



480 E 36th Avenue, Anchorage, AK 99503
(907) 274-2562 Fax: (866) 458-1764

LIMITED LIABILITY REPORT

Customer:

CC: Alaska Housing Finance Corporation, an
Alaska corporation
PO Box 101020
Anchorage, AK 99510
ATTN: Virgiale Williams
vwilliam@ahfc.us
(907) 330-8222 PHONE
(907) 338-6162 FAX

Report No.: 01029-90590
Fee: \$250.00
Effective Date: September 13, 2013
Recording District: Anchorage
Property Address: NHN NSN
Property Legal Description: Lot Fourteen "A" (14A), Tract One "A" (1A), Commercial Tract Fragment Lot Site Plan for MOUNTAIN VIEW DEVELOPMENT SUBDIVISION, according to the official plat thereof, filed under Plat No. 2009-80 lying within Tract One "A" (1A) of Mountain View Development Subdivision according to official Plat No. 2009-79, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

The Agent has searched its internal title plant records, applicable governmental records regarding property taxes, and such other public records for the Recording District which are normally searched in the conduct of a title examination, and has determined that, as of 8:00 a.m. on the Effective Date:

1. Fee simple title to the Property is vested as follows:
 - Alaska Corporation for Affordable Housing, an Alaska non-profit corporation
2. According to those public records which, under the recording laws, impart constructive notice of matters relating to title to the Property, only the following matters appear in such records relating to the Property:
 - a. Reservations and exceptions as contained in the United States Patent and/or in Acts authorizing the issuance thereof.
 - b. Reservations and exceptions as contained in the State of Alaska patent and/or in Acts authorizing the issuance thereof.
 - c. Taxes and/or assessments due the Municipality of Anchorage.
 - d. Easement for electrical transmission and/or telephone distribution and incidental purposes, including terms and provisions thereof:
 - Granted To : Chugach Electric Association, Inc.
 - Recorded : January 27, 1954
 - Deed Book : 101
 - Page : 124

Affects : Blanket Easement

NOTE: Permission was granted to the City of Anchorage by Chugach Electric Association, Inc., allowing attachment of telephone facilities to "...the CEA poles within the aforementioned right-of-way...", by instrument recorded March 12, 1963 in Misc. Book 64 at Page 195.

License for Use of Easement, including terms and provisions thereof:

Licensor: : Chugach Electric Association, Inc.
Licensee: : Municipality of Anchorage, d/b/a/ Anchorage Municipal Light & Power
Recorded : June 5, 1986
Book : 1433
Page : 404

e. Right of Way Permit, including the terms and provisions thereof:

Permitter: : State of Alaska
Permittee: : City of Anchorage
For : An underground telephone cable
Recorded : June 26, 1962
Misc. Book : 49
Page : 370
Affects : A portion as set out therein

f. Right of Way Permit, including the terms and provisions thereof:

Permitter: : State of Alaska, acting by and through the Department of Natural Resources,
Division of Lands
Permittee: : City of Anchorage
For : Storm Sewer
Recorded : September 30, 1965
Misc. Book : 114
Page : 213
Affects : A portion as set out therein

g. Unrecorded Alaska Division of Lands Lease No. 00249, Dated December 10, 1958 and as amended on December 2, 1963, disclosed by Plat 71-257 and State of Alaska Patent recorded November 7, 1979 in Book 451 at Page 829 and Assigned by instrument Recorded March 4, 1980 in Book 477 at Page 198.

h. Intragovernmental Right of Way Permit, including the terms and provisions thereof:

Permitter: : Municipality of Anchorage
Permittee: : Municipal Light and Power
For : Electric Distribution System
Recorded : February 17, 1984
Book : 1050
Page : 278
Affects : A portion as set out therein

i. Intragovernmental Right of Way Permit, including the terms and provisions thereof:

Permitter: : Municipality of Anchorage
Permittee: : Municipal Light and Power
For : Maintaining Anchor and Guy Line
Recorded : October 30, 1984
Book : 1180
Page : 252
Affects : A portion as set out therein

j. Notice of Zoning Action, including terms and provisions thereof, as executed by Municipality of Anchorage on behalf of the Zoning Board of Examiners and Appeals, disclosing action under Municipal Zoning File noted therein:

Zoning File : 2005-079
Request : To create a commercial tract with 14 fragment lots for Tract 1, Mountain View
Development Subdivision

Recorded : May 26, 2006
Serial Number : 2006-034602-0
Affects : A portion as set out therein

- k. Declaration of Easements and Conditions for Commercial Tract Fragment Lot Site Plan Cases S-11433-1 and 2005-150, including the Terms and provisions thereof, as contained in Instrument:

Recorded : June 1, 2006
Serial Number : 2006-035833-0

Amended by instrument:

Recorded : July 23, 2012
Serial Number : 2012-040473-0

- l. Declaration of Easements and Conditions, including the Terms and provisions thereof, as contained in Instrument:

Recorded : June 1, 2006
Serial Number : 2006-035835-0

Amended by instrument:

Recorded : July 23, 2012
Serial Number : 2012-040534-0

- m. Extended Water Service Connection Agreement, including the terms and provisions thereof, executed by and between the parties indicated, for the purposes set out therein:

First Party : Kimco/POB Glenn Square Anchorage, LLC
Second Party : Anchorage Water & Wastewater Utility
Dated : August 15, 2006
Recorded : August 29, 2006
Serial Number : 2006-058728-0

- n. Easement for electrical transmission and/or telephone distribution and incidental purposes, including terms and provisions thereof:

Granted To : Anchorage d/b/a Municipal Light & Power
Recorded : May 25, 2007
Serial Number : 2007-032967-0
Affects : A portion as set out therein

- o. Notice of Zoning Action, including terms and provisions thereof, as executed by Municipality of Anchorage on behalf of the Zoning Board of Examiners and Appeals, disclosing action under Municipal Zoning File noted therein:

Zoning File : 2005-150
Petitioner : P.O'B Montgomery
Request : Site Plan Approval for the Mountain View Community Center
Recorded : November 29, 2007
Serial Number : 2007-074107-0
Affects : A portion as set out therein

- p. Slope easements, as dedicated and reserved on the plat of Mountain View Development Subdivision, Plat No. 2009-79.

- q. Easements as shown on the plat of Mountain View Development Subdivision, Plat No. 2009-79 and Commercial Tract Fragment Lot Site Plan for Mountain View Development Subdivision, Plat No. 2009-80.

- r. Covenants and notes as shown on the plat Mountain View Development Subdivision, Plat No. 2009-79 and Commercial Tract Fragment Lot Site Plan for Mountain View Development Subdivision, Plat No. 2009-80.

- s. Notice of Zoning Action, including terms and provisions thereof, as executed by Municipality of Anchorage on behalf of the Zoning Board of Examiners and Appeals, disclosing action under Municipal Zoning File noted therein:

Zoning File : 2008-002
Recorded : October 14, 2009
Serial Number : 2009-066063-0

Affects : A portion as set out therein

9/30/13 DA

This Report:

- (a) Is issued for the purpose of complying with Bulletin B 07-03 issued by the State of Alaska Division of Insurance.
- (b) Has been prepared only for Customer and may not be relied on by third parties.
- (c) Is not a title insurance policy, guarantee or commitment to issue a title insurance policy. In the event a title insurance commitment, guarantee or policy is requested, additional exceptions for matters not shown on the public record may be shown. These additional exceptions may include, but may not be limited to: (i) reservations and exceptions shown in the U.S. Patent; (ii) section boundary line easements pursuant to A.S. 19.10.010; (iii) taxes and assessments not yet due and payable; (iv) matters not shown by the public records but which would be disclosed by an inspection or inquiry of parties in possession; (v) conflicts in boundary lines, encroachments and other matters that would be disclosed by an accurate survey; (vi) mechanic's lien claims and (vii) easements or claims of easements not disclosed by the public records.

The **maximum liability** the Agent or the Agent's underwriter shall collectively have under this report is the amount of the Fee charged for the report, regardless of any errors or omissions contained herein.

Invoice

Stewart Title of Alaska

480 E 36th Avenue
Anchorage, AK 99503
O: (907) 274-2562; F: (866) 458-1764

Invoice Date: 09/17/2013

Invoice No: 343

**ATTN Virgiale Williams
Alaska Housing Finance
Corporation
PO Box 101020
Anchorage, AK 99510**

Remit To:
Stewart Title of Alaska
480 E 36th Avenue
Anchorage, AK 99503
O: (907) 274-2562; F: (866) 458-1764

File #: 01029-90590
Buyer: Alaska Corporation for Affordable Housing
Lender: Lender
Title Unit: Anchorage Title

Item Code	Description	Amount
ltdreport	Limited Liability Report	\$250.00
TOTAL		\$250.00

Property: NHN NSN Anchorage, Alaska
Lot 14A, MOUNTAIN VIEW DEVELOPMENT TRACT 1A
004-051-31-000

CERTIFICATE OF OWNERSHIP

I HEREBY CERTIFY THAT I DO HOLD THE ABOVE SPECIFIED PROPERTY INTEREST IN THE PROPERTY SHOWN AND DESCRIBED HEREIN IN ACCORDANCE WITH THE PROVISIONS OF THE ANCHORAGE MUNICIPAL CODE AND ANY SUCH RESTRICTIONS OR COVENANTS SHALL BE BINDING AND ENFORCEABLE AGAINST PRESENT AND SUCCESSIVE OWNERS OF THIS PROPERTY.

OWNER:
MOUNTAIN VIEW REAL ESTATE ANCHORAGE, LLC
A DELAWARE LIMITED LIABILITY COMPANY
3333 NEW HYDE PARK ROAD, SUITE 100
NEW HYDE PARK, NEW YORK, NY 10964
BY: MOUNTAIN VIEW REAL ESTATE ANCHORAGE, LLC
A DELAWARE CORPORATION, ITS MANAGING MEMBER
Signature: Daniel C. Slattery Date: 10/14/09
Title: Spec. Vice President
Signature: Daniel C. Slattery
Printed Name:

NOTARY ACKNOWLEDGMENT

SUBSCRIBED AND SWORN TO before me this 14th day of November, 2009, pursuant to its BY-LAWS or a RESOLUTION OF ITS BOARD OF DIRECTORS.
Signature: Daniel C. Slattery
Possibly Affected: Negra C. Anderson
Notary Public
My Commission Expires: 10/14/10
BY COMMISSION EXPIRES

OWNER:

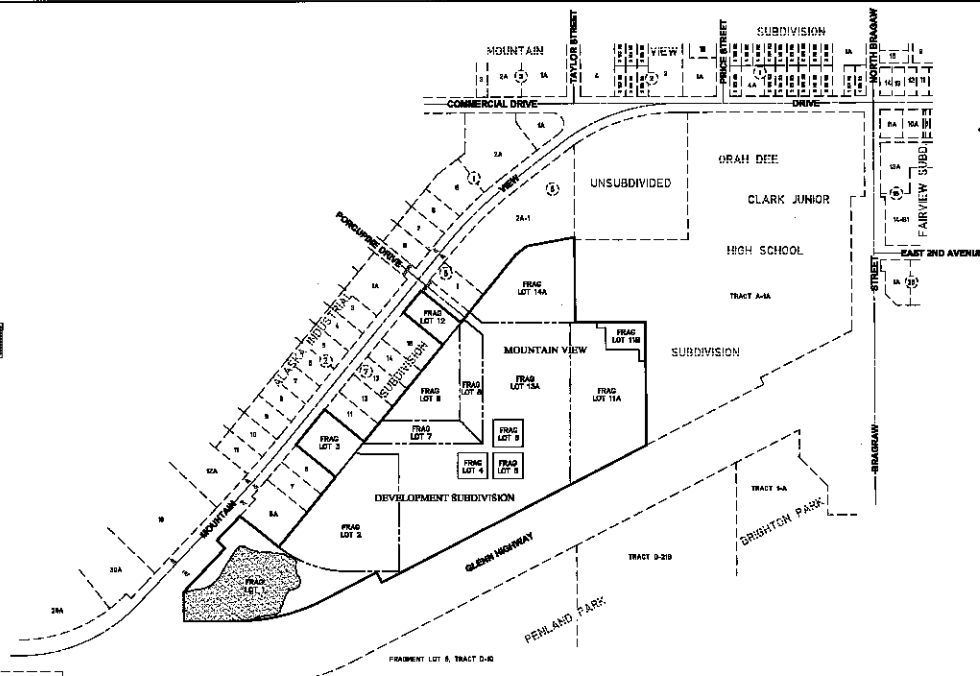
ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY
700 WEST 6TH AVENUE, SUITE 208
ANCHORAGE, ALASKA 99501
BY: [Signature]
Signature: [Signature]
Printed Name: [Name]

NOTARY ACKNOWLEDGMENT

SUBSCRIBED AND SWORN TO before me this 14th day of December, 2009, pursuant to its BY-LAWS or a RESOLUTION OF ITS BOARD OF DIRECTORS.
Signature: [Signature]
Possibly Affected: [Name]
Notary Public
My Commission Expires: [Date]
BY COMMISSION EXPIRES

SURVEYOR'S CERTIFICATE

I, SURVEYOR, HEREBY CERTIFY THAT THIS FRAGMENT LOT SITE PLAN SHOWS A TRUE AND CORRECT REPRESENTATION OF THE BOUNDARY OF MOUNTAIN VIEW DEVELOPMENT SUBDIVISION, TRACT 1A, PER PLAT NO. 2009-077.



NOTES:

1. ALL FEDERAL AND STATE EASEMENTS/RIGHTS/ACCESSES REFERENCED BY CASE NUMBERS AND ALL EASEMENTS REFERENCED BY BOOK AND PAGE NUMBERS OR SERIAL NUMBERS WERE CREATED BY DOCUMENTS, AND ARE NOT DESCRIBED BY THIS PLAN.
2. STREET RIGHT-OF-WAY WIDTHS SHOWN TO THE NEAREST FOOT REPRESENT ACTUAL DIMENSIONS TO THE NEAREST HUNDRETH OF A FOOT (0.1, 30"-30.00").
3. THE DEVELOPMENT OF THIS SUBDIVISION MAY REQUIRE THE COLLECTION AND TREATMENT OF SURFACE WATER RUNOFF. ANY SURFACE WATER RUNOFF COLLECTION AND TREATMENT SYSTEM WILL REQUIRE THE SUBMITTAL AND APPROVAL OF ENGINEERING PLANS TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR ITS AUTHORIZED AGENCY.
4. SEE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS WITH TRACT OF EASEMENTS REFERENCED CONSECUTIVELY WITH THIS SITE PLAN.
5. STREET RIGHT-OF-WAY WIDTHS SHOWN TO THE NEAREST FOOT REPRESENT ACTUAL DIMENSIONS TO THE NEAREST HUNDRETH OF A FOOT (0.1, 30"-30.00").
6. THIS SITE PLAN IS PREPARED IN ACCORDANCE WITH THE ANCHORAGE MUNICIPAL CODE 21.15.014.
7. THIS SITE PLAN IS BASED ON RECORD INFORMATION FROM THE PLAT OF TRACT 1A, MOUNTAIN VIEW DEVELOPMENT SUBDIVISION, PER PLAT NO. 2009-077. SEE SAID PLAT FOR ADDITIONAL INFORMATION, I.E. ALL COVENANTS AND PLAT NOTES. THIS PLAT DOES NOT DEMONSTRATE EASEMENTS.
8. STREET VEHICULAR ACCESS TO THE GLEN HIGHWAY FROM ANY TRACT OR LOT WITHIN THIS SUBDIVISION IS PROHIBITED.
9. ANY DEVELOPMENT ON ANY FRAGMENT LOT WITHIN THIS SUBDIVISION SHALL BE IN CONFORMANCE WITH THE APPROVED TRAFFIC IMPACT ANALYSIS (TIA) AND ANY FUTURE AMENDMENTS TO THE APPROVED TIA.
10. THE TYPE "C" WETLANDS BOUNDARY SHOWN ON THIS PLAN IS APPROXIMATE IN LOCATION AND HAS BEEN OBTAINED FROM 2008 NOAA SONAR DATA. THE WETLANDS ON TRACT 1A SHALL NOT BE DRENCHED OR SPUR AND SHALL REMAIN UNDEVELOPED IN A NATURAL STATE UNLESS AS OTHERWISE APPROVED BY RELEVANT AGENCIES FROM THE CORPS OF ENGINEERS OR OTHER FEDERAL AGENCIES.
11. DEVELOPMENT OF THE TYPE "C" WETLANDS WILL REQUIRE A HYDROLOGY ANALYSIS AND THE INSTALLATION OF A SHADING SYSTEM EQUIVALENT TO THE FUNCTION THAT IS PERFORMED BY THE WETLANDS.
12. THE TYPE "C" WETLANDS AS SHOWN WILL BE THE RECIPIENT OF CONCENTRATED SURFACE FLOWS FROM TRACT 1A.
13. DIRECT VEHICULAR ACCESS TO THE GLEN HIGHWAY FROM ANY TRACT OR LOT WITHIN THIS SUBDIVISION IS PROHIBITED.
14. DEVELOPMENT OF ANY TRACT OR LOT WITHIN THIS SUBDIVISION SHALL BE IN CONFORMANCE WITH THE FINAL APPROVED TRAFFIC IMPACT ANALYSIS (TIA) AND ANY FUTURE AMENDMENTS TO THE APPROVED TIA.
15. ANY EXISTING OR PROPOSED ACCESS TO RIGHT-OF-WAY FROM ANY TRACT OR LOT WITHIN THIS SUBDIVISION SHALL BE IN CONFORMANCE WITH THE APPROVED TIA AND ANY FUTURE AMENDMENTS TO THE APPROVED TIA OR WITH THE APPROVAL OF THE MUNICIPAL TRAFFIC ENGINEER.
16. LANDSCAPING SHALL BE INSTALLED WITH THE DEVELOPMENT OF THE PROPERTY IN ACCORDANCE WITH THE APPROVED SITE AND LANDSCAPING PLAN OR ANY AMENDMENTS TO THE PLAN APPROVED BY THE PLANNING AND ZONING COMMISSION ON ITS SCHEME THAT IS ON FILE IN THE PLANNING DEPARTMENT. THE REQUIRED LANDSCAPING SHALL BE MAINTAINED BY THE OWNER AND/OR HIS/HER SUCCESSORS FOR THE LIFE OF THE SITES.
17. DEVELOPMENT OF FRAGMENT LOT 14B SHALL BE IN ACCORDANCE WITH THE APPROVED CONDITIONAL USE, OR ANY AMENDMENTS TO THE CONDITIONAL USE APPROVED BY THE PLANNING AND ZONING COMMISSION ON ITS SCHEME THAT IS ON FILE IN THE PLANNING DEPARTMENT (CASE 2008-017).
18. DEVELOPMENT OF FRAGMENT LOT 14A SHALL BE IN ACCORDANCE WITH THE APPROVED SITE AND LANDSCAPING PLAN, OR ANY AMENDMENTS TO THE PLAN APPROVED BY THE PLANNING AND ZONING COMMISSION ON ITS SCHEME THAT IS ON FILE IN THE PLANNING DEPARTMENT (CASE 2008-018).
19. REPLANTMENT OF ANY VEGETATION REMOVED AS THE RESULT OF THE UTILITY REPAIR AND/OR MAINTENANCE SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER AND/OR HIS SUCCESSORS. INSTALLATION OF LANDSCAPING SHALL OCCUR BY THE FOLLOWING PLANTING SEASON AND SHALL BE IN ACCORDANCE WITH THE APPROVED SITE AND LANDSCAPING PLAN ON FILE IN THE PLANNING DEPARTMENT OR ANY AMENDMENTS TO THE LANDSCAPING PLAN APPROVED BY THE PLANNING AND ZONING COMMISSION, OR ITS DESIGNEE.
20. SITES SHALL BE RECORDED IN ACCORDANCE WITH THE SMOKE SIGNAL PLAN IN RECORDING REGULATIONS, COVENANTS AND RESTRICTIONS AND AMENDMENTS THERETO THAT ARE SUBSEQUENTLY RECORDED CONCERNING DEVELOPMENT OF THIS PROPERTY.

TAX CERTIFICATION

ALL REAL PROPERTY TAXES PAID BY THE MUNICIPALITY OF ANCHORAGE ON THE AREA SHOWN ON THIS PLAN HAVE BEEN PAID IN FULL. IF APPROVAL IS GRANTED WITHIN ONE YEAR AND THE 100 USE DATE, THERE IS NO CREDIT WITH THE CITY FISCAL OFFICE, AN AMOUNT ATTRIBUTED TO PAY ESTIMATED REAL PROPERTY TAX FOR THE CURRENT YEAR.

Date: 10-17-09
Signature: [Signature]
Title: Authorized Official
Signature: [Signature]
Title: Authorized Official

APPROVALS
Signature: [Signature]
Title: General Surveyor
Signature: [Signature]
Title: General Surveyor

PROXY MAP
LOCATED WITHIN THE N 1/2, SEC. 16, T12N, R24E, S4M, AK

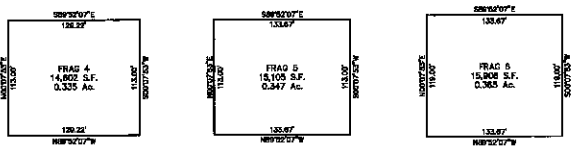
PLAT OF
COMMERCIAL TRACT
FRAGMENT LOT SITE PLAN
FOR
MOUNTAIN NEW DEVELOPMENT SUBDIVISION, TRACT 1A,
PER PLAT NO. 2009-077
FRAGMENT LOTS 1-9; 11A, 11B, 12, 13A, 14A
CONTAINING 34,727 SQUARE FEET, 14 FRAGMENT LOTS
APPROXIMATELY
THE N 1/2, SECTION 16, T12N, R24E, S4M, AK
ANCHORAGE RECORDING DISTRICT

DOWL HKM
401 S STREET ANCHORAGE, ALASKA 99501 TEL: (907) 263-0000 FAX: (907) 263-0000

OWNER: <u>NET</u>	FILE NUMBER: <u>160-88A</u>
SCALE: <u>1"=50'</u>	DATE: <u>01/20/2009</u>
DRAWN: <u>01/20/2009</u>	SHEET: <u>1 OF 2</u>

ANCHORAGE RECORDING DISTRICT PLAT 2009-80

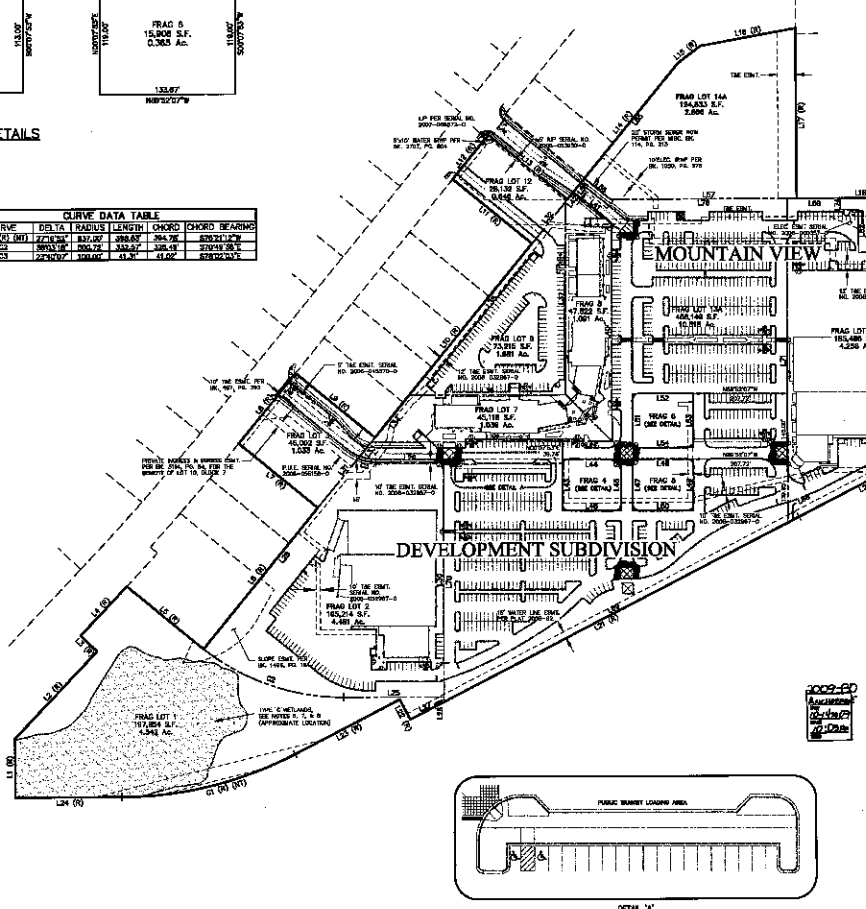
LEGEND
 (NT) NON TANGENT
 (C) RECORD PER PLAT NO. 2008-
 TMC TELECOMMUNICATIONS AND ELECTRIC



FRAGMENT LOT DETAILS

LINE	BEARING	LENGTH
1	S00°00'00"E	120.26
2	S45°00'00"W	200.00
3	S45°00'00"W	200.00
4	S45°00'00"W	150.00
5	S00°00'00"E	120.26
6	S45°00'00"W	200.00
7	S45°00'00"W	200.00
8	S45°00'00"W	150.00
9	S00°00'00"E	120.26
10	S45°00'00"W	200.00
11	S45°00'00"W	200.00
12	S45°00'00"W	150.00
13	S00°00'00"E	120.26
14	S45°00'00"W	200.00
15	S45°00'00"W	200.00
16	S45°00'00"W	150.00
17	S00°00'00"E	120.26
18	S45°00'00"W	200.00
19	S45°00'00"W	200.00
20	S45°00'00"W	150.00
21	S00°00'00"E	120.26
22	S45°00'00"W	200.00
23	S45°00'00"W	200.00
24	S45°00'00"W	150.00
25	S00°00'00"E	120.26
26	S45°00'00"W	200.00
27	S45°00'00"W	200.00
28	S45°00'00"W	150.00
29	S00°00'00"E	120.26
30	S45°00'00"W	200.00
31	S45°00'00"W	200.00
32	S45°00'00"W	150.00
33	S00°00'00"E	120.26
34	S45°00'00"W	200.00
35	S45°00'00"W	200.00
36	S45°00'00"W	150.00
37	S00°00'00"E	120.26
38	S45°00'00"W	200.00
39	S45°00'00"W	200.00
40	S45°00'00"W	150.00
41	S00°00'00"E	120.26
42	S45°00'00"W	200.00
43	S45°00'00"W	200.00
44	S45°00'00"W	150.00
45	S00°00'00"E	120.26
46	S45°00'00"W	200.00
47	S45°00'00"W	200.00
48	S45°00'00"W	150.00
49	S00°00'00"E	120.26
50	S45°00'00"W	200.00
51	S45°00'00"W	200.00
52	S45°00'00"W	150.00
53	S00°00'00"E	120.26
54	S45°00'00"W	200.00
55	S45°00'00"W	200.00
56	S45°00'00"W	150.00
57	S00°00'00"E	120.26
58	S45°00'00"W	200.00
59	S45°00'00"W	200.00
60	S45°00'00"W	150.00
61	S00°00'00"E	120.26
62	S45°00'00"W	200.00
63	S45°00'00"W	200.00
64	S45°00'00"W	150.00
65	S00°00'00"E	120.26
66	S45°00'00"W	200.00
67	S45°00'00"W	200.00
68	S45°00'00"W	150.00
69	S00°00'00"E	120.26
70	S45°00'00"W	200.00
71	S45°00'00"W	200.00
72	S45°00'00"W	150.00
73	S00°00'00"E	120.26
74	S45°00'00"W	200.00
75	S45°00'00"W	200.00
76	S45°00'00"W	150.00
77	S00°00'00"E	120.26
78	S45°00'00"W	200.00
79	S45°00'00"W	200.00
80	S45°00'00"W	150.00
81	S00°00'00"E	120.26
82	S45°00'00"W	200.00
83	S45°00'00"W	200.00
84	S45°00'00"W	150.00
85	S00°00'00"E	120.26
86	S45°00'00"W	200.00
87	S45°00'00"W	200.00
88	S45°00'00"W	150.00
89	S00°00'00"E	120.26
90	S45°00'00"W	200.00
91	S45°00'00"W	200.00
92	S45°00'00"W	150.00
93	S00°00'00"E	120.26
94	S45°00'00"W	200.00
95	S45°00'00"W	200.00
96	S45°00'00"W	150.00
97	S00°00'00"E	120.26
98	S45°00'00"W	200.00
99	S45°00'00"W	200.00
100	S45°00'00"W	150.00

CURVE	DELTA	RADIUS	LENGTH	CHORD	CHORD BEARING
C1	27°15'00"	837.00'	398.67'	394.76'	S20°11'27"W
C2	27°15'00"	837.00'	398.67'	394.76'	S20°11'27"W
C3	27°15'00"	837.00'	398.67'	394.76'	S20°11'27"W



LOCUS MAP

LOCATED WITHIN THE N 1/2, SEC. 16, T.13N, R.23W, S.4E, AS

COMMERCIAL TRACT
 FRAGMENT LOT SITE PLAN
 FOR
 MOUNTAIN VIEW DEVELOPMENT
 SUBDIVISION, TRACT 1A,
 (PER PLAT NO. 2008-)
 FRAGMENT LOTS 1-R, 11A, 11B, 12, 13A, 14A
 CONTAINING 31,737 ACRES, 14 FRAGMENT LOTS

LOCATED WITHIN
 THE N 1/2, SECTION 16, T.13N, R.23W, S.4E, AS
 ANCHORAGE RECORDING DISTRICT

DOWL HKM
 4015 BREKID AVE. ANCHORAGE, ALASKA 99503-2885
 PHONE: 907-562-2222 FAX: 907-562-2222
 SCALE: 1"=100' PLOT: 2228 GRID: 2008-1228
 DRAWN: DUT-38-2008 SURVEYED: JANUARY 2008 SHEET
 2 OF 2

D:\Projects\2008\2008-1228\2008-1228.dwg, 12/28/08 10:28:28 AM, 12/28/08 10:28:28 AM

Property Tax Research, Inc.

