be constructed as a fire wall in accordance with Section 706. Party walls shall be constructed without openings and shall create separate buildings.

Exception (1) Openings in a party wall separating an anchor building and a mall shall be in accordance with Section 402.7.3.1.

After review of the subdivision by the City Building Division, approval is recommended based on

conformance with the 2018 International Building Code:

706.1.1

Exception (2) Fire walls are not required on lot lines dividing a building for ownership purposes where the aggregate height and area of the portions of the building located on both sides of the lot line do not exceed the maximum height and area requirements of this code. For the code official's review and approval, he or she shall be provided with copies of dedicated access easements and contractual agreements that permit the owners of portions of the building located on either side of the lot line access to the other side for purposes of maintaining fire and life safety systems necessary for the operation of the building.

Per this code requirement, a Reciprocal Easement Agreement (REA) has been submitted for review. Even though the City of Great Falls is currently using the 2012 International Building Code, the City will be adopting the 2018 International Building Code in 2019 after State adoption. Because this subdivision is being requested so close to the adoption to the updated building code, both the applicant and staff concur that the newer code provision should guide the request.

Due to the configuration of the lots, parking and access are proposed to be shared between the owners of the five lots. Also, maintenance of the parking lot, drive aisles, landscaping and utilities would be shared between owners. As a recommended condition of approval of the minor subdivision, a Declaration of Covenants, Conditions, and Restrictions is required to be filed with the Amended Plat. This can be completed as a stand-alone document or added into the Reciprocal Easement Agreement document. Also, staff will work with the applicant to ensure that the Agreement addresses all City code requirements for future development or alterations to the site and existing buildings.

The basis for a decision to approve, conditionally approve, or deny a proposed subdivision is whether it is demonstrated that development of the proposed subdivision meets the requirements of the Montana Code Annotated (MCA). Staff has developed Findings of Fact for the proposed subdivision, and Staff concludes the subdivision meets the basic requirements provided by 76-3-608(3) MCA. The full Findings of Fact are included in the attachments of this report.

Neighborhood Council Input:

Per Montana Code Annotated and the Official Code of the City of Great Falls (OCCGF) 17.16.4.010 Table 16-2, minor subdivisions do not require public notification. As a courtesy, information regarding the proposed minor subdivision was provided to Neighborhood Council #6 via email. To date, no comments have been submitted from the Council members.

Fiscal Impact:

City utility services are currently being provided to the proposed subdivision, and the increase in lots will not affect these services. Public safety services are already being provided and will not be affected as well. Because the subdivision is being requested to improve the long-term viability of a key commercial anchor for the city, staff believes that fiscal impacts will only be positive.

Alternatives:

The Planning Advisory Board could deny the minor subdivision. For this action, the Planning Advisory Board must provide alternative Findings of Fact to support a denial of the subdivision request.

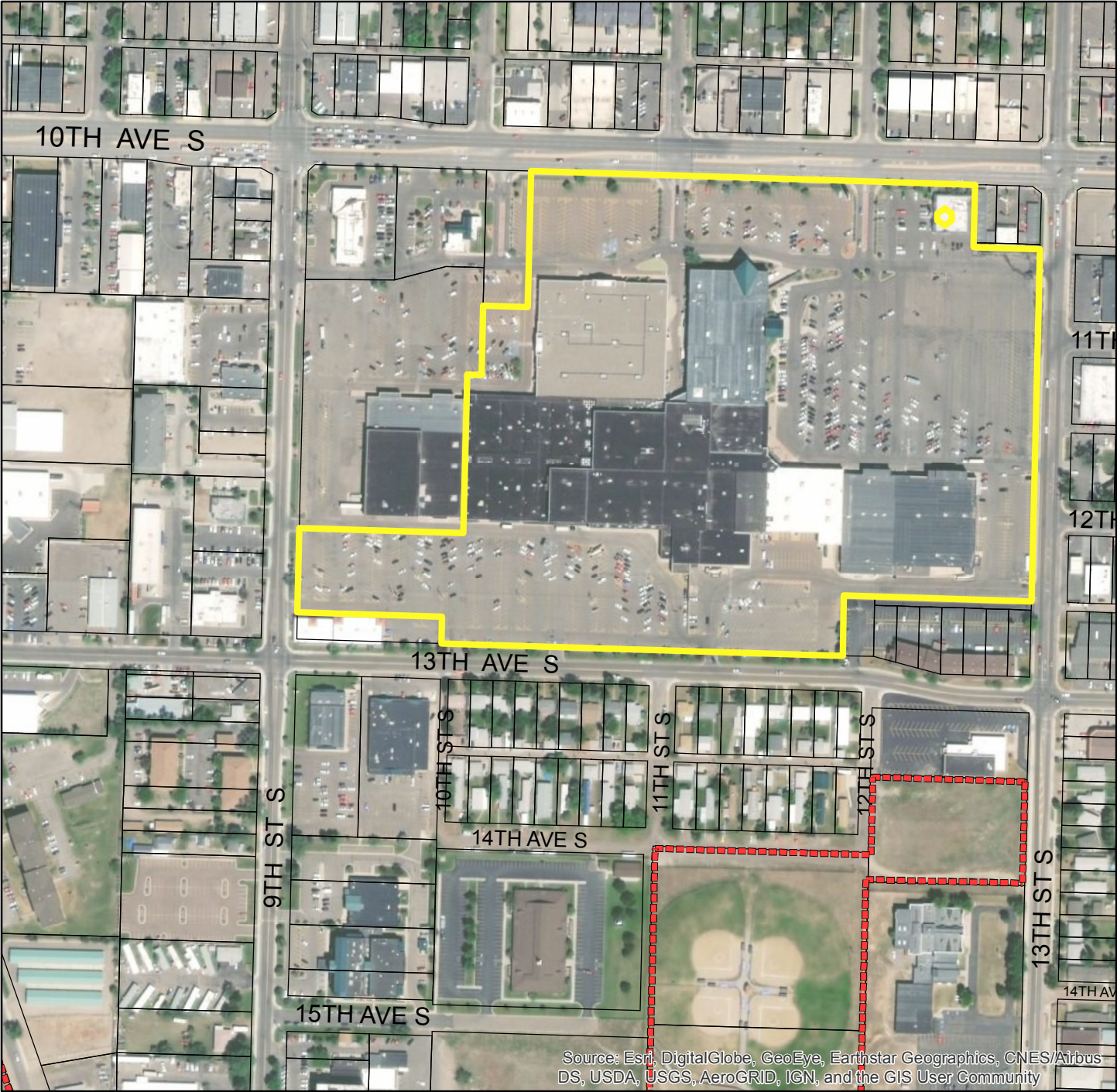
Concurrences:



Representatives from City's Public Works and Fire/Rescue Departments have been involved throughout the review process of this application, and all comments have been taken into consideration for the recommendation of the project.

ATTACHMENTS:

- ▣ Aerial Map
- ▣ Zoning Map
- ▣ Applicant Narrative
- ▣ Alta Survey
- ▣ Findings of Fact - Subdivision
- ▣ Draft Amended Plat
- ▣ C-2 Development Standards
- ▣ Draft Operation and Reciprocal Easement Agreement

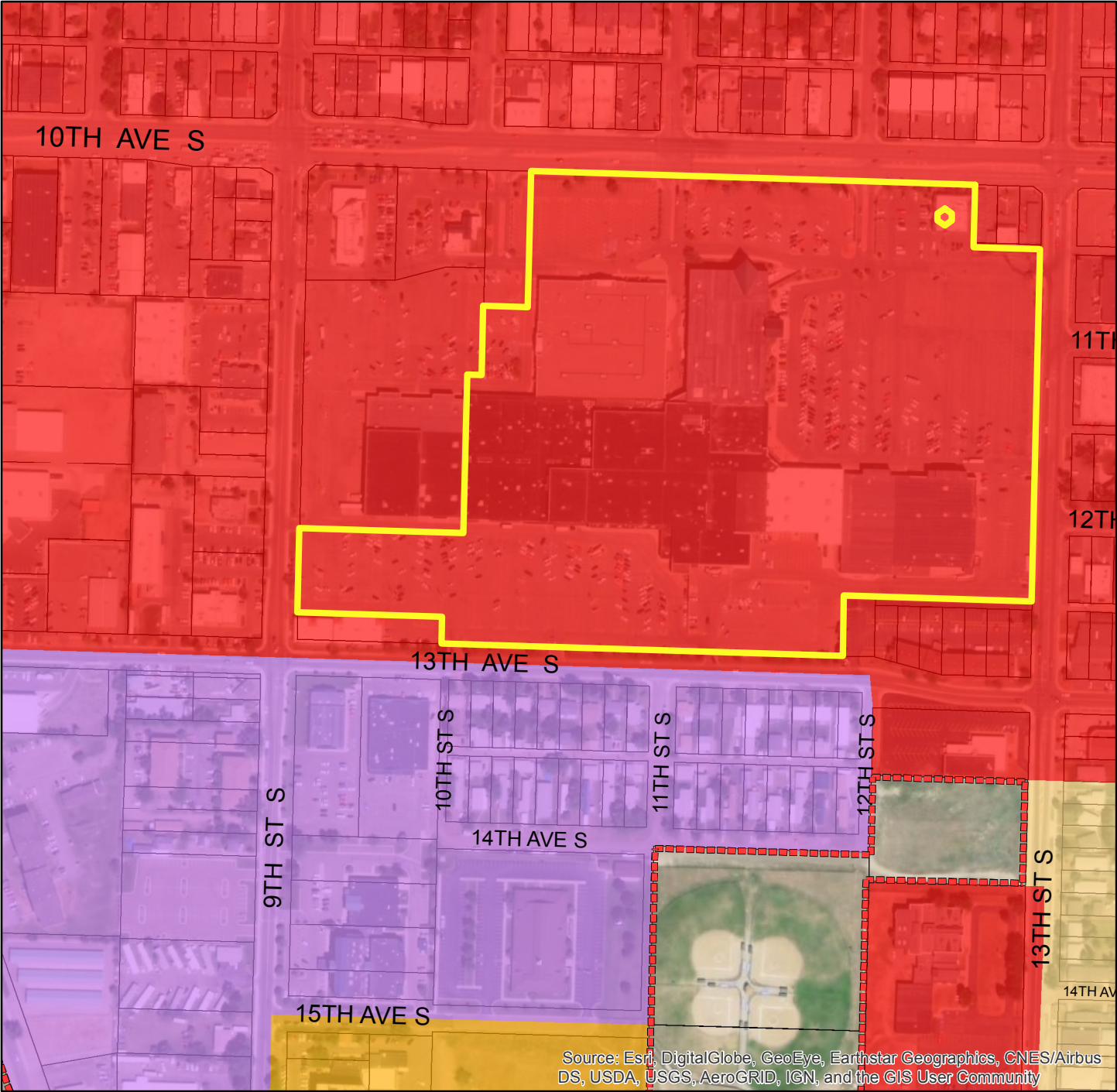
AERIAL MAP










-  Subject Property
-  Tracts of Land

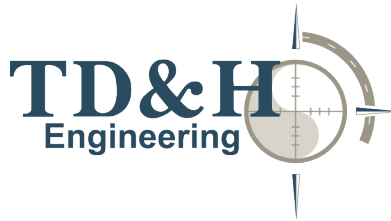


ZONING MAP



-  Subject Property
-  R-5 Multi-family Medium Density
-  R-6 Multi-family High Density
-  C-2 General Commercial
-  M-1 Mixed-use District
-  U Unincorporated Enclave
-  Tracts of Land





HOLIDAY VILLAGE MALL MINOR SUBDIVISION NARRATIVE

TD&H ENGINEERING JOB NO. 17-146

The owners of Holiday Village Mall are requesting a minor subdivision of their property legally described as Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2 and 3, Hillcrest First Addition located in the NE1/4 of Section 13, Township 20 North, Range 3 East, PMM, City of Great Falls, Cascade County, MT. The property consists of a total of 30.074 acres and the Owners are requested a five-lot subdivision of the property. The newly created lots would consist of:

Lot A-1A – 4.253 Acres
Lot A-1B – 5.538 Acres
Lot A-1C – 0.801 Acres
Lot A-1D – 14.299 Acres
Lot A-1E – 5.1083 Acres

The reason(s) for the subdivision request being made is to separate various existing pad and ownership groups, which provides for the following:

- 1) The creation of separate lots for the anchor buildings and outparcel will allow investment in these parcels by new owners.
- 2) This will allow capital to be reinvested in the interior mall building which is necessary to meet changing needs in a dynamic retail environment and insure the long-term viability of the property.
- 3) Management and operation of the property as a shopping center will continue to be carried out in a cohesive manner by the mall owner under a Reciprocal Easement Agreement (REA) between the parties.

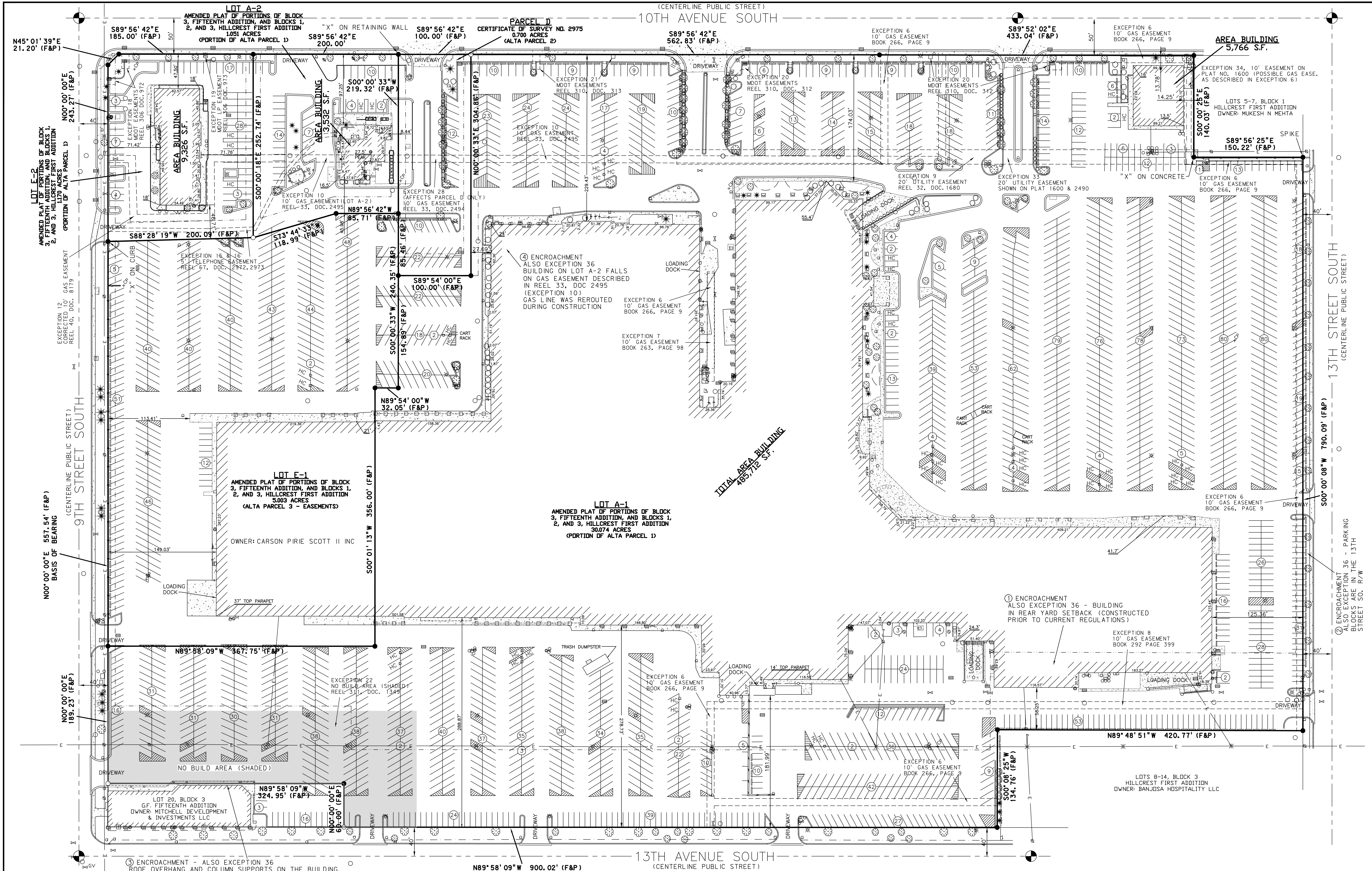
The subject property is zoned C-2 General Commercial, the two newly proposed lots meet the standards of the City of Great Falls Land Development Code per the follow table:

| Standard | C-2 Requirement | Proposed Lots A-1A-E |
|--|--|---|
| Residential Density | N/A | N/A |
| Min Lot Size | 7,500 sq. ft. | All lots meet min size requirements |
| Min Lot Width | 50 feet | All lots meet min width requirements |
| Lot Proportion | N/A | N/A |
| Max Building Height Principal Building | 65 feet | Existing Condition; no new development proposed at this time, if development occurs it will meet code, or require variance if adjustment is necessary |
| Max Building Height Accessory Building | 24 feet; but not higher than the uppermost elevation of principal building | Existing Condition; no new development proposed at this time, if development occurs it will meet code, or require variance if adjustment is necessary |
| Min Front Yard | None | Proposed lots meet front setback |

| Setback | | requirements |
|-----------------------|--|---|
| Min Side Yard Setback | 10 feet each side | Proposed subdivision divides existing buildings; side setback not applicable. Any future development would be reviewed at such time as a request is made. |
| Min Rear Yard Setback | 1/10 of lot depth, but not less than 1/10 of building height | Proposed subdivision divides existing buildings; rear setback not applicable. Any future development would be reviewed at such time as a request is made. |
| Maximum Lot Coverage | Corner Lot 70%; Other Lots 60% | Proposed subdivision appears to meet lot coverage requirements for all new lots created. |

The owners are proposing to utilize a Reciprocal Easement Agreement (REA) between all existing and future owners within the subdivision to ensure proper access and maintenance for the benefit of all parties. The owners are not proposing any changes to the existing utility mains or services that serve the properties. The DRAFT REA has been provided as part of the submittal package.

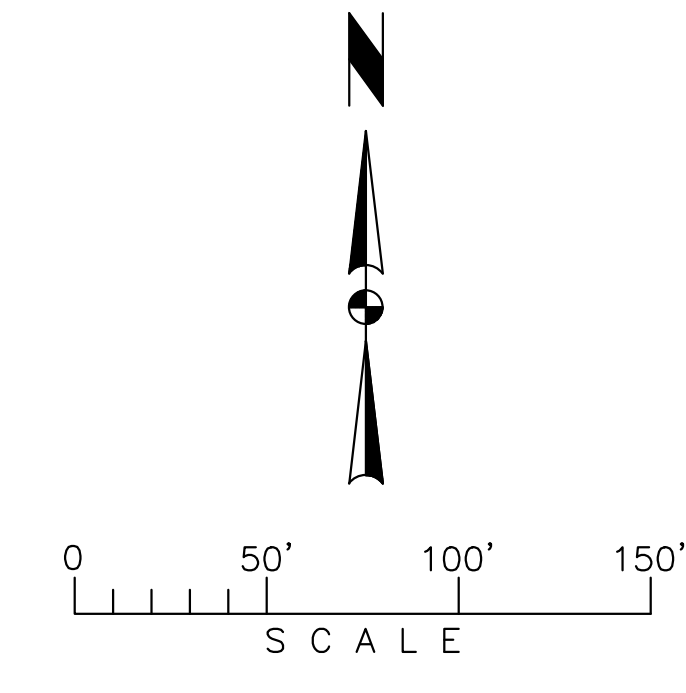
J:\2017\17-146 GK Development Inc - Holiday Village Mall\DOCUMENTS\SUBDIVISION\03_HVM-SUBDIVISION NARRATIVE.DOC



EXCEPTION 4
EASEMENT RECORDED IN BOOK 138 OF DEEDS, PAGE 75, TO
MONTANA POWER COMPANY FOR ELECTRIC TRANSMISSION
AND TELEPHONE SYSTEMS. NO SPECIFIC ALIGNMENT GIVEN.
AFFECTS ALL PARCELS.