Telephone (907) 522-8380

Fax (907) 522-8383

Title Company: Stewart Title Order Number: 90590 Sequence: 1.1

Escrow Number: Date: 9/16/2013 Spl Instructions:

LEGAL INFORMATION

Tax Number: 004-051-31-000 Code Area: 1 Mil Rate: 15.56

Subdivision MOUNTAIN VIEW DEVELOPMENT Lot: Block:

Legal: TRACT 1A FRAG LOT 14A

Address:

TAXES

Taxing Authority/Dates: ANCHORAGE 6/15 & 8/15 Tax Year: 2013

Tax Amount: 0 Amount Due: 0 Delinquent Amount: 0

Good Thru: State Exemption Amount:

Tax1: NOT TAXED OR VALUED FOR 2013 (MUNICIPAL EXEMPTION)

Tax2:

ASSESSMENTS

Assmt1: SEWER PTN PAID REST TO BE ASSESSED UPON CONNECTION

Assmt2: WATER PTN PAID REST TO BE ASSESSED UPON CONNECTION

Assmt3:

Assmt4:

Assmt5:

Owner per Title ACAH

Owner per SAME

Land Value: 0

Bldg Value 0

Zone: B3

Comments1:

Lot Size: 124833

Comments2:

Comments3:

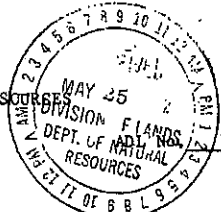
This report is guaranteed accurate to the date of posting. Liability limited by agreement.

Marcia

BOOK misc. 49 PAGE 322
Anchorage Recording District

62-9961

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS



18443

Form No. DL 72

RIGHT-OF-WAY PERMIT

A-527

THIS AGREEMENT made and entered into this 14th day of May, 1962, by and between the STATE OF ALASKA, acting by and through the Department of Natural Resources, Division of Lands, hereinafter referred to as the grantor and City of Anchorage hereinafter referred to as the permittee.

WITNESSETH, that in accordance with the provisions of Chapter 169, SLA 1959, and the rules and regulations promulgated thereunder, the permittee having filed an application for a right-of-way for: an underground telephone cable

with the Division of Lands together with a map showing the definite location thereon of the line of right-of-way which the permittee has adopted and agrees to be the specific and definite location of the aforesaid right-of-way, and

WHEREAS, it is understood and agreed by the permittee herein that, as a condition to the granting of the right-of-way applied for, the land covered by said right-of-way shall be used for no purpose other than the location, construction, operation and maintenance of the said right-of-way over and across the following described State lands, to wit:

(See attached detailed description and plat)

running _____ miles and/or containing _____ acres, more or less and shall extend a width of _____ feet on either side of the center line of said location.

TO HAVE AND TO HOLD the same for the period ~~until cancelled~~ good until cancelled, ~~and~~ and subject to conditions and reservations elsewhere set forth herein, for which the permittee agrees to pay to the State of Alaska the sum of no/100 dollars, said amount to be due and payable as follows:

The sum of no/100 (\$---) dollars, the receipt of which is hereby acknowledged and (\$---) dollars on _____

This right-of-way is granted upon the following terms and conditions, to wit:

The permittee shall pay rentals in advance for each year. Any failure to make such payment shall constitute a default and should the default continue for 60 days, the grantor may, upon written notice, terminate or revoke this permit. After

default has occurred no structure, building or other equipment may be removed from the right-of-way without the written permission of the grantor.

At any time not less than five years after approval of this permit or after the last opportunity for revision of rates per year hereunder, the grantor may review such rates and impose new annual rates as he may deem reasonable and proper.

The sketch map revealing the right-of-way granted herein shall be attached hereto and made a part hereof.

In the event that the right-of-way herein granted shall in any manner conflict with or overlap a previously granted right-of-way the permittee herein shall use this right-of-way in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued right-of-way and no improvements shall be constructed by the permittee herein upon the overlapping area unless the consent therefor has first been obtained from the permittee under the pre-existing right-of-way.

The permittee in the exercise of the rights and privileges granted by this indenture shall comply with all regulations now in effect or as hereafter established by the Division of Lands and all other Federal, State or municipal laws, regulations or ordinances applicable to the area herein granted.

Upon abandonment, termination, revocation or cancellation of this indenture, except for failure to pay rental, the permittee shall within 90 days remove all structures and improvements from the area herein granted, except those owned by the grantor, and shall restore the area to the same or similar condition as the same was upon the issuance of this permit. Should the permittee fail or refuse to remove said structures or improvements, within the time allotted, they shall revert to and become the property of the grantor. However, the permittee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area. Provided further, however, that the grantor, in his discretion, may alter or modify the requirements contained in this provision if it is to the best interest of Alaska to do so.

The permittee shall utilize the lands herein granted consistent with the purposes of the proposed use, as revealed by the application therefor, and shall maintain the premises in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

The permittee shall take all reasonable precaution to prevent and suppress brush and forest fires. No material shall be disposed of by burning in open fire during the closed season unless a permit therefor has first been obtained from the agency empowered by law to issue such permits.

Prior to any construction or development that will use, divert, obstruct, pollute or utilize any of the waters of the State, the permittee shall first obtain approval therefor from the Commissioner of the Department of Fish and Game and file an image copy thereof with the grantor.

Any lands included in this permit which are sold under a contract to purchase shall be subject to this permit and rental shall be collected thereon by the grantor until such time as the purchaser shall have completed his contract and secured title to the land. Upon issuance of title to the purchaser, this permit shall remain in effect until its date of expiration.

In case the necessity for the right-of-way shall no longer exist, or the permittee should abandon or fail to use the same, then this permit shall be revoked or terminated.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result to the permittee herein on account of this permit having been cancelled, forfeited, or terminated prior to the expiration of the full time for which it was issued.

The permittee shall not sublet or assign the right-of-way herein granted, or this permit, without the written consent of the grantor.

NOW THEREFOR, in accordance with the provisions of Chapter 169, SLA 1959, and the rules and regulations promulgated thereunder and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the permittee herein is hereby authorized to locate, construct, operate and maintain said right-of-way over and across the lands herein described.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed in duplicate and the permittee herein has hereunto affixed his signature on the day and year first above written.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

CONCURRED:

Anchorage Independent School District

By: [Signature]
Director, Division of Lands

BY: A. M. Lesh

CITY OF ANCHORAGE

By [Signature]
Permittee Acting City Manager

UNITED STATES OF AMERICA)
State of Alaska) ss.

This is to certify that on the 12th day of June, 1962, before me, the undersigned Notary Public, personally appeared Roscoe S. Bell known to me and known by me to be the Director of the Division of Lands of the Department of Natural Resources, and acknowledged to me that he executed the foregoing instrument for and on behalf of said State, freely and voluntarily and for the use and purposes therein set forth.

IN TESTIMONY WHEREOF, I have her unto set my hand and affixed my official seal, the day and year in this certificate first above written.

Barbara J. Musick
Notary Public in and for the State of
Alaska. My commission expires 3-2-66

UNITED STATES OF AMERICA)
State of Alaska) ss.

This is to certify that on this 22 day of May, 1962, before me, the undersigned, a Notary Public in and for Alaska duly commissioned and sworn, personally appeared K. M. Lash to me personally known to be one of the persons described in and who executed the within instrument and the said K. M. Lash acknowledged to me that he signed and executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Don K. Fidelity
Notary Public in and for the State of
Alaska. My commission expires November 27, 1962
My Commission Expires November 27, 1962

ASSIGNMENT OF RIGHT-OF-WAY

Date: _____, 19____.

The application of _____
for permission to assign right-of-way # _____ and the application
_____ for the assumption of said right-of-way, having been duly considered
this _____ day of _____, 19____, and without waiver of State rights which may
exist against the right-of-way assigned, and with this consent not to be construed
as initiating any new rights in assignee of right-of-way, consent is hereby given
for the assignment applied for and it is hereby ordered that the said right-of-way
_____ and all rights thereunder be and are hereby transferred to the said
_____.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

By _____
Director, Division of Lands

BOOK Misc 49 PAGE 372 A
Anchorage Recording District

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

This is to certify that on this 4th day of June, 1962, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared RICHARD O. GANTZ, to me known to be the ACTING CITY MANAGER of the CITY OF ANCHORAGE, a municipal corporation that executed the foregoing instrument, and he acknowledged the said instrument to be a free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Margie V. Phares
Notary Public in and for the State of Alaska

My Commission Expires: 10-13-64

18443

BOOK 4181. 19 PAGE 323
A. J. Spence, Recorder, District

Those parcels of land in the NE $\frac{1}{4}$ of Section 16, T13N, R3W, S.M., Alaska, described as:

PARCEL NO. 1

Commencing at the section corner common to Sections 9, 10, 15 and 16 in the said township and range, thence South along the section line common to Sections 15 and 16 a distance of 264.65 ft., thence West on a line that is perpendicular to said section line 40 ft. to a point on the West right of way line of Bragaw Street and the true point of beginning; thence S 11° 35' W 147.82 ft.; thence West on a line that is perpendicular to said section line, 10.22 ft.; thence N 11° 35' E 198.37 ft. to a point on the West right of way line of Bragaw Street; thence South along the West right of way line of Bragaw Street 49.49 ft. to the true point of beginning.

PARCEL NO. 2

Commencing at the section corner common to Sections 9, 10, 15 and 16 in the said township and range, thence South along the section line common to Sections 15 and 16, a distance of 994.2 ft.; thence on a line that is perpendicular to said section line 100 ft. to a point on the West right of way line of Bragaw Street and the true point of beginning; thence South along the West right of way line of Bragaw Street 20 ft.; thence West along a line that is perpendicular to said section line 43 ft.; thence North along a line that is parallel to the West right of way line of Bragaw Street 20 ft.; thence East along a line that is perpendicular to said section line 43.0 ft. to the true point of beginning.

PARCEL NO. 3

Commencing at the North 1/16 corner common to Sections 15 and 16 in the said township and range, thence West along the North 1/16 line of Section 16, a distance of 70 ft. to a point on the West right of way line of Bragaw Street and the true point of beginning; thence North along the West right of way line of Bragaw Street 18.25 ft.; thence S 62° 48' W 10.66 ft.; thence S 0° 7 1/4' E 401.17 ft.; thence N 89° 42 3/4' E 10 ft.; thence N 0° 7 1/4' W 387.76 ft. to the true point of beginning.

PARCEL NO. 4

Commencing at the North 1/16 corner common to Sections 15 and 16 in the said township and range, thence South along the section line common to Sections 15 and 16 a distance of 387.76 ft.; thence West along a line that is perpendicular to said section line 51.35 ft. to the true point of beginning; thence S 10° 43' E 61.32 ft. to a point on the West right of way line of Bragaw Street; thence S 0° 03' E along the West right of way line of Bragaw Street 54.0 ft.; thence N 10° 43' W 116.27 ft.; thence East along a line that is perpendicular to said section line 10.17 ft. to the true point of beginning.

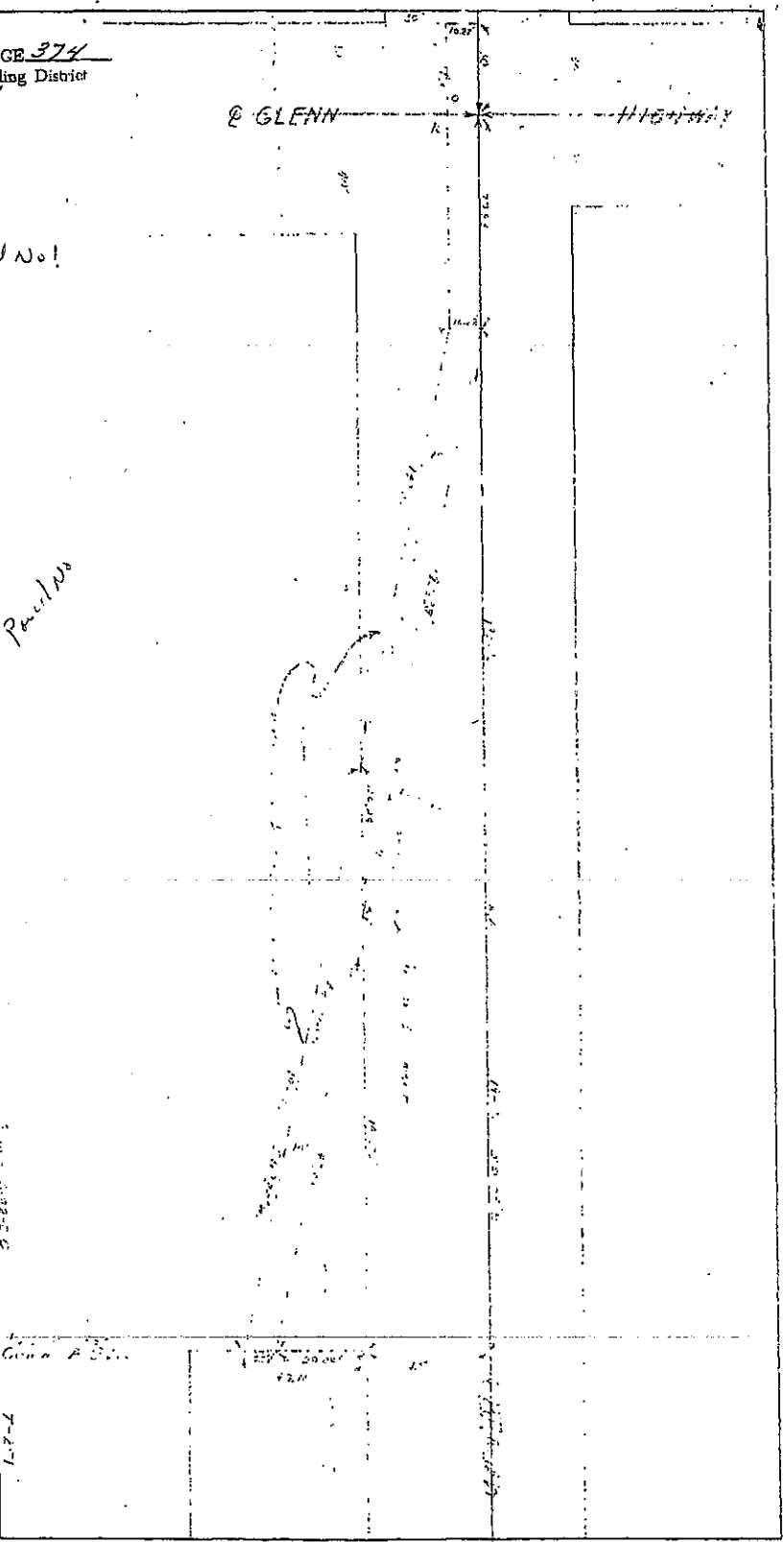
E GLENN HIGHWAY

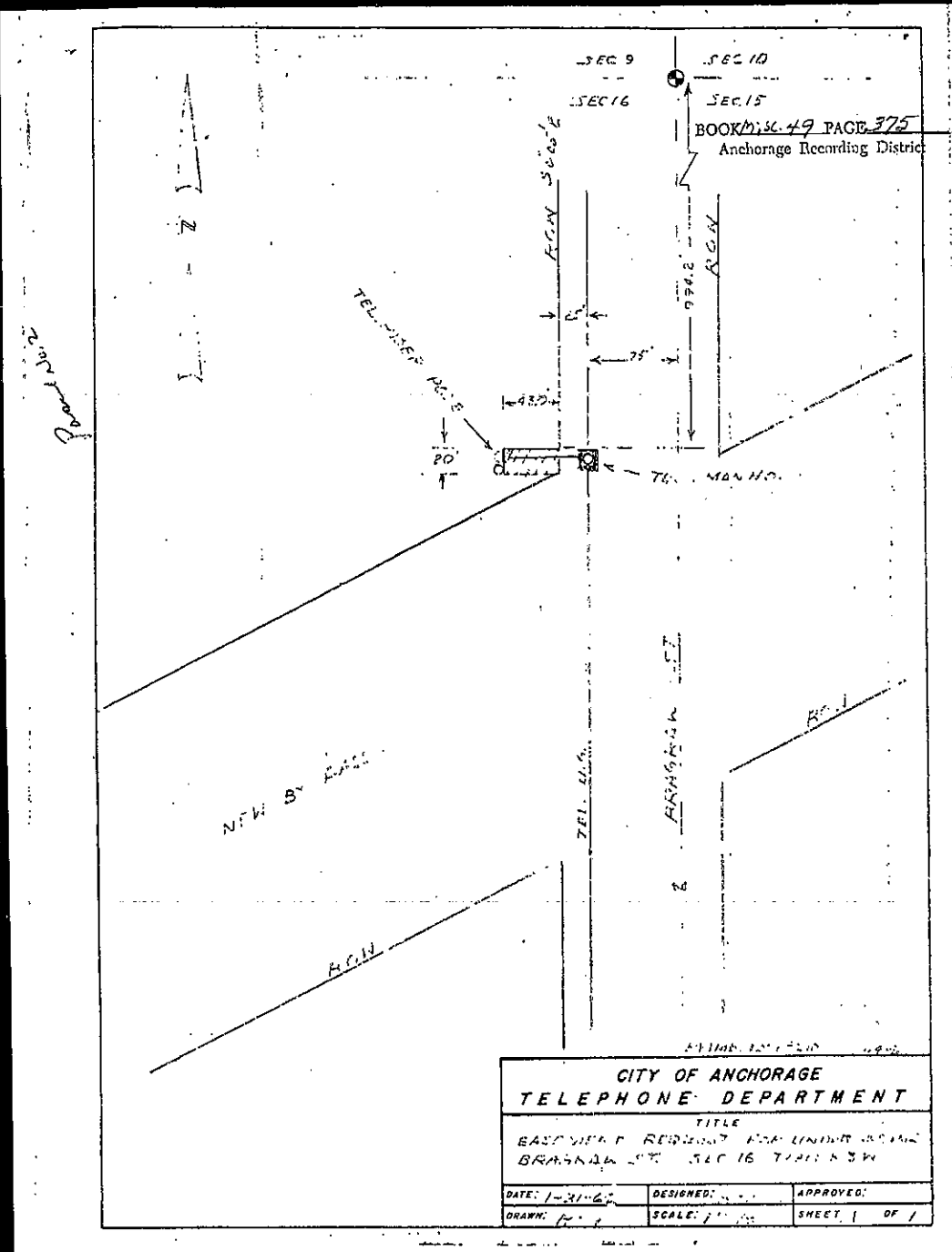
Deal No!

Paulus



DATE 1-13-62		SCALE 1" = 40'		SHEET 1 OF 2	
DRAWN BY [illegible]		DESIGNED BY [illegible]		APPROVED BY [illegible]	
CITY OF ANCHORAGE TELEPHONE DEPARTMENT TITLE SEC 18 T12N R12W					





BOOK M.S.C. 49 PAGE 375
Anchorage Recording District

CITY OF ANCHORAGE		
TELEPHONE DEPARTMENT		
TITLE		
EAST VIEW F. RESIDENT FOR LINDA JOHNS		
BRANDEN ST. SEC 16 T14R13W		
DATE: 1-21-62	DESIGNED: [Signature]	APPROVED: [Signature]
DRAWN: [Signature]	SCALE: 1" = 10'	SHEET 1 OF 1

BOOK *Misc. 49* PAGE *376*
 Anchorage Recording District

587' 02" V
 50' 7 1/2" E
 38' 7 1/2" E
 491' 12" V
 50' 7 1/2" E
 38' 7 1/2" E
 491' 12" V

EXIST STATE ROAD COMM ROW

SCHOOL SECTION

SOUTH BRAGAW ST.

50' 7 1/2" E



P
 100' 0" N
 100' 0" E

DIVISION ST.

N62°48'E

SOUTH R BY PASS ROAD
 152' 05" E
 91' 0" E
 152' 05" E
 SOUTH R BY PASS ROAD

Revised 1022-210

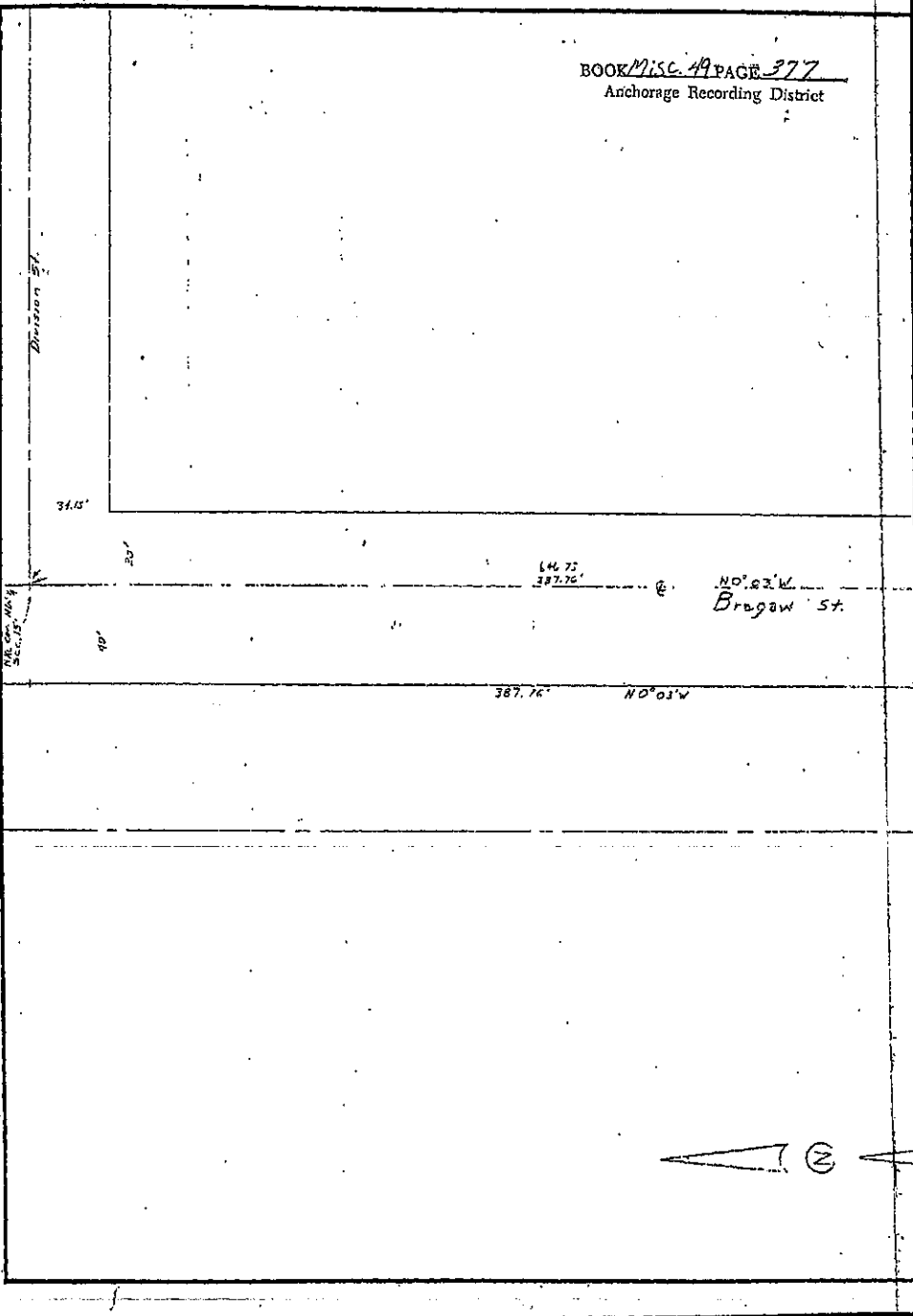
CITY OF ANCHORAGE
 DEPARTMENT

Sec. 16 T.3 R.3W
 EASEMENT REQUEST
 Bragaw St. Underpass

DATE: 2-5-62 DESIGNED: APPROVED:
 DRAWN/Revised: SCALE: NONE SHEET 1 OF 1

Grid U-4-D

BOOK MISC. 49 PAGE 377
Anchorage Recording District



Division St.

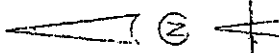
34.15'

30'

64.75
387.76'

N0°02'W
Bragaw St.

387.76' N0°03'W



State of Alaska



Patent

No. 4535

Know All Men By These Presents that the State of Alaska, in consideration of the sum of
TEN AND NO/100 ----- DOLLARS

lawful money of the United States, and other good and valuable considerations, now paid, the receipt
 whereof is hereby acknowledged, does hereby grant to _____

MUNICIPALITY OF ANCHORAGE

Pouch 6-650, Anchorage, Alaska 99502 and to

its successors Municipality
 here and assigns, all that real property situated in the Borough of Anchorage

State of Alaska, and described as follows:

TOWNSHIP 13 NORTH, RANGE 3 WEST, SEWARD MERIDIAN

SECTION 16: GLO LOT 1, EXCLUDING TRACT A, ACCORDING TO THE SURVEY PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 71-257; RIGHTS-OF-WAY FOR BRACAW STREET AND THE GLENN HIGHWAY.

GLO LOT 2, EXCLUDING ALASKA INDUSTRIAL SUBDIVISION AND AMENDMENTS OR ADDITIONS TO ALASKA INDUSTRIAL SUBDIVISION.

GLO LOT 3, EXCLUDING ALASKA INDUSTRIAL SUBDIVISION AND AMENDMENTS OR ADDITIONS TO ALASKA INDUSTRIAL SUBDIVISION; INTERAGENCY LAND MANAGEMENT ASSIGNMENT, ADL 201134.

GLO LOT 4, EXCLUDING ALASKA INDUSTRIAL SUBDIVISION AND AMENDMENTS OR ADDITIONS TO ALASKA INDUSTRIAL SUBDIVISION; INTERAGENCY LAND MANAGEMENT TRANSFER, ADL 02867; INTERAGENCY LAND MANAGEMENT ASSIGNMENT, ADL 75473; INTERAGENCY LAND MANAGEMENT ASSIGNMENT, ADL 201134; LAND LEASE, ADL 201590.

SW $\frac{1}{4}$ NE $\frac{1}{4}$, EXCLUDING ALASKA INDUSTRIAL SUBDIVISION AND AMENDMENTS OR ADDITIONS TO ALASKA INDUSTRIAL SUBDIVISION; TRACT D AND TRACT E-1 OF PENLAND PARK SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 71-311; RIGHT-OF-WAY FOR THE GLENN HIGHWAY.

SE $\frac{1}{4}$ NW $\frac{1}{4}$, EXCLUDING ALASKA INDUSTRIAL SUBDIVISION AND AMENDMENTS OR ADDITIONS TO ALASKA INDUSTRIAL SUBDIVISION; RIGHTS-OF-WAY FOR THE GLENN HIGHWAY, AIRPORT HEIGHTS ROAD AND EAST FIFTH AVENUE; INTERAGENCY LAND MANAGEMENT ASSIGNMENT, ADL 201960.

SW $\frac{1}{4}$ NW $\frac{1}{4}$, EXCLUDING INTERAGENCY LAND MANAGEMENT ASSIGNMENT, ADL 75473; RIGHT-OF-WAY FOR EAST FIFTH AVENUE; ALASKA INDUSTRIAL SUBDIVISION AND AMENDMENTS OR ADDITIONS TO ALASKA INDUSTRIAL SUBDIVISION.

SW $\frac{1}{4}$, EXCLUDING TRACT A AND TRACT E OF PENLAND PARK SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 71-311; MERRILL FIELD LEASE LOTS, ACCORDING TO THE PLATS RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 64-136, PLAT NO. C-217 AND PLAT NO. C-230; RIGHTS-OF-WAY FOR THE GLENN HIGHWAY, AIRPORT HEIGHTS ROAD AND DEBARR ROAD.

TRACT A OF ALASKA DIVISION OF LANDS LEASE NO. 00249, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 71-257.

TRACT B OF ALASKA DIVISION OF LANDS LEASE NO. 00249, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 70-17.

LOT 1A, BLOCK 5, OF ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 76-136.

LOT 17A, BLOCK 2, OF ALASKA INDUSTRIAL SUBDIVISION, A RESUBDIVISION OF LOTS 17, 18, AND 19, BLOCK 2, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 74-213.

LOT 4A, BLOCK 9, FIRST ADDITION, ALASKA INDUSTRIAL SUBDIVISION, A REPLAT OF LOTS 4 AND 5, BLOCK 9, FIRST ADDITION, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 74-9.

LOT 7-A OF BLOCK 3, OF ALASKA INDUSTRIAL SUBDIVISION, FIRST ADDITION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 73-208.

LOT 1A, BLOCK 3, FIRST ADDITION, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT, AS AMENDED, RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 71-88.

LOTS 3A AND 22B, BLOCK 6, ALASKA INDUSTRIAL SUBDIVISION, A REPLAT OF LOTS 3, 4, 5, 6, 22A, 23, 24 AND 25, BLOCK 6, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 71-152.

LOTS 11A, 12B AND 12C, BLOCK 1, FIRST ADDITION TO ALASKA INDUSTRIAL SUBDIVISION, A REPLAT OF LOTS 11 AND 12A, FIRST ADDITION TO ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 70-258.

LOTS 1A AND 2A, BLOCK 1, ALASKA INDUSTRIAL SUBDIVISION, A RESUBDIVISION OF LOTS 1, 2, 3 AND 4, BLOCK 1, ALASKA INDUSTRIAL SUBDIVISION AND LOT 15, BLOCK 1, FIRST ADDITION, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT ON FILE WITH THE DEPARTMENT OF NATURAL RESOURCES AS ADL FILE NO. 1-89.

LOT 2A, BLOCK 8, FIRST ADDITION TO ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 65-3.

LOTS 1-A, 2-A, 3-A, 4-A, 5-A, 6-A, 7-A, 8-A, 9-A, 10-A, 11-A, 12-A, 13-A, 14-A, AND 15-A, IN BLOCK 4 AND LOTS 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 26-A, 27-A, 28-A, 29-A, AND 30-A, BLOCK 6, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT, AS AMENDED, RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 64-128, EXCLUDING INTERAGENCY LAND MANAGEMENT ASSIGNMENT, ADL 75473.

FIRST ADDITION, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT, AS AMENDED, RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 64-102:

BLOCK 1: LOTS 9, 10, 14.

BLOCK 3: LOTS 4, 5, 6, 9.

BLOCK 9: LOTS 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13.

BLOCK 10: LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35.

LOT 17A, BLOCK 10, FIRST ADDITION, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 64-61.

LOT 1A, BLOCK 2, ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 63-121.

ALASKA INDUSTRIAL SUBDIVISION, ACCORDING TO THE PLATS, AS AMENDED, RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 63-61 AND PLAT NO. 64-101:

BLOCK 1: LOTS 5, 6, 7, 8.

BLOCK 2: LOTS 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24.

BLOCK 5: LOTS 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, EXCLUDING INTERAGENCY LAND MANAGEMENT ASSIGNMENT, ADL 75473.

BLOCK 7: LOTS 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.

BLOCK 8: LOT 1.

LOTS 16C, 16D, 16E AND 16F, MERRILL FIELD LEASE LOTS, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. 64-136.

LOTS 25A, 27A, 29A, 43A, 58A, 60A, 61A AND THE SANITARY FILL AREA, MERRILL FIELD LEASE LOTS, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. C-230.

LOTS 17A, 18A, 19A, 20A, 21, 22, 23, 28, 41, 42 AND 60 AND THE PORTIONS OF LOTS 30, 40 AND 44 LYING WITHIN SECTION 16, MERRILL FIELD LEASE LOTS, ACCORDING TO THE PLAT RECORDED IN THE ANCHORAGE RECORDING DISTRICT AS PLAT NO. C-217.

CONTAINING 393.00 ACRES, MORE OR LESS.

Subject to ADL Leases:

00069, 00075, 00077, 00079, 00081, 00082, 00083, 00084,
 00086, 00089, 00093, 00095, 00160, 00162, 00164, 00165,
 00166, 00167, 00168, 00169, 00170, 00171, 00172, 00173,
 00174, 00175, 00176, 00177, 00179, 00180, 00181, 00182,
 00249, 00889, 00930, 01308, 01380, 02419, 02472, 02540,
 03039, 03040, 03041, 03042, 03043, 03044, 03045, 03047,
 03048, 03049, 03050, 03051, 03052, 03053, 03054, 03055,
 03056, 03057, 03058, 03059, 03060, 03061, 03062, 03063,
 03064, 03065, 03066, 03067, 03068, 03069, 03070, 03071,
 03073, 03102, 03104, 21222, 21223, 21224, 21400, 21537,
 21619, 30746, 32647, 32895, 34594, 34660, 47378, 47382,
 47383, 47598, 48789, 49686, 51395, 53595, 53623, 56093,
 57237, 65119, 79851, 200315, 201033, 201034.

Subject to ADL permits, easements and applications:

00069, 00115, 00117, 00118, 00120, 00123, 00125, 00201,
 00221, 00307, 01293, 01310, 02061, 02393, 16998, 18443,
 19418, 19513, 20970, 21851, 22487, 22601, 24947, 28460,
 29478, 33442, 36810, 45311, 52926, 53413, 54286, 54586,
 59606, 59953, 63902, 64600, 67212, 74190, 74457, 200118,
 200315, 200657, 200709, 201023, 201086, 201316, 201379,
 201405, 201706, 202736.

Subject to Water Right, ADL 44626.

Subject to East Fifth Avenue, Glenn Highway, Airport Heights
 Road, DeBarr Road and Bragaw Street.

Subject to valid existing trails, roads and easements.

Subject to platted easements.

The State of Alaska reserves from that portion of GLO Lot 4 lying East of the Elmendorf Access Road and West of Commercial Drive and South of Viking Drive the right to extract aggregate material for the construction of the Elmendorf Access Project provided that the Department of Transportation and Public Facilities shall consult with the Municipality in the preparation of plans and specifications setting forth the limits of excavation and finished grades. Such plans and specifications shall be prepared so as to minimize the impact of the excavation upon the subject property and to leave it in a usable state. Prior to excavation plans must be approved by the Municipality provided that the Municipality shall not unreasonably withhold its approval of plans which meet the criteria set forth herein. The State's material extraction rights will revert to the Municipality upon completion of the Elmendorf Access Project or August 1, 1982 whichever is sooner.

79-055052
13

RECORDED-FILED
ANCHORAGE REC.

Nov 7 2 06 PM '79

REQUESTED BY MUNICIPALITY OF ANCHORAGE
Right-of-Way & Property Maint. Office
ADDRESS TOUCH 4 1/2
ANCHORAGE, ALASKA 99502

Township 13 North Range 3 West Seward Meridian

Alaska, according to the official survey thereof numbered -----;

Save And Except these restrictions appearing in the Federal Patent or other conveyance by which the Grantor acquired title;

And Further, Alaska, as Grantor, expressly reserves out of the grant hereby made, unto itself, its lessees, successors and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils; and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes, and to occupy as much of said lands as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Do Have And To Hold the said land, together with the tenements, hereditaments, and appurtenances thereunto appertaining, unto the said Grantee and their successors and assigns forever.

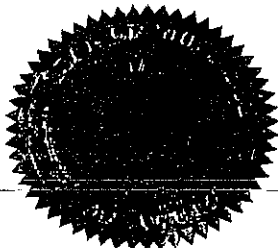
In Testimony Whereof the State of Alaska has caused these presents to be executed by the Director of the Division of Lands, Department of Natural Resources, State of Alaska, this 31st day of October, A.D. 1979.

Theodore G. Smith
Director, Division of Forest, Land and Water Management

State of Alaska)
) ss.
THIRD Judicial District)

This Is To Certify that on the 31st day of October, 1979, appeared before me

THEODORE G. SMITH, who is known to me to be the Director of the Division of Lands, Department of Natural Resources, State of Alaska, or the person who has been lawfully delegated the authority of said Director to execute the foregoing document; that he executed said document under such legal authority and with knowledge of its contents; and that such act was performed freely and voluntarily upon the premises and for the purposes stated therein.



Theodore G. Smith
Notary Public in and for Alaska
My Commission Expires 8/2/81

State Record of Patents

Vol. XLVI
Page 35
ADL No. 201153

ASSIGNMENT OF LEASE

STA
10582

For value received, the undersigned Lessee hereby assigns to NATIONAL BANK OF ALASKA, together with right of reassignment, all of the Lessee's right, title and interest in and to the certain Lease dated May 21, 1961 between State of Alaska, assigned to Municipality of Anchorage by document recorded November 7, 1979 in Book 451 at Page 829 as Lessor, and Ira L. or Penny J. English, assigned to A & M Motors, Inc. by Assignment recorded January 11, 1980 in Book 465 at Page 752, as Lessee, with regard to premises located at Lot Fifteen (15), Block Six (6), ALASKA INDUSTRIAL SUBDIVISION, according to the official plat thereof, filed under Plat No. 64-101, records of the Anchorage Recording District, Third Judicial District, State of Alaska. This Assignment is made solely for the purpose of securing the repayment of loans from the National Bank of Alaska to the undersigned Lessee.

Dated this 18th day of January, 1980

A & M Motors, Inc
Winston C. Chance, Jr.
Secy/Treas.

State of Alaska)
Third Judicial District)SS.

On January 18, 1980, before me, a Notary Public, in and for the State of Alaska, personally appeared Winston C. Chance, Jr. known to me to be the individual (s) described in and who executed the within instrument and acknowledged that he signed the same freely and voluntarily as his act and deed, for the uses and purposes therein mentioned.

Dated this day, month and year herein above written:

Richard Walter
Notary Public in and for Alaska
My Commission expires June 15, 1983

LESSOR'S CONSENT TO ASSIGNMENT OF LEASE

The Lessor, in that certain Lease dated May 21, 1961 between State of Alaska, assigned to Municipality of Anchorage by document recorded November 7, 1979 in Book 451 at Page 829 as Lessor, and Ira L. or Penny J. English, assigned to A & M Motors, Inc. by Assignment recorded January 11, 1980 in Book 465 at Page 752, as Lessee, with regard to premises located at Lot Fifteen (15), Block Six (6), ALASKA INDUSTRIAL SUBDIVISION, according to the official plat thereof, filed under Plat No. 64-101, records of the Anchorage Recording District, Third Judicial District, State of Alaska, hereby consents to the Assignment by said Lessee of all its right, title and interest in and to said Lease to the National Bank of Alaska as partial security for a loan made to said Lessee, and to any reassignment by National Bank of Alaska, in the event of default under the subject Lease or under Note or other instruments of hypothecation evidencing said loan by said Lessee, provided however, that so long as the National Bank of Alaska has not entered into possession of the premises covered by said Lease for the purpose of operating a business, it shall not be liable for rent or any other obligation of said Lessee, and said Lessee shall remain liable for rent and all other obligations, and in the event of any default under subject Lease, said Lessor hereby agrees not to terminate the Lease or take any action to enforce any claim with respect thereto without giving National Bank of Alaska at least Sixty days prior written notice thereof, and the right to cure such default within said period. Lessor hereby waives his right of distraint against goods and property pledged as security on Bank Loan.

DATED THIS 1st DAY OF February 1980

APPROVED AS TO FORM:

MUNICIPALITY OF ANCHORAGE

P. A. Weaving
Municipal Attorney 4/30/80

L. D. Crawford
Larry D. Crawford, Manager

ATTEST:

Lejane Ferguson
Municipal Clerk
Ms. Ferguson

80-008100

REC'D FILED
ANCHORAGE REC.
DISTRICT

MAR 4 9 42 AM '80

COLLECTED BY SAFECO
ADDRESS _____

Return To:
National Bank of Alaska
301 W. Northern Lights Blvd.
Pouch 7-025
Anchorage, Alaska 99503
Attn: Mr. Olga Urtas

MP-5

INTRAGOVERNMENTAL
RIGHT OF WAY PERMIT

Tax No. 004-051-02

KNOW ALL MEN BY THESE PRESENTS, that the Municipality of Anchorage, acting by and through the Division of Property Management, hereinafter called PERMITTER, hereby grants authority to Municipal Light and Power, a Municipal owned utility, hereinafter called the PERMITTEE, and to its successors, assigns, licensees and permittees, a sole and exclusive Permit for erecting, constructing and maintaining an Electric Distribution System through, over, across and under the lands of the Permitter, situated in the Anchorage Recording District, State of Alaska, and more particularly described as follows, to wit:

A parcel of land 10.00 feet in width located within the NE 1/4 of Section 16, Township 13N, Range 3W, Seward Meridian, and more particularly described as follows:

Commencing at the SE corner of Lot 1, Block 8, ALASKA INDUSTRIAL SUBDIVISION 1958, according to the official plat thereof in the records of the Anchorage Recording District, Third Judicial District, State of Alaska; thence N39°22'00"E a distance of 60.06 feet to the true point of beginning; thence N39°22'00"E a distance of 10.00 feet; thence S50°37'30"E a distance of 152.00 feet; thence S00°00'59"E a distance of 24.73 feet; thence N89°00'00"W a distance of 10.00 feet; thence N00°00'59"W a distance of 20.00 feet; thence N50°37'30"W a distance of 147.27 feet to the true point of beginning, said described permit area containing 1,720.00 square feet, more or less.

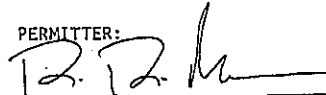
and that only such rights of use in the land above described shall be acquired as shall be necessary for the construction, reconstruction, alteration, operation, maintenance, repair and removal of said improvements and appurtenances thereto, reserving unto the Permitter the right to use said property in any way and for any purpose not inconsistent with the rights of use hereby permitted; provided that the Permittee shall have the right to enter upon the property for the purpose herein described as may from time to time be necessary or desirable for the use, occupation and enjoyment of such right of way, including the right of ingress and egress to said premises; provided further that such work shall be accomplished in such a manner that the allowable improvements of Permitter existing in said right of way shall not be disturbed or destroyed, they shall be replaced in as good a condition as they were in immediately before the property was entered upon by Permittee and provided that Permitter shall not construct any permanent structures within the permit area without the written prior approval of Permittee.

This Permit shall be binding upon the Permitter until or unless otherwise revoked, which action shall require 6 months prior written notice. Permitter agrees that if by any reason of Permitter this Permit shall be revoked and all rights and privileges granted thereunder terminated, Permitter shall bear the full cost and expense of relocating the facility of the Permittee out of the permit area.

In return for the real property right transferred hereby, the utility agrees to transfer \$ 790.00 to the budget account of the Land Trust Fund.

IN WITNESS WHEREOF, the PERMITTER has hereunto set his hand and seal this 14th day of February, 1984.

PERMITTER:

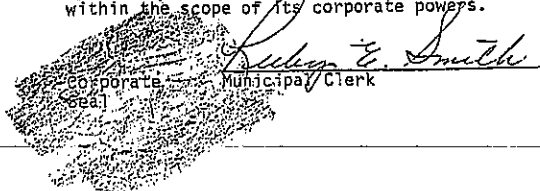


by: R. R. Mann
Property Management Officer
Municipality of Anchorage

ATTEST:

I, Ruby E. Smith, certify that I am the Municipal Clerk of the corporation named as Permitter in the above permit, that R. R. Mann who signed said permit on behalf of the Permitter was then the Property Management Officer of the said corporation, that said permit was duly signed for and in behalf of said corporation by the authority of its governing body, and is within the scope of its corporate powers.

12992



RECORDED-FILED
ANCHORAGE REC.
DISTRICT

FEB 17 10 49 AM '84

REQUESTED BY MUNICIPALITY OF ANCHORAGE
Right-of-Way & Property Mgmt. Div.
ADDRESS POUCH 6450
ANCHORAGE, ALASKA 99503

MP-5

INTRAGOVERNMENTAL
RIGHT OF WAY PERMIT

Tax No. 004-051-01

KNOW ALL MEN BY THESE PRESENTS, that the Municipality of Anchorage, acting by and through the Division of Property Management, hereinafter called PERMITTER, hereby grants authority to Municipal Light and Power, a Municipal owned utility, hereinafter called the PERMITTEE, and to its successors, assigns, licensees and permittees, a sole and exclusive Permit for erecting, constructing and maintaining an Anchor and Guy line through, over, across and under the lands of the Permitter, situated in the Anchorage Recording District, State of Alaska, and more particularly described as follows, to wit:

A parcel of land located within Tract A, ORAH DEE CLARK JUNIOR HIGH, within the N 1/2 NE 1/4 of section 16, Township 13N, Range 3W, Seward Meridian, records of the Anchorage Recording District, Third Judicial District, State of Alaska and more particularly described as follows:

Commencing at the SE corner of lot 2A, Block B, ALASKA Industrial subdivision 1958, records of the Anchorage Recording District, Third Judicial District, State of Alaska; thence S00°08'00"E a distance of 300.04 feet to the true point of beginning; thence N72°14'17"E a distance of 20.56 feet; thence S17°45'43"E a distance of 10.0 feet; thence S72°14'17"W a distance of 23.74 feet; thence N00°08'00"W a distance of 10.5 feet to the true point of beginning, containing 221.5 square feet more or less.

and that only such rights of use in the land above described shall be acquired as shall be necessary for the construction, reconstruction, alteration, operation, maintenance, repair and removal of said improvements and appurtenances thereto, reserving unto the Permitter the right to use said property in any way and for any purpose not inconsistent with the rights of use hereby permitted; provided that the Permittee shall have the right to enter upon the property for the purpose herein described as may from time to time be necessary or desirable for the use, occupation and enjoyment of such right of way, including the right of ingress and egress to said premises; provided further that such work shall be accomplished in such a manner that the allowable improvements of Permitter existing in said right of way shall not be disturbed or destroyed, they shall be replaced in as good a condition as they were in immediately before the property was entered upon by Permittee and provided that Permitter shall not construct any permanent structures within the permit area without the written prior approval of Permittee.

This Permit shall be binding upon the Permitter until or unless otherwise revoked, which action shall require 6 months prior written notice. Permitter agrees that if by any reason of Permitter this Permit shall be revoked and all rights and privileges granted thereunder terminated, Permitter shall bear the full cost and expense of relocating the facility of the Permittee out of the permit area.

In return for the real property right transferred hereby, the utility agrees to transfer \$ 1,329.00 to the budget account of the Land Trust Fund.

IN WITNESS WHEREOF, the PERMITTER has hereunto set his hand and seal this 17 day of October, 1984.

PERMITTER:

R. R. Mann
By: R. R. Mann
Property Management Officer
Municipality of Anchorage

ATTEST:

I, Ruby E. Smith, certify that I am the Municipal Clerk of the corporation named as Permitter in the above permit, that R. R. Mann who signed said permit on behalf of the Permitter was then the Property Management Officer of the said corporation, that said permit was duly signed for and in behalf of said corporation by the authority of its governing body, and is within the scope of its corporate powers.

Corporate Seal

Ruby E. Smith
Municipal Clerk

84-084993

RECORDED - FILED
ANCHORAGE REC.
M. CLERK

OCT 30 10 52 AM '84

REQUESTED BY _____
ADDRESS _____

MUNICIPALITY OF ANCHORAGE
Property Management Office
1000 W. 11th Ave.
ANCHORAGE, ALASKA 99512

A
L
A
S
K
A

2006-034602-0

Recording Dist: 301 - Anchorage

5/26/2006 12:54 PM Pages: 1 of 6



cc

THIS COVER SHEET HAS BEEN ADDED TO THIS DOCUMENT TO PROVIDE SPACE FOR RECORDING DATA. THIS COVER SHEET APPEARS AS THE FIRST PAGE OF THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD.

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2005-079

A RESOLUTION APPROVING A COMMERCIAL TRACT FRAGMENT LOT SITE PLAN CASE S-11433-1, TO CREATE FRAGMENT LOTS 1-14, WITHIN TRACT 1, MOUNTAIN VIEW DEVELOPMENT SUBDIVISION (PER PLAT 2006-62), GENERALLY LOCATED EAST OF AIRPORT HEIGHTS DRIVE BETWEEN MOUNTAIN VIEW DRIVE AND THE GLENN HIGHWAY WITHIN THE N ½ OF SECTION 16, T13N, R3W, S.M., ALASKA (PROPOSED COMMERCIAL TRACT FRAGMENT LOT SITE PLAN FOR MOUNTAIN VIEW DEVELOPMENT SUBDIVISION, TRACT 1).

(Case S-11433-1) (Reference Case S-11432-1; Tax I.D. 004-051-02, 004-082-07, 004-082-06, 004-082-12, 004-051-12, 004-051-01)

WHEREAS, a request has been received from the Municipality of Anchorage Heritage Land Bank for a Commercial Tract Fragment Lot Site Plan Case S-11433-1 to create Fragment Lots 1-14, within Tract 1, Mountain View Development Subdivision (per Plat 2006-62), generally located east of Airport Heights Drive between Mountain View Drive and the Glenn Highway within the N ½ of Section 16, T13N, R3W, S.M, Alaska (proposed Commercial Tract Fragment Lot Site Plan for Mountain View Development Subdivision, Tract 1), and

WHEREAS, notices were published, posted and mailed and a public hearing was held December 12, 2005.

NOW, THEREFORE, BE IT RESOLVED, by the Municipal Planning and Zoning Commission that:

A. The Commission makes the following findings of fact:

1. This is a request to create a commercial tract with 14 fragment lots for Tract 1, Mountain View Development Subdivision (Case S-11432-1).
2. AMC 21.15.134 states that the intent of a commercial tract is "to facilitate construction of commercial developments requiring multiple phases of construction." A commercial tract allows separate financing for the individual fragment lots without encumbering the entirety of the underlying plat. A commercial tract often involves different ownership interests or long term lease arrangements for the individual fragment lots.
3. Designation of a commercial tract is allowed in the proposed B-3 (General Business District) zone.
4. AMC 21.15.134 states that the Planning and Zoning Commission "shall be the platting authority for a commercial tract whose site plan includes a large retail establishment."



5. This commercial fragment lot site plan is being heard in conjunction with a public hearing site plan review for a large commercial establishment under the requirements of AMC 21.50.320.
6. Fragment Lot 1 is the location of the wetlands and is not designated for a commercial use with this development. Fragment Lots 9 and 13 are the location of common parking areas. The building footprints are shown on Fragment Lots 7 and 8 which are identified for retail shops and office use. Building footprints along with associated parking and freight loading areas are shown on Fragment Lots 2 and 11 which are identified as the location of the anchor tenants. The types of uses to be located in the anchor buildings have not been identified on the site plan. Fragment Lots 4, 5, 6 and 10 are shown as building pads for restaurant use; building footprints have not been shown on the commercial site plan for these fragment lots.
7. The commercial site plan may need to be revised to show the parking layout in conformance with the applicable parking lot design standards.
8. A conceptual landscape plan was submitted with the application for a public hearing site plan review (PZC Case 2005-150). Interior parking lot and perimeter landscaping is shown on the plan that is a mix of deciduous and evergreen trees along with ornamental plantings and ground cover. A final landscape plan must be submitted to the Planning Department for review and approval.
9. Two access points to the development are shown on the site plan. The existing from Porcupine Drive is the northernmost access. A 60-foot right-of-way is provided for Porcupine Drive which dead-ends at the northeast corner of the petition site. This right-of-way will be improved to municipal standards with sidewalks on both sides of the constructed roadway.
10. A second access, identified as the South Entrance in the Traffic Impact Analysis, is proposed in the location of existing Lots 9 and 10, Block 7, Alaska Industrial Subdivision.
11. Off-site and site generated drainage will be handled through a series of detention ponds along the south property boundary prior to infiltration into the Type C wetlands located on Fragment Lot 1.
12. Proposed declarations, covenants and restrictions need to be submitted to the Planning Department for review and approval.
13. The Commission finds that this request allows for the development of fragment lots and creates a legal vehicle for financing and for individual sites to be identified and developed.



14. The Commission finds that with regard to the amendment to condition 7.f, it is appropriate for both the MOA and the COE to participate in the decision-making regarding wetlands and was confident the issues could be resolved.
 15. The Commission clarified that condition 8.b references the site and landscaping plan that will be dealt with in case 2005-150. MS. O'BRIEN replied in the affirmative.
- B. The Commission APPROVES the request for a commercial tract fragment lot site plan within Tract 1, Mountain View Development Subdivision (per preliminary plat Case S-11432-1) for 18 months subject to the following conditions:
1. Showing the wetlands boundary on the final commercial tract plat and providing a drainage easement or a plat note designating the wetlands area (Fragment Lot 1) as the recipient of concentrated discharge flows from the proposed development.
 2. Showing the detention ponds and any other required drainage improvements on the final commercial tract plat.
 3. Resolving the conditions for Case S-11432-1 and recording a final plat for the underlying subdivision (Tract 1, Mountain View Development Subdivision and Tract A-1, Orah Dee Clark Junior High School Subdivision) prior to recording a final commercial tract site plan for Fragment Lots 1-14.
 4. Obtaining approval of the parking lot layout from the Municipal Traffic Department and redesigning the commercial tract site plat if required to meet the parking design standards of AMC 21.45.080.W.4 prior to recording the commercial tract site plan.
 5. Submitting a final commercial tract site plan that is drawn to scale as required by AMC 21.15.134.B.2.d.
 6. Submitting a final landscape plan to the Planning Department for review and approval prior to recording a final commercial tract site plat.
 7. Submitting declarations, covenants and restrictions to the Planning Department for review and approval that address, but are not necessarily limited to, the following:
 - a. A snow removal plan including responsibility for snow removal from sidewalks adjacent to store fronts, pedestrian access pathways and the stairway to the lower level of retail uses on Fragment Lot 9.



- b. Responsibility for maintenance of the required interior parking lot landscaping and perimeter landscaping including removal and replacement of dead vegetation.
 - c. Architectural controls that are established in conformance with the approved site plan and elevations.
 - d. Design controls for and placement of signage on store fronts.
 - e. Responsibility for maintenance of the drainage system and detention ponds.
 - f. Retention of the wetlands on Fragment Lot 1 as an undisturbed area as part of the drainage system serving this development. Activities that are prohibited within Fragment Lot 1 include but are not necessarily limited to following: the disturbance and/or removal of vegetation; grading, fill or excavation of the wetlands unless otherwise permitted by the Municipality and the Corps of Engineers; snow dumping and/or storage; the storage of materials, equipment, vehicles; parking.
8. Placing the following notes on the plat:
- a. "Development of the Type C wetlands (Fragment Lot 1) will require a hydrology analysis and the installation of a drainage system equivalent to the function that is performed by the wetlands."
 - b. "Landscaping shall be installed with the development of the property in accordance with the approved Site and Landscaping Plan on file in the Planning Department. The required landscaping shall be maintained by the owner and/or his/her designee(s) for the life of the use(s)."
 - c. "Direct vehicular access to the Glenn Highway from any tract or lot within this subdivision is prohibited."
 - d. "Any development on any fragment lot within this subdivision shall be in conformance with the approved Traffic Impact Analysis (TIA) and any future amendment(s) to the approved TIA."
 - e. "Any existing or proposed access to right of way from any fragment lot within this subdivision shall be in conformance with the approved Traffic Impact Analysis (TIA) and any future amendment(s) to the approved TIA or with the approval of the Municipal Traffic Engineer."



- f. "Snow shall be removed in accordance with the snow removal plan contained in the recorded declarations, covenants and restrictions governing development of this property."