EXCEPTION 5
EASEMENT RECORDED IN BOOK 141 OF DEEDS, PAGE 24, TO
MONTANA POWER COMPANY FOR ELECTRIC TRANSMISSION
AND TELEPHONE SYSTEMS. NO SPECIFIC ALIGNMENT GIVEN.
AFFECTS LOTS E-2, E-1, AND A-1.

BASIS OF BEARING
EAST RIGHT-OF-WAY OF 9TH STREET SOUTH AS N00°00'00"W FROM
AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION,
AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION TO GREAT FALLS



| EXISTING | DESCRIPTION | EXISTING | DESCRIPTION | EXISTING | DESCRIPTION | EXISTING | DESCRIPTION |
|----------|---------------------|----------|--------------------|----------|--|----------|-----------------------------------|
| | BARRIER POST | | EDGE OF ASPHALT | | MANHOLE | | SANITARY SEWER |
| | BUILDING | | EDGE OF GRAVEL | | PARKING BLOCKS | | WATERLINE |
| | BUSH OR SHRUB | | TRACT BOUNDARIES | | POWER POLE | | VALVE |
| | CABLE TV RISER | | ELECTRICAL BOX | | PROPERTY PIN -FOUND -5/8" REBAR WITH YPC -UNLESS NOTED OTHERWISE | | WALL HYDRANT |
| | CENTERLINE MONUMENT | | ELECTRICAL OUTLET | | PROPERTY PIN -SET -5/8" REBAR WITH YPC | | WALL LIGHT |
| | CLEANOUT | | FENCE - CHAIN LINK | | ROOF DRAIN | | HANDICAP PARKING STALL |
| | CONCRETE | | FENCE - WOOD | | SETBACK LINE | | NUMBER OF REGULAR PARKING STALLS |
| | CONTROL POINT | | FIRE HYDRANT | | TELEPHONE RISER | | NUMBER OF HANDICAP PARKING STALLS |
| | CURB BOX | | GAS METER | | TRAFFIC SIGN | | BUILDING HEIGHT |
| | CURB & GUTTER | | GUY WIRE | | TREE - CONIFEROUS | | FIELD MEASUREMENT |
| | CULVERT | | INLET | | TREE - DECIDUOUS | | PLAT DISTANCE |
| | EASEMENT | | LIGHT POLE | | | | |

LEGEND

THOMAS, DEAN, & HOSKINS
1800 RIVER DRIVE ND.
GREAT FALLS, MT 59401
(406)761-3010

TD&H
Engineering

REVISIONS
BY DRK
DATE 11-19-12
DESCR COMMENTS

BY DRK
DATE 11-20-12
DESCR COMMENTS

BY
DATE
DESCR

DRAWN BY: DRK
DESIGNED BY: DRK
QUALITY CHECK: DRK
DATE: 11-9-12
JOB NO. 12-313
FIELDBOOK

ALTA/ACSM LAND TITLE SURVEY
HOLIDAY VILLAGE MALL

11-19-12

GREAT FALLS, MONTANA

CAD NO. 12-313 ALTA.DWG
SHEET 1 OF 2

TITLE COMMITMENT EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 1:
Lots A-1, A-2, and E-2, of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition to Great Falls, Cascade County, Montana, according to the Plat No. 1600, filed June 15, 2000, records of Cascade County, Montana, which Amended Plat amends the Amended Plat of Lots 8 & 9, in Block 3, Fifteenth Addition to Great Falls, Cascade County, Montana, according to Plat no. 2490, filed December 7, 1990, records of Cascade County, Montana.

PARCEL 2:
A tract of land in Lot 5, Block 3, Fifteenth Addition to Great Falls Townsite, Cascade County, Montana, and being more particularly described as follows:
Beginning at the intersection monument of the centerlines of 10th Avenue South and 9th Street South;
Thence South 89°56'58" East along the centerline of 10th Avenue South, a distance of 440.00 feet;
Thence South 00°00'00" East, a distance of 50.00 feet to the southerly right-of-way of 10th Avenue South, and True Point of Beginning;
Thence South 89°56'58" East, along said southerly right-of-way, a distance of 100.00 feet;
Thence South 00°00'00" West, a distance of 304.82 feet;
Thence North 89°56'00" West, a distance of 100.00 feet;
Thence North 00°00'00" East, a distance of 304.79 feet to the True Point of Beginning.
(According to Certificate of Survey No. 2975, Parcel D, filed February 3, 1994, records of Cascade County, Montana.)

PARCEL 3:
Non-exclusive easements in and to Lot E-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition, additions to the City of Great Falls, Cascade County, Montana, according to Plat No. 1600, filed June 15, 2000, records of Cascade County, Montana, such easement interests being set forth in Section 2 of that certain Operation and Reciprocal Easement Agreement, executed by and between Parisian, Inc., an Alabama corporation, and The Macerich Partnership, L.P., a Delaware limited partnership, dated July 13, 2000, recorded July 13, 2000, on Reel 336, Document 465, records of Cascade County, Montana, and re-recorded July 21, 2000, on Reel 336, Document 833, records of Cascade County, Montana.

PARCEL 4:
Non-exclusive easements for vehicular and pedestrian ingress and egress and parking as created in that certain Reciprocal Easement Agreement, executed by and between Voegel's Inc., a Montana corporation, and The Macerich Partnership, L.P., a Delaware limited partnership, dated September 24, 1998, recorded September 25, 1998, on Reel 311, Document 1349, records of Cascade County, Montana, as the same is modified by Amendment to Reciprocal Easement Agreement, dated March 12, 1999, recorded March 12, 1999, on Reel 318, Document 1084, records of Cascade County, Montana.

PARCEL 5:
Non-exclusive easements including, but not limited to, pedestrian and vehicular ingress and egress, parking and utilities as created in that certain Grant of Easements with Covenants and Restrictions Affecting Land, executed by and among Holiday Village Shopping Center, a corporation, The Adams Corporation, a corporation, Voegel's Inc., a Montana corporation, and Lydia (Dollie) Wadsworth, dated September 3, 1965, recorded November 19, 1965, on Reel 32, Document 1680, records of Cascade County, Montana.

TITLE COMMITMENT:

SURVEY AND EXCEPTION NUMBERS BASED ON THE CHICAGO TITLE INSURANCE COMPANY'S COMMITMENT FOR TITLE INSURANCE, NBU NO. 21203231, LOCAL NO. 95582-01, WITH AN EFFECTIVE DATE OF OCTOBER 22, 2012, AT 8:00 A.M.

LAND AREAS:

LAND OWNED: LOT E-2 - 1.171 AC.
LOT A-1 - 30.074 AC.
LOT A-2 - 1.051 AC.

TOTAL OWNED 32.296 AC.

LAND LEASED: PARCEL "D" - 0.700 AC.

TOTAL LEASED 0.700 AC.

EASEMENT LAND: LOT E-1 - 5.003 AC.

TOTAL EASEMENT 5.003 AC

ZONING :

C-2 GENERAL COMMERCIAL

SETBACKS:
FRONT YARD - 0 FEET
SIDE YARD - 10 FEET ON EACH SIDE
REAR YARD - 1/10 OF LOT DEPTH, BUT NOT LESS THAN 1/10 OF BUILDING HEIGHT
MAX. HEIGHT OF PRINCIPAL BUILDING: 65 FEET
MAX. HEIGHT OF ACCESSORY BUILDING: 24 FEET, BUT NOT HIGHER THAN PRINCIPAL BUILDING
BUILDING BULK: 70% CORNER LOT, 60% OTHER LOTS

FLOOD ZONE DESIGNATION:

THE SUBJECT PROPERTY IS ENTIRELY WITHIN AN AREA DETERMINED TO BE ZONE "X" OUTSIDE THE 500-YEAR FLOOD PLAIN, AS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NUMBER 3000100005D, DATED FEBRUARY 15, 2002

PARKING STALLS:

HANDICAP PARKING STALLS 45
REGULAR PARKING STALLS 2543
TOTAL NUMBER OF PARKING STALLS 2588

PROPERTY ADDRESS:

1200 10TH AVENUE SOUTH, GREAT FALLS, MT 59405 (LOT A-1)
1000 10TH AVENUE SOUTH, GREAT FALLS, MT 59405 (LOT A-2)
900 10TH AVENUE SOUTH, GREAT FALLS, MT 59405 (LOT E-2)

TABLE A NOTES:

16) NO EVIDENCE FOUND OF CURRENT EARTH MOVING WORK OR BUILDING ADDITIONS
17) NO KNOWN PROPOSED CHANGES IN STREET RIGHT-OF-WAY OR CONSTRUCTION
18) NO EVIDENCE FOUND OF THE SITE USED AS A SOLID WASTE DUMP OR LANDFILL
19) NO WETLANDS FOUND ON THE PROPERTY
20) NO KNOWN OFFSITE EASEMENTS OR SERVITUDES BENEFITTING THE PROPERTY

ENCROACHMENTS

- ① BUILDING ENCROACHES ON REAR YARD SETBACK — SE CORNER OF LOT A-1 (NOTE: AT TIME OF CONSTRUCTION IT MET SETBACKS IN FORCE AT THE TIME)
② PARKING BLOCKS ENCROACH ON 13th STREET SOUTH R/W.
③ ROOF OVERHANG AND COLUMN SUPPORTS ON THE BUILDING LOCATED ON LOT 20, BLOCK 3, G.F. FIFTEENTH ADDITION (NEAR THE SW CORNER OF THE PLAN) ENCROACH INTO LOT A-1.
④ BUILDING IN LOT A-2 ENCROACHES ON GAS LINE EASEMENT DESCRIBED IN REEL 33, DOCUMENT 2495 (EXCEPTION 10). GAS LINE WAS REROUTED AROUND BUILDING DURING CONSTRUCTION.

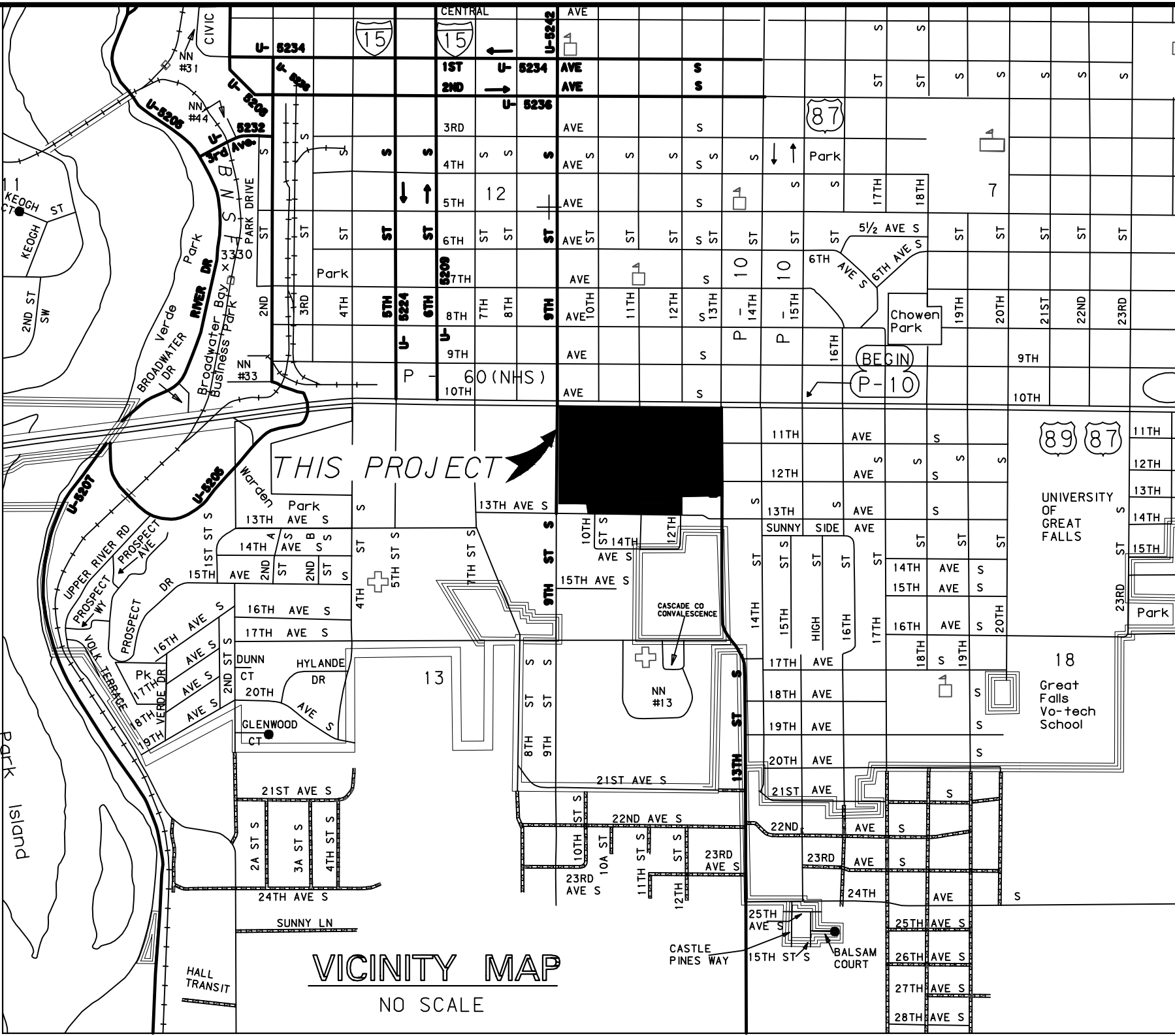
SURVEYOR'S CERTIFICATE:

TO: KEYBANK NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION,
ITS SUCCESSORS AND/OR ASSIGNS
CHICAGO TITLE AND TRUST COMPANY
GK HOLIDAY VILLAGE MEZZ, LLC
GK HOLIDAY VILLAGE, LLC
HOLIDAY VILLAGE PARTNERS, L.L.C.
MERCHANTS CROSSING PARTNERS, LLC
INVEST LINC/GK PROPERTIES FUND L, LLC
SEYFARTH SHAW, LLP

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE "2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS", JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 6(b), 7(a), 7(b)(1), 7(c), 8, 9, 10(a), 11(a), 13, 16, 17, 18, 19, AND 20 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON NOVEMBER 15, 2012.

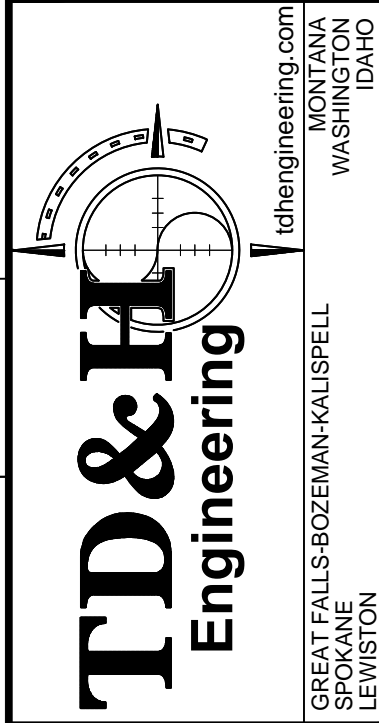
DATED THIS 20TH DAY OF NOVEMBER, 2012.

SIGNED: Daniel R. Kenczka
DANIEL R. KENCZKA, REG. NO. 156255
THOMAS, DEAN, & HOSKINS
1800 RIVER DRIVE NO.
GREAT FALLS, MT 59401
(406)-761-3010



| SCHEDULE B SPECIAL EXCEPTIONS | | |
|-------------------------------|--|--|
| EXCEPTION NUMBER | DOCUMENT | DESCRIPTION |
| 1 | - | General taxes for the year 2012 - affects all parcels |
| 2 | - | Delinquent City of Great Falls water and sewer charges- affects all parcels |
| 3 | Book 1, Page 81 | Reservation contained in U.S. Patent - Does not affect any parcels |
| 4 | Book 138, Page 75 | Blanket easement for an electric and telephone system - affects all parcels |
| 5 | Book 141, Page 240 | Blanket right-of-way easement for an electric and telephone system - affects Lots E-2, E-1, & A-1 |
| 6 | Book 266, Page 9 Book 323, Page 61 Reel 225, Doc 703 | Gas pipeline easement - shown on plan - affects Lot A-1 Partial release of easement - portion removed from plan - affects Lot A-1 Partial release of easement - portion removed from plan plan - affects Lot A-1 |
| 7 | Book 263, Page 98 | Gas pipeline easement - shown on plan - affects Lot A-1 |
| 8 | Book 292, Page 399 | Gas pipeline easement - shown on plan - affects Lot A-1 |
| 9 | Reel 32, Doc 1680 Reel 33, Doc 2618 Reel 42, Doc 9952 Reel 33, Doc 2495 | Utility Easements, conditions, or restrictions contained in Grant of Easement - shown on plan - affects Lot A-1 Resolution to vacate a portion of the utility easement - portion removed from plan - affects Lots E-2, A-1, Parcel D Agreement to vacate portion of 11th Ave So & the 40' utility easement - portion removed from plan - affects Lot A-1 Gas pipeline easement - shown on plan - affects Lots A-2 and A-1 |
| 10 | | |
| 11 | Reel 33, Doc 2618 | Resolution to vacate a portion of the utility easement - portion removed from plan - affects Lots E-2, A-1, Parcel D |
| 12 | Reel 40, Doc 8179 | Gas pipeline easement - shown on plan - affects Lot E-2 |
| 13 | Reel 42, Doc 86 | Resolution to abandon a utility easement as described on Reel 2, Document 927 - removed from plan - affects Lot A-1 |
| 14 | Reel 42, Doc 9952 | Agreement to vacate portion of 11th Ave So & the 40' utility easement - portion removed from plan - affects Lot A-1 |
| 15 | Reel 67, Doc 2972 | Telephone right-of-way easement - shown on plan - affects Lots E-2 and A-2 |
| 16 | Reel 67, Doc 2973 | Telephone right-of-way easement - shown on plan - affects Lots E-2 and A-2 |
| 17 | Reel 225, Doc 808 | Agreement with City of Great Falls to vacate 11th Ave So - Owner takes responsibility of water line - affects Lot A-1 |
| 18 | Reel 306, Doc 972 | Bargain and Sale Deed with Easement - to Montana Department of Transportation - shown on plan - affects Lot E-2 |
| 19 | Reel 306, Doc 973 | Light standard easement to the Montana Department of Transportation - shown on plan - affects Lot E-2 |
| 20 | Reel 310, Doc 312 | Easements to the Montana Department of Transportation - shown on plan - affects Lot A-1 |
| 21 | Reel 310, Doc 313 | Light standard easements to the Montana Department of Transportation - shown on plan - affects Lot A-1 |
| 22 | Reel 311, Doc 1349 Reel 318, Doc 1084 | Reciprocal Easement Agreement - affects all parcels - "No Build Area" in Lot A-1 shown on plan Amendment to Reciprocal Easement Agreement - affects all parcels |
| 23 | Reel 336, Doc 833 | Operation and Reciprocal Easement Agreement - affects all parcels |
| 24 | R0014672 | Memorandum of Ground Lease - affects all parcels |
| 25 | R0094258 | Memorandum of Lease - affects all parcels |
| 26 | R0101260 | Memorandum of Lease - affects all parcels |
| 27 | R0141343 R0141933 | Memorandum of Lease - affects all parcels Subordination, Non-Disturbance, and Attornment Agreement - affects all parcels |
| 28 | Reel 33, Doc 2494 | Gas pipeline easement - shown on plan - affects Parcel D |
| 29 | Reel 31, Doc 977 Reel 259, Doc 88 R0130893 | Lease Agreement - affects Parcel D Agreement of Ground Leases - affects Parcel D, Lot E-1, and Lot A-1 Assignment of Ground Lease and Consent to Assignment of Ground Lease affects Parcel D |
| 30 | Reel 105, Doc 1503 R0231100 LS | Memorandum of Lease - affects all parcels Memorandum of Lease Extension Agreement - affects all parcels |
| 31 | - | Tenants, as tenants only, in possession pursuant to written leases - affects all parcels |
| 32 | Reel 223, Doc 1467 | Memorandum of Lease - affects all parcels |
| 33 | Plat 1600 & 2490 | Easement shown on plats - references Reel 32, Doc 1680 - portion vacated on Reel 33, Document 2618 - remainder shown on plan - affects Lot A-1 |
| 34 | Plat 1600 | Easement shown on the northeast corner of the plat - possible gas easement in Book 266, Page 9, Exception 6 - shown on plan - affects Lot A-1 |
| 35 | R0235644 CAG | Hold Harmless Agreement - affects all parcels |
| 36 | ALTA/ACSM Survey | Encroachments shown on the ALTA/ACSM Land Title Survey by Thomas, Dean, & Hoskins, dated November 6th, 2005. A) Building encroaches on side yard - building has been demolished and no longer affects parcels B) Building encroaches on rear yard setback (met setback at time of cons.) - shown on plan as encroachment 1 C) Parking blocks encroach on 13th Street So. R/W - shown on plan as encroachment 2 D) Building roof and column supports encroach onto property - shown on plan as encroachment 3 E) Building encroaches on gas easement - shown on plan as encroachment 4 |
| 37 | R0130894 R0185162 R0213280 | Modification of Security Document - affects all parcels First Modification of Security Document- affects all parcels Second Modification of Security Document - affects all parcels |
| 38 | U0111623 | Financing Statement given to secure Indebtedness - affects all parcels |
| 39 | - | Require documentation as to who is authorized to sign on behalf of the Mortgagee |

THOMAS, DEAN, & HOSKINS
1800 RIVER DRIVE ND.
GREAT FALLS, MT 59401
(406)761-3010



REVISIONS
BY: DRK
DATE: 11-19-12
DESCR: COMMENTS
BY: DRK
DATE: 11-20-12
DESCR: COMMENTS
BY: _____
DATE: _____
DESCR: _____

DRAWN BY: DRK
DESIGNED BY: DRK
QUALITY CHECK: DRK
DATE: 11-9-12
JOB NO. 12-313
FIELDBOOK

ALTA/ACSM LAND TITLE SURVEY
HOLIDAY VILLAGE MALL
900, 1000, & 1200 10TH AVENUE SOUTH
GREAT FALLS, MONTANA

FINDINGS OF FACT/BASIS OF DECISION – MONTANA SUBDIVISION AND PLATTING ACT

Holiday Village Mall minor subdivision of Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2 and 3, Hillcrest First Addition located in the NE1/4 of Section 13, Township 20 North, Range 3 East, PMM, City of Great Falls, Cascade County, MT. (PREPARED IN RESPONSE TO 76-3-608(3) MCA)

PRIMARY REVIEW CRITERIA:

Effect on Agriculture and Agricultural Water User Facilities: The minor subdivision is located on 10th Avenue South, which is located in city limits and surrounded by commercial development. The property is currently the location of the Holiday Village Mall. Thus, the proposed minor subdivision will not interfere with any agricultural irrigation system or present any interference with agricultural operations in the vicinity.