PASSED AND APPROVED by the Municipal Planning and Zoning Commission on the 12th day of December, 2005.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 13th day of Feb. 2006. If the secretary received a written request and intent to appeal, this written decision/resolution of the Planning and Zoning Commission is final and any party may appeal it within twenty (20) days to the Board of Adjustment pursuant to Anchorage Municipal Code 21.30.030 and Anchorage Municipal Code of Regulations 21.10.304. If the secretary did not receive a written request and intent to appeal within seven (7) calendar days of the date the decision was made on the record, December 5, 2005, then this written decision is final and not appealable to any other administrative body. Final administrative decisions with no further administrative remedy may be appealed to the Superior Court within thirty (30) days.

Tom Nelson
for Tom Nelson
Secretary

Don Poulton
for Don Poulton
Chair

(Case S-11433-1)
(Reference Case S-11432-1; Tax I.D. 004-051-02, 004-082-07, 004-082-06, 004-082-12, 004-051-12, 004-051-01)

MO'B

Return To:
Municipality of Anchorage
Planning Department
P.O. Box 196650
Anchorage, AK 99519--6650



6 of 6
2006-034602-0

A
L
A
S
K
A

2006-035833-0

Recording Dist: 301 - Anchorage
6/1/2006 12:03 PM Pages: 1 of 9



After Recording Return To:

Laura P. Sims, Esq.
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202

15280CS

cc

This Space Reserved for Recording Purposes

ANCHORAGE, ALASKA

DECLARATION OF EASEMENTS AND CONDITIONS
FOR COMMERCIAL TRACT FRAGMENT LOT SITE PLAN CASES S-11433-1 AND 2005-150

THIS DECLARATION OF EASEMENTS AND CONDITIONS FOR COMMERCIAL TRACT FRAGMENT LOT SITE PLAN CASE S-11433-1 (this "DEC") is made as of the 17th day of May, 2006, by ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY, whose address is 700 West Sixth Avenue, Suite 206, Anchorage, Alaska 99501 (the "Authority") and MUNICIPALITY OF ANCHORAGE, whose address is P.O. Box 196650, Anchorage, Alaska 99519-6650 (the "Municipality").

RECITALS

This DEC is made with reference to the following facts and objectives:

A. The Authority and the Municipality (collectively hereinafter, the "Owner") are together the owners of those certain Fragment Lots 1-14, within Tract 1, Mountain View Development Subdivision (per Plat 2006-104 [the "Plat"])), situated in the Anchorage Recording District, Third Judicial District, State of Alaska (the "Land").

B. In order to effectuate the common use and operation of certain portions of the Land, Owner hereby grants certain reciprocal easements into, over, and across certain portions of the Land and imposes certain conditions and restrictions thereon.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the easements, conditions, and restrictions hereinafter set forth, Owner hereby makes this DEC:

1. CERTAIN DEFINITIONS.

1.1. Party. "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors, assigns and/or transferees. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Land owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party's liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its interest in the Land shall give notice to all other Parties of such transfer and shall include therein at least the following information:

- (a) the name and address of the new Party; and
- (b) a copy of the legal description of the portion of the Land transferred.

If a Tract is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Tract shall designate one (1) of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this DEC only) be the transferee's agent.

1.2. Person. "Person" shall mean any individual, partnership, limited partnership, limited liability company, firm, association, corporation, trust, or any other form of business or governmental entity.

1.3. Tract. "Tract" shall mean those Fragment Lot(s) which is a part of the Land and owned by a Party (e.g., all fragment lot(s) owned by the Authority shall be deemed the "Authority Tract").

1.4. Utility Lines. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water.

2. EASEMENTS.

2.1. Access and Signage Easements.

(a) Access Easements.

(i) The Authority hereby grants to each Party hereto, a public use road easement (the "Lot 3 Road Easement") over a portion of the northeasterly part of Fragment Lot 3 (being a part of the Land), as more particularly designated on the Plat, for the benefit of all other Fragment Lots within the Land. The Municipality shall, at its expense, construct or cause to be constructed a public use road, together with associated curbs, sidewalks, lighting, signs and landscaping, within the Lot 3 Road Easement, in accordance with Anchorage Municipal codes and ordinances (the "Lot 3 Road Improvements"), and upon completion of such Lot 3 Road Improvements, the same shall define the precise location of the Lot 3 Road Easement. The Party owning Fragment Lot 13 shall be responsible to replace, repair, maintain and operate the Lot 3 Road Improvements.

(ii) The Municipality hereby grants to each Party hereto, an access easement (the "Lot 12 Access Easement") over a portion of the southwesterly part of Fragment Lot 12 (being a part of the Land), as more particularly designated on the Plat, for the benefit of Fragment Lots 7, 8 and 9. The Municipality hereby reserves for itself and for each successor owner of Fragment Lot 12 a right to use the Lot 12 Access Easement. No Party entitled hereunder to use of the Lot 12 Access Easement may use said Lot 12 Access Easement for any purpose inconsistent with or which diminishes or interferes with the use of said Lot 12 Access Easement by any other such Party. The Municipality shall construct (or cause to be constructed pursuant to agreement with the now or prospective owner or owners of Fragment Lot 9) an access-way, together with associated lighting, signs and landscaping, within the Lot 12 Access Easement, in accordance with Anchorage Municipal codes and ordinances (the "Lot 12 Access Improvements"), and upon completion of such Lot 12 Road Improvements, the same shall define the precise location of the Lot 12 Access Easement. The Party owning Fragment Lot 9 shall be responsible to replace, repair, maintain and operate the Lot 12 Access Improvements.

(iii) Each Party hereby grants to each other Party, for the benefit of such Party's Tract, and for use by each other Party, its agents, employees and contractors, in common with others to use the same, non-exclusive access, ingress and egress easements over and across the publicly accessible parking and driveways area now or hereafter located within a Party's Tract (as the same are constituted from time to time) for the purpose of providing each Party access, ingress and egress to and from its Tract from the Lot 3 Road Easement and/or the Lot 12 Road Easement, as applicable, and to and from any access point to any public street adjoining the Land (including, without limitation, Porcupine Drive). Nothing herein shall imply or grant access from any portion of the Land to Glenn Highway or from any Fragment Lots other than Fragment Lots 7, 8 or 9 to the Lot 12 Access Easement, which access is expressly herein denied.

(iv) Each of the Lot 3 Road Easement, the Lot 12 Road Easement, and the easements granted in Section 2.1(a)(iii) above shall extend in perpetuity, provided, upon any termination of such easement by lawful means, all rights, title and interest therein shall thereupon revert to the then owner of the applicable Tract.

(b) Signage Easement. The Authority hereby grants to the Party owning the majority of land area within Fragment Lots 2, 11 and 13, a sign easement over a portion of the northerly corner of Fragment Lot 3, together with appurtenant rights of access and availability of utilities thereto, as more particularly designated on the Plat (the "Sign Easement"). The applicable Party may, at its expense, construct, re-construct, replace, repair, maintain and operate a permanent freestanding sign, together with utilities thereto, within the Sign Easement, in accordance with Anchorage Municipal codes and ordinances (the "Sign Improvements"). The Sign Easement shall extend in perpetuity and all Sign Improvements shall remain the property of the constructing or re-constructing or then maintaining Party; provided, that upon termination of the Sign Easement by any lawful means, the then owner of the Sign Improvements shall remove such Sign Improvements and restore the Sign Easement to a clean, level condition, unless the Authority, at its option, elects to take possession of such Sign Improvements, and all rights, title and interest in the Sign Easement shall revert to the then owner of Fragment Lot 3.

2.2. Utilities (including Drainage) Easements.

(a) Each Party hereby grants and conveys to each other Party, for the benefit of such Party's Tract, and for use by such Party, one or more non-exclusive, perpetual easements in, to, over, under, along, and across those portions of the publicly accessible parking and driveway areas located on granting Party's Tract reasonably necessary for the installation, operation, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone, and communication lines. All Utility Lines shall be under-ground except:



- (i) all above-ground utility lines designated on the Plat;
- (ii) ground mounted electrical transformers;
- (iii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iv) as may be required by governmental agencies having jurisdiction;
- (v) as may be required by the provider of such service; and
- (vi) fire hydrants.

Prior to claiming or exercising any utility easement right granted herein, the Party claiming the right shall first provide each Party whose Tract shall be burdened with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, and shall furnish a certificate of insurance showing that its contractor has obtained appropriate insurance coverage. Except as otherwise agreed to by the relevant Parties in a given instance, any Party installing Utility Lines serving a single Tract pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible, in a manner so as to not unreasonably interfere with the use, occupancy, or enjoyment of any granting Party's Tract or any other portion of the Land. If the relevant Parties elect to install common Utility Lines, all repair, maintenance, replacement, and other work thereon shall, if not performed by the utility company, be performed by the owner(s) of the Tract(s) upon which the common Utility Lines are located and paid for by such Owners as agreed by them.

(b) The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Tract is to be burdened thereby, such approval not to be unreasonably withheld or delayed. The granting Party shall have the right at any time to relocate a Utility Line upon thirty (30) days' prior written notice to the benefited Party, provided that such relocation:

- (i) shall not interfere with or diminish the utility service to the benefited Party during the hours of operation of such Party's Tract, and shall not unreasonably restrict any vehicular movement;
- (ii) shall not reduce or impair the usefulness or function of such Utility Line;
- (iii) shall be performed without cost or expense to the benefited Party;
- (iv) shall be completed using materials and design standards which equal or exceed those originally used; and
- (v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereof.

(c) Each Party hereby grants and conveys to each Party owning an immediately adjacent Tract the perpetual right and easement to discharge surface storm drainage and/or runoff from the benefited Party's Tract over, upon, and across the publicly accessible parking and driveway areas of the granting Party's Tract, upon the following conditions and terms:

- (i) The publicly accessible parking and driveway area grades and the surface water drainage/retention system for the Land shall be initially constructed in strict conformance with the details contained in the Site Plan or otherwise required and approved by the Municipality;
- (ii) No Party shall alter or permit to be altered the surface of the publicly accessible parking and driveway areas or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area or materially decrease the purity or quality of surface water flowing onto an adjacent Tract; and
- (iii) Except as provided in notes set forth on the Plat, the wetlands located on Fragment Lot 1 (as designated on the Plat) shall be maintained and retained as an undisturbed area as part of the drainage system serving the Land and no commercial use is allowable thereon. Activities prohibited within said Fragment Lot 1 include but are not necessarily limited to following: the disturbance and /or removal of vegetation; grading, fill or excavation of the wetlands unless otherwise permitted by the Municipality and the U.S. Army Corps of Engineers; snow dumping and/or storage; the storage of materials, equipment, vehicles; and parking.

2.3 General. Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen, and laborers a temporary license for access and passage over and across the



publicly accessible areas of the granting Party's Tract as shall be reasonably necessary for the benefited Party to construct and/or maintain improvements upon such benefited Party's Tract; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use, operation, and enjoyment of any Tract by others. Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the affected area of granting Party's Tract, and shall restore and/or repair the affected portion of the granting Party's Tract to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers, and/or others connected with construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers, and/or others working for another Party from using the publicly accessible parking and driveway areas on its Tract. No fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the publicly accessible parking areas and driveways (as the same exist from time to time), exclusive of reasonable curbing and other forms of traffic control, or permitted staging and/or storage areas.

2.4. Building Improvements. While it is acknowledged and agreed that nothing herein shall obligate a Party to commence construction of any building or improvement on its Tract, the Parties hereby agree once construction has been commenced, such building or improvement shall be completed in a timely fashion. Each building and improvement (other than improvements such as Utility lines, public telephones, benches and the like) on a Tract shall be located only within the Building Area for such Tract as designated on the Site Plan for the Land attached hereto as Exhibit A-1 (as approved by the Municipality pursuant to Title 21 of the Anchorage Municipal Code, as amended from time to time in accordance with such code) for such Tract (or if no Building Area is designated for such Tract or a portion of such Tract, then improvements on such Tract or Tracts shall be allowable as pursuant to applicable zoning and building codes of the Municipality of Anchorage). All building improvements on Fragment Lots 2, 4, 5, 6, 7, 8, 9, 10, 11 and 13 shall comply with the Site Plan and the design, architectural, building signage, and other requirements therefor set forth in any recorded declaration of easements and conditions applicable thereto and as contemplated by the Site Plan, it being the understanding of the parties that to the extent of any unresolvable conflict, the Site Plan shall control over the terms of this DEC and any other recorded declaration of easements and conditions. All building improvements shall also comply with the commercial fragment lot site plan recorded as plat 2006-~~64~~ and the site plan review under case 2005-150 on file with the Municipal Planning Department.

3. MAINTENANCE AND REPAIR.

3.1. Utility Lines.

(a) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Utility Lines exclusively serving its Tract and utilized by it regardless of where located. Any maintenance and repair of non-dedicated utilities located on another Party's Tract shall be performed: (i) after two (2) weeks' notice to said other Party (except in an emergency the work may be initiated with reasonable notice); (ii) after normal business hours whenever possible; and (iii) in such a manner as to cause as little disturbance in the use of said other Party's Tract as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work agrees: (1) to promptly pay all costs and expenses associated therewith, and in any event prior to attachment of any lien to any other Party's Tract; (2) to diligently complete such work as quickly as possible; and (3) to promptly clean the area and restore the affected portion of each affected Tract to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) The portion of any Utility Line serving more than one Tract (including, without limitation, the Utility Lines comprising the drainage system for the Land) which is located on a Tract shall be maintained and replaced by the owner of such Tract, at its sole cost and expense; provided, that such maintenance may be performed by and the costs for the same be paid on a pro rata basis between the owner(s) of Fragment Lots 2, 4, 5, 6, 7, 8, 9, 10, 11 or 13.

3.2. General Tract Maintenance.

(a) Each Party shall at all times maintain, or cause to be maintained, its Tract in a slightly, safe condition and good state of repair, including, without limitation, the parking lots and landscaping on each Tract. Any unimproved areas shall be mowed and kept litter free. All Tracts shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances, and the provisions hereof. The maintenance and repair obligation for each Tract shall include but not be limited to the following:



(i) *Drive and Parking Areas.* Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing, and resurfacing (for the purpose of this section, an overlay of the drives and parking areas shall be considered a maintenance item).

(ii) *Debris and Refuse; Snow Removal.* Periodic removal of all paper, debris, filth, and refuse, including vacuuming and broom sweeping to the extent necessary to keep the Tract in a clean, and orderly condition, as well as periodic removal of ice and snow, including removal from sidewalks adjacent to store fronts, pedestrian access pathways and stairways (including, without limitation, the stairway to the lower level of retail uses on Fragment Lots 7 & 8).

(iii) *Signs and Markers.* Maintaining, cleaning, and replacing any appropriate directional, stop, or handicapped parking signs; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas, and pedestrian cross-walks.

(iv) *Lighting.* Maintaining, cleaning, and replacing lighting facilities, including light standards, wires, conduits, lamps, ballasts, lenses, time clocks, and circuit breakers.

(v) *Landscaping.* Maintaining and replacing all on-site and off-site (including interior parking and perimeter) landscape plantings, trees, and shrubs in an attractive and thriving condition, trimmed and weed free, including removal and replacement of dead vegetation. Maintaining and replacing landscape planters, including those adjacent to exterior walls of buildings and automatic sprinkler systems. Modify irrigation systems to satisfy governmental water allocation or emergency requirements and perform pest control and extermination as needed.

Each Party agrees to defend, indemnify, and hold each other Party ("Indemnitee") harmless from and against all claims, costs, losses, expenses, and liability (including reasonable attorney fees and costs of suit) arising from or directly or indirectly relating to the maintenance, use or operation of its Tract, except for claims caused by the gross negligence or willful act or omission of such Indemnitee(s).

(b) In the event a Party fails to maintain its Tract in accordance with the requirements of Section 3.2(a) (such Party being hereinafter referred to as the "Defaulting Party") any other Party (hereinafter referred to as the "Nondefaulting Party") may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "Deficiencies") in the Defaulting Party's performance of its obligations under Section 3.2(a). Except for an Emergency Situation, the Defaulting Party shall have ten (10) days after receipt of such notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten-day period, and thereafter to proceed diligently to complete the correction of the Deficiencies. An "Emergency Situation" is a situation which threatens access to a Tract or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons. In the event a Defaulting Party shall fail or refuse to timely correct or to begin to correct the Deficiencies and proceed to diligently complete the same, as the case may be, the Nondefaulting Party may, in its option, correct the Deficiencies. In the event the Nondefaulting Party shall exercise its option, the Defaulting Party shall, within ten (10) days from receipt from the Nondefaulting Party, of an itemized invoice for the actual and reasonable costs incurred by the Nondefaulting Party in correcting the Deficiencies, pay such costs to the Nondefaulting Party.

(c) In the event any improvements on a Tract are damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this DEC, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract is affected shall, at a minimum, subject to governmental regulations and/or insurance adjustment delays, immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall do one of the following: (i) repair or restore the building improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this DEC; (ii) erect other building improvements in such location, such construction to be performed in accordance with all provisions of this DEC; or (iii) demolish the damaged portion and/or the balance of such building improvements and restore the cleared area to either a hard surface condition or a landscaped condition as would be required hereunder for property on which no construction has been commenced. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty (or as soon thereafter as all insurance issues are settled to the extent necessary to make a prudent election of alternatives) of which alternative it elects.

4. TAXES AND ASSESSMENTS.

4.1. Taxes and Assessments. Each Party shall be responsible for timely payment of all taxes and assessments, if any, with respect to its Tract, the buildings, and improvements located thereon and any personal property owned or leased by such Party, and no Party shall permit non-payment or delinquent payment of its taxes to subject any other Tract or portion thereof with a lien, judgment or



other like encumbrance. Each Party shall indemnify each other Party against any adverse consequent to such Party from the indemnifying Party's non-payment or delinquent payment of taxes.

4.2 Liens. In the event any mechanic's or materialman's lien is filed against the Tract (or portion thereof) of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be paid or bonded as allowable by law within fifteen (15) days after receipt of notice of the existence of such lien, and in any event prior to foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. So long as protection against foreclosure is provided by the Party permitting or causing such lien, such Party may contest the validity of said lien in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

5. MISCELLANEOUS.

5.1 Estoppel Certificate.

Each Party agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

- (a) whether it knows of any default under this DEC by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (b) whether this DEC has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- (c) whether this DEC is in full force and effect; and
- (d) any other reasonable factual matter requested by the requesting Party or its prospective mortgagee or successor.

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to demand performance under or to enforce remedies for non-compliance with the terms of this DEC.

5.2 Notices. All notices under this DEC shall be in writing and delivered either: (a) in person; (b) by reputable over-night delivery service, so long as delivery is made by obtaining a signed receipt; (c) by certified mail; or (d) by facsimile transmission, so long as the original notice is also forwarded by the method described in (a), (b), or (c). Initial address for notices are set forth in the first paragraph of this DEC. Any notice given pursuant to this DEC shall be deemed effective the day it is personally delivered or transmitted by facsimile, the day after it is delivered to the overnight delivery service, or three (3) business days after the date it is deposited in the United States mail system.

Upon at least ten (10) days' prior written notice, each Person shall have the right to change its address to any other address within the United States of America.

5.3 Condemnation. In the event any portion of the Land shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that: (a) if the taking includes improvements benefiting to more than one Party, such as Utility Lines, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition; and (b) if the taking includes easement rights which are intended to extend beyond the term of this DEC, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this DEC which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.

5.4 Binding Effect. The terms of this DEC and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors, assigns and



owners who become Parties hereunder. This DEC is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

5.5 Construction and Interpretation.

(a) This DEC and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. The provisions of this DEC and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(b) Whenever required by the context of this DEC: (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

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

(d) Invalidity of any of the provisions contained in this DEC, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(e) This DEC may be amended by, and only by, a written agreement signed by the then-Parties hereto, and shall be effective only when recorded in the county or applicable recording district and state where the Land is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of any other Party or its Tract without the consent of such other Party. No consent to the amendment of this DEC shall ever be required of any Person other than the Parties.

(f) This DEC may be executed in several counterparts, each of which shall be deemed an original. The signatures to this DEC may be executed and notarized on separate pages, and when attached to this DEC shall constitute one complete document.

5.6 DEC Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this DEC shall: (a) entitle any Party to cancel, rescind, or otherwise terminate this DEC; or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Land. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

5.7 Limitation of Liability. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, employees or agents of a party hereto with respect to any of the terms, covenants, conditions, and provisions of this DEC. In the event of default by a defaulting party hereunder any non-defaulting party who seeks recovery shall look solely to the interest of such defaulting party, its successors and assigns, in its Tract for the satisfaction of each and every remedy; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party to pursue equitable relief in connection with any term, covenants or condition of this DEC, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance.



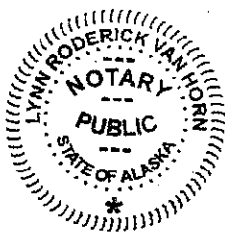
IN WITNESS WHEREOF, the Authority and the Municipality have caused this DEC to be executed effective as of the day and year first above written.

ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY

By: Healia C. Palmer
Healia C. Palmer, Chief Financial Officer

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 17th day of May, 2006, by Healia C. Palmer, Chief Financial Officer for the ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY, an Alaska public corporation, on behalf of the corporation.



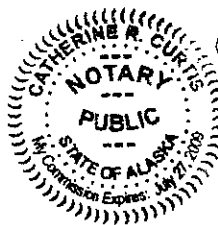
Lynn Roderick Van Horn
Notary Public in and for Alaska
My Commission Expires: 12/31/2009

MUNICIPALITY OF ANCHORAGE

By: Denis C. LeBlanc
Denis C. LeBlanc, Municipal Manager

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 17th day of May, 2006, by Denis C. LeBlanc, Municipal Manager for the MUNICIPALITY OF ANCHORAGE, an Alaska municipal corporation, on behalf of the corporation.



Catherine R. Curtis
Notary Public in and for Alaska
My Commission Expires: July 27, 2009

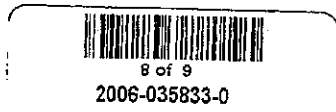
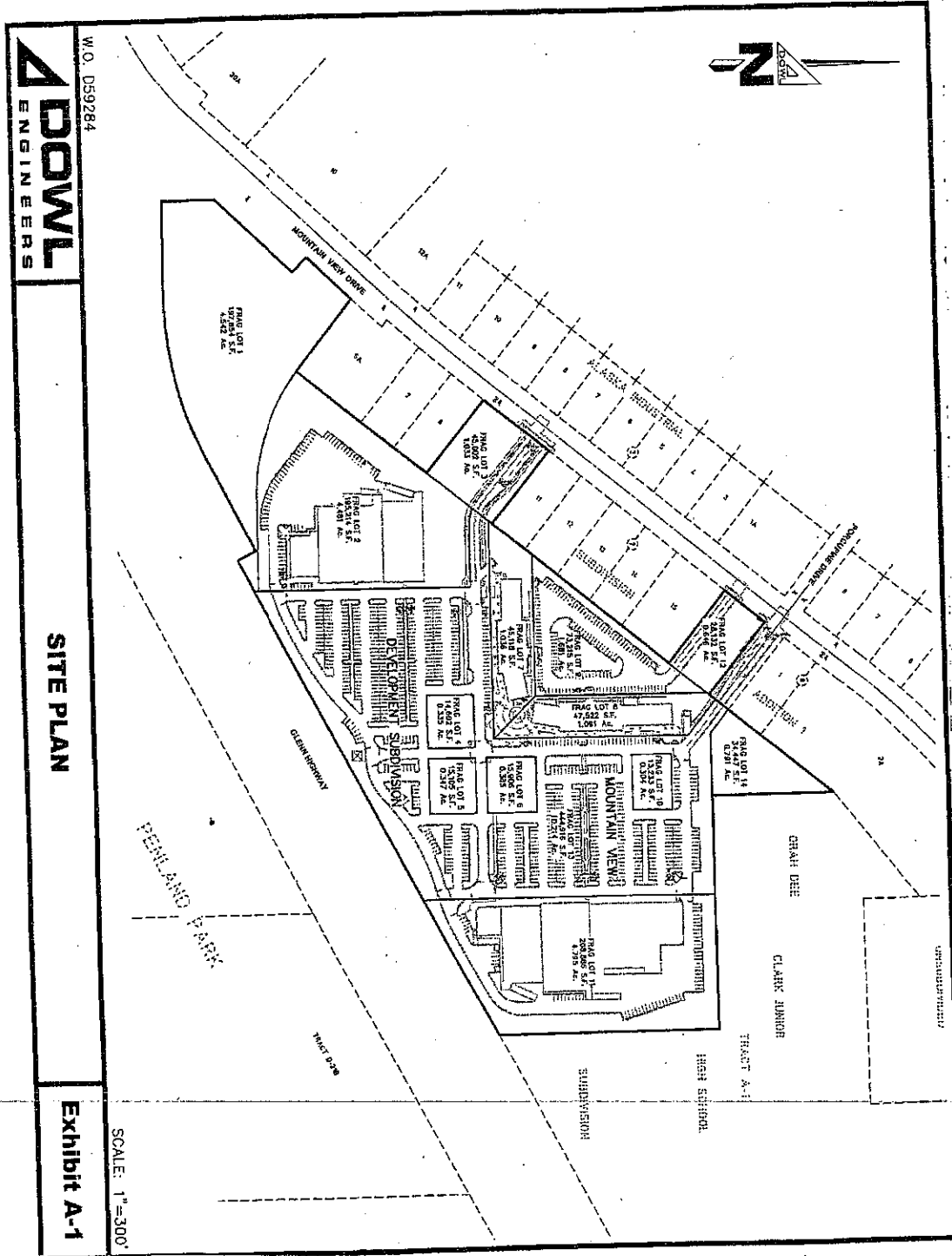


EXHIBIT A-1

SITE PLAN



W.O. D59284
DOWL
ENGINEERS

SITE PLAN

Exhibit A-1

SCALE: 1"=300'



9 of 9
2006-035833-0

CC, NS

A
L
A
S
K
A

2012-040473-0

Recording District 301 ANCHORAGE
07/23/2012 12:01 PM Page 1 of 30



After Recording Return To:

After recording, return to:
Patricia Gregory
Pachter, Gregory & Raffaldini, P.C.
790 Estate Drive
Suite 150
Deerfield, Illinois 60015

This Space Reserved for Recording Purposes

ANCHORAGE, ALASKA

AMENDED AND RESTATED DECLARATION OF EASEMENTS AND CONDITIONS FOR COMMERCIAL TRACT FRAGMENT LOT SITE PLAN CASES S-11433-1 AND 2005-150, AND COMMERCIAL TRACT FRAGMENT LOT PLAT CASE S-11647

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS AND CONDITIONS FOR COMMERCIAL TRACT FRAGMENT LOT PLAT CASE S-11647 is an amendment and restatement of that certain Declaration of Easements and Conditions for Commercial Tract Fragment Lot Site Plan Cases S-11433-1 AND 2005-150, originally made by ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY, whose address is 245 West Fifth Avenue, Suite 122, Anchorage, Alaska 99501 (the "Authority") and the MUNICIPALITY OF ANCHORAGE, whose address is P.O. Box 196650, Anchorage, Alaska 99519-6650 (the "Municipality"), dated May 17, 2006 and recorded June 1, 2006 as Document No. 2006-035833-0, Anchorage Recording District, Third Judicial District, State of Alaska with respect to Fragment Lots 1-14, within Tract 1, Mountain View Development Subdivision (per Plat 2006-64), situated in the Anchorage Recording District, Third Judicial District, State of Alaska.

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS AND CONDITIONS FOR COMMERCIAL TRACT FRAGMENT LOT PLAT CASE S-11647 (this "DEC") is made by the Authority, the Municipality, and KIMCO GLENN SQUARE ANCHORAGE, LLC, a Delaware limited liability company, whose address is c/o Kimco Realty Corporation, 3333 New Hyde Park Road, Suite 100, New Hyde Park, New York 11042-0020 ("Glenn Square").

RECITALS

This DEC is made with reference to the following facts and objectives:

- A. The Authority is the owner of that certain Fragment Lots 3 and 14A, within Tract 1A, of Mountain View Development Subdivision (per Plat 2009-80 [herein, the "Re-Plat"]) (the "Authority Land").
- B. The Municipality is the owner of those certain Fragment Lots 1 and 12, within Tract 1A, of Mountain View Development Subdivision, per the Re-Plat (the "Municipality Land").
- C. Glenn Square is the owner of those certain Fragment Lots 2, 4, 5, 6, 7, 8, 9, 11A, 11B and 13A, within Tract 1A, Mountain View Development Subdivision, per the Re-Plat (the "Glenn Square Land").
- D. The Authority Land, the Municipality Land and the Glenn Square Land are herein referred to collectively as the "Land." The Land is more particularly depicted on Exhibit A attached hereto (the "Site Plan").

In order to effectuate the common use and operation of certain portions of the Land, the Authority, the Municipality, and Glenn Square hereby grant certain reciprocal easements into, over, and across certain portions of the Land and impose certain conditions and restrictions thereon.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the easements, conditions, and restrictions hereinafter set forth, the Authority, the Municipality and Glenn Square hereby make this DEC:

Dallas 152151946
#8318-5-10/23/2008 Dallas 152151946
#8318-5-10/23/2008

1. CERTAIN DEFINITIONS.

1.1. Party. "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors, assigns and/or transferees of an ownership interest in any portion of the Land or a lessee of any Tract pursuant to a lease having a term of at least twenty (20) years ("Lease") provided that the fee owner of such Tract has designated such lessee as the "Party" for said Tract for purposes of this DEC pursuant to an instrument recorded against the Land. . Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Land owned (or leased as the case may be) by it which accrue during the period of such ownership (or leasehold as the case may be), and such liability shall continue with respect to any portion transferred (or leased as the case may be) until the notice of lease as provided above or of transfer set forth below is given, at which time the transferring Party's (or lessor's) liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its ownership interest in the Land (or leasing any Tract) shall give notice to all other Parties of such transfer (or lease) and shall include therein at least the following information:

- (a) the name and address of the new Party; and
- (b) a copy of the legal description of the portion of the Land transferred.

If a Tract is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Tract shall designate one (1) of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this DEC only) be the transferee's agent. Upon the termination or expiration of any Lease, the fee owner of any such Tract shall once again be obligated for liabilities thereafter accruing with respect to such Tract under this DEC.

1.2. Person. "Person" shall mean any individual, partnership, limited partnership, limited liability company, firm, association, corporation, trust, or any other form of business or governmental entity.

1.3. Tract. "Tract" shall mean the Fragment Lot or Lots which is or are a part of the Land and owned by a Party (e.g., all fragment lot(s) owned by the Authority shall be deemed the "Authority Tract").

1.4. Utility Lines. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water.

2. EASEMENTS.

2.1. Access, Parking and Signage Easements.

(a) Access Easements.

(i) The Authority hereby grants to each Party hereto and for the benefit of such Party's Tract, and for use by such Party's, agents, employees, contractors, and customers, a public use road easement (the "Lot 3 Road Easement") over a portion of the northeasterly part of Fragment Lot 3, as more particularly designated on the Re-Plat, for the benefit of all other Fragment Lots within the Land and no other real estate. The Municipality has, at its expense, constructed or caused to be constructed a public use road, together with associated curbs, sidewalks, lighting, signs and landscaping, within the Lot 3 Road Easement, in accordance with Anchorage Municipal codes and ordinances (the "Lot 3 Road Improvements"), and such Lot 3 Road Improvements now define the precise location of the Lot 3 Road Easement. The Party owning Fragment Lot 13A shall be responsible to replace, repair, maintain and operate the Lot 3 Road Improvements. The Authority has constructed a memorial within the Lot 3 Road Easement. The Authority hereby reserves the right to reconstruct or replace the memorial within the Lot 3 Road Easement, so long as the same does not impair, inhibit, prevent or materially diminish or limit the use of the Lot 3 Road Easement as a public road providing access to the Fragment Lots within the Land, as contemplated above. The Party owning Fragment Lot 13A shall be responsible to maintain said memorial, including, without limitation, maintenance of surrounding landscaping, at such Party's cost and expense without reimbursement from the Authority; provided, that the Party owning Fragment Lot 13A shall have no obligation to insure said memorial, to make material or capital repairs to said memorial, or to replace or reconstruct said memorial following destruction thereof by any casualty or other event.

(ii) The Municipality hereby grants to each Party hereto and for the benefit of such Party's Tract, and for use by such Party's, agents, employees, contractors, and customers, an



access easement (the "Lot 12 Access Easement") over a portion of the southwesterly part of Fragment Lot 12, as more particularly designated on the Re-Plat, for the benefit of Fragment Lots 7, 8 and 9. The Municipality hereby reserves for itself and for each successor owner of Fragment Lot 12 a right to use the Lot 12 Access Easement for purposes not inconsistent with, and which do not diminish or interfere with, the grant of easement contained in this Section 2.1(a)(ii). The Municipality has constructed or caused to be constructed (pursuant to agreement with the now or prospective owner or owners of Fragment Lot 9) an access-way, together with associated lighting, signs and landscaping, within the Lot 12 Access Easement, in accordance with Anchorage Municipal codes and ordinances (the "Lot 12 Access Improvements"), and such Lot 12 Road Improvements now define the precise location of the Lot 12 Access Easement. The Party owning Fragment Lot 9 shall be responsible to replace, repair, maintain and operate the Lot 12 Access Improvements.

(iii) Each Party hereby grants to each other Party, for the benefit of such Party's Tract, and for use by each other Party, its agents, employees, contractors, and customers in common with others to use the same, non-exclusive access, ingress and egress easements over and across the publicly accessible parking and driveway areas now or hereafter located within a Party's Tract (as the same are constituted from time to time) for the purpose of providing each Party access, ingress and egress to and from its Tract from the Lot 3 Road Easement and/or the Lot 12 Road Easement, as applicable, and to and from any access point to any public street adjoining the Land (including, without limitation, Porcupine Drive). Nothing herein shall imply or grant a right of vehicular access from any portion of the Land to Glenn Highway or right of vehicular access from any Fragment Lots other than Fragment Lots 7, 8 or 9 to the Lot 12 Access Easement, which vehicular access is expressly herein denied. No fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the publicly accessible parking areas and driveways (as the same exist from time to time), exclusive of reasonable curbing and other forms of traffic control, or permitted temporary staging and/or storage areas with respect to construction.

(iv) Each of the Lot 3 Road Easement, the Lot 12 Road Easement, and the easements granted in Section 2.1(a)(iii) above shall extend in perpetuity, provided, upon any termination of such easement by lawful means, all rights, title and interest therein shall thereupon revert to the then owner of the applicable Tract.

(b) No Parking Easement. Nothing herein shall imply or grant a right to any Party or its employees, agents, contractors or customers of its Tract to park within the parking areas of any other Tract: all such cross parking rights are expressly herein denied.

(c) Signage Easement(s).

(i) The Authority hereby grants to the Party owning the majority of land area within Fragment Lots 2, 11A and 13A, for the benefit of said Fragment Lots or at the discretion of such Party for the benefit of Fragment Lots 4,5,6,7,8 or 9, a sign easement over a portion of the northerly corner of Fragment Lot 3, as more particularly designated on the Site Plan (the "Lot 3 Sign Easement"), together with appurtenant rights of access and availability of utilities thereto. Glenn Square has, at its expense, constructed, and hereafter may re-construct, replace, repair, maintain and operate, a permanent freestanding sign, together with utilities thereto, within the Lot 3 Sign Easement, in accordance with Anchorage Municipal codes and ordinances (the "Lot 3 Sign Improvements"), and such Lot 3 Sign Improvements now define the precise location of the Lot 3 Sign Easement. The Lot 3 Sign Easement shall extend in perpetuity and all Lot 3 Sign Improvements shall remain the property of the constructing or re-constructing or then maintaining Party; provided, that upon termination of the Lot 3 Sign Easement by any lawful means, the then owner of the Lot 3 Sign Improvements shall remove such Lot 3 Sign Improvements and restore the Lot 3 Sign Easement to a clean, level condition, unless the then owner of Fragment Lot 3, at its option, elects to take possession of such Lot 3 Sign Improvements, and in such event all rights, title and interest in the Lot 3 Sign Easement shall revert to the then owner of Fragment Lot 3.

(ii) The Municipality hereby grants to the Party owning the majority of land area within Fragment Lots 2, 11A and 13A, for the benefit of said Fragment Lots or at the discretion of such Party for the benefit of Fragment Lots 4, 5,6,7,8 or 9, a sign easement over a portion of Fragment Lot 12, as more particularly designated on the Site Plan (the "Lot 12 Sign Easement"), together with appurtenant rights of access and availability of utilities thereto. Glenn Square has, at its expense, constructed, and hereafter may re-construct, replace, repair, maintain and operate, a permanent freestanding sign for the benefit of the retail operations on said Fragment Lots, together with utilities thereto, within the Lot 12 Sign Easement, in accordance with Anchorage Municipal codes and ordinances (the "Lot 12 Sign Improvements"), and such Lot 12 Sign Improvements now define the precise location of the Lot 12 Sign Easement. The Lot 12 Sign Easement shall extend in perpetuity and all Lot 12 Sign Improvements shall remain the property of the constructing or re-constructing or then maintaining Party; provided, that upon termination of the Lot 12 Sign Easement by any lawful

means, the then owner of the Lot 12 Sign Improvements shall remove such Lot 12 Sign Improvements and restore the Lot 12 Sign Easement to a clean, level condition, unless the then owner of Fragment Lot 12, at its option, elects to take possession of such Lot 12 Sign Improvements, and in such event all rights, title and interest in the Lot 12 Sign Easement shall revert to the then owner of Fragment Lot 12.

2.2. Utilities (including Drainage) Easements.

(a) Each Party hereby grants and conveys to each other Party, for the benefit of such Party's Tract, and for use by such Party, one or more non-exclusive, perpetual easements in, to, over, under, along, and across those portions of the publicly accessible parking and driveway areas located on granting Party's Tract reasonably necessary for the installation, operation, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone, and communication lines. All Utility Lines shall be under-ground except:

- (i) all above-ground utility lines designated on the Re-Plat;
- (ii) ground mounted electrical transformers and an electrical substation now located on Fragment Lot F1B;
- (iii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iv) as may be required by governmental agencies having jurisdiction;
- (v) as may be required by the provider of such service; and
- (vi) fire hydrants.

Prior to claiming or exercising any utility easement right granted herein, the Party claiming the right shall first provide each Party whose Tract shall be burdened with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, and shall furnish a certificate of insurance showing that its contractor has obtained appropriate insurance coverage. Except as otherwise agreed to by the relevant Parties in a given instance, any Party installing Utility Lines serving a single Tract pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible, in a manner so as to not unreasonably interfere with the use, occupancy, or enjoyment of any granting Party's Tract or any other portion of the Land. If the relevant Parties elect to install common Utility Lines, all repair, maintenance, replacement, and other work thereon shall, if not performed by the utility company, be performed by the owner(s) of the Tract(s) upon which the common Utility Lines are located and paid for by such Owners as agreed by them.

(b) The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Tract is to be burdened thereby, such approval not to be unreasonably withheld or delayed. The granting Party shall have the right at any time to relocate a Utility Line upon thirty (30) days' prior written notice to the benefited Party, provided that such relocation:

- (i) shall not interfere with or diminish the utility service to the benefited Party during the hours of operation of such Party's Tract, and shall not unreasonably restrict any vehicular movement;
- (ii) shall not reduce or impair the usefulness or function of such Utility Line;
- (iii) shall be performed without cost or expense to the benefited Party;
- (iv) shall be completed using materials and design standards which equal or exceed those originally used; and
- (v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereof.

(c) Each Party hereby grants and conveys to each Party owning an immediately adjacent Tract the perpetual right and easement to discharge surface storm drainage and/or runoff from the benefited Party's Tract over, upon, and across the publicly accessible parking and driveway areas of the granting Party's Tract, upon the following conditions and terms:

- (i) The publicly accessible parking and driveway area grades and the surface water drainage/retention system for the Land shall be initially constructed in strict conformance with



Handwritten initials or signature, possibly "NR".

details as approved by the Municipality pursuant to Title 21 of the Anchorage Municipal Code, as amended from time to time, or as otherwise required and approved by the Municipality;

(ii) No Party shall construct, alter or permit to be altered the surface of the publicly accessible parking and driveway areas or the drainage/retention system constructed on its Tract if such construction or alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area or materially decrease the purity or quality of surface water flowing onto an adjacent Tract; and

(iii) Except as provided in notes set forth on the Re-Plat, the wetlands located on Fragment Lot 1 (as designated on the Re-Plat) shall be maintained and retained as an undisturbed area as part of the drainage system serving the Land and no commercial use is allowable thereon. Activities prohibited within said Fragment Lot 1 include but are not necessarily limited to following: the disturbance and /or removal of vegetation; grading, fill or excavation of the wetlands unless otherwise permitted by the Municipality and the U.S. Army Corps of Engineers; snow dumping and/or storage; the storage of materials, equipment, vehicles; and parking.

(d) A perpetual easement, namely, that certain Electric Systems Easement - Overhead/Underground and Surface Facilities for an Electrical Substation, dated December 17, 2007, recorded January 4, 2008, as Document No. 2008-000358-0, Anchorage Recording District, Third Judicial District, State of Alaska (the "Lot 11B Substation Easement"), has been granted by Glenn Square to the Municipality (in its capacity as Municipal Light & Power) to construct and operate an electrical substation on Fragment Lot 11B. Pursuant to the terms of the Lot 11B Substation Easement, the Municipality shall be solely responsible for the operation, maintenance and repair of the electrical substation located on Lot 11B.

2.3 **General.** Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen, and laborers a temporary license for access and passage over and across the publicly accessible parking and driveway areas of the granting Party's Tract as shall be reasonably necessary for the benefited Party to construct and/or maintain improvements upon such benefited Party's Tract; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use, operation, and enjoyment of any Tract by others. Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the affected area of granting Party's Tract, and shall restore and/or repair the affected portion of the granting Party's Tract to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers, and/or others connected with construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers, and/or others working for another Party from using the publicly accessible parking and driveway areas on its Tract.

2.4. **Building Improvements.** While it is acknowledged and agreed that nothing herein shall obligate a Party to commence construction of any building or improvement on its Tract, the Parties hereby agree once construction has been commenced, such building or improvement shall be completed in a timely fashion. Each building and improvement (other than improvements such as Utility lines, public telephones, benches and the like) on a Tract shall be located only within the Building Area for such Tract as designated on the Site Plan for such Tract (or if no Building Area is designated for such Tract or a portion of such Tract, then improvements on such Tract or Tracts shall be allowable as pursuant to applicable zoning and building codes of the Municipality of Anchorage). All building improvements on Fragment Lots 2, 4, 5, 6, 7, 8, 9, 11A and 13A shall comply with the Site Plan and the design, architectural, building signage, and other requirements therefor set forth in any recorded declaration of easements and conditions applicable thereto and as contemplated by the Site Plan, it being the understanding of the parties that to the extent of any unresolvable conflict, the Site Plan shall control over the terms of this DEC and any other recorded declaration of easements and conditions. Notwithstanding the foregoing, this paragraph does not apply to the electrical substation Fragment Lot 11B as long as an electrical substation is located thereon. Building improvements on Lot 14A shall comply with applicable codes and ordinances. The Party owning Lot 14A shall provide copies of all improvement plans to Glenn Square at the same time as such plans are submitted for review to the Municipality or other entity(ies) responsible for issuing the building permit.

3. MAINTENANCE AND REPAIR

3.1. Utility Lines.

(a) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Utility Lines exclusively serving its Tract and utilized by it regardless of where located. Any maintenance and repair of non-dedicated utilities located on another Party's Tract shall be performed: (i) after two (2) weeks' notice to said other Party (except in an emergency the work may be initiated with reasonable notice); (ii) after normal business hours whenever

A&R DECLARATION OF EASEMENTS AND CONDITIONS - 5

Dallas 1152151946
48318-5 10/23/2008 Dallas 1152151946
48318-5 10/23/2008



Page 5 of 30
2012-040473-0

RB

possible; and (iii) in such a manner as to cause as little disturbance in the use of said other Party's Tract as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work agrees: (1) to promptly pay all costs and expenses associated therewith, and in any event prior to attachment of any lien to any other Party's Tract; (2) to diligently complete such work as quickly as possible; and (3) to promptly clean the area and restore the affected portion of each affected Tract to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) The portion of any Utility Line serving more than one Tract (including, without limitation, the Utility Lines comprising the drainage system for the Land) which is located on a Tract shall be maintained and replaced by the owner of such Tract, at its sole cost and expense; provided, that the costs for such maintenance shall be paid on a pro rata or other agreed basis between the owner(s) of the benefitting Tracts.

3.2. General Tract Maintenance.

(a) Each Party shall at all times maintain, or cause to be maintained, its Tract in a sightly, safe condition and good state of repair, including, without limitation, the parking lots and landscaping on each Tract. Any unimproved areas shall be mowed and kept litter free. All Tracts shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances, and the provisions hereof. The maintenance and repair obligation for each Tract shall include but not be limited to the following:

(i) *Drive and Parking Areas.* Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing, and resurfacing (for the purpose of this section, an overlay of the drives and parking areas shall be considered a maintenance item).

(ii) *Debris and Refuse; Snow Removal.* Periodic removal of all paper, debris, filth, and refuse, including vacuuming and broom sweeping to the extent necessary to keep the Tract in a clean, and orderly condition, as well as periodic removal of ice and snow, including removal from sidewalks adjacent to store fronts, pedestrian access pathways and stairways (including, without limitation, the stairway to the lower level of retail uses on Fragment Lots 7 & 8).

(iii) *Signs and Markers.* Maintaining, cleaning, and replacing any appropriate directional, stop, or handicapped parking signs; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas, and pedestrian cross-walks.

(iv) *Lighting.* Maintaining, cleaning, and replacing lighting facilities, including light standards, wires, conduits, lamps, ballasts, lenses, time clocks, and circuit breakers.

(v) *Landscaping.* Maintaining and replacing all on-site and off-site (including interior parking and perimeter) landscape plantings, trees, and shrubs in an attractive and thriving condition, trimmed and weed free, including removal and replacement of dead vegetation. Maintaining and replacing landscape planters, including those adjacent to exterior walls of buildings and automatic sprinkler systems. Modify irrigation systems to satisfy governmental water allocation or emergency requirements and perform pest control and extermination as needed.

Each Party agrees to defend, indemnify, and hold each other Party ("Indemnitee") harmless from and against all claims, costs, losses, expenses, and liability (including reasonable attorney fees and costs of suit) arising from or directly or indirectly relating to the maintenance, use or operation of its Tract, except for claims caused by the gross negligence or willful act or omission of such Indemnitee(s).

(b) In the event a Party fails to maintain its Tract in accordance with the requirements of Section 3.2(a) (such Party being hereinafter referred to as the "Defaulting Party") any other Party (hereinafter referred to as the "Nondefaulting Party") may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "Deficiencies") in the Defaulting Party's performance of its obligations under Section 3.2(a). Except for an Emergency Situation, the Defaulting Party shall have ten (10) days after receipt of such notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten-day period, and thereafter to proceed diligently to complete the correction of the Deficiencies. An "Emergency Situation" is a situation which threatens access to a Tract or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons. In the event a Defaulting Party shall fail or refuse to timely correct or to begin to correct the Deficiencies and proceed to diligently complete the same, as the case may be, the Nondefaulting Party may, in its option, correct the Deficiencies. In the event the Nondefaulting Party shall exercise its option, the Defaulting Party shall, within ten (10) days from



receipt from the Nondefaulting Party, of an itemized invoice for the actual and reasonable costs incurred by the Nondefaulting Party in correcting the Deficiencies, pay such costs to the Nondefaulting Party.

(c) In the event any improvements on a Tract are damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this DEC, other than damage caused by ordinary use or wear and tear, the Party whose Tract is affected shall, at a minimum, subject to governmental regulations and/or insurance adjustment delays, immediately remove the debris resulting from such event and provide a slightly barrier, and within a reasonable time thereafter shall do one of the following: (i) repair or restore the building improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this DEC; (ii) erect other building improvements in such location, such construction to be performed in accordance with all provisions of this DEC; or (iii) demolish the damaged portion and/or the balance of such building improvements and restore the cleared area to either a hard surface condition or a landscaped condition as would be required hereunder for property on which no construction has been commenced. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty (or as soon thereafter as all insurance issues are settled to the extent necessary to make a prudent election of alternatives) of which alternative it elects.

4. TAXES AND ASSESSMENTS.

4.1. Taxes and Assessments. Each Party shall be responsible for timely payment of all taxes and assessments, if any, with respect to its Tract, the buildings, and improvements located thereon and any personal property owned or leased by such Party, and no Party shall permit non-payment or delinquent payment of its taxes to subject any other Tract or portion thereof with a lien, judgment or other like encumbrance. Each Party shall indemnify each other Party against any adverse consequence to such Party from the indemnifying Party's non-payment or delinquent payment of taxes.

4.2. Liens. In the event any mechanic's or materialman's lien is filed against the Tract (or portion thereof) of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be paid or bonded as allowable by law within fifteen (15) days after receipt of notice of the existence of such lien, and in any event prior to foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. So long as protection against foreclosure is provided by the Party permitting or causing such lien, such Party may contest the validity of said lien in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

5. USE RESTRICTIONS.

5.1 The Authority and Municipality acknowledge that the Glenn Square Land is subject to certain use restrictions pursuant to that certain Declaration of Easements and Conditions dated as of May 19, 2006 and recorded as Instrument No. 2006-035835-0, as amended from time to time (the "Private Declaration"). The Parties agree to impose on Fragment Lot 14A certain of the use restriction contained in the Private Declaration or otherwise currently burdening the Glenn Square Land as hereinafter set forth in Section 5.2; PROVIDED, however, such use restrictions shall apply only to Fragment Lot 14A and its existing boundaries as of the date this DEC is recorded against the Land and not to any land adjoining Fragment Lot 14A, whether such land is owned separately or joined with Fragment Lot 14A to form a larger lot.

5.2 Subject to the limitations as set forth in this Section 5.2, no part of Fragment Lot 14A shall be used or occupied for purposes other than: (i) retail sales, (ii) Business Offices, (iii) Financial Retail Offices, (iv) Fast Food Restaurants, (v) Restaurants (all as defined below), (vi) residential, including ancillary garage and community buildings and activities incident thereto, (vii) arts and/or cultural center, and (viii) children's playground or a passive park. The term "Business Office" shall mean an office (other than a Financial Retail Office) and shall include government offices generally open to the public during normal business hours. The term "Financial Retail Office" shall mean an office which provides financial services directly to consumers such as banks, credit unions, investment firms and stock brokerages. The term "Restaurant" shall mean a restaurant or food service establishment which offers as the primary method of service, orders to be taken and served by a waitperson at the customer's table, or whose primary method of service is for customers to serve themselves at a buffet line. The term "Fast Food Restaurant(s)" shall mean a restaurant whose marketing strategy is based on preparing and dispensing food orders in a limited period of time. Without limitation and for illustrative purposes, Fast Food Restaurant(s) include the following:



Handwritten signature or initials

Burger King	Hardy's
Wendy's	McDonalds
Carl's Jr.	Jack In The Box
Taco Bell	Arby's
Taco Time	Subway
Blimpie	Quizno's

Also, without limitation and for illustrative purposes, Fast Food Restaurant(s) do not include any Restaurant.

5.3 Except as noted below, no use shall be permitted on Fragment Lot 14A which is inconsistent with the operation of a first-class retail shopping center on the Glenn Square Land. Without limiting the generality of the foregoing, the following uses shall not be permitted:

- (i) Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled on the Glenn Square Land;
- (ii) Any operation primarily used as a storage warehouse operation (as opposed to incidental storage use exclusively serving a neighboring residential community) and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- (iii) Any "second hand" store or "surplus" store except those such as (without limitation) Ross Dress For Less or T.J. Maxx, GI Joe, Play It Again Sports, Play It Again Instruments, Once Upon a Child and similar first-class resale or consignment stores;
- (iv) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors or other future technology no more intrusive than garbage compactors located near the rear of any building);
- (vi) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (vii) Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to: (1) nominal supportive facilities for on-site service-oriented pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Land is located; and (2) the operation of on-site laundry facilities which service only the internal needs of a neighboring residential community and does not provide laundry services to the general public;
- (viii) Any manufactured home, automobile, truck, trailer, boat or recreational vehicles sales, leasing, display, body shop or repair operation;
- (ix) Any entertaining or recreational facility which includes movie theaters, live performance theaters, skating rinks, dance halls, billiard or pool halls, massage parlors or similar facilities, except those incidental to and serving a neighboring resident community;
- (x) Any veterinary hospitals or animal raising facilities (except that this prohibition shall not prohibit pet shops, including, without limitation, PetCo, Pet Commissary or Petsmart [notwithstanding that said operations include veterinary services] or the employment from time to time of trained therapy animals);
- (xi) Any mortuaries or funeral homes;
- (xii) Any adult book or adult video stores or establishments selling or exhibiting pornographic materials or drug-related paraphernalia;
- (xiii) Any bars or taverns, except those incidental to Restaurants serving full sit-down menus;



(xiv) Any health spas, fitness centers, gyms, or workout facilities in excess of 4,000 square feet;

(xv) Any flea markets, amusement or video arcades (except up to five (5) electronic games shall be allowed as a recreational use primarily serving a neighboring residential community);

(xvi) Any training or educational facilities in excess of 4,000 square feet, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; or

(xvii) Any Fast Food Restaurant until and unless all necessary governmental approvals and consents have been obtained and Glenn Square has approved in writing the design and location of the drive through facilities of any such Fast Food Restaurant, and the location of its building footprint.

5.4 No use shall be permitted on Fragment Lot 14A which violates the terms of the existing exclusives granted to current tenants on the Glenn Square Land and expressly set forth in Exhibit B attached hereto. If permitted by their respective terms, such use restrictions on Fragment Lot 14A shall terminate upon termination of any such existing exclusive.

6. MISCELLANEOUS.

6.1 Estoppel Certificate.

Each Party agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

- (a) whether it knows of any default under this DEC by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (b) whether this DEC has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- (c) whether this DEC is in full force and effect; and
- (d) any other reasonable factual matter requested by the requesting Party or its prospective mortgagee or successor.

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to demand performance under or to enforce remedies for non-compliance with the terms of this DEC.

6.2 Notices. All notices under this DEC shall be in writing and delivered either: (a) in person; (b) by reputable over-night delivery service, so long as delivery is made by obtaining a signed receipt; (c) by certified mail; or (d) by facsimile transmission, so long as the original notice is also forwarded by the method described in (a), (b), or (c). Initial address for notices are set forth on the first page of this DEC. Any notice given pursuant to this DEC shall be deemed effective the day it is personally delivered or transmitted by facsimile, the day after it is delivered to the overnight delivery service, or three (3) business days after the date it is deposited in the United States mail system.

Upon at least ten (10) days' prior written notice, each Person shall have the right to change its address to any other address within the United States of America.

6.3 Condemnation. In the event any portion of the Land shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that: (a) if the taking includes improvements benefiting to more than one Party, such as Utility Lines, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly-owned improvements to a useful condition; and (b) if the taking includes easement rights which are intended to extend beyond the term of this DEC, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this DEC which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.



RP

6.4 Binding Effect. The terms of this DEC and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors, assigns and owners who become Parties hereunder.

6.5 Construction and Interpretation.

(a) This DEC and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. The provisions of this DEC and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(b) Whenever required by the context of this DEC: (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

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

(d) Invalidation of any of the provisions contained in this DEC, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(e) This DEC may be amended by, and only by, a written agreement signed by the then-Parties hereto, and shall be effective only when recorded in the county or applicable recording district and state where the Land is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of any other Party or its Tract without the consent of such other Party. No consent to the amendment of this DEC shall ever be required of any Person other than the Parties.

(f) This DEC may be executed in several counterparts, each of which shall be deemed an original. The signatures to this DEC may be executed and notarized on separate pages, and when attached to this DEC shall constitute one complete document.

6.6 DEC Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this DEC shall: (a) entitle any Party to cancel, rescind, or otherwise terminate this DEC; or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Land. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

6.7 Limitation of Liability. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, employees or agents of a party hereto with respect to any of the terms, covenants, conditions, and provisions of this DEC. In the event of default by a defaulting party hereunder any non-defaulting party who seeks recovery shall look solely to the interest of such defaulting party, its successors and assigns, in its Tract for the satisfaction of each and every remedy; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party to pursue equitable relief in connection with any term, covenants or condition of this DEC, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance.

SIGNATURE PAGE FOLLOWS



Handwritten initials or signature

IN WITNESS WHEREOF, the Authority, the Municipality and Glenn Square have caused this DEC to be executed effective as of the 16 day of July, 2012.