Effect on Local Services: Buildings on the subject property are serviced by a private water and sewer system that is connected to the City's public system.

The property proposed for this subdivision is also currently receiving law enforcement and fire protection service from the City of Great Falls and the subdivision does not propose any changes to the current services.

Effect on the Natural Environment: The subdivision is not expected to adversely affect soils or the water quality or quantity of surface or ground waters. The site contains an existing development that will not require any additional work to the existing storm system. Any new development or building additions or alterations will require review by the Public Works Department.

Effect on Wildlife and Wildlife Habitat: The subdivision is surrounded by existing development with commercial buildings to the north, east, and west, and existing mixed-use development to the south. This is not in an area of significant wildlife habitat beyond occasional migrating fowl.

Effect on Public Health and Safety: Based on available information, the subdivision is not subject to abnormal natural hazards nor potential man-made hazards. The subdivision itself will not have a negative effect on Public Health and Safety.

REQUIREMENTS OF MONTANA SUBDIVISION AND PLATTING ACT, UNIFORM STANDARDS FOR MONUMENTATION, AND LOCAL SUBDIVISION REGULATIONS

The subdivision meets the requirements of the Montana Subdivision and Platting Act and the surveying requirements specified in the Uniform Standards for Monumentation and conforms to the design standards specified in the local subdivision regulations. The local government has complied with the subdivision review and approval procedures set forth in the local subdivision regulations.

EASEMENT FOR UTILITIES

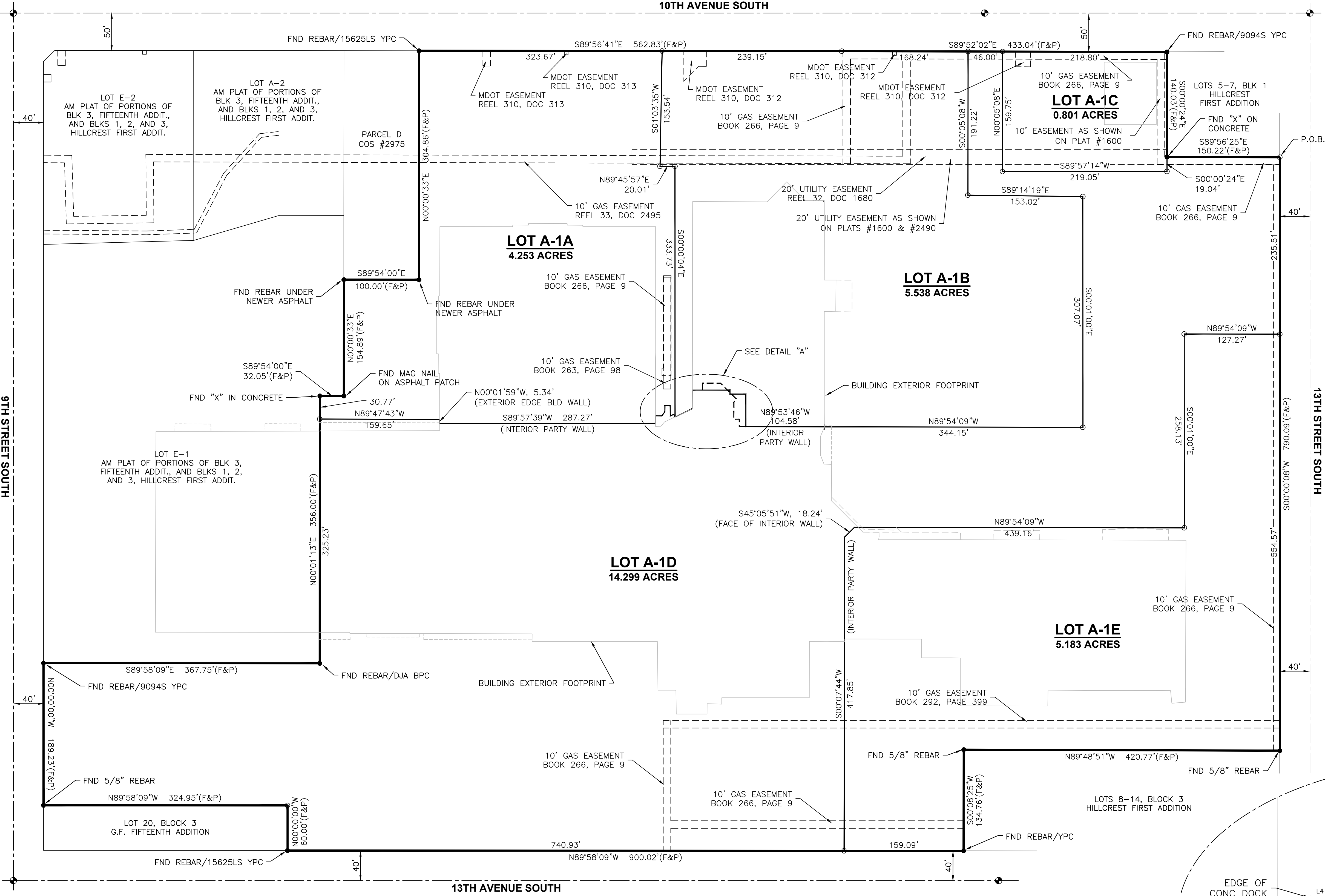
The proposed plat will be reviewed by City Utilities Staff to determine any necessary utility easements to accommodate water mains, sanitary sewer mains and private utilities to serve all lots of the subdivision.

LEGAL AND PHYSICAL ACCESS

Legal and physical access to the proposed development will be from several shared access points throughout the development, which will be addressed in an shared parking, access and maintenance agreement that will be provided with the approval of this subdivision.

AN AMENDED PLAT OF LOT A-1 OF THE
AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION
LOCATED IN THE NE1/4 OF SECTION 13, T20N, R3E, P.M.M., CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA

LANDOWNER: GK HOLIDAY VILLAGE LLC



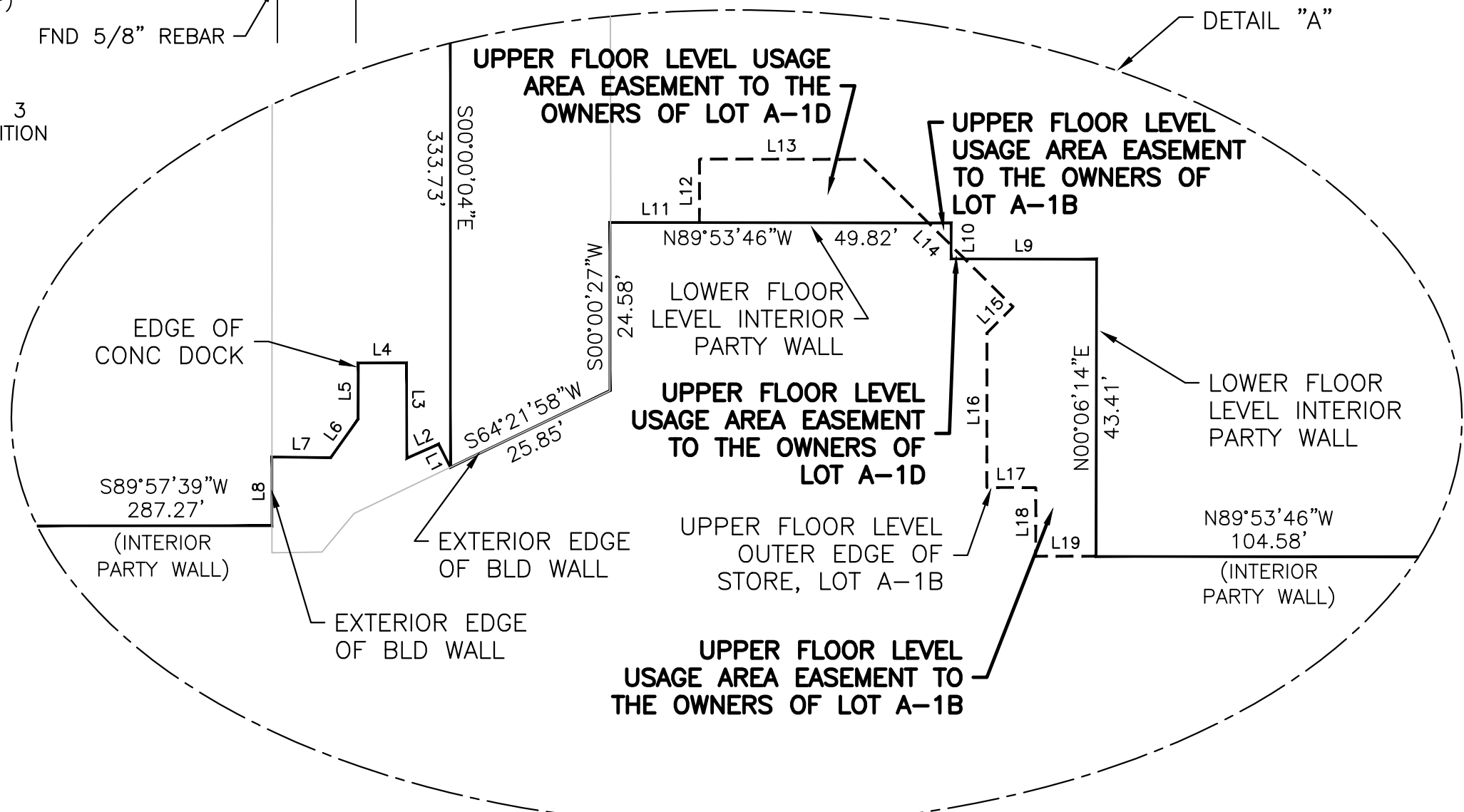
- LEGEND**
- FND PROPERTY PIN
— AS NOTED
 - SET PROPERTY PIN
— 18"x5/8" REBAR/YPC 15625LS
 - FND CENTERLINE MONUMENT
 - SUBDIVISION BOUNDARY
 - STREET CENTERLINE
 - EXISTING EASEMENT BY PLAT OR DOC.
 - NEW EASEMENT THIS PLAT
 - EXISTING LOT LINE
 - NEW LOT LINE
 - BUILDING EXTERIOR FOOTPRINT
 - (F) FOUND/FIELD MEASUREMENT
 - (P) PLAT RECORD DISTANCE
 - P.O.B. POINT OF BEGINNING

| LINE | BEARING | DISTANCE |
|------|-------------|----------|
| L1 | N26°32'44"W | 3.78' |
| L2 | S66°10'14"W | 5.10' |
| L3 | N00°08'23"W | 13.95' |
| L4 | S89°45'14"W | 7.05' |
| L5 | S00°10'16"W | 8.21' |
| L6 | S35°29'51"W | 6.92' |
| L7 | N89°11'44"W | 8.57' |
| L8 | S00°01'53"W | 10.04' |
| L9 | N89°53'46"W | 21.26' |
| L10 | N00°06'14"E | 5.24' |
| L11 | S89°53'46"E | 13.05' |
| L12 | N00°06'14"E | 9.28' |
| L13 | S89°53'46"E | 24.08' |
| L14 | S45°13'11"E | 30.60' |
| L15 | S45°16'48"W | 5.36' |
| L16 | S00°06'14"W | 22.61' |
| L17 | S89°53'46"E | 7.17' |
| L18 | S00°06'14"W | 10.03' |
| L19 | S89°53'46"E | 8.81' |

AREA OF LOTS = 30.074 ACRES
AREA OF PARK = 0 ACRES
AREA OF DEDICATED ROADS = 0 ACRES
TOTAL SUBDIVISION AREA = 30.074 ACRES

BASIS OF BEARING:
EAST RIGHT-OF-WAY OF 9TH STREET SOUTH, BEING N00°00'00"W FROM THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION

PURPOSE OF SURVEY:
TO CREATE 5 LOTS FROM LOT A-1 OF THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION



TD&H

Engineering

Planning Advisory Board Meeting - December 11, 2018 Attachment # 6

Page 22 of 76

DRAWN BY: DRK

SURVEYED BY: RFS

GREAT FALLS-BOZEMAN-KALISPELL-SHELBY

LEWISTON

WATFORD CITY

DATE: 10-24-18

JOB NO. 17-146

MONTANA

WASHINGTON

IDAHO

NORTH DAKOTA

QUALITY CHECK: X

FIELDBOOK

X

SHEET 1 OF 2

AN AMENDED PLAT OF LOT A-1 OF THE
AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION
LOCATED IN THE NE1/4 OF SECTION 13, T20N, R3E, P.M.M., CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA

LANDOWNER: GK HOLIDAY VILLAGE LLC

CERTIFICATE OF OWNERSHIP

I(we), the undersigned property owner(s), do hereby certify that I(we) have caused to surveyed, subdivided, and platted into lots, blocks, and easements, the following described tract of land in the City of Great Falls, Cascade County, Montana, to-wit:
A tract of land being Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition, located in the NE1/4 of Section 13, Township 20 North, Range 3 East, P.M.M., City of Great Falls, Cascade County, Montana, and being more particularly described as follows:
Beginning at the Northeast corner of said Lot A-1, being a point on the Westerly right-of-way line of 13th Street South; thence South 00°00'08" West along said Westerly right-of-way line, a distance of 790.09 feet to the Southeast corner of said Lot A-1; thence North 89°48'51" West along the Southerly boundary line of said Lot A-1, a distance of 420.77 feet; thence South 00°08'25" West along said Southerly boundary line, a distance of 134.76 feet to a point on the Northerly right-of-way line of 13th Avenue South; thence North 89°58'09" West along said Northerly right-of-way line, a distance of 900.02 feet to the Southerly corner of said Lot A-1; thence North 00°00'00" West along the Southerly boundary line of said Lot A-1, a distance of 60.00 feet; thence North 89°58'09" West along said Southerly boundary line, a distance of 324.95 feet to a point on the Easterly right-of-way line of 9th Street South; thence North 00°00'00" West along said Easterly right-of-way line, a distance of 189.23 feet to the Westerly corner of said Lot A-1; thence South 89°58'09" East along the Westerly boundary line of said Lot A-1, a distance of 367.75 feet; thence North 00°01'13" East along said Westerly boundary line, a distance of 356.00 feet; thence South 89°54'00" East along said Westerly boundary line, a distance of 32.05 feet; thence North 00°00'33" East along said Westerly boundary line, a distance of 154.89 feet; thence South 89°54'00" East along said Westerly boundary line, a distance of 100.00 feet; thence North 00°00'33" East along said Westerly boundary line, a distance of 304.88 feet to a point on the Southerly right-of-way line of 10th Avenue South; thence South 89°56'41" East along said Southerly right-of-way line, a distance of 562.83 feet; thence South 89°52'02" East along said Southerly right-of-way line, a distance of 433.04 feet to the Northerly corner of said Lot A-1; thence South 00°00'24" East along the Northerly boundary line of said Lot A-1, a distance of 140.03 feet; thence South 89°56'25" East along said Northerly boundary line, a distance of 150.22 feet to the Point of Beginning and containing 30.074 acres, along with and subject to any existing easements.
The above described tract of land is to be known and designated as AN AMENDED PLAT OF LOT A-1 OF THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION, City of Great Falls, Cascade County, Montana, and the lands included in all streets, avenues, and parks or public lands shown on said plat are hereby granted and donated to the use of the public forever.

CERTIFICATE OF EXEMPTION FROM PARK DEDICATION

I(we), the undersigned property owner(s), do hereby certify that being this subdivision is into parcels that are all nonresidential, a park dedication will not be required pursuant to 76-3-621(3)(b) MCA, stating "(3) A park dedication may not be required for: (b) subdivision into parcels that are all nonresidential".

Dated this _____ day of _____, A.D., 2018

GK HOLIDAY VILLAGE LLC

Printed Name _____

Title _____

State of Montana)
: ss
County of Cascade)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared, _____, known to me to be the person who executed the Certificate of Ownership, IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for the State of Montana
Residing at _____
My commission expires _____

(Notarial Seal)

CERTIFICATE OF PUBLIC WORKS DIRECTOR

I, Jim Rearden, Public Works Director for the City of Great Falls, Montana, do hereby certify that I have examined the accompanying plat of the AN AMENDED PLAT OF LOT A-1 OF THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION, and the survey it represents, find that same conforms to regulations governing the platting of lands and presently platted adjacent land, as near as circumstances will permit, do hereby approve the same.

Dated this _____ day of _____, _____.

JIM REARDEN, Public Works Director
City of Great Falls, Montana

CERTIFICATE OF CITY COMMISSION

I, Gregory T. Doyon, City Manager of the City of Great Falls, Montana, do hereby certify that the accompanying plat of the AN AMENDED PLAT OF LOT A-1 OF THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION, was duly examined and approved by the City Commission of the City of Great Falls, Montana, at its regular meeting held on the _____ day of _____, _____.

GREGORY T. DOYON, City Manager
City of Great Falls, Montana

CERTIFICATE OF AVAILABILITY OF MUNICIPAL SERVICES

I, Gregory T. Doyon, City Manager of the City of Great Falls, Montana, do hereby certify that the City Commission of the City of Great Falls, Montana, at its regular meeting held on the _____ day of _____, _____, found that adequate municipal facilities for the supply of water and the disposal of sewage and solid waste, are available to the above described property, namely the said facilities of the City of Great Falls, Montana, and this certificate is made pursuant to Section 76-4-125(2)(d) M.C.A., permitting the Clerk and Recorder of Cascade County, Montana, to record the accompanying plat.