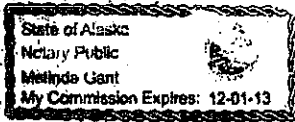
ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY

By: [Signature]
Ronald T. Pollock, Executive Director

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 16 day of July, 2012, by Ronald T. Pollock, Executive Director for the ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY, an Alaska public corporation, on behalf of the corporation.

Melinda Gant
Notary Public in and for Alaska
My Commission Expires: 12-01-13



MUNICIPALITY OF ANCHORAGE

By: [Signature]
George J. Vakalis, Municipal Manager

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 17th day of July, 2012, by George J. Vakalis, Municipal Manager for the MUNICIPALITY OF ANCHORAGE, an Alaska municipal corporation, on behalf of the corporation.



[Signature]
Notary Public in and for Alaska
My Commission Expires: 10-13-2012

KIMCO GLENN SQUARE ANCHORAGE, LLC,
a Delaware limited liability company

By: KIMCO GLENN SQUARE 1360, INC.,
a Delaware corporation, its Managing Member

By: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____ of Kimco Glenn Square 1360, Inc., a Delaware corporation and managing member of Kimco Glenn Square Anchorage, LLC, a Delaware limited liability company, on behalf of said corporation and limited liability company.

Notary Public in and for _____
My Commission Expires: _____

[Handwritten initials]

IN WITNESS WHEREOF, the Authority, the Municipality and Glenn Square have caused this DEC to be executed effective as of the ___ day of _____, 2012.

ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY

By: _____
Ronald T. Pollock, Executive Director

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by Ronald T. Pollock, Executive Director for the ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY, an Alaska public corporation, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____

MUNICIPALITY OF ANCHORAGE

By: _____
George J. Vakalis, Municipal Manager

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by George J. Vakalis, Municipal Manager for the MUNICIPALITY OF ANCHORAGE, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____

KIMCO GLENN SQUARE ANCHORAGE, LLC,
a Delaware limited liability company

By: KIMCO GLENN SQUARE 1360, INC,
a Delaware corporation, its Managing Member

By: 

Kevin Smith
Vice President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by _____ of Kimco Glenn Square 1360, Inc., a Delaware corporation and managing member of Kimco Glenn Square Anchorage, LLC, a Delaware limited liability company, on behalf of said corporation and limited liability company.

See Attached.

Notary Public in and for _____
My Commission Expires: _____

ACKNOWLEDGMENT

State of California
County of SAN DIEGO

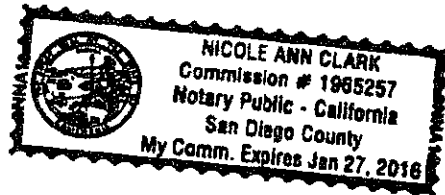
On July 14 2012 before me, NICOLE ANN CLARK
(insert name and title of the officer)

personally appeared Kevin Smith,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature N Clark (Seal)



CONDEMNOR OF RECORD:
 1. THE BOARD OF SUPERVISORS HAS THE HONORABLE OBLIGATION TO PROTECT THE PUBLIC INTEREST AND TO PROMOTE THE WELFARE OF THE PEOPLE OF THE COUNTY. IN THE EXERCISE OF THIS DUTY, THE BOARD IS AUTHORIZED TO TAKE SUCH ACTION AS MAY BE NECESSARY TO PROMOTE THE PUBLIC INTEREST AND TO PROTECT THE WELFARE OF THE PEOPLE OF THE COUNTY.

DATE: _____
APPROVED: _____
BY: _____
OFFICE: _____

NOTICE OF PUBLIC HEARING:
 NOTICE IS HEREBY GIVEN THAT THE BOARD OF SUPERVISORS HAS SET FOR THE PUBLIC HEARING OF THE PROPOSED SUBDIVISION OF THE LAND DESCRIBED IN THE ATTACHED MAP, TO BE HELD AT THE BOARD OF SUPERVISORS' OFFICE, COUNTY OF SAN JOAQUIN, CALIFORNIA, ON _____ AT _____ O'CLOCK, P.M.

APPLICANT: _____
ADDRESS: _____
CITY: _____

PREPARED BY: _____
DATE: _____

RECORDING INFORMATION:
 THIS MAP IS BEING RECORDED FOR THE PURPOSE OF RECORDING THE INTERESTS OF THE APPLICANT AND THE PUBLIC IN THE LAND DESCRIBED IN THE ATTACHED MAP.

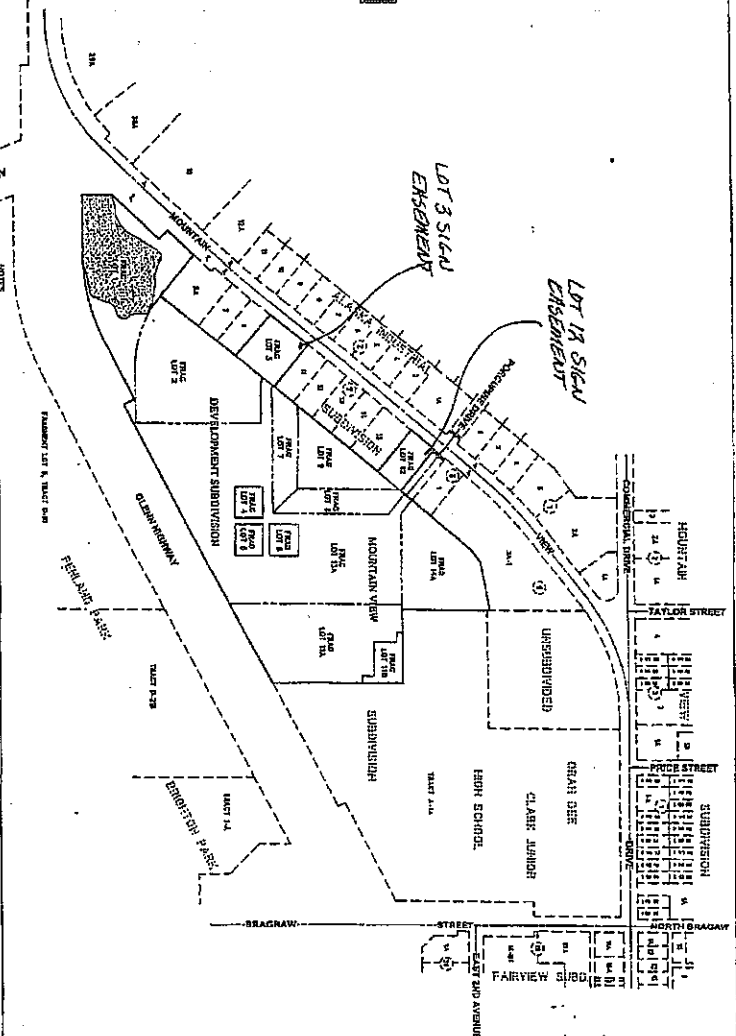


EXHIBIT A

GENERAL FIELD DESIGN:
 1. THE BOARD OF SUPERVISORS HAS THE HONORABLE OBLIGATION TO PROTECT THE PUBLIC INTEREST AND TO PROMOTE THE WELFARE OF THE PEOPLE OF THE COUNTY. IN THE EXERCISE OF THIS DUTY, THE BOARD IS AUTHORIZED TO TAKE SUCH ACTION AS MAY BE NECESSARY TO PROMOTE THE PUBLIC INTEREST AND TO PROTECT THE WELFARE OF THE PEOPLE OF THE COUNTY.

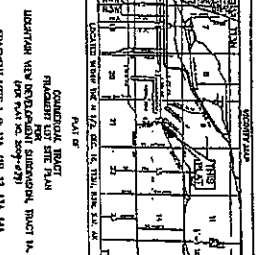
RECORDING INFORMATION:
 THIS MAP IS BEING RECORDED FOR THE PURPOSE OF RECORDING THE INTERESTS OF THE APPLICANT AND THE PUBLIC IN THE LAND DESCRIBED IN THE ATTACHED MAP.

Page 14 of 30
 2012-040473-0

EXHIBIT A

APPROVED: _____
DATE: _____
OFFICE: _____

RECORDING INFORMATION:
 THIS MAP IS BEING RECORDED FOR THE PURPOSE OF RECORDING THE INTERESTS OF THE APPLICANT AND THE PUBLIC IN THE LAND DESCRIBED IN THE ATTACHED MAP.



RECORDING INFORMATION:
 THIS MAP IS BEING RECORDED FOR THE PURPOSE OF RECORDING THE INTERESTS OF THE APPLICANT AND THE PUBLIC IN THE LAND DESCRIBED IN THE ATTACHED MAP.

GLENN SQUARE EXISTING EXCLUSIVES

BED BATH & BEYOND

13.2.1 Landlord shall not lease, rent or occupy or permit any other premises in the Shopping Center or on any Related Land to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself (collectively "Occupant"), primarily for the sale, rental or distribution, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items; (c) housewares; (d) frames and wall art (provided that this shall not apply to custom framing); (e) window treatments (provided that this shall not apply to custom blinds); and/or (f) closet, shelving and storage items (which items, either singly or in any combination, are hereinafter referred to as the "Exclusive Items").

DYMEONDS BRIDAL BOUTIQUE

1. (M-1) Exclusive:

Landlord will not hereafter enter into a new lease in the Shopping Center with a tenant whose principal permitted use is the retail sale of wedding dresses and ladies formal wear (the "Exclusive Use").

FAMOUS FOOTWEAR

11. EXCLUSIVE AND PROHIBITED/CURRENT RESTRICTED USES: (a) Landlord covenants, warrants, and agrees that it has not and shall not, throughout the term hereof, directly lease space in the Shopping Center to any other open stock branded footwear store

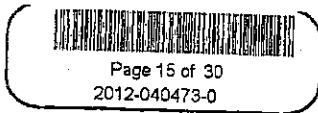
H&R BLOCK

1. (M-1) Exclusive Use:

Landlord will not hereafter enter into a new lease with a tenant whose principal permitted use is tax preparation, electronic tax filing, and refund anticipation loans (the "Exclusive Use").

MICHAELS

18.4.1 Limitation on Use. Neither Landlord nor any entity controlled by Landlord will use, lease (or permit the use, leasing or subleasing of) or sell any space in or portion of the Shopping Center to any "craft store", store selling arts and crafts, art supplies, craft supplies, picture frames or picture framing services, artificial flowers, artificial floral arrangements, wedding or party goods (except apparel), scrapbooking/memory book store, or a store selling scrapbooking/memory book supplies, accessories, and/or decorations or other papercrafting (e.g. making greeting cards, gift bags, tags, and other related or similar items) supplies, accessories and/or decorations associated with the foregoing, or providing classes on any of the foregoing or any combination of the foregoing categories.



Handwritten signature or initials.

OLD NAVY

12.5 Tenant's Exclusive Use Rights

Except for the Premises, Landlord shall not lease or permit any space within the Shopping Center to be used for (a) the sale, rental or display of infants', babies' or children's apparel by any tenant or occupant except for incidental sales in not more than fifteen percent (15%) of such tenant's or occupant's premises; and/or (b) the sale, rental or display of apparel by any tenant or occupant occupying in excess of ten thousand (10,000) square feet of GLA, except for incidental sales of apparel in not more than fifteen percent (15%) of such other tenant's or occupant's premises ("Tenant's Exclusive").

PETCO

10. (a) NON-COMPETITION

Landlord agrees not to lease to, nor

approve any sublease or assignment of lease or change in use unless Landlord is prevented from taking such steps by the terms of any lease (or such lease does not require Landlord's consent), then currently in force and effect as modified, for any tenant, sub-tenant, assignee or user which utilizes ten percent (10%) or more of its leased area or five hundred (500) square feet, whichever is less, for the sale of pet food and supplies, fish, birds, small animals, reptiles, grooming, training or veterinary services.

REGIS SALON

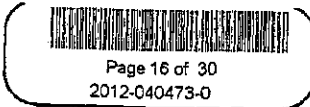
52. Exclusive. Landlord agrees that during the term of this Lease, but only for so long as Tenant is (a) open for business from the entire Leased Premises, (b) using the Leased Premises for the Permitted Use and (c) is not otherwise in default of any of the provisions of this Lease, Landlord will not enter into a new lease for space located in the area identified on Exhibit "A-1" as "Shops C" with a tenant whose principal use is a directly competing hair cuttery (the "Exclusive Use"), such as Great Clips.

XALOS MEXICAN GRILL

1. (M-1) Exclusive:

Landlord will not

hereafter enter into a new lease in the Shopping Center with a tenant whose principal permitted use is a Mexican restaurant/grill (the "Exclusive Use").



RP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75

EXHIBIT J
TO
SHOPPING CENTER LEASE
BETWEEN
P.O'B. MONTGOMERY & COMPANY
AND
MICHAELS STORES, INC.

PROHIBITED USES

1. funeral establishment;
2. automobile sale, leasing, repair or display establishment or used car lot, including body repair facilities and quick-lube and tire and battery facilities;
3. auction or bankruptcy sale;
4. pawn shop;
5. outdoor circus, carnival or amusement park, or other entertainment facility;
6. outdoor meetings;
7. bowling alley;
8. primarily pool or billiard establishment;
9. shooting gallery;
10. off-track betting (provided that state sponsored lottery tickets shall not be prohibited);
11. refinery;
12. adult bookstore or facility selling or displaying pornographic books, literature, or videotapes (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality) adult bookstore or facility selling or displaying pornographic books, literature, or videotapes (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); provided, however, (a) a regional or national full-line bookstore displaying books or literature which might be considered "adult" or "pornographic" as an incidental part of its business shall not be considered a violation of this #12 so long as such store operates in accordance with applicable Law and in a manner consistent with its typical regional or national operation, and in a manner consistent with first-class shopping centers, (b) a regional or national full-line video store or other regional or national retailer displaying videos which might be considered "adult" or "pornographic" as an incidental part of its business shall not be considered a violation of this #12 so long as such store operates in accordance with applicable Law and in a manner consistent with its typical regional or national operation, and in a manner consistent with first-class shopping centers, and (c) any regional or national electronics store, drug store or supermarket displaying videos, books or literature which might be considered "adult" or "pornographic" as an incidental part of its business shall not be considered a violation of this #12 so long as such store operates in accordance with applicable Law and in a manner consistent with its typical regional or national operation, and in a manner consistent with first-class shopping centers;
13. massage parlor (except this #13 shall not prohibit the operation in the Shopping Center of a day spa offering therapeutic massage if not in line with the Premises);
14. ~~any residential use, including but not limited to, living quarters, duplexes, cottages, or other residential uses;~~
15. theater;
16. ~~public health center, ballroom, day care facility, school or other place of public assembly (but one (1) learning or tutorial business of less than 3,000 Leasable Square Feet such as Score!, Sylvan or Kumon shall be permitted within the Shopping Center if not in line with the Premises);~~
17. unemployment agency, service or commission (but one (1) job reference or training center of less than 1,500 Leasable Square Feet shall be permitted within the Shopping Center if not in line with the Premises);

Landlord's initials

MSFC094.STD 09/11/98 .44

J-1

DAS

Tenant's initials



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

- 18. ~~_____~~
- 19. dance hall;
- 20. cocktail lounge, bar, disco or night club unless incidental to a permitted restaurant;
- 21. bingo or similar games of chance, but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business;
- 22. video game or amusement arcade, except as an incidental part of another primary business;
- 23. skating or roller rink;
- 24. car wash, car repair or car rental agency;
- 25. second hand store, close-out store, dollar store, auction house, or flea market except this #25 shall not prohibit the operation of a retailer commonly found in first class shopping center such as GameStop, Play It Again Sports or substantially similar uses and except this #25 shall not prohibit one (1) dollar store of less than 10,000 Leasable Square Feet within the Shopping Center if not inline with the Premises;
- 26. restaurant or food use within two hundred fifty feet (250') from the perimeter of the Premises (excluding any pad sites);
- 27. non-retail use (which shall not prohibit in the Shopping Center such uses commonly referred to as "quasi-retail" or "service retail" such as a travel agency, real estate office, insurance agency, accounting service, etc., so long as same do not exceed ten percent (10%) of the Leasable Square Feet of the Shopping Center) except this #27 shall not apply to the second and third floors on "Lot 7" and "Lot 8" as shown on Exhibit B; or
- 28. see attached, 2 pages.

Lendlord's initials
MSIFORM 670 09/10/99 -48

J-2

DBS

Tenant's initials

Exhibit B
Page 4 of 16

Handwritten signature/initials

dance hall, bingo hall or similar games of chance, a massage parlor, video game arcade (except as incidental to a restaurant use such as a Chuck E. Cheese), bowling alley, skating rink, car wash, car repair or car rental agency (except that a car rental agency will be allowed if not within one hundred feet of the Premises so long as no more than ten cars are stored at the Shopping Center), night club, adult book or adult video store or for a restaurant within one hundred feet (100') of the Premises' front door, unless Tenant consents, which Tenant may choose to give or deny in its sole and absolute discretion; however, a non-full service sit down eating establishments such as Starbucks, Baskin Robbins, Subway or Blimpies and those which are ancillary to a primary use such as a Barnes & Noble Coffee Bar, shall be excluded from the one hundred feet (100') restriction. Notwithstanding the foregoing provisions of Paragraph 11 [of the Petco Lease], the character of the Shopping Center and foregoing restrictions shall be subject to the existing tenants' leases in the Shopping Center and to the rights of fee owners within the Shopping Center.

FAMOUS FOOTWEAR'S PROHIBITED USE

Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores. No cafeteria, theatre, bowling alley, billiard parlor, night club, ~~amusement arcade, miniature golf course, race track, aquarium or zoo, paintball or laser tag facility, swimming pool or water park, amusement park, driving range, skating rink, batting cage, theme park, skate park, or any business serving alcoholic beverages~~, massage parlor, off-track betting parlor, pool room, game room, amusement arcade, gaming hall, cinema, establishment conducting games of chance, bingo hall, ~~amusement arcade, miniature golf course, race track, aquarium or zoo, paintball or laser tag facility, swimming pool or water park, amusement park, driving range, skating rink, batting cage, theme park, skate park, or any business serving alcoholic beverages~~, miniature golf course, race track, aquarium or zoo, paintball or laser tag facility, swimming pool or water park, amusement park, driving range, skating rink, batting cage, theme park, skate park, or any business serving alcoholic beverages shall occupy space within the Shopping Center (except that such prohibition on serving alcoholic beverages shall not apply to a full-service restaurant serving alcohol for on-premises consumption so long as gross receipts from the sale of alcoholic beverages do not exceed forty percent (40%) of each such restaurant's total gross receipts). No space in or portion of the Shopping Center shall be leased or occupied by or conveyed to any other party for use as a facility dispensing gasoline thru pumps, a membership warehouse club, a pharmacy, a discount department store or other discount store, as a grocery store or as any combination of the foregoing uses. Nothing herein shall be deemed to prohibit the operation of a category or specialty retailer (as opposed to a general merchandise retailer) in the Shopping Center. However, a "category or specialty retailer" shall not include a grocery store or a pharmacy.

DBS

PETCO

DALLAS 764850v1 01892-00149

Exhibit B
Page 6 of 16



Page 20 of 30
2012-040473-0

Handwritten signature or initials, possibly "RP".

Prohibited Uses

As used in this Lease, the term "Prohibited Uses" shall mean any of the following uses:

A. As to the Shopping Center, any of the following uses:

- (1) Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse;
- (2) Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- (3) Any "second hand" store, "surplus" store (it being agreed that the foregoing restriction shall not prohibit a single "second-hand" store of the type commonly located in first-class shopping centers in the Longview metropolitan area, such as Play-It-Again Sports and Once Upon a Child, provided that same shall (x) contain an aggregate Floor Area not in excess of 3,000 square feet, (y) be located at least 200 linear feet from the perimeter of the Premises, and (z) maintain approximately the same hours of operation as other stores located in the Shopping Center);
- (4) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (5) Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building);
- (6) Any fire sale, bankruptcy sale (unless pursuant to a court order), auction house operation, fictitious going-out-of-business sale, lost-our-lease sale or similarly advertised event;
- (7) Any central laundry, dry cleaning plant, or laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping Center shall be permitted, so long as its on-site premises are located more than 150 feet away from the Premises);
- (8) Any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation;
- (9) Any bowling alley or skating rink;
- (10) Any live performance theater, ~~entertainment~~, sporting event, or other entertainment use;
- ~~(11) Any other use prohibited by the Shopping Center's rules and regulations;~~
- (12) Any veterinary hospital or animal raising or boarding facilities (except to the extent permitted below);
- (13) Any mortuary or funeral home;
- (14) Any "Pornographic Use", which shall include, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational [provided, however, that the sale of books, magazines and other publications by a national bookstore of the type normally

27641/0521-2310610/

BEO BATH

L-1



[Handwritten signature]

located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a "pornographic use" hereunder; or (y) a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto [provided, however, that the sale or rental of such videos by a national video store of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Blockbuster or West Coast Video, as said stores currently operate) shall not be deemed a "pornographic use" hereunder]; or massage parlor [except for therapeutic massages given in connection with the operation of a day spa or health club which may otherwise be permitted under this Exhibit M];

(15) Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;

(16) Any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption (except as an incidental part of a permitted restaurant under item (35) below);

(17) Any catering or banquet hall;

(18) Any flea market, amusement or video arcade, pool or billiard hall, night club, discotheque, or dance hall;

(19) Any training or education facility (except as an incidental part of another use otherwise permitted by this Lease), including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center;

(20) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant;

(21) Any unlawful use;

(22) Any pawn shop, check-cashing store (within three hundred feet of the Premises), gun shop, or tattoo parlor;

(23) Any church or other place of religious worship;

(24) Any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lube oil change service, tire center or gasoline or service station or facility;

(25) Any carnival, amusement park or circus;

(26) Any medical clinics or medical offices (except that a dentist or chain type walk-in medical facility typically found in first class retail shopping centers up to 4,000 square feet shall be permitted so long as it is not within 100 feet of the Premises);

BED BATH

276410521-2310610-7

L-2

Exhibit B
Page 8 of 16



Page 22 of 30
2012-040473-0

RP

(27) Any: (i) discount, open-box or canned goods grocery operators (such as, by way of example, PriceRite and Canned Goods Warehouse), or (ii) any grocer within 200 feet of the Premises;

(28) Any office use, other than: (x) office space used in connection with and ancillary to a permitted retail use hereunder; and (y) retail offices providing services commonly found in similar first-class shopping centers in the Anchorage metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency), provided that such uses are located at least 100 feet away from the Premises, and not more than nine thousand (9,000) square feet of Floor Area in the Shopping Center, in the aggregate, shall be devoted to such uses;

(29) hotel/motel;

(30) ~~_____~~;

(31) veterinary office, except as may be incidental to a permitted full-line pet and pet supply store operating in at least 15,000 square feet of Floor Area and located at least 100 feet away from the Premises (except that a full-line pet and pet supply store shall be permitted to be located within the Premises); such occupant shall use reasonable efforts to prevent its customers from allowing their pets to urinate or defecate in the Common Areas and will promptly remove any "dog dirt" from in front of the Premises; no pet or pet supply store shall be located within 100 feet of the Premises;

(32) children's entertainment or activity facility (such as "Discovery Zone", or "Chuck E. Cheese's");

(33) karate center;

(34) movie theater;

(35) restaurant serving meals for on- or off-premises consumption within 100 feet of the Premises;

(36) beauty parlor or nail salon if located immediately adjacent to the Premises, provided that no more than nine thousand five hundred (9,500) square feet of Floor Area in the Shopping Center shall be dedicated to such uses;

(37) ~~_____~~;
~~_____~~; or

(38) a store primarily selling merchandise which is classed as "odd lot," "close out," "clearance," "discontinued," "cancellation," "second," "factory reject," "sample," "floor model," "demonstrator," "obsolescent," "over stock," "distressed," "bankruptcy," "fire sale" or "damaged", such as, for example, "Grossman's Bargain Outlet", "Contractor's Warehouse", "Big Lots", "Liquidation World", or "Odd Job"; the retailer commonly known as "Christmas Tree Shops" shall be deemed not to violate the foregoing restriction.

B. As to Related Land, any of the uses listed in Items 1, 2, 4, 5, 14, 15, 21, 22, and 25 above.

BED BATH

L-3

27641/0521-2310510v7

Exhibit B
Page 9 of 16



Page 23 of 30
2012-040473-0

MRP

PROHIBITED USES

Michael's

PROHIBITED USES

1. funeral establishment;
2. automobile sale, leasing, repair or display establishment or used car lot, including body repair facilities and quick-lube and tire and battery facilities;
3. auction or bankruptcy sale;
4. pawn shop;
5. outdoor circus, carnival or amusement park, or other entertainment facility;
6. outdoor meetings;
7. bowling alley;
8. primarily pool or billiard establishment;
9. shooting gallery;
10. off-track betting (provided that state sponsored lottery tickets shall not be prohibited);
11. refinery;
12. adult bookstore or facility selling or displaying pornographic books, literature, or videotapes (materials shall be considered "adult" or "pornographic" for such purposes if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality) adult bookstore or facility selling or displaying pornographic books, literature, or videotapes (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); provided, however, (a) a regional or national full-line bookstore displaying books or literature which might be considered "adult" or "pornographic" as an incidental part of its business shall not be considered a violation of this #12 so long as such store operates in accordance with applicable Law and in a manner consistent with its typical regional or national operation, and in a manner consistent with first-class shopping centers, (b) a regional or national full-line video store or other regional or national retailer displaying videos which might be considered "adult" or "pornographic" as an incidental part of its business shall not be considered a violation of this #12 so long as such store operates in accordance with applicable Law and in a manner consistent with its typical regional or national operation, and in a manner consistent with first-class shopping centers, and (c) any regional or national electronics store, drug store or supermarket displaying videos, books or literature which might be considered "adult" or "pornographic" as an incidental part of its business shall not be considered a violation of this #12 so long as such store operates in accordance with applicable Law and in a manner consistent with its typical regional or national operation, and in a manner consistent with first-class shopping centers;
13. message parlor (except this #13 shall not prohibit the operation in the Shopping Center of a day spa offering therapeutic massage);
14. [REDACTED]
15. theater;
16. [REDACTED] ballroom, [REDACTED] school or other place of public assembly (but one (1) learning or tutorial business of less than 3,000 Leasable Square Feet such as Score!, Sylvan or Kumon shall be permitted within the Shopping Center);
17. unemployment agency, service or commission (but one (1) job reference or training center of less than 1,500 Leasable Square Feet shall be permitted within the Shopping Center if not in line with the Premises);
18. [REDACTED]
19. dance hall;
20. cocktail lounge, bar, disco or night club unless incidental to a permitted restaurant;

Old Navy #5708 Anchorage, AK

Page 1 of 2

OLD NAVY

Exhibit B
Page 10 of 16



[Handwritten signature]

PROHIBITED USES

Michael's (continued)

- 21. bingo or similar games of chance, butterfly labels and other items commonly sold in retail establishments may be sold as an incidental part of business;
- 22. video game or amusement arcade, except as an incidental part of another primary business;
- 23. skating or roller rink;
- 24. car wash, car repair or car rental agency;
- 25. second hand store, clearance store, dollar store, auction house, or flea market except this center shall not prohibit the operation of a retailer commonly found in other shopping centers such as Discount, Play It Again Sports or substantially similar uses and except this use shall not prohibit one (1) dollar store of less than 10,000 Leasable Square Feet within the Shopping Center if not within the Premises;
- 26. restaurant or food use within one hundred feet (100') from the perimeter of the Premises (excluding any pad area); or
- 27. non-retail use (which shall not prohibit in the Shopping Center such uses commonly referred to as "qual-retail" or "service retail" such as a travel agency, real estate office, insurance agency, accounting service, etc., so long as same do not exceed ten percent (10%) of the Leasable Square Feet of the Shopping Center) except this 27 shall not apply to the second and third floor.

Petco

11. CHARACTER OF SHOPPING CENTER

Tenant has entered into this Lease in reliance upon representations by Landlord that the Shopping Center is and will remain substantially commercial retail in character and, further, that Landlord will not allow either within the Shopping Center, ~~any school~~ school (a use ancillary to a retail use such as a seasonal or special event type classes or a learning center such as a Sylvan Learning Center operating in no more than four thousand (4,000) square feet are acceptable) provided that such use is not overly burdensome to the Premises, Common Area and parking area in the Shopping Center) ~~any church~~ church, ~~any dance hall~~ dance hall, Bingo hall or similar games of chance, a message parlor, video game arcade (except as incidental to a restaurant use such as a Chuck E. Cheese), bowling alley, skating rink, car wash, car repair or car rental agency (except that a car rental agency will be allowed if not within one hundred feet of the Premises so long as no more than ten cars are stored at the Shopping Center), night club, adult book or adult video store, or for a restaurant within one hundred feet (100') of the Premises' front door, unless Tenant consents, which Tenant may choose to give or deny in its sole and absolute discretion; however, a non-full service sit down eating establishments such as Starbucks, Baskin Robbins, Subway or BJs and those which are ancillary to a primary use such as a Barnes & Noble Coffee Bar, shall be excluded from the one hundred feet (100') restriction. Notwithstanding the foregoing provisions of Paragraph 11, the character of the Shopping Center and foregoing restrictions shall be subject to the existing tenants' leases in the Shopping Center and to the rights of fee owners within the Shopping Center.