GREGORY T. DOYON, City Manager
City of Great Falls, Montana

CERTIFICATE OF GREAT FALLS PLANNING BOARD

We, the undersigned, Peter Fontana, President of the Great Falls Planning Board, City of Great Falls, Montana, and Craig Raymond, Secretary of said Great Falls Planning Board, do hereby certify that the accompanying plat of AN AMENDED PLAT OF LOT A-1 OF THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION, has been submitted to the said Great Falls Planning Board, for examination by them and was approved at its regular meeting held on the _____ day of _____, _____.

Peter Fontana, President
Great Falls Planning Board

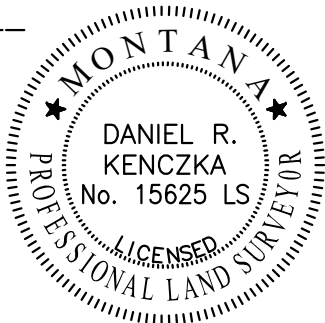
CRAIG RAYMOND, Secretary
Great Falls Planning Board

CERTIFICATE OF SURVEYOR

I, the undersigned, Daniel R. Kenczka, Professional Land Surveyor, Montana Registration No. 15625LS, do hereby certify that I supervised this Plat of the AN AMENDED PLAT OF LOT A-1 OF THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION, and platted same as shown on the accompanying plat and as described in accordance with the provisions of the Montana Subdivision and Platting Act, Sections 76-3-101 through 76-3-614, M.C.A., and Cascade County.

Dated this _____ day of _____, A.D., _____

Daniel R. Kenczka, Montana Reg. No. 15625LS



CERTIFICATE OF COUNTY TREASURER

I, Jamie Bailey, County Treasurer of Cascade County, Montana, do hereby certify that I have examined the records covering the areas included in the accompanying plat of the AN AMENDED PLAT OF LOT A-1 OF THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION, and find that the current taxes are not delinquent.

Dated this _____ day of _____, A.D., _____

County Treasurer, Cascade County, Montana

BASIS OF BEARING:
EAST RIGHT-OF-WAY OF 9TH STREET SOUTH, BEING N00°00'00"W FROM THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION
PURPOSE OF SURVEY:
TO CREATE 5 LOTS FROM LOT A-1 OF THE AMENDED PLAT OF PORTIONS OF BLOCK 3, FIFTEENTH ADDITION, AND BLOCKS 1, 2, AND 3, HILLCREST FIRST ADDITION

SHEET 2 OF 2

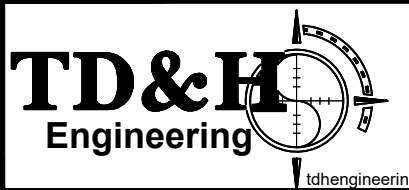
| | | | |
|---|------------------|----------------|--|
|  | DRAWN BY: DRK | DATE: 10-24-18 | QUALITY CHECK: X |
| | SURVEYED BY: RFS | JOB NO. 17-146 | FIELDBOOK X |
| GREAT FALLS-BOZEMAN-KALISPELL-SHELBY SPOKANE LEWISTON WATFORD CITY | | | MONTANA WASHINGTON IDAHO NORTH DAKOTA |

Exhibit 20-4. Development standards for other zoning districts

| | M-1 | M-2 | C-1 | C-2 | C-3 | C-4 | C-5 | PLI | GFIA | I-1 | I-2 |
|--|--|--|----------------|----------------|----------------|--|----------------|---|----------------|----------------|----------------|
| Residential density | 500 sq. feet of lot area per dwelling unit | 500 sq. feet of lot area per dwelling unit | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |
| Minimum lot size for newly created lots | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet | 7,500 sq. feet |
| Minimum lot width for newly created lots | 50 feet | 50 feet | 50 feet | 50 feet | 50 feet | 50 feet | 50 feet | 50 feet | 50 feet | 50 feet | 50 feet |
| Lot proportion for newly created lots (maximum depth to width) | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | 3:1 | 3:1 |
| Maximum building height of principal building | 65 feet except as follows: 35 feet within 200 feet of an R-1, R-2, R-3 district; 45 feet when within 200 feet to 350 | 65 feet except as follows: 35 feet within 200 feet of an R-1, R-2, R-3 district; 45 feet when within 200 feet to 350 | 35 feet | 65 feet | 50 feet | 100 feet by right; 101 feet to 160 feet as conditional use | 55 feet | 100 feet by right; 101 feet to 160 feet as conditional use, except as follows; in the | 65 feet | 45 feet | none |

| | | | | | | | | | | | |
|---|---|---|---|---|---|------|---|---|---|-------------------|--|
| | feet of an R-1, R-2, R-3 district; and 65 feet when more than 350 feet from an R-1, R-2, R-3 district | feet of an R-1, R-2, R-3 district; and 65 feet when more than 350 feet from an R-1, R-2, R-3 district | | | | | | proposed medical district master plan area, 160 feet by right | | | |
| Maximum building height of accessory building | 24 feet, but may not be higher than the uppermost elevation of the principal building | 24 feet, but may not be higher than the uppermost elevation of the principal building | 24 feet, but may not be higher than the uppermost elevation of the principal building | 24 feet, but may not be higher than the uppermost elevation of the principal building | 24 feet, but may not be higher than the uppermost elevation of the principal building | n/a | 24 feet, but may not be higher than the uppermost elevation of the principal building | 24 feet, but may not be higher than the uppermost elevation of the principal building | 24 feet, but may not be higher than the uppermost elevation of the principal building | 35 feet | none |
| Minimum front yard setback of principal and accessory buildings | none | Existing Industrial: 20 feet | 15 feet | none | 25 feet | none | 15 feet | 25 feet | 25 feet | 20 feet | 10 feet |
| Minimum side yard setback of principal and accessory | Commercial: none Residential: 5 feet each side | Commercial: none Residential: 5 feet each side Existing Industrial: 15 | 10 feet each side | 10 feet each side | 15 feet each side | none | 10 feet each side | 10 feet each side | none | 10 feet each side | 10 feet each side, 15 feet when side yard abuts a non- |

| | | | | | | | | | | | |
|--|------------------------------------|------------------------------------|------------------------------------|---|---|------|---|---|------|------------------------------------|------------------------------------|
| buildings | | feet each side | | | | | | | | | industrial zoning district |
| Minimum rear yard setback of principal and accessory buildings | 10 feet | 10 feet | 15 feet | 1/10 of lot depth but not less than 1/10 of building height | 1/10 of lot depth but not less than 1/10 of building height | none | 1/10 of lot depth but not less than 1/10 of building height | 1/10 of lot depth but not less than 1/10 of building height | none | 5 feet | 5 feet |
| Maximum lot coverage of principal and accessory buildings | Corner lot: 70% Other lots: 65% | Corner lot: 70% Other lots: 65% | Corner lot: 50% Other lots: 40% | Corner lot: 70% Other lots: 60% | Corner lot: 70% Other lots: 60% | 100% | Corner lot: 70% Other lots: 60% | Corner lot: 70% Other lots: 60% | none | Corner lot: 85% Other lots: 70% | Corner lot: 85% Other lots: 70% |

(Ord. No. 3087, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)

AFTER RECORDING RETURN TO:

GK Development, Inc.
257 East Main Street, Suite 200
Barrington, IL 60010
Attn: Joshua Chupack

**OPERATION AND RECIPROCAL
EASEMENT AGREEMENT**

By

GK Holiday Village, LLC,
a Delaware limited liability company

OPERATION AND RECIPROCAL EASEMENT AGREEMENT

THIS OPERATION AND RECIPROCAL EASEMENT AGREEMENT (this "**Agreement**") is made and entered into this ____ day of _____, 201__, by **GK HOLIDAY VILLAGE, LLC**, a Delaware limited liability company ("**Developer**")

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. These Recitals refer to and utilize certain capitalized terms which are defined in this Agreement. The Parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

B. Developer is the owner or groundlessee of that certain real property and improvements comprising a portion of the Shopping Center located in the City of Great Falls, County of Cascade, State of Montana, legally described in Exhibit A-1 attached hereto ("**Mall Parcel**") and depicted as Lot A-1D on the plat attached hereto as Exhibit B (the "**Plat**").

C. Developer is the owner or groundlessee of that certain real property and improvements comprising a portion of the Shopping Center located in the City of Great Falls, County of Cascade, State of Montana, legally described in Exhibit A-2 attached hereto ("**Parcel E-2**") and depicted as Lot E-2 on the Plat.

D. Developer is the owner or groundlessee of that certain real property and improvements comprising a portion of the Shopping Center located in the City of Great Falls, County of Cascade, State of Montana, legally described in Exhibit A-3 attached hereto ("**Parcel A-2**") and depicted as Lot A-2 on the Plat.

E. Developer is the owner or groundlessee of that certain real property and improvements comprising a portion of the Shopping Center located in the City of Great Falls, County of Cascade, State of Montana, legally described in Exhibit A-4 attached hereto ("**Parcel A-1A**") and depicted as Lot A-1A on the Plat.

F. Developer is the owner or groundlessee of that certain real property and improvements comprising a portion of the Shopping Center located in the City of Great Falls, County of Cascade, State of Montana, legally described in Exhibit A-5 attached hereto ("**Parcel A-1B**") and depicted as Lot A-1B on the Plat.

G. Developer is the owner or groundlessee of that certain real property and improvements comprising a portion of the Shopping Center located in the City of Great Falls, County of Cascade, State of Montana, legally described in Exhibit A-6 attached hereto ("**Parcel A-1C**") and depicted as Lot A-1C on the Plat.

H. Developer is the owner or groundlessee of that certain real property and improvements comprising a portion of the Shopping Center located in the City of Great Falls, County of Cascade, State of Montana, legally described in Exhibit A-7 attached hereto ("**Parcel A-1E**" and together with Parcel E-2, Parcel A-2, Parcel A-1A, Parcel A-1B, and Parcel A-1C, each an "**Ancillary Parcel**" and collectively, the "**Ancillary Parcels**") and depicted as Lot A-1E on the Plat.

I. A portion of the Shopping Center ("**Former Herberger's Property**") depicted at Lot E-1 on the Plat is owned by a successor and/or assign of Parisian, Inc., an Illinois corporation ("**Herberger's Successor**").

J. Developer, as owner of the Mall Parcel, Parcel E-2, Parcel A-2, Parcel A-1A, Parcel A-1B, Parcel A-1C and Parcel A-1E, and Herberger's Successor, as owner of the Former Herberger's Property are parties to that certain Operation and Reciprocal Easement Agreement dated July 13, 2000 and recorded July 13, 2000 on Reel 336, Document 465, records of Cascade County, Montana, and re-recorded July 21, 2000, on Reel 336, Document 833, records of Cascade County, Montana (the "**Shopping Center REA**") originally between The Macerich Partnership, L.P., a Delaware limited partnership ("Macerich"), and Parisian, Inc., an Alabama corporation. The Mall Parcel, Parcel E-2, Parcel A-2, Parcel A-1A, Parcel A-1B, a portion of Parcel A-1C and Parcel A-1E, among other property, is subject to the Shopping Center REA.

K. The Parties intend to operate their respective Parcels as integral parts of the Shopping Center, as generally shown on the Plat. To effect the further common development, use and operation of the Shopping Center, the Parties desire to enter into certain covenants and agreements as part of a general plan for beneficial use of the Parcels and to grant each to the other certain reciprocal easements in, to, over and across the Common Area to be located on the Parcels as described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and agreements contained herein and other valuable consideration, the Parties agree as follows:

1. **Definitions.**

1.1 **Defined Terms.** Each reference in this Agreement to any of the following terms shall have the meaning set forth below.

1.2 **Affiliate.** The term "Affiliate" means any other Person directly or indirectly, controlling, controlled by, or under common control with a Party. For purposes of this definition, "control" (including with correlative meanings, the term "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession of a legal and equitable interest in the Person sufficient to grant the power to direct or cause the direction of the management and policies of that Person.

1.3 **Ancillary Parcel Owner and Ancillary Parcel Owners.** The term "Ancillary Parcel Owner" means each owner of an Ancillary Parcel, and the term "Ancillary Parcel Owners" means the owners of the Ancillary Parcels.

1.4 **Appropriation.** The term "Appropriation" shall mean the taking of or damage to the Shopping Center, any building or improvement therein, any Parcel therein, or any portion thereof, by reason of any exercise of the power of eminent domain (including inverse condemnation), or any transfer of all or any part of the Shopping Center, any building or improvement therein, or any Parcel, or any portion thereof, in avoidance of an exercise of the power of eminent domain.

1.5 **Building or Buildings.** The term "**Building**" or "**Buildings**" mean the buildings (exclusive of the Enclosed Mall) located or to be located on the respective Building Areas on the Mall Parcel and/or the Ancillary Parcels as the context may appropriately require, as the same may exist from time to time including any replacements thereof, together with appurtenant truck loading or delivery docks or areas, ramps and wells.

1.6 **Building Area.** The term "Building Area" shall mean those area designated and shown on the Plat upon which areas are located Buildings and improvements.

1.7 **Common Area.** The term "Common Area" means all areas of the Shopping Center shown on the Plat (other than buildings located within Building Areas, and related building canopies, support columns, pilasters, overhangs and footings and appurtenant building truck loading or delivery docks or areas, ramps and wells) encompassing, without limitation, all of those facilities within or upon the Shopping Center for the non-exclusive use of Parties, Occupants and Users in common, including but not limited to, Parking Areas, service areas, driveways, areas of ingress and egress, sidewalk and other pedestrian ways, perimeter sidewalks adjacent and contiguous to buildings on Building Areas, areas containing buildings or structures used in connection with the maintenance of the Common Area, roadways, delivery areas, landscaped areas (including planters and areas located between perimeter sidewalks and buildings or next to exterior building walls), areas containing signs or structures advertising the common name given for the Shopping Center, together with the signs and structures constructed thereon (but not areas containing only the signs of individual Occupants, or the Occupant signs or sign structures), common corridors, public restrooms, if any, accessible from pedestrian passageways not within the building owned by Herberger's Successor or leased space of any Occupant, and the Enclosed Mall.

1.8 **Enclosed Mall.** The term "Enclosed Mall" means the enclosed, lighted, heated, ventilated and air-conditioned mall located in the Mall Parcel in the Shopping Center, as shown and designated on the Plat. For the avoidance of doubt, any property not located on the Mall Parcel cannot be included in the definition of "Enclosed Mall" even if such property includes a corridor to the Enclosed Mall.

1.9 **Floor Area.** The term "Floor area" means the aggregate from time to time of the actual number of square feet of floor space of all floors in any structure, designated or intended for use by an Occupant, whether roofed and enclosed or not, located in the Shopping Center whether or not actually occupied, including basement space and subterranean areas, and balcony and mezzanine space, measured from the exterior faces or the exterior lines of the exterior walls (including basement walls), except party and interior common walls, as to which the center thereof instead of the exterior faces thereof shall be used.

The term "Floor Area" shall not include any of the following:

- (i) The upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes so long as and to the extent used solely for that purpose, regardless of whether such multi-deck stock areas are permanent or temporary installations;
- (ii) Areas, whether physically separated or otherwise required by building codes, which are used exclusively to house mechanical, electrical, telecommunications, HVAC and other such building operated equipment, and rooms housing equipment to operate point of sale terminals and management information systems (including a computer data room), trash rooms and trash compacting and baling areas;
- (iii) Any Common Area;
- (iv) Any (a) Shopping Center management office and (b) Merchants' Association offices or storage rooms;
- (v) Emergency exit corridors or stairs between fire resistant walls required by building codes;
- (vi) Truck loading areas, and truck parking, turn-around and dock areas and ramps;
- (vii) A United States post office;
- (viii) Any community meeting rooms; and
- (ix) A police station.

No deduction shall be made from Floor Area computed under the foregoing definition by reason of interior columns, stairs (except as provided in subparagraph (v) above), escalators, elevators, dumbwaiters, conveyors or other interior construction or equipment within the building involved, except as provided above. Mall Parcel Owner may, in its discretion, from time to time exclude from Floor Area mezzanine or balcony space Mall Parcel Owner determines is not accessible, either by elevator or otherwise.

Whenever and during any period in which a building or other improvement in the Shopping Center is damaged, destroyed, rebuilt, repaired, replaced or razed for any reason whatsoever, the Floor Area of such Building shall be deemed to be the same as the Floor Area of such Building immediately prior to such period. Within thirty (30) days after completion of (i) initial construction or (ii) any reconstruction, remodeling or improvement of any building on a Party's Parcel, such Party shall certify, or shall cause its architect to certify, to the other Party the number of square feet of Floor Area on its Parcel. The Floor Area set forth in such certification shall constitute the Floor Area contained in the Building Area on such Party's Parcel as to which such certification has been made for all purposes under this Agreement, until affected by subsequent construction, reconstruction, remodeling or improvement, decreasing or increasing Floor Area.

1.10 **Indemnify.** The term "Indemnify" means indemnify, defend, with counsel reasonably satisfactory to the indemnitee, and protect and hold harmless the other Person, and such other Person's officers, directors, agents, servants, employees, partners, Sale and Leaseback lessors and Affiliates from and against all loss, claims, liability, cost or expense (including the reasonable attorneys' fees) ("**Claims**") incurred by the indemnitee as a result of or caused by the matter which is the subject of the indemnity, but excluding Claims arising in whole or in part from the gross negligence or intentional wrongdoing of the indemnitee, or its officers, directors, agents, servants, employees, partners, Sale and Leaseback lessors or Affiliates. The indemnitee shall give the indemnitor prompt notice of any suit, action or proceeding with respect to which the indemnitee is entitled to indemnification pursuant to this Agreement. Failure to give such notice shall not, however, in any manner negate or invalidate the obligation to provide such indemnity, except to the extent the indemnitor is prejudiced thereby.

1.11 **Mall Parcel Owner.** The term "Mall Parcel Owner" means the owner of the Mall Parcel.

1.12 **Mortgage and Mortgagee.** The term "Mortgage" means an indenture of first mortgage or first deed of trust on a Parcel, or, a, Sale and Leaseback. The term "Mortgagee" means either (i) the mortgagee under a Mortgage, (ii) the trustee and beneficiary under a Mortgage, or (iii) the fee owner or sublessor following a Sale and Leaseback. The term "Mortgagee" shall not refer to any of the foregoing Persons when in possession of the Parcel of any Party or any Affiliate of a Party.

1.13 **Occupant.** The term "Occupant" means each Party and any Person or Persons from time to time entitled to the use and occupancy of any portion of any Building Area in the Shopping Center by ownership thereof or under any lease, license or concession agreement, or other instrument or arrangement under which the Occupant acquires its right to such use and occupancy.

1.14 **Operating Costs.** The term "Operating Costs" means all costs and expenses paid or incurred for the operation, equipping, securing, maintenance, management, repair and

insurance of the Common Area and other portions of the Shopping Center, including the costs for parking lot lighting, utility facilities. Additionally, Mall Parcel Owner may include in Operating Costs (and seek payment from the Parties for) any and all rent, taxes, operating costs or other payments payable by Mall Parcel Owner under any reciprocal easement agreements, easements, leases, ground leases, deeds or other agreements, documents or instruments with other third parties.

1.15 **Parcels.** The term "Parcels" means the Mall Parcel and the Ancillary Parcels. Reference to a "Parcel" shall mean any or all of the Parcels, as the context may require.

1.16 **Parking Area.** The term "Parking Area" means that portion of the Common Area used for parking and passage of motor vehicles, including without limitation, incidental and interior roadways, walkways, curbs and landscaping within the areas used for such parking, together with all improvements as permitted by the provisions of this Agreement which are at any time erected thereon.

1.17 **Parking Ratio.** The term "Parking Ratio" means the ratio of parking spaces to Floor Area required to be maintained in the Parking Area of the Shopping Center pursuant to Article 7.

1.18 **Party.** The term "Party" means Mall Parcel Owner and each Ancillary Parcel Owner, or their respective successors in interest with respect to their respective Parcels, who succeed to their respective rights and obligations pursuant to Article 12.