Old Navy #578 Anchorage, AK

Page 2 of 2

OLD NAVY

Exhibit B
Page 11 of 16



Page 25 of 30
2012-040473-0

1
2 **PROHIBITED AND EXCLUSIVE USES**
3

4 **OLD NAVY'S RESTRICTED/EXCLUSIVE USE**

5 Except for the [Old Navy] Premises, Landlord shall not lease or permit any space within the
6 Shopping Center to be used for (a) the sale, rental or display of infants', babies' or children's
7 apparel by any tenant or occupant except for incidental sales in not more than fifteen percent (15%)
8 of such tenant's or occupant's premises; and/or (b) the sale, rental or display of apparel by any
9 tenant or occupant occupying in excess of ten thousand (10,000) square feet of GLA, except for
10 incidental sales of apparel in not more than fifteen percent (15%) of such other tenant's or occupant's
11 premises.



12 **OLD NAVY'S PROHIBITED USE**

13 Landlord covenants that, except with respect to existing tenants or occupants of the Shopping
14 Center who have executed leases with Landlord prior to the date of this [Old Navy] Lease, if and to
15 the extent such leases do not prohibit any or all of the Prohibited Uses, no portion of the Shopping
16 Center shall be used for . . . any of the following purposes: a bowling alley; a video or amusement
17 arcade (other than as an incidental use); an establishment for the sale of alcoholic beverages within
18 five hundred (500) feet of the Premises except if incidental to a permitted restaurant use; a movie
19 theatre within one thousand (1,000) feet of the [Old Navy] Premises; ~~_____~~
20 ~~_____~~
21 ~~_____~~
22 ~~_____~~, the
23 sale of automotive parts including tires (other than as an incidental use) or automotive services
24 including repair services; the sale, rental or display of materials that are pornographic in nature
25 (provided that the sale of books, videos, magazines and other publications by a national bookstore or
26 video store of the type normally located in first class shopping centers in the State of Alaska (such as
27 Borders Books and Music, Barnes & Noble and Blockbuster, as said stores currently operate) shall
28 not violate the foregoing restriction); any unusual fire, explosive or dangerous hazards (including the
29 storage, display or sale of explosives or fireworks other than "sparklers"); a restaurant adjacent to
30 the [Old Navy] Premises; a carnival or amusement park; a the sale of Christmas trees or pumpkins
31 within the parking lot or other Common Areas; an assembling, manufacturing, distilling, refining,
32 smelting, industrial, agricultural, drilling or mining operation; a facility for storage (other than as an
33 incidental use); a commercial laundry or dry cleaning plant; a laundromat; a veterinarian or
34 veterinary hospital (other than as an incidental use); a mortuary or funeral establishment; the sale
35 rental or display of coffins or caskets; a pawn shop; a flea market; a shooting gallery; any use that
36 permits a pest infestation; any use that permits music or sounds to be heard outside of the premises
37 when all doors are closed; any use that permits noxious odors to be smelled outside of the premises;
38 and any use that permits vibrations to be felt outside of the premises.

39 **FAMOUS FOOTWEAR'S EXCLUSIVE/RESTRICTED USE**

Revised: June 18, 1997
H:\ess\statem.doc

PETCO

	
Landlord	Tenant



1 provided that no such lessee or occupant may devote more than (a) one thousand (1,000) Leasable
2 Square Feet, or (b) ten percent (10%) of its sales area (whichever is less), in the aggregate, to the
3 sale of the products described in the first sentence of this Section 16.4.1 [of the Michaels Lease];
4 provided, however, this clause (i) shall not apply to picture framing services, it being the intent that
5 no other lessee or occupant shall be permitted to offer or render picture framing services, not even
6 on an "incidental" basis, except as may otherwise be permitted by clause (i) above; or,

7 (ii) apply to any lessee whose lease was fully executed on the Effective Date [of the
8 Michaels lease] and is identified on Exhibit I [of the Michaels Lease] as an "Existing Lease Not
9 Subject to Tenant's Exclusive;" provided, however, that this exception shall not apply if (a)
10 Landlord permits or agrees to an expansion of the premises for any such permitted use which
11 violates Tenant's exclusive to the extent if Landlord may avoid per the terms of the existing lease the
12 granting of such permission, or (b) Landlord permits or agrees to the change of a permitted use by
13 any such lessee or its successors or assigns if Landlord may avoid per the terms of the existing lease
14 the granting of such permission, or (c) Landlord permits or agrees to an assignment or sublease of
15 such existing lease if Landlord may avoid per the terms of the existing lease the granting of such
16 permission, or (d) Landlord has the right, by virtue of the provisions of the existing lease, to cause
17 said lessee to honor the exclusive granted to Tenant by giving said existing lessee notice of this
18 exclusive or otherwise.

19 [Michaels] hereby agrees to waive any claim it might have of a violation of its exclusive by
20 the operation within the Shopping Center of a traditional greeting card store, such as Hallmark Card
21 Shop, so long as such store operates in a manner substantially consistent with the operation of
22 traditional greeting card stores as of the Effective Date. Additionally, a floral shop selling fresh
23 flowers and/or fresh floral arrangements shall not be deemed in violation of this Section 16.4.1 [of
24 the Michaels Lease].

25 **MICHAELS PROHIBITED USES**

26 Neither Landlord nor any entity controlled by Landlord will use or lease (or permit the use,
27 lease or sublease of) or sell any space in or portion of the Shopping Center during the [Michaels]
28 Lease Term allowing for use as any of the following (being Prohibited Uses set forth on Exhibit J to
29 [the Michaels] Lease).

- 30 1. funeral establishment;
- 31 2. automobile sale, leasing, repair or display establishment or used car lot, including
32 body repair facilities and quick-lube and tire and battery facilities;
- 33 3. auction or bankruptcy sale;
- 34 4. pawn shop;
- 35 5. outdoor circus, carnival or amusement park, or other entertainment facility;

Revised: June 18, 1987
K:\Sec...leases\selon.1.doc

3 PETCO

FE
Exhibit B
Page 14 of 16



Page 28 of 30
2012-040473-0

1 17. unemployment agency, service or commission (but one (1) job reference or training
2 center of less than 1,500 Leasable Square Feet shall be permitted within the Shopping Center if not
3 inline with the [Michaels] Premises);

4 18. ~~_____~~
5 ~~_____~~
6 ~~_____~~;

7 19. dance hall;

8 20. cocktail lounge, bar, disco or night club unless incidental to a permitted restaurant;

9 21. bingo or similar games of chance, but lottery tickets and other items commonly sold
10 in retail establishments may be sold as an incidental part of business;

11 22. video game or amusement arcade, except as an incidental part of another primary
12 business;

13 23. skating or roller rink;

14 24. car wash, car repair or car rental agency;

15 25. second hand store, close-out store, dollar store, auction house, or flea market except
16 this #25 shall not prohibit the operation of a retailer commonly found in first class shopping center
17 such as GameStop, Play It Again Sports or substantially similar uses and except this #25 shall not
18 prohibit one (1) dollar store of less than 10,000 Leasable Square Feet within the Shopping Center if
19 not inline with the [Michaels] Premises;

20 26. restaurant or food use within two hundred fifty feet (250') from the perimeter of the
21 Premises (excluding any pad sites); or

22 27. non-retail use (which shall not prohibit in the Shopping Center such uses commonly
23 referred to as "quasi-retail" or "service retail" such as a travel agency, real estate office, insurance
24 agency, accounting service, etc., so long as same do not exceed ten percent (10%) of the Leasable
25 Square Feet of the Shopping Center) except this #27 shall not apply to the second floor on "Lot 7"
26 and "Lot 8" as shown on Exhibit B (to the Michaels Lease). ^{and wind}

RE

[Handwritten signature]

A
L
A
S
K
A

2006-035835-0

Recording Dist: 301 - Anchorage
6/1/2006 12:03 PM Pages: 1 of 26



After Recording Return To:

Laura P. Sims, Esq.
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202

CC

15289CS

This Space Reserved for Recording Purposes

ANCHORAGE, ALASKA

DECLARATION OF EASEMENTS AND CONDITIONS

THIS DECLARATION OF EASEMENTS AND CONDITIONS ("DEC") is made as of the ^{19th} day of May, 2006, by KIMCO/POB GLENN SQUARE ANCHORAGE, LLC, a Delaware limited liability company ("Kimco").

RECITALS

This DEC is made with reference to the following facts and objectives:

A. Kimco is the owner of those fragment lots of land in the Municipality of Anchorage, State of Alaska more particularly set forth on Exhibit A attached hereto (the "Land") and also identified as a part of the retail parcel on the "Site Plan" (herein so called) attached hereto as Exhibit B (such retail portions of the Land being herein referred to as the "Shopping Center").

B. Notwithstanding the fact that Kimco owns certain additional fragment lots of real property adjacent to the Shopping Center and owns the non-retail portions of certain buildings located on the Land, the Shopping Center consists only of the real property described on Exhibit A and the portions of the buildings thereon specifically identified as the "Shopping Center" on the Site Plan.

C. In order to effectuate the common use and operation of certain portions of the Shopping Center, Kimco hereby grants certain reciprocal easements into, over, and across certain portions of the Shopping Center and imposes certain conditions and restrictions thereon.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the easements, conditions, and restrictions hereinafter set forth, Kimco hereby makes this DEC:

1. DEFINITIONS.

1.1. Adjacent Party. "Adjacent Party" shall have the meaning set forth in Section 2.3(b).

1.2. Administration Fee. "Administration Fee" shall have the meaning set forth in Section 4.2(b).

1.3. Approving Party. "Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this DEC. There shall be one Approving Party which shall be Kimco, for so long as Kimco shall own any portion of the Shopping Center, and thereafter the Party owning all or a majority of the square footage of land in the Shopping Center. The Approving Party shall, unless otherwise provided herein, have absolute and unreviewable discretion to make the decisions and/or give the approvals expressly designated in this DEC to be made and/or given by the Approving Party.

1.4. Budget. "Budget" shall have the meaning set forth in Section 4.2(c).

1.5. Building Area. "Building Area" shall mean the limited areas of the Shopping Center within which buildings (which for the purpose of this DEC shall include any appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions) may be constructed, placed, or located. Building Areas are designated on the Site Plan by the building limit lines shown thereon.

1.6. Business Office. "Business Office" shall have the meaning set forth Section 5.1.

1.7. Common Area. "Common Area" shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of buildings (or portions thereof within the Shopping Center).

1.8. Common Area Maintenance Costs. "Common Area Maintenance Costs" shall have the meaning set forth in Section 4.2(b).

1.9. Common Utility Lines. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to more than one (1) Tract.

1.10. Communications Equipment. "Communications Equipment" shall have the meaning set forth in Section 3.3(d).

1.11. Constant Dollars. "Constant Dollars" means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth (6th) calendar year following the date of this DEC, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the Index for the month during which the DEC is dated. The "Current Index Number" shall be the level of the Index for the month of September of the year preceding the adjustment year. The "Index" shall be the Consumer Price Index All Urban Consumers (CPI-U), all items index, applicable to Anchorage, Alaska (base year 1982-1984=100), published by the United States Department of Labor, Bureau of Labor Statistics. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Party shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.12. Constructing Party. "Constructing Party" shall have the meaning set forth in Section 2.3(b).

1.13. DEC. "DEC" shall have the meaning set forth in the introductory paragraph above.

1.14. Deficiencies. "Deficiencies" shall have the meaning set forth in Section 4.2(g).

1.15. Environmental Laws. "Environmental Laws" means all present and future federal, state or local statute, ordinance, regulation, rule, guideline, decision, or order governing the generation, storage, release, discharge, transportation, removal, remediation, reduction, or disposal of hazardous or toxic materials at the Shopping Center, such as, without limitation, the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. § 6901, et seq.), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 U.S.C. § 9601, et seq.) as amended, the Toxic Substance Control Act (TSCA, 15 U.S.C. § 2601, et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRTKA, 42 U.S.C. § 11001, et seq.), the Clean Water Act (33 U.S.C. § 1251, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), the Pollution Prevention Act of 1990 (42 U.S.C. § 13101, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), or any similar laws of the State of Alaska or the Municipality of Anchorage regulating environmental pollutants or underground storage tanks, and any and all amendments, supplements, modifications, and replacements thereof.

1.16. Fast Food Restaurant. "Fast Food Restaurant" shall have the meaning set forth in Section 5.1.

1.17. Financial Retail Office. "Financial Retail Office" shall have the meaning set forth in Section 5.1.

1.18. Floor Area. "Floor Area" shall mean the actual number of square feet of space contained on each floor within a building (or portion thereof within the Shopping Center), including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculations: office space within retail establishments used by the Occupant for administrative purposes of that location and which is not open or accessible to the general public; space attributable to any multi-deck, platform, or structural levels used for the storage of merchandise which is located vertically above ground floor; truck ramps, loading and delivery areas, and trash-compactor facilities located outside the building (or portion thereof within the Shopping Center), though attached to it. Within thirty (30) days of a request (or as soon thereafter, as reasonably possible), a Party shall certify to the requesting Party the amount of Floor Area applicable to each building (or portion thereof within the Shopping Center) on its Tract.

During any period of rebuilding, repairing, replacement, or reconstruction of a building (or portion thereof within the Shopping Center), the Floor Area of that building (or portion thereof within the Shopping Center) shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement, or reconstruction, the Party upon whose Tract such building (or portion thereof within the Shopping Center) is located, shall cause a new determination of Floor Area for such building (or portion thereof within the Shopping Center) to be made in the manner described above, and such determination shall be sent to any Party requesting the same.



1.19. Hazardous Materials. "Hazardous Materials" means wastes, substances, mixtures, pollutants, contaminants, or other materials which are defined or classified by any Environmental Law as hazardous, toxic, or radioactive, including, whether or not so defined, petroleum and natural gas products, polychlorinated biphenyls, radioactive materials, urea formaldehyde foam insulation, and asbestos-containing materials.

1.20. Intentionally Deleted.

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

1.22. Operator. "Operator" means the Person designated from time to time by the Approving Party to maintain and operate the Common Area of the Shopping Center. The Person designated as Operator shall serve in such capacity until it resigns or is removed by the Approving Party.

1.23. Operator Maintenance Areas. "Operator Maintenance Areas" shall have the meaning set forth in Section 4.2(b).

1.24. Outdoor Sales Area. "Outdoor Sales Area" shall mean the limited areas of the Shopping Center within which goods may be sold outside a building. Outdoor Sales Areas are designated on the Site Plan.

1.25. Party. "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors, assigns and/or transferees who become owners of any portion of the Shopping Center. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party's liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its interest in the Shopping Center shall give notice to all other Parties of such transfer and shall include therein at least the following information:

- (a) the name and address of the new Party; and
- (b) a copy of the legal description of the portion of the Shopping Center transferred.

If a Tract is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Tract shall designate one (1) of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this DEC only) be the transferee's agent.

Nothing contained herein to the contrary shall affect the existence, priority, validity, or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Shopping Center prior to receipt of the notice.

1.26. Person. "Person" shall mean any individual, partnership, limited partnership, limited liability company, firm, association, corporation, trust, or any other form of business or governmental entity.

1.27. Permittee. "Permittee" shall mean any Occupant and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of any Occupant insofar as their activities relate to the intended development, use, and occupancy of the Shopping Center. Among others, Persons (other than Occupants) engaging in the following activities on the Common Area will not be considered to be Permittees:

- (a) Exhibiting any placard, sign, or notice;
- (b) Distributing any circular, handbill, placard, or booklet;
- (c) Soliciting memberships or contributions;
- (d) Parading, picketing, or demonstrating; or
- (e) Failing to follow regulations relating to the use of the Shopping Center.

1.28. Plans. "Plans" shall have the meaning set forth in Section 3.3(b).

1.29. Pylon Sign(s). "Pylon Sign(s)" shall have the meaning set forth in Section 5.3(a)(i).



1.30. Restaurant. "Restaurant" shall mean any operation or business which requires a governmental permit, license, and/or authorization to prepare and/or serve food for either on-site or off-site consumption.

1.31. Separate Utility Lines. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service solely to a single Tract. For the purpose of this DEC, the portion of a Utility Line extending between a Common Utility Line and a building shall be considered a Separate Utility Line.

1.32. Shopping Center. "Shopping Center" shall have the meaning set forth in Recital A above.

1.33. Site Plan. "Site Plan" shall have the meaning set forth in Recital A above.

1.34. Subsurface Construction Elements. "Subsurface Construction Elements" shall have the meaning set forth in Section 2.3(b).

1.35. Tract. "Tract" shall mean those fragment lot(s) which is a part of the Shopping Center and owned by a Party (e.g., all fragment lot(s) owned by Kimco shall be deemed the Kimco Tract").

1.36. Utility Lines. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water.

2. EASEMENTS.

2.1. Ingress, Egress and Parking.

Each Party hereby grants and conveys to each other Party, for the benefit of such Party's Tract, and for the use of said Party and its Permittees, in common with others entitled to use the same, non-exclusive, perpetual easements for (a) the ingress, egress, passage and parking of vehicles over and across the parking and driveway areas located on the Common Area of granting Party's Tract, as said Common Area may from time to time be constituted, and (b) the ingress, egress, passage and accommodation of pedestrians over and across the parking, driveways, and sidewalk areas located on the Common Area of granting Party's Tract, as said Common Area may from time to time be constituted. Such easement rights shall be subject to the following reservation, as well as other provisions contained in this DEC: each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Common Area on its Tract.

2.2. Utilities.

(a) Each Party hereby grants and conveys to each other Party, for the benefit of such Party's Tract, and for use by such Party, one or more non-exclusive, perpetual easements in, to, over, under, along, and across those portions of the Common Area (exclusive of any portion located within a Building Area) located on granting Party's Tract reasonably necessary for the installation, operation, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone, and communication lines. All Utility Lines shall be under-ground except:

- (i) all above-ground utility lines existing as of the date of this DEC;
- (ii) ground mounted electrical transformers;
- (iii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iv) as may be required by governmental agencies having jurisdiction;
- (v) as may be required by the provider of such service; and
- (vi) fire hydrants.

Prior to claiming or exercising any utility easement right granted herein, the Party claiming the right shall first provide each Party whose Tract shall be burdened with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(b) hereof. Except as otherwise agreed to by the relevant Parties in a given instance, any Party installing Separate Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clear-up and proper surface and/or subsurface restoration) to be completed as quickly as possible, in a manner so as to minimize interference with the use of the Common Area and in a



manner so as to not unreasonably interfere with the use, occupancy, or enjoyment of any granting Party's Tract. If the relevant Parties elect to install Common Utility Lines, all repair, maintenance, replacement, and other work thereon shall, if not performed by the utility company or the Operator, be performed by the owner(s) of the Tract(s) upon which the Common Utility Lines are located and paid for as provided in Section 4.2.

(b) The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Common Area is to be burdened thereby, such approval not to be unreasonably withheld or delayed. Except as otherwise agreed in writing by the relevant Parties, the easement area shall be the greater of the width reasonably necessary to satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a Party. Upon request, the benefited Party shall provide to the burdened Party a copy of an as-built survey showing the location of such Utility Line. The granting Party shall have the right at any time to relocate a Utility Line upon thirty (30) days' prior written notice to the benefited Party, provided that such relocation:

- (i) shall not interfere with or diminish the utility service to the benefited Party during the hours of operation of such Party's Tract, and shall not unreasonably restrict any vehicular movement;
- (ii) shall not reduce or impair the usefulness or function of such Utility Line;
- (iii) shall be performed without cost or expense to the benefited Party;
- (iv) shall be completed using materials and design standards which equal or exceed those originally used; and
- (v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover.

Upon request by the benefited Party, documentation of the relocated easement area, including the furnishing to the benefited Party of an "as-built" survey, shall be provided at the relocating Party's expense and shall be accomplished as soon as reasonably possible following receipt of said request.

(c) Each Party hereby grants and conveys to each Party owning an immediately adjacent Tract the perpetual right and easement to discharge surface storm drainage and/or runoff from the benefited Party's Tract over, upon, and across the Common Area of the granting Party's Tract, upon the following conditions and terms:

- (i) The Common Area grades and the surface water drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the details approved by the Approving Party;
- (ii) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area or materially decrease the purity or quality of surface water flowing onto an adjacent Tract; and

(iii) Pursuant to the terms of that certain Declaration of Easements and Conditions executed by the Anchorage Community Development Authority and the Municipality of Anchorage dated May 17, 2006 and recorded JUNE 1st 2006, the wetlands located on fragment lot 1 (as shown on Exhibit B) shall be maintained and retained as an undisturbed area as part of the drainage system serving the Land. Activities prohibited within said fragment lot 1 include but are not necessarily limited to following: the disturbance and /or removal of vegetation; grading, fill or excavation of the wetlands unless otherwise permitted by the Municipality of Anchorage and the U.S. Army Corps of Engineers; snow dumping and/or storage; the storage of materials, equipment, vehicles; and parking.

The surface water collection, retention and distribution facilities shall be deemed a Common Utility Line.

2.3. Construction, Maintenance, and Reconstruction.

(a) In order to accommodate any building improvements which may inadvertently be constructed beyond a Tract's boundary line, each Party grants to each Party owning an immediately adjacent Tract an easement in, to, over, under, and across that portion of the granting Party's Tract adjacent to such common boundary line for the maintenance and replacement of such building improvements to a maximum lateral distance of six inches (6").



(b) In the event a constructing Party (the "Constructing Party") determines that it is necessary (i.e. there are no commercially reasonable alternatives) in connection with its proposed use of its Tract to place underground piers, footings and/or foundations ("Subsurface Construction Elements") across the boundary line of its Tract, the Constructing Party shall advise the Party owning the adjacent Tract where such piers, footings and/or foundations would be located (the "Adjacent Party") of its construction requirement and shall provide plans and specifications relating thereto, including proposed construction techniques for the Subsurface Construction Elements. The Adjacent Party hereby grants and conveys to the Constructing Party for the benefit of its Tract an easement, not to exceed a maximum lateral distance of five feet (5'), in, to, under, and across that portion of the Adjacent Party's Tract not then occupied by any structure or improvement, for the installation, use, maintenance, repair and replacement of such Subsurface Construction Elements; provided, however, that no easement rights shall arise to the benefit of Constructing Party if the Adjacent Party is able to provide the Constructing Party a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Party's Tract. The Adjacent Party reserves the right to require the Constructing Party to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Party the opportunity to utilize the same in connection with the construction of its building improvements to the end that each Party shall be able to place its building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Parties, each shall assume and pay its reasonable share of the cost and expense of the design and construction and all continuing use, maintenance, repair and replacement thereof. In the event any building utilizing a common Subsurface Construction Element is destroyed and not replaced or is removed, the common Subsurface Construction Element shall remain in place for the benefit of the other building utilizing the same and shall be the sole obligation of the Party on whose Tract said remaining building is located.

(c) The foregoing encroachment easement grants shall not diminish or waive any right of a Party to recover damages resulting from the constructing Party's failure to construct its building within its Tract in the case of (a) above, or within the easement area limits in the case of (b) above. Nothing herein shall be deemed to create or establish a "common" or "party" wall to be shared by buildings constructed along the common boundary line between the Tracts. The easements in each instance shall:

(i) continue in effect for term of this DEC and thereafter for so long as the building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such building if the same shall be destroyed, damaged, or demolished); and

(ii) include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 3.1(e) below.

2.4. Restriction. No Party other than the Approving Party shall grant any easement or license for the purpose set forth in this Article for the benefit of any property not within the Shopping Center or for the benefit of any Person in connection with any activity not related to the Shopping Center. Provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to governmental or quasi-governmental authorities or to public utilities.

3. CONSTRUCTION.

3.1. General Requirements.

(a) Each Party agrees that all construction activities performed by it within the Shopping Center shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof.

(b) Each Party further agrees that its construction activities shall not:

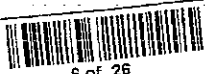
(i) cause any unreasonable increase in the cost of constructing improvements upon another Party's Tract;

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

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

(iv) cause any building located on another Tract to be in violation of any law, rule, regulation, order, or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

(c) Each Party agrees to defend, indemnify, and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings, and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury, loss, or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities performed or



authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them unless covered by the release set forth in Section 5.4(d).

(d) In connection with any construction, reconstruction, repair, or maintenance on its Tract, each Party reserves the right to create a temporary staging and/or storage area in the Common Area or in the Building Area on its Tract at a location which will not unreasonably interfere with access between such Tract and the other areas of the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Tract a Party shall give at least thirty (30) days' prior notice to the Approving Party, for its approval, of the proposed location. If the Approving Party does not approve the proposed location of the staging and/or storage area, the Party shall modify the proposed location to satisfy the reasonable requirements of the Approving Party. If substantial work is to be performed (e.g. construction of a new building, any exterior work on an existing building reasonably expected to take more than ninety (90) days to complete, etc.), the constructing Party shall, at the request of any Approving Party, fence off the staging and storage area. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract, and all laborers, suppliers, contractors, and others connected with such construction activities shall use only the access points located upon the constructing Party's Tract. Upon completion of such work, the constructing Party shall restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work.

(e) Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen, and laborers a temporary license for access and passage over and across the Common Area of the granting Party's Tract as shall be reasonably necessary for the benefited Party to construct and/or maintain improvements upon such benefited Party's Tract; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use, operation, and enjoyment of the Common Area by others. Prior to exercising the rights granted herein, the benefited Party shall first provide the granting Party with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(b). Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the affected area of granting Party's Tract, and shall restore and/or repair the affected portion of the granting Party's Tract to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers, and/or others connected with construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers, and/or others working for another Party from using the Common Area on its Tract.

3.2. Common Area. The Parties have agreed that the Common Area of the Shopping Center shall be initially constructed as shown on the Site Plan or as otherwise finally approved by the Municipality of Anchorage; provided, however, from and after completion of the initial construction of the Common Areas, no fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel within the Common Area shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, or permitted staging and/or storage areas. The following minimum general design standards shall be complied with throughout the term of this DEC.

(a) The lighting system shall be designed to produce a minimum maintained lighting intensity measured at grade at all points in the Common Area of 2.0 foot candle; provided, however, that the drive areas immediately in front of the entrance to any building shall have not less than a minimum maintained lighting intensity measured at grade of 4.0 foot candles. Subject to the provisions of Section 5.2, each Party may elect to control the lighting system located on its Tract. The type and design of the Common Area light standards shall be approved by the Approving Party.

(b) The slope of all parking areas within the Common Area on each Tract shall not exceed a maximum of three percent (3%) nor be less than a minimum of one percent (1%).

(c) All sidewalks and pedestrian aisles shall be concrete or other materials reasonably approved by the Approving Party. The automobile parking areas, drives, and access roads shall be designed in conformity with the recommendations of a registered soils engineer approved by the Approving Party which shall require the installation of a suitable base and the surfacing with an asphaltic concrete or concrete wearing material.

(d) Utility Lines that are placed underground shall be at depths designated by any consultant or engineer licensed by the State of Alaska for such work. If surface water retention and/or detention areas are located outside of the Common Area parking lots, such areas shall, at the Approving



Party's discretion or as required by law, be fenced or otherwise secured to impede public, but allow appropriate Municipality personnel, access thereto, as reasonably approved by the Approving Party.

(e) Except as otherwise expressly set forth herein, the parking areas within and serving the Shopping Center shall contain sufficient ground level parking spaces in order to comply with the following minimum requirements:

(i) the number of parking spaces and, subject to immaterial changes (i.e. not affecting access ways or drive lanes and/or not reducing the total number of parking spaces), the configuration of the parking spaces for each Tract shall be as shown on the Site Plan or as otherwise finally approved by the Municipality of Anchorage; and

(ii) if a business use contains a drive-up unit (such as remote banking teller), then, there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit.