1.19 **Party's Proportionate Share.** The term "Party's Proportionate Share" means a fraction, the numerator of which is the gross leasable area of a Party's Parcel and the denominator of which is the gross leasable area of the Shopping Center from time to time, as either may be remeasured from time to time by Landlord to more accurately reflect the true gross leasable area. The denominator in the above fraction shall increase or decrease with the further increase or decrease in the size of the Shopping Center, as Shopping Center may be defined by Mall Parcel Owner for purposes of calculating any Party's Proportionate Share from time-to-time. Gross leasable area of a Party's Parcel or the Shopping Center means, in Mall Parcel Owner's discretion, either (a) all ground floor area contained in a Party's Parcel or the Shopping Center designated for tenants' or other occupants' exclusive occupancy or (b) the actual acreage of each Parcel or the Shopping Center, regardless of whether designated for tenants' or other occupants' occupancy. Mall Parcel has the right to estimate each Party's Proportionate Share of Taxes and Operating Costs from time-to-time and notify each Party of the estimates which shall be paid by each Party in advance, on the first day of each and every calendar month. When Mall Parcel Owner has calculated the exact amount of Tenant's Proportionate Share of the costs, Mall Parcel Owner shall notify each Party of the exact amount. Any deficiencies in the payments made by each Party shall be paid by each Party to Mall Parcel Owner within thirty (30) days of demand therefor. Any surplus paid by a Party shall be applied against the next due monthly installments of the costs due from such Party.

1.20 **Person or Persons.** The term "Person" or "Persons" means individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals, or any other form of business or legal entity.

1.21 **Sale and Leaseback.** The term "Sale and Leaseback" means a transaction whereby a Party conveys the fee or a leasehold estate in such Parcel for financing purposes only and such conveyance is followed immediately by a leaseback or sub-leaseback of the entirety of the Parcel or the improvements thereupon to such Party, or to an Affiliate of such Party.

1.22 **Shopping Center.** The term "Shopping Center" means the Mall Parcel, Ancillary Parcels, the Former Herberger's Property and other property shown on the Plat, including the Building Areas and Common Area.

1.23 **Taxes.** The term "Taxes" means real estate and ad valorem taxes and any other assessments of any nature (1) which shall or may become a lien upon, or be assessed, imposed, or levied by lawful taxing authorities against the land upon which the Shopping Center is located and buildings and improvements on or for the benefit of the Shopping Center; or (2) which arise in connection with the use, occupancy, or possession of the Shopping Center or any part of the Shopping Center or any land, the building, easements or other improvements on the Shopping Center. The Taxes shall include, in Mall Parcel Owner's discretion, any fees, expenses or costs (including attorney's fees, expert fees and appraisal fees) incurred by Mall Parcel Owner in protesting or contesting any assessments, levies or the tax rate. A real estate tax bill or copy submitted by Mall Parcel Owner to any other Party shall be conclusive evidence of the amount of any real estate taxes, assessments, or installment.

1.24 **Users.** The term "Users" means all Occupants and the respective officers, partners, directors, licensees, invitees, customers, contractors, agents, and concessionaires.

1.25 **Certain Other Terms.** Certain other terms shall have the meaning set forth elsewhere in this Agreement for each such term.

2. Grant of Reciprocal Easements.

2.1 Each Party grants to the other Party easements over, across, in, under and through (i) Common Area of its Parcel appurtenant to and for the benefit of the other Parcel, for the uses and purposes set forth in Section 2.2, and (ii) the Building Areas of its Parcel appurtenant to and for the benefit of the other Parcels, for the uses and purposes set forth in Section 2.3, and (iii) in each case, for the duration specified in each instance in Section 2.4, and subject to all the terms, conditions and limitations set forth in Sections 2.2, 2.3 and 2.4. Each easement granted herein shall in each instance be (A) appurtenant to and for the benefit of the Parcel occupied by each grantee of such easement, and (B) nonexclusive for use in common with the grantor by the grantee, and for the easements granted under Section 2.1(i) by all Users and Occupants, solely for the purpose of developing and operating the Parcels as part of the Shopping Center pursuant to a common plan of beneficial use.

2.2 **Common Area Easements.** The Common Area on each Parcel shall be used only for the following purposes related to the businesses and activities conducted in the Shopping Center:

- (a) **Parking.** Parking in Parking Areas of Users' motor vehicles.
- (b) **Ingress and Egress.** Ingress and egress by any Users and any motor vehicles of such Users to, from and across any portion of the Common Area, and User access to, from and between any Building Area, Common Area and the public streets adjacent to the Common Area.
- (c) **Utilities.** Installation, maintenance, repair, replacement and operation of utility lines, fire service lines, and related facilities and services for the Common Area or Building Areas, together with and including, without limitation, vaults, manholes, meters, transformers, pipelines, valves, hydrants, sprinkler controls, conduits, storm drainage and sewage facilities, and all related facilities, all of which shall whenever and wherever reasonably feasible be located below the surface of the Common Area, or the surface of any other above ground improvements located thereon. Placement of any such utility facilities by the owner of the Ancillary Parcels above ground after the date of this Agreement shall require the prior approval of the Mall Parcel Owner, and all utilities and installations approved for above ground installation shall be placed so as not to interfere with, restrict, or impede other uses of Common Area provided for herein.
- (d) **Pedestrian Traffic.** Pedestrian traffic by Users (i) between business establishments in the Building Areas, (ii) between the Building Areas and Common Area, and (iii) between the Building Areas and Common Area and the adjoining public streets.
- (e) **Comfort and Convenience.** Comfort and convenience of Users by installation of minor convenience facilities, such as mailboxes, public telephones, and benches; provided, however, that no such minor convenience facilities shall materially interfere with, restrict or impede other uses of the Common Area provided for herein.
- (f) **Temporary Construction Activity.** Construction, maintenance, repair, replacement, rearrangement and remodeling permitted under this Agreement of buildings and improvements within Building Areas and Common Area. All such work shall be performed in compliance with the applicable provisions of Article 4 .
- (g) **Service and Delivery Vehicles.** Ingress, egress, and temporary parking of delivery and service vehicles traveling to and from the Building Areas, or any portion thereof, and access to and from the public streets adjacent to the Shopping Center, for the delivery of goods, wares, merchandise, furniture, fixtures, supplies and equipment, and the rendition of services to any Occupant.
- (h) **Doors and Exits.** The opening onto the Common Area of doors and other

exits of Buildings in the Building Areas.

(i) **Foundations, Footings, Supports and Common Walls.** Installation, repair, replacement and maintenance of Building foundations, footings, supports and common walls extending from any portion of a Building Area of any Parcel, over, onto, under and into the Common Area; provided, however, that Building foundations, footings, supports and common walls that benefit the Ancillary Parcel Owners, to the extent not existing as of the date of this Agreement, shall not extend into or below the Enclosed Mall.

(j) **Overhangs and Canopies.** Minor encroachments of building overhangs, canopies and support columns, eaves and signs, and pilasters and other building columns or pillars extending from a Building Area over, into and onto the Common Area; provided, however, that to the extent not existing as of the date of this Agreement, no such encroachment may in any event extend beyond the vertical plane of the outside edge of a sidewalk in the Common Area adjoining the Building Area perimeter.

(k) **Repair, Maintenance and Replacement.** Subject to the conditions and limitations specified in this Article 2 and Article 4 with respect to construction activities, ingress, egress and access over, along, and under each Party's Parcel (other than within Building Area) for the purpose of effectuating any necessary repairs, maintenance or replacements in connection with the use of the common non-exclusive easements and exercise of the other rights granted under this Agreement with respect to each Parcel, as permitted under this Agreement. Each Party hereby reserves the right to eject or cause the ejection from the Common Area of its Parcel of any Person or Persons not authorized, empowered or privileged to use the Common Area of such Parcel, and each Party reserves the right to close off the Common Area of its Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Party (i) shall have received the advice and recommendation of its regular legal counsel to proceed in such a manner, and (ii) shall to the extent practical under the circumstances give reasonable advance written notice to each other Party of its intention so to do, and shall coordinate such closing with the other Party and/or Herberger's Successor, as applicable, so that no unreasonable interference with the operation of the Shopping Center or the Former Herberger's Property shall occur.

2.3 **Building Area.** The Building Areas on each Parcel shall be subject to the following uses for the benefit of the other Parcel:

(a) **Foundations, Footings, Party Walls and Load Bearing Walls.** Repair, replacement and maintenance of building foundations, footings, party walls and load bearing walls required in connection with construction of improvements in the Building

Areas or Common Area on the Parcels; provided that, any such repair, replacement or maintenance by a Party on another Party's Parcel shall not (i) materially interfere with improvements on such other Party's Parcel, or (ii) increase the cost of operation or maintenance of the improvements on such other Party's Parcel, unless the Party performing such repair, replacement or maintenance agrees in writing, in a form reasonably acceptable to such other Party, to reimburse such other Party for such increased costs. Except to the extent existing as of the date of this Agreement, no foundations, footings, party walls and load bearing walls shall extend beyond a lateral distance of six feet (6') from the Building Area limit line upon which the building is constructed or from the improvements located in the Common Area. Nothing herein contained shall relieve a Party of its obligation to use best efforts to construct entirely within Building Area limit lines. Each grantor of an easement under this Section 2.3(a) covenants to the grantee of such easement that if all or any part of any grantor's building is removed or destroyed and not repaired, it will leave in place any common foundations, footings, party walls and load bearing walls (or portions thereof) not destroyed if, immediately before such removal or destruction, such common foundations, footings, party walls and load bearing walls (or portions thereof) were shared jointly between such grantor and grantee. The grantor of an easement under this Section 2.3(a) shall be obligated to leave the common foundations, footings, party walls and load bearing walls in place only for so long as that portion of the building of the grantee of such easement or of the Enclosed Mall sharing such common foundations, footings, party walls or load bearing walls (as originally constructed or as replaced under this Agreement) shall stand or shall be in the process of being replaced.

(b) **Encroachments.** Subject to the provisions of Section 2.3(a) above, minor encroachments of building overhangs, support columns, canopies and eaves, but only if (i) to the extent not existing as of the date of this Agreement, approved in writing by the Party occupying the burdened Parcel and (ii) such minor encroachment upon the Building Area of another Party's Parcel does not materially interfere with improvements on, or the use and enjoyment of, such other Party's Parcel.

(c) **Utility Connections.** Connection to or with utility installations, subject, however, to the provisions of Section 2.2(c) above; provided, however, that to the extent not existing as of the date of this Agreement (i) no such use shall be allowed in a manner which unreasonably burdens the affected Parcel, results in interference with the improvements thereon, impairs or diminishes the effectiveness of the existing system, inconveniences unreasonably the Occupants thereof, or adversely affects the fire insurance rating standard of the building on the affected Parcel; (ii) no such utilities and installations shall be located on the Mall Parcel without the consent of the Mall Parcel Owner, which consent may be withheld in such Mall Parcel Owner's sole and arbitrary discretion.

(d) **Enclosed Mall.** Unless otherwise permitted by Mall Parcel Owner in

writing, in Mall Owner's sole and absolute discretion, the owners of Parcel A-1A, Parcel A-1B and Parcel A-1E shall continue to abut and open onto the Enclosed Mall (or there shall be corridors which provide access between all or a portion of such parcels and the Enclosed Mall) in the locations shown on Exhibit B to provide access between such Parcels and the Enclosed Mall. Nothing contained herein shall be deemed to require Mall Owner to install any additional openings or corridors to the Enclosed Mall not existing on the date hereof.

2.4 **Duration of Easements.** Except as provided in Sections 2.4(a), all of the easements under Sections 2.2 and 2.3 granted under Section 2.1 shall automatically terminate and be extinguished upon the expiration or prior termination of this Agreement pursuant to Section 18.2(b).

(a) **Termination of Easements on Abandonment.** The easements granted between the Parcels pursuant to Sections 2.2(c) and 2.3(c) shall terminate as between the Parcels benefited and burdened thereby only if the use thereof for the benefit of a Parcel is abandoned for a period of two (2) years. Abandonment and termination of an easement hereunder shall be conclusively established for the benefit of any Parcel burdened by such easement, if:

(i) **Notice.** The Party, if this Agreement is still in effect as to such Party's Parcel, and if not, the then record owner of the fee of the Parcel, burdened with any such easement gives written notice by United States certified or registered mail, return receipt requested, to (i) the Parties to this Agreement, if this Agreement is then still in effect as to any Parcel, at the then address specified by each Party under Section 18.9(a) below, (ii) the then record owner of the fee of the Parcel benefited by such easement at the address given for mailing tax statements in the office of the Tax Collector of the County of Cascade, State of Montana, and (iii) the then record owner, if any, of any leasehold interest in such benefited Parcel, which notice (A) states that such easement has been abandoned by virtue of non-use of such easement for a two (2) year period; (B) identifies by name and address the Party or record owner of the Parcel burdened by such easement giving the notice; (C) describes both the Parcel benefited and the Parcel burdened by such easement; and (D) identifies the Party (if this Agreement is still in effect as to such Party's Parcel), and the then record owner of the fee, of the benefited Parcel and the record owner of any leasehold interest therein; and

(ii) **Recordation.** Concurrently therewith the Party or record owner of the fee interest of the burdened Parcel giving notice records, in the Office of the Recorder of the County of Cascade, such notice of abandonment, together with a certificate verifying that such notice has been served on the Parties (if this Agreement is still in effect as to such Parties' Parcels), the then record owner of the Parcel benefited by such easement and the then record owner, if any, of the

leasehold interest in such benefited Parcel as provided in Section 2.4(b)(i) above; and

(iii) **Response.** Any Party or any record owner of the fee of the benefited Parcel or any record owner of a leasehold interest in such Parcel, within ninety (90) days after receipt of the notice referred to in Section 2.4(b)(i) above, fails to serve by mail, in the manner provided in Section 2.4(b)(i) above, upon the Party or then record owner of the Parcel burdened by such easement at the address set forth for such Party or record owner in its notice under clause (B) of Section 2.4(b)(i) above, and concurrently therewith record in the Office of the Recorder of the County of Cascade an affidavit which (A) identifies the name and address of the Person giving the affidavit and the basis upon which such Person claims to have the requisite record interest in the benefited Parcel; (B) states the use of the easement which has been made within such two (2) year period which forms the basis of the claim of non-abandonment, or that the Person or Party intends to use the easement within 6 months from the date of the Notice (and in the case of intent to use, actually does use the easement within such 6 month period); (C) identifies Parties (if this Agreement is still in effect as to such Parties' Parcel) and the record owners of the fee of the burdened and benefited Parcels; and (D) describes both the Parcel benefited and the Parcel burdened by the easement. Failure of any Person having the requisite record interest in the Parcel benefited by the abandoned easement to serve and record the affidavit called for by Section 2.4(b)(iii) within the ninety (90) day period therein specified shall create a conclusive presumption, binding upon all Persons owning any interest in either the Parcel benefited or the Parcel burdened by the easement, that such easement is abandoned and terminated. Any Person at any time acquiring an interest in any Parcel more than 90 days after the notice referred to in Section 2.4(b)(i) above has been served by mail and placed of record in accordance with Section 2.4(b)(ii) above shall be entitled to rely absolutely on such failure as conclusive evidence that such easement has been abandoned and terminated. All notices under this Section 2.4(b) shall be served in the manner specified in Section 18.9(a), subject to address changes made in accordance therewith which are then in effect as to any Party, regardless of whether this Agreement is then in effect.

2.5 **Relocation of Utility Easements.**

(a) **Relocation Right.** At any time, Mall Parcel Owner shall have the right to relocate any of the easements created under Sections 2.2(c) and 2.3(c) that are either (a) located on and burden the Mall Parcel and benefit another Parcel or (b) are located on and burden another Parcel but benefit the Mall Parcel, provided that such relocation is performed only after thirty (30) days written notice of Mall Parcel Owner's intention to relocate given to the Party with respect to the benefited or burdened Parcel, as applicable,

and such relocation in Mall Parcel Owner's reasonable determination: (i) will not interfere with or diminish the enjoyment of the easement by the other Party occupying the benefited or burdened Parcel, as applicable; (ii) will not reduce or impair the usefulness or function of any of such easement, (iii) is made to a location or locations reasonably approved by the Party with respect to the Parcel burdened by such easement, and (iv) will not impair or impede the traffic flow through any entrance to the Shopping Center. Notwithstanding any such relocation, the maintenance and operation of any easement so relocated shall continue to be the obligation of the Party with respect to the Parcel benefited by such easement.

(b) **Execution of Documentation.** At the request of either the grantor Party or the grantee Party, such Parties shall execute and acknowledge such documents or instruments (in recordable form) as may be reasonably necessary or appropriate to extinguish of record the prior location of the easement relocated under this Section 2.5 and to establish of record the new location of such easement hereunder.

2.6 **Maintenance of Utility Facilities.** Subject to the provisions of Section 2.5, all utility facilities for the service of the Common Area shall be installed, maintained, repaired and removed by Mall Parcel Owner as part of the Common Area operation and maintenance under Section 5.1. All utility facilities within any Building Areas or that service the Building Area of a Party shall be installed, maintained, repaired and removed at Mall Parcel Owner's election by either the Party owning such Building Area or by Mall Parcel Owner at the owning Party's expense.

2.7 **Pylon Sign Easement.** The owner of Parcel A-1B hereby grants to Mall Parcel Owner the exclusive easement over, across, in, under and through Parcel A-1B appurtenant to and for the benefit of Mall Parcel Owner for the purpose of installing, maintaining, repairing and replacing the pylon sign located on Parcel A-1B. Notwithstanding anything to the contrary, Mall Parcel Owner shall be the sole party with any rights to such pylon sign, and not other Party shall have any rights to install, maintain, repair or replace such pylon sign or any rights to have a panel on such sign without Mall Parcel Owner's written consent. No Party shall install any new free-standing or pylon sign on its Parcel without Mall Parcel Owner's prior written consent.

2.8 **Loading Dock Easement.** The owner of Parcel A-1A and Parcel A-1B each hereby grants to the other and to Mall Parcel Owner the exclusive easement over, across, in, under and through Parcel A-1A and Parcel A-1B appurtenant to and for the benefit of the owners of Parcel A-1A and Parcel A-1B and Mall Parcel Owner for the limited purpose of accessing and using the loading and delivery dock and ramp currently used by the tenants and occupants located on Parcel A-1A, Parcel A-1B and the Mall Parcel.

3. **Covenants Regarding Shopping Center Use and Operation.**

3.1 **Uses.** Ancillary Parcel Owner covenants and agrees that no part of the Ancillary

Parcels shall be used, and no Building or other improvement shall be constructed, maintained or used on the Ancillary Parcels, except (a) for retail, office and commercial service uses compatible with a first-class enclosed mall regional shopping center as reasonably determined by Mall Parcel Owner and (b) in compliance with the use restrictions and other terms of the Shopping Center REA.

3.2 **Building Area Limit Lines.** Buildings (including entryways and appurtenant delivery areas) shall only be placed or constructed within the Building Area limit lines on each Parcel as shown on the Plat.

3.3 **Building Upkeep and Maintenance.** Unless otherwise determined by Mall Parcel Owner, each Parcel owner, without cost or expense to the other Parcel owners, shall provide for appropriate upkeep and maintenance for the exterior of the buildings and improvements in the Building Areas on its Parcel (including, without limitation, the physical structure, façade, roof, windows, doors, awnings, overhangs, building fixtures, attached signage, truck loading or delivery docks or areas, ramps and wells) so as to ensure that the Shopping Center, and each part thereof, is maintained in a first-class manner and retains at all times the appearance of a first-class shopping center, as determined by Mall Parcel Owner. Such upkeep and maintenance shall also include the prompt removal of graffiti or other defacement from building exterior surfaces.

3.4 **Prohibited Operations and Nuisances.**

(a) **Non-Interference With Common Area.** To prevent interference with the easements granted to the respective Parties under Article 2 or with the proper operation and appearance of the Shopping Center, no merchandise and/or service shall be displayed, sold, leased, stored, advertised or offered for sale or lease by any Ancillary Parcel Owner outside the physical limits of Building Areas. Notwithstanding anything to the contrary in this Agreement, Mall Parcel Owner will have the right to place kiosks, retail merchandising units and pushcarts in the Enclosed Mall.

(b) **Limitation on Detrimental Characteristics.** No use or operation will be made, conducted or permitted on any part of the Ancillary Parcels, which use or operation is clearly objectionable to the development or operation of the Shopping Center as a first class regional shopping center containing an enclosed air conditioned mall without the prior written consent of the owner of the Mall Parcel, which consent may be withheld by such Mall Parcel Owner in its sole and absolute discretion. Included among the uses or operations which are objectionable are the following uses or operations, or any uses or operations which produce or are accompanied by the following characteristics, which list is not intended to be all-inclusive.

(i) Any noise, litter, dust, dirt, odor or other activity which constitutes a public or private nuisance;

(ii) Any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);

(iii) Any warehouse operation (but any area for the storage by an Occupant of goods intended to be sold at its retail establishment in the Shopping Center shall not be deemed to be a warehouse), or any assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation;

(iv) Any trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, junk yard, stock yard or animal raising;

(v) Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner and in accordance with applicable law;

(vi) Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital, car washing establishment, bowling alley, mortuary or similar service;

(vii) Any automobile body and fender repair work; or

(viii) Any residential living quarters;

(ix) Any game arcade or amusement center if located within 100 feet of the Herberger's Building (as defined in the Shopping Center REA);

(x) Any automobile, boat, truck or trailer display or repair shops, except for tire, batteries and automobile accessories shops and other nationally operated automobile service centers; or

(xi) Any lounge, pool hall, dance hall, auditorium, massage parlor, adult book store, flea market, "head" shop or other shop selling drug-use paraphernalia, bingo parlor, consignment store, auction house, gasoline or service station or roller rink.

(c) **Contest of Laws.** Each Party, without cost or expense to the other Party shall promptly comply or cause compliance with all laws, ordinances, rules and regulations of any governmental authority having jurisdiction which may at any time be applicable to the buildings and improvements contained within the Building Area on its Parcel; provided, however, that each Party shall have the right to contest, by appropriate legal or administrative proceedings, the validity or application of any such law, ordinance, rule or regulation and may delay compliance until a final decision has been

rendered in such proceedings and appeal is no longer possible, unless such delay would render the Shopping Center, or any portion thereof, liable to forfeiture, involuntary sale or loss, or result in involuntary closing of any business conducted thereon, or subject any other Party or Occupant to civil or criminal liability, in which case the affected Party shall immediately take such steps as may be necessary to prevent any of the foregoing, including posting bonds or security or complying with such law, ordinance, rule or regulation. If compliance with any such law, ordinance, rule or regulation would prevent the Party to whose Parcel such law applies from performing any of its obligations under this Agreement, and such Party does not contest the applicability or validity of such law, ordinance, rule or regulation, any other Party may contest the same in accordance with the procedures and subject to the limitations hereinabove set forth, and during the pendency of such contest, the Party whose Parcel is affected shall delay compliance in accordance with the provisions contained hereinabove. Each non-contesting Party shall cooperate to the fullest extent necessary with any contesting Party in any proceeding undertaken pursuant to this Section 3.4(c), including execution of necessary documents or consents to such contest, provided that all costs and expenses incurred with respect to such cooperation shall be paid by the contesting Party and provided, further, that a Party or its Parcel shall not thereby incur any civil or criminal liability. Notwithstanding anything to the contrary herein contained, this Section 3.4(c) shall not apply to any tax contest or Appropriation which is subject to Articles 6 or 10.

3.5 **Rules and Regulations: Employee Parking and Deliveries.** The Mall Parcel Owner may from time to time, promulgate and impose rules and regulations upon Occupants of the Ancillary Parcels pertaining to the use of Building Areas and Common Area by Occupants and Users, and establishing employee parking regulations and regulations with respect to delivery, service and Shopping Center use related vehicles, times of delivery and places of delivery. Mall Parcel Owner may from time to time, prescribe certain sections within the Parking Area for use as parking space by certain Occupants of the Shopping Center and the employees, tenants, agents, contractors, licensees and concessionaires of such Occupants. Each Party shall require its Occupants and the employees, agents, contractors, licensees and concessionaires of such Party and of such Occupant to use only such sections as are so prescribed for parking.

3.6 **Parking Area Levies.** No Ancillary Parcel Owner nor any Occupant of an Ancillary Parcel shall impose or attempt to impose any charge, service fee or exact any other consideration in exchange for the right of a User to enter or depart from or park a motor vehicle in the Shopping Center or Parking Area in connection with use of the Common Area for purposes contemplated herein, unless such charges are lawfully ordered by appropriate governmental authority having jurisdiction over the Shopping Center.

3.7 **No Walls, Fences or Barriers.** Subject to the provisions contained in Article 4 concerning construction activities, and except as shown on the Plat or existing as of the date of this Agreement, no walls, fences or barriers of any sort or kind shall be constructed or erected or permitted to be constructed or erected in the Common Area by an Ancillary Parcel Owner, or

any portion thereof, without the prior written consent of the Mall Parcel Owner.

3.8 **Signs.** No Party shall place or allow or cause to be placed any signs of any type (i) upon the roof of any building or improvement in the Shopping Center, or (ii) which protrude or extend above the roofline of any such building or improvement, except as otherwise shown on the Plat. Notwithstanding anything to the contrary in this Agreement, no Party may install, alter or modify any external signage without Mall Parcel Owner's prior written consent.

3.9 **Lighting.** Subject to the terms and conditions of the Shopping Center REA (to the extent such Shopping Center REA applies to the Parties) and Section 5.2 below, Mall Parcel Owner shall control all lighting for the Common Area. If "special" lighting (other than lighting necessary for Shopping Center security) is required or if regular lighting is required for a time later than provided by any Party or Occupant of the Shopping Center, then the electricity and all expenses thereof to service such lighting requirements shall be paid by such Party or Occupant who requires the special service. If such electricity is not separately metered, then the cost of such special lighting shall be determined by Mall Parcel Owner on a prorated basis in accordance with the special usage or other reasonable basis and all such pro-rated or reasonable determine expenses shall be paid by such Party or Occupant which requires the special service.

3.10 **Parcel A-1B.** The owner of Parcel A-1B covenants that no part of Parcel A-1B shall violate Section 3.11 of the Shopping Center REA.

4. **General Construction Requirements.**

4.1 **Construction and Installation of Shopping Center Improvements Generally.**

(a) **Construction Work Generally.** All construction, additions, alterations and/or repair work undertaken by any Ancillary Parcel Owner upon any Parcel pursuant to any easement granted herein, or permitted by any other provision of this Agreement, shall be accomplished in the most diligent manner which is commercially reasonable and shall be subject to Mall Parcel Owner's prior written consent. Not in limitation of the foregoing, such Mall Parcel Owner's prior written consent shall be required for all alterations, repairs, or other work performed by an Ancillary Parcel Owner that modifies structural or non-structural components of buildings or structures, including the exterior appearance thereof, and all such construction, additions, alterations and/or repair work must be substantially similar, in Mall Parcel Owner's discretion, in design, character, quality and architectural treatment (including the appearance of construction material used) to the basic structure of which it will form a part and the remainder of the Shopping Center and not adversely affect the orderly flow of pedestrian and vehicular traffic in the Shopping Center or render any Parcel less accessible to such traffic. The Party undertaking such work shall minimize any disruption or inconvenience caused by such work to the other Occupants or Users of the affected Parcel and shall provide for the safety and convenience of all Occupants and Users. Such work shall be accomplished by

the Party undertaking it in such manner as to prevent any damage and minimize any adverse affects which might be caused by such work to any other Party, any Parcel or the Occupants and Users thereof, and cause as little disruption of and interference with use of the Common Area and other Buildings as reasonably possible as reasonably determined by Mall Parcel Owner. Dust, noise and other effects of such work shall be controlled by the Party undertaking the work using commercially reasonable methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area. The Party undertaking such work shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the affected portion of the Parcel upon which such work is performed to a condition equal to or better than the condition existing prior to beginning such work. In addition, except as otherwise set forth in Article 2 and the remainder of this Agreement, the Party undertaking such work shall pay all costs and expenses associated therewith and shall indemnify the other Party from all Claims attributable to the performance of such work. All such work pursuant to any easement granted herein shall be undertaken only after receiving Mall Parcel Owner prior written consent to the work to be undertaken, the scope, nature and extent of the work, the duration of the work, and the area in which the work is to be performed.

(b) **Utility Connections.** Any work performed by or on behalf of a Party to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, fire service line, gas line, telephone conduit or any other public utility service shall be performed without interference with the provision of such services to the Common Area and the other Parties and the Occupants of their Parcels, unless such interference is made unavoidable by emergency repairs or as a result of a casualty, in which event the Party performing the work shall use good faith efforts to give prior notice to the other Party of such interference, or if prior notice is not possible, to give such notice as soon as possible after the occurrence of the event giving rise to such interference and otherwise use due diligence to take all measures available to prevent interference with such services or the disruption of the orderly conduct of the business of the other Parties, and any Occupants of their Parcels. Any work of installation, alteration, replacement or repair of utility installations shall be undertaken with particular care so as to minimize the impact upon traffic circulation within the Common Area and access of all Users to the various business establishments in the Shopping Center.

(c) **Compliance with Laws.** All construction work undertaken by any Party shall comply with the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations of such authorities, including, without limitation, zoning laws and building codes. Each Party shall also secure all licenses and permits from governmental agencies, public bodies and other entities (such as public utilities) necessary for any construction undertaken by it, and if requested by Mall Parcel Owner, provide copies of such licenses and permits to Mall Parcel Owner.

(d) **Timing Restriction On Construction.** No construction activity, including storage of construction equipment or materials, shall be conducted or permitted in the Common Area during the period from October 1 through December 31 of any calendar year without the prior written consent of the Mall Parcel Owner, unless (i) such construction activity is conducted within an enclosed area without material obstruction of any part of the Parking Area, driveways, walkways, corridors, Enclosed Mall or accesses or (ii) such construction activity is required in connection with emergency repairs or as a result of a casualty.

(e) **Emergency Work.** Notwithstanding any other notice provision contained in this Section 4.1, in the event of emergency conditions, any Party may undertake the necessary construction work to remedy the emergency condition, provided that the Party undertaking such work does so in good faith, gives notice thereof to the other Parties upon the occurrence of the emergency condition or as soon thereafter as possible, and otherwise conforms to the applicable conditions of this Section 4.1.

(f) **Fencing Off Construction.** Unless waived by Mall Parcel Owner, each Party, at its own cost and expense, shall fence off or cause to be fenced off, in locations determined by Mall Parcel Owner, any development, construction, repair, alteration or remodeling work performed by or under the Party on any Parcel, if fencing is necessary or appropriate to insure the safety of Users of the Common Area or in order to prevent interference with the operation of a Party's business or such Party's rights of use in the Common Area under this Agreement. Fencing shall be of such height and of a construction sufficient to protect existing facilities in the Shopping Center from dust, debris and other inconveniences occasioned by such work, and to protect Users from safety hazards resulting from such work and shall be constructed of materials in keeping with the character of existing Shopping Center facilities.

(g) **Common Area Encroachments.** In connection with work of construction performed within Building Areas, incidental encroachment upon Common Area may occur as a result of the use of ladders, scaffolding, store front barricades and similar facilities resulting in temporary obstruction of portions of the Common Area, all of which are permitted hereunder so long as (i) their use is kept within reasonable requirements of permitted construction work expeditiously pursued, and (ii) they do not unduly interfere with the use and enjoyment of the easements granted under Article 2 above, or access, ingress and egress to and from the Building Areas and the Common Area and adjoining public streets, or the circulation of vehicles or pedestrians within the Common Area or between Building Areas and the Common Area or adjoining public streets.

(h) **Use of Common Area.** Common Area may be used (i) for ingress and egress of vehicles transporting construction materials and equipment and Persons employed in connection with any work provided for herein, and (ii) staging areas for

temporary storage of materials and vehicles being used in connection with such construction, subject to all of the other terms of this Agreement. The location for ingress and egress and staging areas under the foregoing clauses (i) and (ii) shall be subject to approval of Mall Parcel Owner prior to commencement of construction.

4.2 **Indemnification By Parties.** Each Party (the "Indemnifying Party") shall Indemnify the other Party (the "Indemnified Party") from any and all Claims arising by reason of injury to or death of persons, damage to property of Persons or liens for work or labor performed, materials or supplies furnished, arising out of or in connection with us by the Indemnifying Party of the easements granted hereunder or otherwise supplied or obtained for the benefit of such Party's Parcel, the exercise by Indemnifying Party of the rights granted to it in this Agreement, or the performance by the Indemnifying Party of its obligations under this Agreement. The Indemnifying Party may contest any lien or claim of lien asserted against the Indemnified Party, or the Parcel affected by the Indemnifying Party's use of any of the easements or rights granted hereunder, or the exercise by the Indemnifying Party of the rights granted to it in this Agreement; provided, however, that the Indemnifying Party shall pay and fully discharge any such claim of lien within five (5) days after entry of final judgment adverse to the Indemnifying Party in any action to enforce or foreclose the same. For purposes of this Section 4.2, a judgment shall be deemed final when it can be enforced by execution or judicial sale, and no such judgment shall be considered final for the purposes hereof during the pendency of a stay of execution in connection with an appeal. If an Indemnifying Party contests a claim of lien, then upon the written request of the Indemnified Party, the Indemnifying Party shall promptly take one or more of the following actions as shall be required to induce a title insurance company insuring the Indemnified Party's Parcel chosen by the Indemnified Party to issue its policy of title insurance not showing the lien claim as an exception to title to the affected Parcel: record a bond of a responsible corporate surety of such kind and in such amount as may be required to release the lien from the affected Parcel, (ii) post security in the amount of the Claim, plus estimated costs and interests, or (iii) provide such indemnities as such title insurance company may require. Notwithstanding the preceding sentence, the Indemnifying Party shall not be required to take any of the actions described in the preceding sentence if the Indemnifying Party's net worth at the time of the request exceeds \$200,000,000 and the other Party is not then attempting to sell or finance its interest in the Parcel encumbered by such lien.

5. **Common Area Maintenance and Operation.**

5.1 **Operation and Maintenance of Common Area (Other than Enclosed Mall).** Subject to Section 5.2 and in accordance with this Article 5, and except with respect to the Enclosed Mall, Mall Parcel Owner shall operate and maintain (and no other Party shall be permitted to operate and maintain without Mall Parcel Owner's prior written consent) the Common Area located in the Shopping Center, including, without limitation, any paved areas, Parking Area, directional signs, markers and lines, lighting facilities, landscaped areas (including irrigation systems and planters), utility lines, systems and services, public restrooms, and sidewalks. Notwithstanding the foregoing, unless otherwise determined by Mall Parcel

Owner, each Party shall install, operate and properly maintain, or cause to be so installed, operated and maintained, on its Parcel, without cost or expense to the other Party and so as not to be visible to the general public shopping at the Shopping Center, sufficient trash compactors, bailers and enclosed trash bins, for use in connection with storage of all trash, refuse and waste materials of the Occupants of such Party's Parcel, and each Party shall take, or cause to be taken, all necessary measures to keep the Parcels free from all debris and rubbish caused by or emanating from such facilities. Mall Parcel Owner shall have the right to regulate traffic at entrances and exits to the Shopping Center as conditions reasonably require in order to maintain orderly and proper traffic flow and ingress and egress to the Shopping Center and provide security and other personnel that Mall Parcel Owner determines are necessary.

5.2 **Cost of Operation and Maintenance of Common Area.** Except as may be set forth in any separate agreement(s) entered into or to be entered into between Mall Parcel Owner and any other Parties, each Party shall pay Mall Parcel Owner in connection with Mall Parcel Owner's Operating Costs, the greater of (a) a reasonable fixed dollar amount per square foot per annum determined by Mall Parcel Owner at the time any Parcel is conveyed, which amount may be increased each calendar year by five percent (5%) over the amount charged to such Party during the previous calendar year, (b) such Party's Proportionate Share of Operating Costs paid or incurred by Mall Parcel Owner or others on Mall Parcel Owner's behalf, or (c) an amount equal to the Operating Costs or other common area maintenance costs each Party is entitled to collect from its tenants or other occupants under leases, licenses or other arrangements.

6. **Real and Personal Property Taxes.**

6.1 **Payment of Property Taxes.** Except as may be set forth in any separate agreement(s) entered into or to be entered into between Mall Parcel Owner and any other Parties, each Party shall pay, or cause to be paid, to Mall Parcel Owner, at least thirty (30) days before being due to the applicable taxing authority, the greater of (a) all Taxes which may be levied or assessed against such Party's Parcel, (b) such Party's Proportionate Share of Taxes, or (c) an amount equal to the Taxes each Party is entitled to collect from its tenants or other occupants under leases, licenses or other arrangements. Notwithstanding the foregoing, Mall Parcel Owner may elect from time-to-time for each Party to pay all or any portions of such amounts directly to the applicable taxing authorities. Additionally, and notwithstanding anything to the contrary, Mall Parcel Owner may from time-to-time determine and require a different equitable or reasonable calculation, allocation, system, standards or procedures to govern the amount of Taxes each Party shall be responsible to pay.

6.2 **Contest of Property Taxes.** Each Party and Mall Parcel Owner shall have the right to contest in good faith any real property tax or other special tax or assessment levied upon its respective Parcel or any building or improvement thereon. Any such contested tax or assessment shall be paid, however, prior to the time when the affected portion of the Shopping Center can be subjected to sale under any applicable law pursuant to a proceeding which may

result in impairment of the rights created hereunder or termination of any provision hereof as applied to any Parcel. Any Party who is not a party to such contest shall execute such documents as may be reasonably necessary to establish or evidence the contesting Party's right to contest any such tax, assessment or charge. The Party making such contest shall indemnify the other Party against any loss, cost, damage, injury or expense arising out of or relating to the conduct of such contest, but no Party shall be charged with responsibility as a result of any such contest for any increased taxes allegedly resulting therefrom or as a result thereof.

7. **Parking Ratio.** No Party shall take any action without Mall Parcel Owner's prior written consent that reduces the Parking Ratio required below the ratio of parking spaces per Floor Area required under the Shopping Center REA.

8. **Indemnification; Insurance; Damage and Destruction.**

8.1 **Common Area Indemnity.** Each Ancillary Parcel Owner covenants to Indemnify Mall Parcel Owner from and against any and all Claims incurred in connection with, arising from, or as a result of the bodily or personal injury or death or property damage to any Person, as shall occur in or about the Common Area located on such Ancillary Parcel Owner's parcel or arising as a result of such owner's gross negligence or willful acts.

8.2 **Indemnification As to Each Parcel.** Each Ancillary Parcel Owner shall Indemnify Mall Parcel Owner from and against any and all Claims as shall occur on its Ancillary Parcel.

8.3 **Parties' Liability Insurance.** Each Ancillary Parcel Owner shall, during the term of the Agreement, severally maintain in full force and effect comprehensive commercial general liability insurance, including but not limited to, comprehensive property damage insurance and contractual liability insurance for Ancillary Parcel Owner's obligations to Indemnify set forth in Section 8.2, providing coverage for any Claim on its Ancillary Parcel (exclusive of Common Areas) with a combined single limit of at least Five Million Dollars (\$5,000,000.00) per occurrence or such other amount as Mall Parcel Owner may from time to time require including bodily injury or death. The insurance policy shall be on Service Office, Inc. (ISO) form CG 0001 0196 or an equivalent occurrence basis commercial general liability insurance policy form that is reasonably satisfactory to Landlord.

8.4 **Parties' Casualty Insurance.** Each Ancillary Parcel Owner agrees to carry, or cause to be carried, builder's risk during any construction and thereafter fire and extended coverage insurance in an amount which shall avoid the coinsurance provisions of any policy and shall be at least equal to ninety percent (90%) of the replacement cost (exclusive of the cost of excavation, foundations and footings) of the improvements on its Ancillary Parcel, without deduction for depreciation for the improvements being insured, insuring against "all risks of physical loss or damage" (except loss or damage by war or nuclear incident), and specifically against at least the following perils: loss or damage by acts of God, earthquake, subsidence,

flood, fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicles, smoke damage and sprinkler leakage as well as boiler and machinery perils for the full replacement value covering all of Ancillary Parcel Owner's goods and merchandise, trade fixtures, furniture, signs, decorations, furnishings, wall covering, floor covering, draperies, equipment, and all other items and personal property of Ancillary Parcel Owner located on or within its Ancillary Parcel. Each Ancillary Parcel Owner shall furnish to Mall Parcel Owner, prior to the effective date of any such policy, evidence that the insurance required by this Section 8.4 is in force and effect. Replacement value is understood to mean the cost to replace without deduction for depreciation.

8.5 **General Obligations on Rebuilding.** Whenever an Ancillary Parcel Owner rebuilds, replaces or repairs any Building Area or other improvement damaged or destroyed from any cause whatsoever, the work of such rebuilding, replacement or repair shall be commenced and prosecuted to completion with all due diligence and as soon as reasonably possible after the event of damage or destruction occurs but in no event more than twenty-four (24) months after the damage occurred. The work of rebuilding, replacement or repair shall be undertaken by the affected Ancillary Parcel Owner in accordance with all the terms of this Agreement.

8.6 **Obligations When Party Does Not Rebuild.** In the event of any damage or destruction to any Building Area or improvements located on any Ancillary Parcel, which an Ancillary Parcel Owner is not obligated to and does not repair hereunder, then the affected Ancillary Parcel Owner shall either (a) restore the exterior of its Building to a safe and presentable condition or (b) raze and demolish such Building Area or improvement (or such part thereof that has been damaged or destroyed), clear the affected area of all debris.

8.7 **Additional Insurance.** Each Ancillary Parcel Owner agrees to carry during the entire term of this Agreement Worker's Compensation Insurance, Employer's Liability Insurance, and, if each such Ancillary Parcel Owner uses vehicles, owned and non-owned, in any way to carry out business on or about the Shopping Center, each Ancillary Parcel Owner shall maintain Motor Vehicle Liability Insurance. Each Ancillary Parcel Owner shall carry Employer's Liability Insurance which shall be for limits of not less than \$500,000 for Bodily Injury per each accident and each disease, per employee, and a total combined limit for Bodily Injury in amounts not less than \$500,000 per accident and \$500,000 per disease. The Motor Vehicle Liability Insurance shall be for limits of not less than \$1,000,000 combined single limit for Bodily Injury and Property Damage. Each Ancillary Parcel Owner shall be responsible for the maintenance of the plate glass in or on its Ancillary Parcel and shall carry at its expense Plate Glass Insurance with a deductible of not more than \$250.

8.8 **Blanket Coverage.** Any policy required to be maintained hereunder by a Party may be maintained under a so-called "blanket policy" insuring other Persons and other locations, so long as the amount of insurance required to be provided hereunder is not thereby diminished.

8.9 **Other Insurance Requirements.** Any policy of insurance required to be carried

under this Article 8 by an Ancillary Parcel Owner shall provide that such policy may not be cancelled or modified without at least thirty (30) days prior written notice to Mall Parcel Owner and shall be carried with an insurance company or companies having an A.M. Best's Key Rating Guide rating of A-VII or better or such other comparable publication if Best's is no longer published and qualified to insure property in Montana. Each Ancillary Parcel Owner shall furnish to Mall Parcel Owner on or before the effective date of any policy of insurance required to be carried under this Article 8, a certificate thereof stating that such insurance is in full force and effect, that the premiums therefor have been paid, that Mall Parcel Owner (and any other Person required to be so named by Mall Parcel Owner) have been designated as named or additional insureds where required, evidencing that the policy contains the required waivers of subrogation and that such insurance may not be cancelled or modified without at least thirty (30) days prior written notice to Mall Parcel Owner by registered mail by the insurance company prior to cancellation, termination or change in insurance. Whenever, in Mall Parcel Owner's reasonable judgment, good business practice or change in conditions indicate a need for additional or different types of insurance, each Ancillary Parcel Owner shall upon request obtain the insurance at its own expense. Each Ancillary Parcel Owner shall provide Mall Parcel Owner with copies of the insurance policies or certificates evidencing that the insurance is in full force and effect and indicating the terms of the insurance.

8.10 **Mutual Release: Waiver of Subrogation.** Each Ancillary Parcel Owner for itself, and on behalf of its insurer, hereby releases and waives any right to recover against the Mall Parcel Owner from any liability for any loss or damage to buildings or other improvements in the Shopping Center, or the contents thereof, and any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is covered by insurance by such Ancillary Parcel Owner, irrespective of any negligence on the part of Mall Parcel Owner which may have contributed to such loss or damage. All casualty coverage insurance carried by Ancillary Parcel Owner shall provide for waiver of subrogation against Mall Parcel Owner and its affiliates. Evidence of the existence of the waiver shall be furnished by Ancillary Parcel Owner to Mall Parcel Owner on request.

9. Options to Purchase and Right of First Refusal.

9.1 If any Ancillary Parcel ceases operating its Parcel under its current use on the Effective Date for a continuous period in excess of twelve (12) months ("**Use Requirements**"), Mall Parcel Owner shall have the right ("**Mall Parcel Owner's Purchase Option**"), but not the obligation, to purchase the Ancillary Parcel, including the improvements located thereon, as well as any and all other rights appurtenant thereto (collectively, the "**Ancillary Parcel Fee Interest**"). If Mall Parcel Owner's Purchase Option is exercised, the purchase price to be paid by Mall Parcel Owner will equal the "**Fair Market Value**" (as hereinafter defined) of the Ancillary Parcel Fee Interest. After the Ancillary Parcel Owner fails to cause its Ancillary Parcel to comply with the "Use Requirements", Mall Parcel Owner giving the Ancillary Parcel Owner written notice of its intent to exercise Mall Parcel Owner's Purchase Option ("**Intent to Purchase Notice**") and purchase the Ancillary Parcel Fee Interest. Thereafter,

Mall Parcel Owner will provide the Ancillary Parcel Owner with written notice proposing the Fair Market Value of the Ancillary Parcel (unless such identification was included in the Intent to Purchase Notice). If Ancillary Parcel Owner agrees with such amount, it shall be the Fair Market Value. If, however, within ten (10) days thereafter (time being of the essence) the Ancillary Parcel Owner notifies Mall Parcel Owner that it disagrees with Mall Parcel Owner's fair market value determination, Mall Parcel Owner shall appoint an appraiser at Ancillary Parcel Owner's expense who shall appraise the Ancillary Parcel Fee Interest and deliver its written appraisal to Mall Parcel Owner and Ancillary Parcel Owner, which appraisal shall be the Fair Market Value. Within thirty (30) days after the determination of the Fair Market Value, Mall Parcel Owner shall have the right, but not the obligation, to purchase the Ancillary Parcel Fee Interest for the Fair Market Value by providing written notice to Ancillary Parcel Owner of its election to purchase and specifying in such notice a date for the closing of the transaction for the purchase by Mall Parcel Owner of the Ancillary Parcel Fee Interest. Mall Parcel Owner's obligation to close on the Ancillary Parcel shall be contingent on Mall Parcel Owner's satisfactory (in Mall Parcel Owner's discretion) performance of due diligence, securing equity and debt financing and receipt of an owner's policy of title insurance insuring fee simple title to the Ancillary Parcel in form and substance acceptable to Mall Parcel Owner.

9.2 The Parties hereto that are also parties to the Shopping Center REA acknowledge and agree that the rights granted to the Developer (as defined in the Shopping Center REA) in Article 9 of the Shopping Center REA shall inure to the benefit of and may be exercised solely by Mall Parcel Owner and not the other Parties to this Agreement.

9.3 Reference is hereby made to that certain Reciprocal Easement Agreement between Voegel's Inc., a Montana corporation, and Macerich, dated September 24, 1998 and recorded September 25, 1998 on Reel 311, Document 1349, records of Cascade County, Montana, as amended by that certain Amendment to Reciprocal Easement Agreement, dated March 12, 1999 and recorded March 12, 1999, on Reel 318, Document 1084, records of Cascade County, Montana (collectively, the "Lot 20 REA"). Certain of the Parties to this Agreement are successors-in-interest to the Center Owner (as defined in the Lot 20 REA), and the Parties hereto that are such successors-in-interest to the Center Owner under the Lot 20 REA acknowledge and agree that the rights granted to the Center Owner in Section 4.1 of the Lot 20 REA shall inure to the benefit of and may be exercised solely by Mall Parcel Owner and not the other Parties to this Agreement.

9.4 In the event that any Ancillary Parcel Owner desires to sell its Parcel, then such Parcel shall first be offered for sale to Mall Parcel Owner at the same price and on the same terms at which such owner selling the Ancillary Parcel has received an offer and is willing to accept for the Ancillary Parcel. The Ancillary Parcel Owner desiring to sell such Ancillary Parcel shall give Mall Parcel written notice of the Ancillary Parcel Owner's desire to sell such Ancillary Parcel and shall further advise Mall Parcel in said notice of the price and terms the owner selling the Ancillary Parcel has received in an offer (along with the name of the party

making the offer) and is willing to accept for the Ancillary Parcel. Mall Parcel Owner shall have a period of thirty (30) days after receipt of said written notice within which to give notice to the owner of the Ancillary Parcel of Mall Parcel Owner's intention to exercise its option to purchase the Ancillary Parcel at the same price and on the same terms as disclosed in the notice received by Mall Parcel Owner. Should Mall Parcel Owner fail or refuse within said thirty (30) day period to notify the owner as aforesaid of its intention to exercise its option to purchase said unit at the offered price and terms, then the owner of the Ancillary Parcel shall have the right to sell said Ancillary Parcel to the person, firm or corporation or other entity making said bona fide offer whose identity was revealed to Mall Parcel Owner in said written notice on the terms contained in such notice; provided, however, that any such sale of any Ancillary Parcel by its owner to the person, firm or corporation making such offer shall be subject to all restrictions, limitations, and provisions of this Agreement.

10. **Appropriation.**

10.1 **Distribution of Award.** Any award of compensation or damages payable on account of an Appropriation of any Parcel, or a portion thereof, whether the same be obtained by agreement or by judgment, verdict or order in a legal proceeding resulting from an Appropriation of any Parcel, or any portion thereof, shall be distributed in accordance with the terms of the agreement, or judgment, verdict, or order made in the proceedings. In the event of any sale of any Parcel or any portion thereof under threat of Appropriation, such Parcel, or portion thereof, shall for all purposes be deemed to have been subject to an Appropriation, and the net amount of the price received therefor after deduction of the expenses of the sale shall be deemed to constitute an "award" as that term is used herein.

10.2 **Effect of Appropriation.** If an Appropriation results in a taking or more than ten percent (10%) of the parking spaces located within the Parking Area within four hundred feet (400') of the Building of a Party or results in a reduction of the Parking Ratio below the level required to be maintained under Article 7 and the Party for the affected Parcel is unable without unreasonable cost to provide substitute parking reasonably satisfactory to the other Party within 6 months thereafter, the Parties shall cooperate in attempting to provide additional parking spaces to achieve such ratio, but neither Party shall have any obligation to spend any funds to do so beyond any net condemnation award received by it.

10.3 **Interests Affected.** Nothing contained in this Article 10 shall entitle any Party to share in any award made to any other Party; provided, however, that a Party may claim and collect consequential damages, if any, to its own Parcel resulting from the taking of any of its easements in the other Party's Parcel or damages to its own Parcel resulting from the withdrawal from the Shopping Center of the Appropriated portion of the Shopping Center; provided further, however, that in no event shall such claim reduce the award of the Party or Parties whose Parcel was condemned. In the event of the Appropriation of any Parcel, or portion thereof, this Agreement and the terms, covenants, conditions, easements and restrictions herein contained shall terminate only with respect to the portion of such Parcel so taken upon the taking of

possession thereof under such Appropriation.

11. **Rights Upon Default.**

11.1 **Right to Cure.** If an Ancillary Parcel Owner defaults in the performance of any of the obligations of this Agreement, and such defaulting owner fails to cure such default within thirty (30) days after written notice given by Mall Parcel Owner, unless such default cannot reasonably be cured within such thirty (30) day period, in which event such defaulting owner fails within such thirty (30) day period to commence cure and diligently thereafter prosecute such cure to completion, then Mall Parcel Owner shall have the right, but not the obligation, to cure such default for the account of and at the expense of the defaulting owner or its Occupant; provided, however, that in the event of emergency conditions posing an immediate threat to Persons or property and constituting a default, Mall Parcel Owner acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which Mall Parcel Owner proposes to take in order to cure the claimed default. To effectuate such cure, Mall Parcel Owner shall have the right to enter upon the Ancillary Parcel of the defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party.

11.2 **Legal and Equitable Relief.** Each Party shall have the right to prosecute any proceedings at law or in equity against any other Party, or any other Person, violating, attempting to violate, threatening to violate, or defaulting upon any of the provisions contained in this Agreement, in order to prevent the violating or defaulting Party or any such Person from violating, attempting to violate, threatening to violate or defaulting upon the provisions of this Agreement and to recover damages for any such violation or default. The remedies available under this Section 11.2 shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, actions for declaratory relief and actions for specific performance of this Agreement.

11.3 **Costs of Cure.** All costs and expenses reasonably incurred by any Party to cure a default of a defaulting Party under the provisions of Section 11.1, together with interest thereon, at the lower of two percent (2%) over the prime rate of interest as published in the Wall Street Journal, or the maximum rate allowed by applicable usury law, and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees awarded to any Party by an order of court pursuant to Section 18.13, shall be assessed against and paid by the defaulting or violating Party.

11.4 **Waiver and Cumulative.** No waiver by any Party of any default under this Agreement shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such

default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement. All of the remedies permitted or available to a Party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

12. Transfers of Interest, Rights, Powers and Obligations.

12.1 Limitations on Transfer or Assignment. In no event shall the rights, powers and obligations conferred upon a Party pursuant to this Agreement be at any time transferred or assigned by any such Party except through a transfer of its interest in its Parcel or to a Mortgagee as security for a Mortgage on its Parcel, and then only to the extent and in the manner hereinafter provided.

12.2 Transfer of Entire Interest. In the event of the transfer, conveyance or termination of the whole of the interest of a Party in its Parcel without retaining any beneficial interest therein, other than as beneficiary under the terms of a Mortgage or without simultaneously acquiring a new interest by way of fee ownership, leasehold, life estate, or any other similar interest, then the rights and powers conferred upon and the obligations under this Agreement of the transferring Party shall be transferred and assigned with its interest, or termination thereof, and the successor shall become the Party as to its Parcel. In the event Mall Parcel Owner transfers, conveys, terminates or otherwise no longer maintains its interest in the Mall Parcel such that the Mall Parcel is not owned by an affiliate of GK Development, Inc. ("GKD") or an entity that is managed by GKD, then GKD shall have the right (which right is personal to GKD and does not run with the land) but not the obligation to terminate this Agreement.

12.3 Retention of Interest. In the event that (i) the whole of the interest of a Party in its Parcel is transferred or conveyed, but a new interest is created in the transferring Party simultaneously with the conveyance of its previous interest, by way of fee ownership, leasehold, life estate, or any other similar interest, or (ii) the transferring Party shall convey its interest in its Parcel, or a portion thereof, by Mortgage or other security instrument as security for any obligation or indebtedness of such Party, then none of the rights and powers conferred upon, or obligations under this Agreement of, the transferring Party shall be transferred or assigned with the transfer or conveyance of its interest, but all of the rights and powers conferred upon and obligations under this Agreement of the transferring Party shall remain in such Party so long as such Party retains, under clause (i) above, the new interest in and to its Parcel (other than as beneficiary under the terms of a deed of trust or mortgage), or so long as such Party remains, under clause (ii) above, the beneficial owner of the interest in its Parcel. Upon the termination of the new interest created in the transferring

Party as specified in this Section 12.3, the rights and powers conferred upon, and the obligations of such Party, shall vest in accordance with Sections 12.2 or 12.4 hereof, whichever is applicable, as if the new interest created in such Party had never existed, subject only to the provisions of Article 13 of this Agreement.

12.4 **Multiple Ownership.**

(a) **Designation.** In the event that a Party transfers or conveys its interest in its Parcel, or any portion of its interest in its Parcel, in such manner as to vest ownership of the Parcel or interest therein in more than one Person, then the Persons owning all of such interest in such Parcel shall be jointly considered a single Party (the "**Principal Party**") and such Persons shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Agreement. Any such designation shall be in writing, duly executed, verified and acknowledged by each such Person, shall be served upon the other Party in accordance with the notice provisions of Section 18.9 of this Agreement, shall contain a certificate that a copy thereof has been so served, and shall be recorded in the Office of the Recorder of Cascade County.

(b) **Effect of Designation.** In the absence of such written designation, the acts of the transferring Party whose interest is so divided with respect to the performance of the provisions of this Agreement shall be binding upon all of the Persons owning any interest in such Parcel, until such time as the written designation is properly served and recorded as provided by this Section 12.4, and whether or not such transferring Party retains any interest in the Parcel in question. The exercise or performance of any rights, powers or obligations of a Principal Party under this Agreement by the Person designated to represent the Principal Party shall be binding upon all Persons having an interest or right in such Parcel and/or upon all Persons having an interest in the Principal Party. So long as such designation remains in effect, all Persons having an interest or right in the Parcel and/or all Persons having an interest or right in the Principal Party shall act only through such Person designated hereunder and the other Party shall have the right to deal exclusively with and rely solely upon the acts or omissions of such Person in the performance or provisions of this Agreement.

(c) **Removal of Designated Person.** Any Person designated hereunder may be removed by the Persons so designating, provided that written notice of such removal and designation of a new Person to act on behalf of the Principal Party under this Agreement is given and made in the manner specified in this Section 12.4, and in the absence of any such written notice and designation, the previous designation shall continue in effect and the acts of the Person previously designated with respect to the performance of the provisions of this Agreement shall be binding upon all such Persons until such time as the written notice and designation is properly served and recorded as provided by this Section 12.4.

(d) **Designation of Party Representative by Other Parties.**

Notwithstanding anything to the contrary herein contained, if (i) at any time after a Person has been designated to act on behalf of a Principal Party hereunder, such Person is removed or dies, becomes incapacitated or is dissolved and no new Person is designated to act on behalf of such Principal Party pursuant to Section 12.4(a) above, or (ii) if a Person has not been designated hereunder within thirty (30) days after the other Party receives notice of any change in ownership of any portion of a Parcel which would give rise to the requirement for designation under this Section 12.4, or (iii) if the designation of a Person to act on behalf of a Principal Party earlier than the expiration of such thirty (30) day period is reasonably necessary to enable or entitle the other Party to comply with any of its obligations under this Agreement, or to take any other action which may be necessary or permitted to carry out the purposes of this Agreement, then in any such event, the other Party at any time may make such designation of a Person to act on behalf of all such Persons comprising the Principal Party with respect to this Agreement, which designation shall be made and given in accordance with the applicable notice and recording provisions of this Section 12.4. Such designation made hereunder shall remain in full force and effect until the Persons comprising the Principal Party make a new designation pursuant to the provisions of this Section 12.4.

(e) **Status of Designated Person.** Any Person designated pursuant to the provisions of this Section 12.4 shall be the agent of each of its principals, hereby irrevocably appointed for such purpose, and upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Agreement may be made, and service upon such designated Person shall constitute due and proper service of any such matter upon each of its principals, provided a copy of such matter is also mailed to such principals at the principals' last addresses known to the sender. As used herein, the term "principals" means all Persons comprising the Principal Party who have interests of record in connection with the ownership of such Party's interest in its Parcel.

(f) **Obligation of Other Persons Comprising Party.** Notwithstanding anything to the contrary herein contained, the designation of a Person to act on behalf of other Persons comprising the Principal Party under this Section 12.4 shall not for any purpose relieve any such other Persons from the obligations or liabilities created by or arising from this Agreement.

13. **Release on Sale of Interest.**

13.1 **Sale or Transfer by Any Party.** Upon the assignment, conveyance, sale or other transfer by any Party of its entire right, title and interest in its Parcel, that Party shall be released from its obligations under this Agreement arising subsequent to the effective date of such sale or transfer (other than those obligations arising from any default by such Party in the performance of any provision of this Agreement prior to such sale or transfer, including payment of any

amounts which may then be due and owing under this Agreement and any indemnity obligation under this Agreement arising out of events occurring prior to such sale or transfer) provided that such Party shall have given notice to all other Parties of such transfer and delivered the assumption statement required by Section 13.3 concurrently with or following the filing for record of the instrument effecting the transfer. No consent is required for an assignment, conveyance, sale or other transfer, including any such transfer in connection with the exercise of any remedies of a Mortgagee of the other Party's Parcel (including, without limitation, such Mortgagee's right to foreclose upon a Mortgage against the Party's Parcel or to take title to the Party's Parcel, in its own name or in the name of its designee, by deed-in-lieu of foreclosure).

13.2 **Personal Liability of Transferee.** In no event shall any transferee of any Party be personally liable for any default under this Agreement of the transferring Party which occurred prior to the effective date of the transfer of any right, title and interest in the affected Parcel to the transferee; provided, however, that nothing contained in this Section 13.2 shall affect the rights of any Party to invoke any other right or remedy which may be available in equity in order to enforce the provisions of this Agreement against the Parcel of the transferring Party, nor shall this Section 13.2 affect the obligation of such transferee to cure any conditions constituting a default which continue after the transfer has been effected; and provided further, that nothing contained in this Section 13.2 shall affect liability under the provisions of Section 12.4 in the event of a failure to designate a Person thereunder if so required.

13.3 **Assumption Statement.** Concurrently with or following the transfer of any right, title and interest in any Parcel by any Party so that the transferee becomes a Party or member of a Party pursuant to Article 12, the transferee shall execute and deliver to the other Party a written statement in which: (i) the name and address of the transferee shall be disclosed; and (ii) the transferee shall assume the obligations of the transferor under this Agreement with respect to the interest it has acquired and shall covenant, for the benefit of the Parties, to perform all obligations hereunder with respect to the interest it has acquired in accordance with the provisions of this Agreement. Failure to deliver such written statement shall not affect the running of any covenants herein with the land as provided by Section 15.1, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement, but such failure shall constitute a default by the transferee hereunder, and shall delay the release of the transferor as specified in Section 13.1 until such time as the transferee complies with this Section 13.3.

14. **Effect of Breach: Mortgagees.**

14.1 **No Termination.** The breach of this Agreement shall not entitle any Party or Person to cancel, rescind or otherwise terminate this Agreement, or any conditions, covenants, easements or restrictions hereunder.

14.2 **Mortgagee Protection.** This Agreement, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Party and Parcel, shall be superior and

senior to any lien placed upon any Parcel, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including any Mortgagee) who acquires title to any Parcel, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

15. **Covenants and Recordation.**

15.1 **Covenants Run With the Land.** All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon the Parties, their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other Persons acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties, and their respective heirs, successors (by merger, consolidation or otherwise) and assigns as Parties determined under Article 12. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. It is expressly acknowledged that each covenant to do or refrain from doing some act on each Parcel hereunder (i) is for the benefit of each other Parcel and is a burden upon each other Parcel, (ii) runs with each Parcel, and (iii) shall be binding upon each Party and each successive owner during its ownership of each Parcel, or any portion thereof, and each Person having any interest therein derived in any manner through any owner of any Parcel, or any portion thereof, and shall benefit each Party and its Parcel and each other Person becoming a Party (or member of a Party) as specified in Article 12 and its interest in its Parcel.

15.2 **Recordation.** This Agreement shall become effective and binding upon the Parties in accordance with the provisions of this Article 15 upon execution by Developer. This Agreement shall be recorded in the office of the County Recorder of Cascade County, Montana. Recordation shall be effected by Developer.

16. **Shopping Center REA.**

16.1 **Compliance with Shopping Center REA.** Those Ancillary Parcel Owners that are subject to the Shopping Center REA shall comply with all applicable provisions of the Shopping Center REA. Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Agreement, including the designation of Mall Parcel Owner to act on behalf of certain of the other Parties pursuant to Section 16.2 of this Agreement below, shall not for any purpose relieve such other Parties from the obligations or liabilities created by or arising from the Shopping Center REA.

16.2 **Multiple Ownership under Shopping Center REA.** The Parties to this

Agreement, to the extent they own property subject to the Shopping Center REA, acknowledge that collectively they are the owner of the "Developer Parcel" defined and described in the Shopping Center REA and are jointly considered a single party under the Shopping Center REA. Pursuant to Section 12.4(a) of the Shopping Center REA, those Parties that own property subject to the Shopping Center REA designate Mall Parcel Owner to act on their behalf in the performance of the provisions of the Shopping Center REA. The acts of the Mall Parcel Owner and the exercise or performance of any rights, powers or obligations of the Mall Parcel Owner as such designee shall be binding on the Parties to this Agreement that own property subject to the Shopping Center REA. The Parties to this Agreement that own property subject to the Shopping Center REA agree that with respect to the Shopping Center REA, they shall only act through Mall Parcel Owner, and the other parties to Shopping Center REA shall have the right to deal exclusively with and rely solely upon the acts or omissions of Mall Parcel Owner in the performance of or provisions of the Shopping Center REA.

16.3 **Further Assurances.** Each Party that owns property subject to the Shopping Center REA agrees that it shall provide such further assurances and confirmations and execute, deliver and record such further documents, instruments and certificates as may be necessary to designate Mall Parcel Owner to act on each such Party's behalf in the performance of the provisions of the Shopping Center REA and to carry out the terms and purpose of this Article 16.

16.4 **Indemnification.** Each Ancillary Parcel Owner covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless Mall Parcel Owner for losses, liabilities, damages, judgments, costs and expenses, including, without limitation, reasonable legal fees, incurred by Mall Parcel Owner arising out of any claim arising out of the Ancillary Parcel Owner's (a) actions or omissions that cause Mall Parcel Owner any losses, liabilities, damages, judgments, costs and expenses, including, without limitation, reasonable legal fees, pursuant to the Shopping Center REA or (b) failure to perform its obligations under this Article 16.

17. **Mall Parcel Redevelopment.**

17.1 **Mall Parcel Owner Authorization.** Notwithstanding anything to the contrary set forth in this Agreement, including, without limitation, any plot plan, plat and/or site plan attached hereto (including any terms, notes and depictions contained therein) and all other exhibits to this Agreement, and/or any supplementary, ancillary, confirming or other agreements, documents or plans, in connection with any redevelopment of the Mall Parcel, Mall Parcel Owner is authorized to and may, from time to time, in Mall Parcel Owner's sole and absolute discretion (and without approval or consent of the Ancillary Parcel Owners or amendment to this Agreement or other further documentation), do, cause, permit or authorize all or any of the following:

(a) increase, reduce, change, alter or modify the size, location, layout, elevation, height, parking, paving, nature and/or use of any Common Area in the Mall Parcel, including any structural and non-structural construction and demolition;

(b) erect, install, add, construct, layout, expand, extend, pave, demolish, remove, reconstruct, develop, redevelop, alter, remodel, repair, replace, maintain, re-install, locate, move, increase or decrease the height, operate, change, alter and/or modify buildings, improvements, additions, facilities, installations, fences, barricades, dividers, kiosks, signage, the Enclosed Mall, interior and exterior walls, floors, ceilings, stories, parking spaces, parking decks, parking facilities (at ground level, a multi-level parking garage or otherwise), parking layouts, lighting, entrances, exits, corridors, driveways, roadways, easements, curbs, curb cuts, sidewalks, walks, walkways, service areas, aisles, other areas for the flow of pedestrian or vehicular traffic, guard rails, planters and/or landscaped areas in the Mall Parcel and any and all appurtenances ancillary thereto, the architecture, style, design, interior and exterior appearance, character, purpose, use, operation, quality, location and materials of which shall be within Mall Parcel Owner's sole discretion;

(c) temporarily close the Common Area or any part thereof and/or any portion of the Mall Parcel to take, cause or permit any of the actions permitted under Section 17.1; and

(d) use and operate or permit the use and operation, by means of lease, license or otherwise, of all or any portion of the Mall Parcel for retail, shopping center, selling, entertainment, recreation, amusement, restaurant, grocery store, service establishment, hotel, office, professional, multi-family, parking and other commercial and residential uses and activities, as such uses and activities evolve from time to time (and Mall Parcel Owner and its affiliates shall not be limited to operating in a manner consistent with any regional shopping center practice), and it shall be within Mall Parcel Owner's sole discretion to determine the diversification and location of all tenants, licensees, occupants, uses, operations, merchandise and services in any portions of the Mall Parcel and the name under which all or any portion of the Shopping Center shall operate.

17.2 **Further Assurances.** Ancillary Parcel Owners shall cooperate with Mall Parcel Owner and execute and/or record any further instruments, documents or agreements, and shall take such further actions as may be reasonably necessary, appropriate or advisable to carry out and perform the purpose and intent of this Article 17 and/or in order to comply with any requirements of or requests from any governmental body, title company or lender of Mall Parcel Owner.

18. **Miscellaneous.**

18.1 **Negation of Partnership; No Third Party Beneficiary Rights.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any Person who is not a Party, unless expressly otherwise provided.

18.2 **Termination and Amendment.**

(a) **Amendment.** Except as otherwise specified in this Agreement, this Agreement may be cancelled, changed, modified or amended in whole or in part only by written instrument executed by all of the Parties. If a Party has a Mortgage which requires the Mortgagee's consent to any amendment of this Agreement and such Mortgagee has given notice of the existence of such Mortgage to the other Party in accordance with Section 18.9 hereof, the consent, in writing, of such Mortgagee to any proposed amendment, which consent shall not be unreasonably withheld, must be obtained in order for such amendment to be enforceable against or binding upon such Mortgagee. Nothing herein contained shall constitute an agreement by any Party that this Agreement cannot be amended without the prior approval of another Party's Mortgagee.

(b) **Term of Agreement.** Notwithstanding any other provision of this Agreement to the contrary and unless previously terminated in its entirety or as to a Party's Parcel, all the provisions hereof (other than certain easements as set forth in Article 2, which shall terminate as therein provided) shall terminate upon the 50th anniversary date of the recordation of this Agreement.

18.3 **Approvals.** Unless otherwise herein provided, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of any Party pursuant to this Agreement (or any Exhibit hereto), such approval shall not be unreasonably withheld. Unless provision is made for a specific time period, approval shall be deemed given within thirty (30) days after receipt of the written request for approval, and if a Party shall neither approve nor disapprove within such thirty (30) day period, or other time period as may be specified in this Agreement or Exhibit hereto for approval, that Party shall then be deemed to have given its approval. Whenever under this Agreement approval may not be unreasonably

withheld, and a Party shall disapprove, the reasons therefor shall be stated by such Party in reasonable detail in writing. Approval by a Party to or of any act or request by any other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

18.4 **First-Class.** The term "first-class" when used in this Agreement in connection with the development, maintenance, operation or condition of the Shopping Center, or any portion thereof, shall refer to a comparative standard of quality judged in accordance with other similar well-maintained shopping centers within the State of Montana as reasonably determined by Mall Parcel Owner.

18.5 **Not A Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center, or of any Parcel, or portion thereof, to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private shopping center on private property solely for the benefit of the Parties. Pursuant to the provisions of this Section 18.5, and notwithstanding any other provision to the contrary herein contained, any Party shall have the right to prevent or prohibit the use of its Parcel, or any portion thereof, including Common Area and buildings and improvements located thereon, by any Person, including Users, for any purpose inimical to the operation of an integrated first-class shopping center for retail and commercial purposes as contemplated by this Agreement.

18.6 **Excusable Delays.** If any performance required of a Party hereunder is delayed at any time by acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, or damage to work in progress by reason of fire or other casualty, or other cause beyond the reasonable control of a Party (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused.

18.7 **Severability.** Invalidation of any of the provisions in this Agreement, 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 or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

18.8 **Exhibits.** The Exhibits listed in the Table of Contents to which reference is made herein are deemed incorporated into this Agreement in their entirety by reference thereto.

18.9 **Notices.**

(a) **Procedure.** Any notice to any Party given under this Agreement shall be in writing and given by delivering the same to such Party in person, by a nationally

recognized overnight courier or express service, or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to such Party. The address of each Party for the giving of notices hereunder (whether by mail or personal delivery) is, until changed as hereinafter provided, the following:

Developer: GK Holiday Village, LLC
c/o GK Development, Inc.
257 East Main Street, Suite 200
Barrington, IL 60010
Attn: Garo Kholamian

Any Party may change its notice address at any time by giving written notice of such change to the other Parties in the manner provided herein. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected at the address for such Party as herein specified, if mailed, on the delivery date or attempted delivery date at such Party's address hereunder as shown on the return receipt, or on the next business day after the date sent by nationally recognized overnight courier or express service.

(b) **Form and Effect of Notice.** Every notice (other than the giving or withholding of consent, approval or satisfaction under this Agreement, but including requests therefor) given to a Party or other Person shall comply with the following requirements. Each such notice shall state: (i) the Article, Section or Exhibit (or provision or Paragraph thereof) of this Agreement pursuant to which the notice is given; (ii) the period of time within which the recipient of the notice must respond, or if no response is required, a statement to that effect; and (iii) if applicable, that the failure to respond to the notice within the stated time period shall be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice. Each request for consent or approval shall contain reasonably sufficient data or documentation to enable the recipient to make an informed decision. In no event shall notice be deemed given nor shall a Party's approval of, consent to, or satisfaction with, the subject matter of a notice be deemed given by such Party's failure to object or respond thereto if such notice did not fully comply with the requirements of this Section 18.9, unless such notice failed to comply with the requirements of clause (ii) above, in which event the time for response shall be deemed to be thirty (30) days pursuant to Section 18.3 (unless a longer time period is provided under this Agreement, in which event such longer period shall govern), and upon failure of a Party to respond to the notice within such time period shall be deemed to have been approved under Section 18.3. No waiver of this Section 18.9(b) shall be inferred or implied from any act (including conditional approvals, if any) of a Party, unless such waiver shall be in writing, specifying the nature and extent of the waiver.

(c) **Mortgagee Notice and Right to Cure.** The Mortgagee under the Mortgage encumbering the Parcel of a Party shall be entitled to receive a copy of any notice of any default by the Party upon whose Parcel it has a Mortgage, provided that such Mortgagee shall have delivered a copy of a notice in the manner provided in Section 18.9(a) and in the form hereinafter contained to each Party. The form of such notice shall be as follows:

The undersigned, whose address is _____ does hereby certify that it is the Mortgagee, as defined in Section 1.9 of that certain, Operation and Reciprocal Easement Agreement recorded as of _____ in _____ official records of Cascade County, Montana, of the parcel of land described on Exhibit A attached hereto and made a part hereof and being the Parcel of (Party) in Holiday Village, Great Falls, Montana. In the event that any notice shall be given of the default of the Party upon whose Parcel the Mortgage held by the undersigned applies, a copy thereof shall be delivered to the undersigned who shall have all rights of such Party to cure such default. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of default as it respects such Party but shall make the same invalid as it respects the Mortgage of the undersigned.

Any such notice to a Mortgagee shall be given in the same manner as provided in Section 16.9(a) hereof. The giving of any notice of default or the failure to deliver a copy to the defaulting Party's Mortgagee shall not create any liability on the part of the Party so declaring a default. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Party so declaring a default. If any notice shall be given of the default of a Party and such defaulting Party has failed to cure or commence to cure such default as provided in this Agreement, then any such Mortgagee, which has given notice as above provided, under any Mortgage affecting the Parcel of the defaulting Party shall be entitled to receive an additional notice given in the manner provided in Section 18.9 hereof that the defaulting Party has failed to cure such default and such Mortgagee shall have thirty (30) days after-said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, to diligently commence curing within such time and diligently pursue such cure to completion within a reasonable time thereafter. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Party so declaring a default.

18.10 **Entire Agreement.** This written Agreement and the Exhibits hereto and any separate agreement contemplated in Section 5.2 contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and Exhibits hereto and any separate agreement contemplated in Section 5.2.

18.11 **Interpretation: Captions.** The captions preceding the text of each Article,

Section, subsection and the Table of Contents hereof and Paragraphs of Exhibits are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

18.12 **References.** All references herein to a given Article, Section, subsection or Exhibit refer to the Article, Section, subsection or Exhibit of this Agreement.

18.13 **Litigation Expenses.**

(a) **Payment to Prevailing Party.** If any Party shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third-party claim) against any other Party by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement or interpretation of any provision of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

(b) **Attorneys' Fees in Third Party Litigation.** If any Party is required to defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third-party claim) because of any other Party's breach of this Agreement and such Party is the prevailing party in such action or proceeding, then such Party shall be entitled to reasonable attorneys' fees from such other P a r t y .

18.14 **Signature Pages.** For convenience, the signatures of each of the Parties may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

18.15 **Time.** Time is of the essence of this Agreement and each and every provision hereof.

18.16 **Estoppel Certificate.** Each Party severally covenants that upon written request of the other Party, it will issue to such other Party, or to any Mortgagee, or any other Person specified by such requesting Party, an estoppel certificate stating to the best of its knowledge: whether the Party or signatory to whom the request has been directed knows of any default under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof) and that this Agreement (and any other agreement) represents the entire agreement between such Parties; and (iii) that this Agreement as of that date is in full force and effect. A Party delivering such certificate shall not have any liability to any other Person arising out of any inaccuracy or omission of information in or from such certificate, but such Party shall be estopped from taking a position against the Person to whom such certificate was delivered which is inconsistent with the statement made in the certificate if the person receiving the certificate reasonably relied on such certificate to its detriment. Each Party receiving such

request shall execute and return such certificate within fifteen (15) days following the receipt thereof.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

GK HOLIDAY VILLAGE, LLC,
a Delaware limited liability company

By: GK Development, Inc.,
an Illinois corporation,
its Manager

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

I, _____, a Notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of GK Development, Inc., which is the Manager of GK Holiday Village, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such _____, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the act of said corporation as _____ of GK Development, Inc. for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ____ day of _____, 201__.

Notary Public

My Commission Expires:

Signature Page – Operation and Reciprocal Easement Agreement

EXHIBIT A-1

LEGAL DESCRIPTION OF MALL PARCEL

Lot A-1D of An Amended Plat of Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition, located in the NE1/4 of Section 13, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana.

A-1-1

EXHIBIT A-2

LEGAL DESCRIPTION OF PARCEL E-2

Lot E-2, of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition to Great Falls, Cascade County, Montana, according to the Plat No. 1600, filed June 15, 2000, records of Cascade County, Montana, which Amended Plat amends the Amended Plat of Lots 8 & 9, in Block 3, Fifteenth Addition to Great Falls, Cascade County, Montana, according to Plat no. 2490, filed December 7, 1990, records of Cascade County, Montana.

A-2-1

EXHIBIT A-3

LEGAL DESCRIPTION OF PARCEL A-2

Lot A-2, of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition to Great Falls, Cascade County, Montana, according to the Plat No. 1600, filed June 15, 2000, records of Cascade County, Montana, which Amended Plat amends the Amended Plat of Lots 8 & 9, in Block 3, Fifteenth Addition to Great Falls, Cascade County, Montana, according to Plat no. 2490, filed December 7, 1990, records of Cascade County, Montana.

A-3-1

EXHIBIT A-4

LEGAL DESCRIPTION OF PARCEL A-1A

Lot A-1A of An Amended Plat of Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition, located in the NE1/4 of Section 13, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana.

A-4-1

EXHIBIT A-5

LEGAL DESCRIPTION OF PARCEL A-1B

Lot A-1B of An Amended Plat of Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition, located in the NE1/4 of Section 13, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana.

A-5-1

EXHIBIT A-6

LEGAL DESCRIPTION OF PARCEL A-1C

Lot A-1C of An Amended Plat of Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition, located in the NE1/4 of Section 13, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana.

A-6-1

EXHIBIT A-7

LEGAL DESCRIPTION OF PARCEL A-1E

Lot A-1E of An Amended Plat of Lot A-1 of the Amended Plat of Portions of Block 3, Fifteenth Addition, and Blocks 1, 2, and 3, Hillcrest First Addition, located in the NE1/4 of Section 13, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana.

A-7-1

B-1