In the event of a condemnation of part of a Tract or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is set forth on the Site Plan or as otherwise previously approved hereunder, the Party whose Tract is so affected shall use its best efforts (including, if available, using proceeds from the condemnation award or settlement) to restore and/or substitute ground level parking spaces in order to comply with the parking requirements set forth in this DEC. If such compliance is not possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located upon its Tract unless authorized to do so by Approving Party in its sole, absolute, and unreviewable discretion. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Tract may not subsequently be increased unless the parking requirement is satisfied or unless otherwise authorized to do so by Approving Party in its sole, absolute, and unreviewable discretion.

(f) No Party shall make changes to the Common Area on its Tract without the approval of the Approving Party, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any insignificant change, modification, or alteration in its portion of the Common Area, including the installation of convenience facilities such as mailboxes, public telephones and benches, provided that:

(i) the accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan;

(ii) there shall be maintained at all times within such Common Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2(e), as well as all governmental rules, regulations, and/or ordinances relating to parking requirements;

(iii) no governmental rule, ordinance, or regulation shall be violated as a result of such action, and such action shall not result in any other Party being in violation of any governmental rule, ordinance, or regulation;

(iv) no change shall be made in the access points between the Common Area and the public streets; provided, however, that additional access points may be created with the approval of the Approving Party, such approval not to be unreasonably withheld; and

(v) at least thirty (30) days prior to making any such change, modification, or alteration, the Party desiring to do such work shall deliver to each other Party copies of the plans therefor, and provided further that, except for the initial construction of the Common Area, such work shall not occur between October 1st and the following January 31st.

The provisions of this paragraph (f) do not apply to any changes, modifications, or alterations of Common Area located within Building Areas which result from or arise out of the construction, expansion, or maintenance of buildings. Notwithstanding anything contained herein to the contrary, any change to the access points or the major driveways from that which is shown on the Site Plan must be approved by the Approving Party.

3.3. Building Improvements.

(a) While it is acknowledged and agreed that nothing herein shall obligate a Party to commence construction of any building or improvement on its Tract, the Parties hereby agree once construction has been commenced, such building or improvement shall be completed in a timely fashion. Each building and improvement (other than Common Area improvements such as Utility lines, public telephones, benches and the like) on a Tract shall be located only within the Building Area designated on the Site Plan for such Tract. The Building Area for each building (or portion thereof within the



Shopping Center) shall not exceed the number of square feet designated in Section 3.3(d) for that building or portion.

(b) The exterior of all buildings to be constructed or placed within the Shopping Center shall be architecturally and aesthetically compatible. In order to ensure the exterior architectural and aesthetic compatibility of the buildings within the Shopping Center, each Party shall submit to the Approving Party plans for the exterior portion of any building to be constructed on its Tract ("Plans") containing all information reasonably necessary for Approving Party to assess the same and covering the exterior element for initial construction of each building and any additions, remodeling, reconstruction, or other alteration thereto which changes affect the exterior thereof for approval at least thirty (30) days prior to the commencement of any such work. If the Approving Party should reject the Plans for not complying with the architectural theme, the submitting Party and the Approving Party shall mutually consult to establish approved Plans for the proposed work. The Approving Party shall not arbitrarily or unreasonably withhold approval of the Plans, nor shall it unreasonably withhold approval of exterior remodeling or exterior reconstruction which does not substantially change an existing structure. In no event shall the Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of buildings on its Tract. Approval of Plans by the Approving Party shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. No material deviation shall be made from the approved Plans.

(c) The second Party to construct a building along a common boundary line shall do so in a manner that does not result in damage to the improvements then in place on the adjoining Tract, and further shall undertake and assume at its sole cost the obligation of completing and maintaining the nominal attachment (flashing and seal) of its building to that of the existing building on the other Tract, it being the intent of the Parties to establish and maintain the appearance of one continuous building complex. In performing such attachment, the wall of one building shall not receive support from nor apply pressure to the wall of the other building.

(d) No building or other structure (exclusive of any light poles, free standing signs referred to in Section 5.3 or flag poles referred to in Section 5.3(a)) shall exceed the following size and height restrictions:

<u>TRACT</u>	<u>HEIGHT</u>	<u>ALLOWABLE FLOOR AREA</u>
On frag. lots 4, 5, 6 & 10	24 feet	6,000 square feet (f.l. 4) 7,000 square feet (f.l. 5) 6,000 square feet (f.l. 6) 6,000 square feet (f.l. 10)
On frag. lots 2 & 11	43 feet	83,000 square feet (f.l. 2) 92,000 square feet (f.l. 11)
On frag. lots 7 & 8	55 feet	48,000 square feet each

Notwithstanding the foregoing, the height restrictions set forth herein shall not prevent any Occupant of a Tract occupying more than 8,000 square feet of building Floor Area from installing from time to time its then prototype exterior signage for its applicable trade name, so long as the same shall have been approved by Approving Party and otherwise comply with all laws and other governmental rules and regulations. The height of any building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment, or similar appurtenance located on the roof of such building; provided, however, the height of each building pad shall be subject to the prior written approval of the Approving Party. Any Party shall have the right to install, maintain, repair, replace, and remove Communications Equipment on the top of the building on its Tract so long as it does not extend above the height limits established above; provided, however, such Communication Equipment shall be screened so that it is not visible to customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas, and laser heads, together with associated equipment and cable.

(e) ~~No building or other structure on any Tract (other than fragment lots 2, 7, 8 and 11) shall exceed one (1) story.~~

4. MAINTENANCE AND REPAIR.

4.1. Utility Lines.

(a) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Separate Utility Lines utilized by it regardless of where located. Any maintenance and repair of nondedicated utilities located on another Party's Tract shall be performed: (i) after two (2) weeks' notice to said other Party (except in an emergency the work may be



initiated with reasonable notice); (ii) after normal business hours whenever possible; and (iii) in such a manner as to cause as little disturbance in the use of said other Party's Tract as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work agrees: (1) to promptly pay all costs and expenses associated therewith, and in any event prior to attachment of any lien to any other Party's Tract; (2) to diligently complete such work as quickly as possible; and (3) to promptly clean the area and restore the affected portion of each affected Tract to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) Common Utility Lines shall be maintained and replaced as part of the Common Area pursuant to Section 4.2 below.

4.2. Common Area Maintenance.

(a) Subject to the joint maintenance provision set forth in Section (b) below, each Party shall at all times maintain, or cause to be maintained, the Common Area on its Tract in a slightly, safe condition and good state of repair. Any unimproved Common Area shall be mowed and kept litter free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the Anchorage, Alaska area. Notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances, and the provisions of this DEC. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. The maintenance and repair obligation for each Tract shall include but not be limited to the following:

(i) *Drive and Parking Areas.* Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing, and resurfacing (for the purpose of this section, an overlay of the drives and parking areas shall be considered a maintenance item). Each Party shall attempt in good faith to coordinate any resurfacing or restriping of the parking lot in the Common Area on its Tract in order to maintain its appearance as an integrated parking area for the entire Shopping Center.

(ii) *Debris and Refuse; Snow Removal.* Periodic removal of all paper, debris, filth, and refuse, including vacuuming and broom sweeping to the extent necessary to keep the Common Area in a first-class, clean, and orderly condition; provided, however, that Occupant trash and/or garbage removal shall not be a Common Area Maintenance Cost since such removal shall be the obligation of each Occupant/Party. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees. Periodic removal of ice and snow, including removal from sidewalks adjacent to store fronts, pedestrian access pathways and stairways (including, without limitation, the stairway to the lower level of retail uses on Fragment Lots 7 & 8).

(iii) *Non-Occupant Signs and Markers.* Maintaining, cleaning, and replacing any appropriate directional, stop, or handicapped parking signs; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas, and pedestrian cross-walks.

(iv) *Lighting.* Maintaining, cleaning, and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts, lenses, time clocks, and circuit breakers.

(v) *Landscaping.* Maintaining and replacing all on-site and off-site (including interior parking and perimeter) landscape plantings, trees, and shrubs in an attractive and thriving condition, trimmed and weed free, including removal and replacement of dead vegetation. Maintaining and replacing landscape planters, including those adjacent to exterior walls of buildings and automatic sprinkler systems. Modify irrigation systems to satisfy governmental water allocation or emergency requirements and perform pest control and extermination as needed.

(vi) *Common Utility Lines.* Maintaining, cleaning, replacing, and repairing any and all Common Utility Lines; provided, however, and notwithstanding the provisions of Sections (d) and (f) below, the cost of maintaining, cleaning, replacing, and repairing Common Utility Lines, if not performed by the utility company, shall be shared by the Parties in the ratio that the number of square feet of Building Area in each Tract bears to the number of square feet of Building Area in the Shopping Center.

(v) *Obstructions.* Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this DEC.



(vi) *Sidewalks.* Maintaining, cleaning, and replacing all sidewalks, including those adjacent and contiguous to buildings located within the Shopping Center. Sidewalks shall be cleaned regularly and swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area.

Notwithstanding anything in this section to the contrary, each Party shall maintain and repair any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor, or dumpster area located on its Tract.

(b) Unless the Approving Party elects to have an Operator maintain the Common Area, each Party shall maintain the Common Area on its Tract in accordance with the requirements of Section (a) above. During such times as the Approving Party has designated in writing the identity of an Operator, the Operator shall operate and maintain: (i) the Common Area in the Shopping Center located on all Tracts; (ii) the landscaping located along the exterior boundaries of the Shopping Center not on said Tracts, if any; (iii) any landscaping which the Municipality of Anchorage may require the Parties to maintain or the maintenance of which would, as determined by the Approving Party, benefit the Shopping Center; and (iv) Common Utility Lines which are not maintained by utility companies (including, but not limited to, surface water collection, retention and distribution facilities) (the "Operator Maintenance Areas") in accordance with the requirements of Section (a) above. The Operator may hire companies affiliated with it to perform the maintenance and operation of the Operator Maintenance Areas, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in or about the Shopping Center, it being agreed that this provision shall be construed strictly against Operator. Each Party hereby grants to Operator, its agents and employees a license to enter upon its Tract to discharge the duties to operate, maintain, and repair the Operator Maintenance Areas, such license to be revocable only upon material default by Operator of its obligations hereunder. Upon revocation by any Party of the foregoing license, such Party shall automatically become solely responsible for Operator's duties as to any Operator Maintenance Area located on its Tract. The Operator shall expend only such funds as are reasonable or customary for the operation, maintenance, and insurance of the Operator Maintenance Areas and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred. For the purpose of this DEC, Common Area Maintenance Costs shall not include:

- (i) any late charges or fees;
- (ii) any charge for lighting electricity to a Party that separately pays the electrical costs for lighting the Common Area on its Tract;
- (iii) any costs to clean up or repair the Common Area resulting from a Party's or Parties' promotional activities or construction, maintenance or replacement of buildings;
- (iv) real property taxes and assessments;
- (v) Operator's profit, administrative and overhead costs (including but not limited to: office space, equipment and utilities; legal, accounting or administrative services; Operator's personnel who are not permanently located at the Shopping Center); and
- (vi) entertainment, transportation, meals, and lodging of anyone.

In lieu of Operator's profit, administrative and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Common Area Maintenance Costs (exclusive of insurance premiums, fees paid to third Persons who perform all or a portion of the Common Area operation and management on Operator's behalf, and utility charges) by ten percent (10%). To the extent the Operator directly or indirectly contracts with a commercial property management company to administer or oversee any portion of the maintenance of the Operator Maintenance Areas, Operator shall not receive an Administration Fee on the portion so contracted. If any of Operator's personnel at the Shopping Center perform services, functions, or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(c) Operator shall, at least sixty (60) days prior to the beginning of each calendar year, submit to the Approving Party an estimated budget ("Budget") for the Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area of the Shopping Center located on the Operator Maintenance Areas for the ensuing calendar year. The Budget shall be in a form reasonably acceptable to the Approving Party and shall identify separate cost estimates for at least the categories specified under Section 4.2(a), plus:

- (i) rental or purchase of equipment and supplies;
- (ii) depreciation or trade-in allowance applicable to items purchased for Common Area purposes; and



(iii) Administration Fee.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to such year (including the area of the Common Area affected), and shall note the anticipated cost and timing (indicating the area of the Common Area affected) of such phased work during succeeding calendar years. Operator shall use its best efforts to operate and maintain the Operator Maintenance Areas in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to person or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds Ten Thousand Dollars (\$10,000) in Constant Dollars then Operator may submit a supplemental billing to each Party, together with evidence supporting such payment, and each Party shall pay its share thereof within thirty (30) days.

(d) Common Area Maintenance Costs and the Administration Fee payable with respect to each Tract shall, except as otherwise provided herein, be allocated in the proportion that, respectively, the land area of each Tract bears to the total land area of all Tracts within the Shopping Center. As provided in Section 5.10, additional costs resulting from seasonal or promotional sales in the Outdoor Sales Area are to be paid by the Party holding such sales, and, as provided in Section (f) below, certain costs shall be payable separately by the Parties.

(e) Operator agrees to defend, indemnify and hold each Party paying it the amounts due hereunder harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Operator of the Common Area, and in the event that the Tract of any such Party shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

(f) Each Party shall, at its sole cost and expense, maintain, repair, and/or replace the Common Area on its Tract in accordance with the requirements of Section 4.2(a) above. It is recognized and acknowledged that certain maintenance items within the Common Area benefit the entire Shopping Center and cannot be practically segregated from or allocated to Tracts. These items are the maintenance, repair, and/or replacement of the accesses to and the main driveways in the Shopping Center, the landscaping and irrigation of areas on the exterior boundary of the Shopping Center, the off-site landscaping and irrigation and the Common Utility Lines.

Each Party agrees to defend, indemnify, and hold each other Party ("Indemnitee") from and against all claims, costs, losses, expenses, and liability (including reasonable attorney fees and costs of suit) arising from or directly or indirectly relating to the maintenance, use or operation of the Common Areas located on its Tract, except for claims caused by the negligence or willful act or omission of such Indemnitee(s).

(g) In the event a Party maintaining the Common Area on its Tract fails to maintain it in accordance with the requirements of Section 4.2(a) (such Party being hereinafter referred to as the "Defaulting Party") any other Party (hereinafter referred to as the "Nondefaulting Party") may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "Deficiencies") in the Defaulting Party's performance of its obligations under Section 4.2(a). Except for an Emergency Situation, the Defaulting Party shall have ten (10) days after receipt of such notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten-day period, and thereafter to proceed diligently to complete the correction of the Deficiencies. An "Emergency Situation" is a situation which threatens access to a Tract or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons. In the event a Defaulting Party shall fail or refuse to timely correct or to begin to correct the Deficiencies and proceed to diligently complete the same, as the case may be, the Nondefaulting Party may, in its option, correct the Deficiencies. In the event the Nondefaulting Party shall exercise its option, the Defaulting Party shall, within ten (10) days from receipt from the Nondefaulting Party, of an itemized invoice for the actual and reasonable costs incurred by the Nondefaulting Party in correcting the Deficiencies, pay such costs to the Nondefaulting Party, plus an administrative fee in the amount of ten percent (10%) of the costs. If the invoice is not paid within said ten-day (10) period, interest on the amount due under the invoice from the date of the invoice shall be paid by the Defaulting Party at the then "Prime Rate" of Bank of America (or if such financial institution no longer exists, then its immediate successor or, at Approving Party's election, a comparable national bank having multiple locations in Alaska), plus two percent (2%) per annum until paid.

(h) In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this DEC, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided that no Party shall be required to expend more than \$250,000 in Constant Dollars in excess of insurance proceeds which may



be available (or which would have been available except for a Party's failure to obtain insurance coverage as required herein or for elections relating to deductibles or self-insurance for which the Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require another Party to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of such sum. Except to the extent limited by Section 5.4 hereof, in the event such damage or destruction of Common Area is caused in whole or in part by another Party (or its Occupant) or third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution or damages.

4.3. Building Improvements.

(a) After completion of construction, each Party covenants and agrees to maintain and keep the exterior portion of the building improvements, if any, located on its Tract and within the Shopping Center in first-class condition and state of repair in a manner consistent with other first-class retail developments of comparable size in the Anchorage, Alaska area, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this DEC. Each Party further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

(b) In the event any of the building improvements within the Shopping Center are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such building improvements are located shall, subject to governmental regulations and/or insurance adjustment delays, immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall do one of the following: (i) repair or restore the building improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this DEC; (ii) erect other building improvements in such location, such construction to be performed in accordance with all provisions of this DEC; or (iii) demolish the damaged portion and/or the balance of such building improvements and restore the cleared area to either a hard surface condition or a landscaped condition as would be required hereunder for property on which no construction has been commenced. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty (or as soon thereafter as all insurance issues are settled to the extent necessary to make a prudent election of alternatives) of which alternative it elects.

5. OPERATION OF THE SHOPPING CENTER

5.1. Uses.

(i) Subject to the limitations set forth in Section 5.1, no part of the Shopping Center shall be used or occupied for purposes other than retail sales, Business Offices, Financial Retail Offices, Fast Food Restaurants (defined below), and sit down Restaurants. The term "Business Office" shall mean an office other than a Financial Retail Office. The term "Financial Retail Office" shall mean an office which provides financial services directly to consumers such as banks, credit unions, investment firms and stock brokerages. The term "Fast Food Restaurant(s)" shall mean a restaurant whose marketing strategy is based on preparing and dispensing food orders in a limited period of time. Without limitation and for illustrative purposes, Fast Food Restaurant(s) include the following:

Burger King	Hardy's
Wendy's	McDonalds
Carl's Jr	Jack In The Box
Taco Bell	Arby's
Taco Time	Subway
Blimpie	Quizno's

Also, without limitation and for illustrative purposes, Fast Food Restaurant(s) do not include any Restaurant or food service establishment which offers as the primary method of service for orders to be taken and served by a waitperson at the customer's table, or whose primary method of service is for customers to serve themselves at a buffet line.

(b) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(i) any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in the Shopping Center; however, this provision shall not be interpreted to restrict any Occupant from (1) conducting supermarket operations, including a



bakery, in the ordinary course of its business, or (2) conducting restaurant operations in the ordinary course of its business, provided in each instance that said Occupant shall take measures normally taken by first-class supermarket operations and/or restaurant operations, as applicable, to limit the emission of odors;

(ii) any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;

(iii) any "second hand" store or "surplus" store except those such as (without limitation) Ross Dress For Less or T.J. Maxx, GI Joe, Play It Again Sports, Play It Again Instruments, Once Upon a Child and similar first-class resale or consignment stores;

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

(v) any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors or other future technology no more intrusive than garbage compactors located near the rear of any building);

(vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(vii) any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to: (1) nominal supportive facilities for on-site service-oriented pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located; and (2) the operation of on-site laundry facilities within a store which services only the internal needs of that store and does not provide laundry services to the general public;

(viii) any manufactured home, automobile, truck, trailer, boat or recreational vehicles sales, leasing, display, body shop or repair operation;

(ix) any entertaining or recreational facility which includes movie theaters, live performance theaters, skating rinks, dance halls, billiard or pool halls, massage parlors or similar facilities;

(x) any living quarters, sleeping apartments, or lodging rooms;

(xi) any veterinary hospitals or animal raising facilities (except that this prohibition shall not prohibit pet shops, including, without limitation, PetCo, Pet Commissary or PetSmart [notwithstanding that said operations include veterinary services] or the employment from time to time of trained therapy animals);

(xii) any mortuaries or funeral homes;

(xiii) any adult book or adult video stores or establishments selling or exhibiting pornographic materials or drug-related paraphernalia;

(xiv) any bars or taverns, except those incidental to Restaurants serving full sit-down menus;

(xv) any health spas, fitness centers, gyms, or workout facilities in excess of 4,000 square feet;

(xvi) any flea markets, amusement or video arcades (except up to five (5) electronic games shall be allowed if incidental to any permitted use);

(xvii) any training or educational facilities in excess of 4,000 square feet, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers. This prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center; or

(xviii) No Fast Food Restaurant shall be located on any Tract until and unless all necessary governmental approvals and consents have been obtained and the Approving Party has approved in writing the design and location of the drive through facilities of any such Fast Food Restaurant, and the location of its building footprint.



(c) No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided however, that the foregoing prohibition shall not be applicable to: (i) the storage of shopping carts (so long as the same shall not otherwise violate the requirements of the DEC as to the Common Area or parking spaces); (ii) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Party which may be withheld in its sole, absolute, and unreviewable discretion; (iii) newspaper distribution stands and similar public service items; or (iv) outdoor sales or promotional activities within any Outdoor Sales Area as shown on the Site Plan or such sales or activities (including storage at the rear of buildings) as allowed pursuant to written leases in effect as of the date hereof for any portion of the Shopping Center. In addition, if a recycling center or equipment is required by law to be located in the Shopping Center, the location thereof shall be subject to the approval of the Approving Party

(d) The Shopping Center shall be called by such name as the Approving Party may from time to time designate, but may not utilize the trade name of any Party or Occupant without the express written consent of any such Party or Occupant.

(e) Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area. For the purpose of this provision, a tax assessment or other form of charge applicable to parking spaces or parking lots may be deemed by the Approving Party an imposition required by law.

(f) This DEC is not intended to, and does not, of itself create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Shopping Center or on any Tract.

5.2. Lighting. After completion of the Common Area lighting system on its Tract, each Party hereby covenants and agrees to the lighting on its Common Area being separately metered and to keep its Tract fully illuminated each day from dusk to at least 10:00 p.m. Each Party further agrees to, except to the extent additional lighting is required herein, keep the lights in the Common Area on its Tract illuminated from dusk until dawn at not less than twenty-five percent (25%) of full capacity and to keep any exterior building security lights on from dusk until dawn. During the term of this DEC, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tract.

5.3. Pylon Sign(s).

(a) No freestanding sign shall be permitted within the Shopping Center except those three (3) Pylon Signs designated on the Site Plan as Pylon Signs. Said freestanding Pylon Signs shall be utilized as follows:

(i) One (1) pylon sign at the approximate location shown on the Site Plan as the "Frag. Lot 2 Pylon Sign" (the "Frag. Lot 2 Sign") may be used to identify the Occupants of fragment lot 2 only; one (1) pylon sign at the approximate location shown on the Site Plan as the "Frag. Lot 11 Pylon Sign" (the "Frag. Lot 11 Sign") may be used to identify the Occupants of fragment lot 11 only; and one (1) pylon sign at the approximate location shown on the Site Plan as the "Frag. Lot 13 Pylon Sign" (the "Frag. Lot 13 Sign") may be used to identify certain Occupants of fragment lot(s) 4, 5, 6, 7 & 8 only.

(ii) The use, design and construction of, and the panel inserts on, the Pylon Signs shall be subject to the prior written approval of the Approving Party, which approval shall not be unreasonably withheld by the Approving Party as to design and construction.

(iii) This section shall not be interpreted to restrict any Occupant of a Tract from erecting a flag pole(s) on its building and displaying thereon only a United States flag or a State of Alaska flag of such size as shall not obstruct visibility of any building on any other Tract; provided that the same is permitted by local ordinances and regulations, and provided further that said Occupant exercises proper care in the maintenance and display of said flag(s) and flag pole.

(b) No Occupant identification sign attached to the exterior of a building shall be, except as otherwise approved by the Approving Party in its sole and absolute discretion:

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

(ii) placed at any angle to the building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk;



- (iii) painted on the surface of any building;
- (iv) flashing or audible signs;
- (v) signs employing exposed raceways (unless the raceway is the same color as the building), exposed ballast boxes, or exposed transformers; or
- (vi) paper or cardboard signs, temporary signs (exclusive of contractor signs), stickers or decals; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information.

Unless approved by the Approving Party, and further subject to any necessary governmental approvals, no Occupant of less than fifty thousand (50,000) square feet of Floor Area shall have an exterior sign which identifies leased departments, and/or concessionaires operating under the Occupant's business or trade name, nor, shall such sign identify specific brands or products for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name.

(c) Notwithstanding anything above to the contrary, each Party shall be permitted to place within the Common Area located on its Tract directional signs or informational signs such as "Handicapped Parking", the temporary display of leasing information and the temporary erection of one sign identifying each contractor working on a construction job.

5.4. Insurance.

(a) Each Party (as to its Tract(s) only) shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of not less than Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily or personal injury or death, and for property damage, arising out of any one occurrence.

Each Party ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Party ("Indemnitee") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees and cost of suit) arising from or as a result of the injury to or death of any Person occurring on or about, or damage to the property of any Person located on or about, the Common Area on its Tract, except for claims caused by the negligence or willful act or omission of an Indemnitee, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

(b) Prior to commencing any construction activities within the Shopping Center, each Party shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

- (i) Workers' Compensation - statutory limits
- (ii) Employers' Liability - \$500,000
- (iii) Comprehensive General/Commercial General Liability and Business Auto Liability as follows:
 - (1) Bodily Injury - \$1,000,000 per occurrence
 - (2) Property Damage - \$1,000,000 per occurrence
 - (3) Independent Contractors Liability; same coverage as set forth in (1) and (2) above;
 - (4) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
 - (5) "XCU" Hazard Endorsement, if applicable;
 - (6) "Broad Form" Property Damage Endorsement;
 - (7) "Personal Injury" Endorsements; and
 - (8) "Blanket Contractual Liability" Endorsement.



If the construction activity involves the use of another Party's Tract, then the Party owning such Tract (or its Occupant, if the sole occupant) shall be an additional insured and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this DEC, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the constructing Party shall immediately stop all work on or use of the other Party's Tract until either the required insurance is reinstated or replacement insurance obtained.

(c) Effective upon the commencement of construction of any building or typically-insured improvements on its Tract and within the Shopping Center, and so long as such building or improvement exists, a Party shall carry, or cause to be carried, casualty insurance with "extended" or "all-risk" coverage, in the amount of not less than ninety percent (90%) of full replacement cost thereof (excluding footings, foundations or excavations).

Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to property of such Releasing Party located upon the Releasing Party's Tract, irrespective of any negligence on the part of the Released Party which may have contributed to or caused such loss or of the existence or amount of any insurance required or actually carried, including any deductible or self insurance reserve. Each Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless each other Party ("Indemnitee") from and against all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the Indemnitor's Tract, irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

(d) All insurance required by Section 5.4 shall be procured from companies licensed in the state where the Shopping Center is located and shall be rated by Best's Insurance Reports not less than A/VII. All insurance may be provided under: (i) an individual policy covering this location; (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000 in Constant Dollars; (iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has \$100,000,000 in Constant Dollars or more of net worth, determined in accordance with generally accepted accounting principles; and (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party agrees to furnish to any Party requesting the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

The insurance required pursuant to Sections 5.4(a) and (b) above shall include the following provisions:

(i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this DEC, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured;

(ii) shall provide for severability of interests;

(iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; and

(iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth herein, provided, however, the coverage limits of such insurance shall in no event limit the indemnity obligations of any Party hereunder.

5.5. Taxes and Assessments. Each Party shall be responsible for timely payment of all taxes and assessments with respect to its Tract, the buildings, and improvements located thereon and within the Shopping Center, and any personal property owned or leased by such Party in the Shopping Center, and no Party shall permit non-payment or delinquent payment of its taxes to subject any other Tract or portion thereof with a lien, judgment or other like encumbrance. Each Party shall indemnify each other



Party against any adverse consequent to such Party from the indemnifying Party's non-payment or delinquent payment of taxes.

5.6. Liens. In the event any mechanic's or materialman's lien is filed against the Tract (or portion thereof) of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be paid or bonded as allowable by law within fifteen (15) days after receipt of notice of the existence of such lien, and in any event prior to foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. So long as protection against foreclosure is provided by the Party permitting or causing such lien, such Party may contest the validity of said lien in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

6. ENVIRONMENTAL MATTERS.

6.1. Duties of Users. Except as provided in Section 6.2, neither the Parties nor any Occupant(s) shall release, generate, use, store, dump, transport, handle or dispose of any Hazardous Material within the Shopping Center or otherwise permit the presence of any Hazardous Material on, under or about the Shopping Center or transport any Hazardous Material to or from the Shopping Center. Any such use, handling or storage permitted under Section 6.2 shall be in accordance with all Environmental Laws and all other applicable laws, ordinances, rules and regulations now or hereafter promulgated by any governmental authority having jurisdiction thereof. Neither the Parties nor any Occupant(s) shall install, operate or maintain any above, below or at grade tank, sump, pit, pond, lagoon or other storage or treatment vessel or device on or about the Shopping Center unless plans therefor have been submitted to and approved by the Approving Party pursuant to Section 6.2 hereof. Each Party with respect to its Tract shall immediately notify the other Parties in writing of the following with respect to such Party's Tract: (a) any notice of violation or notice of potential or alleged violation of any laws, ordinances or regulations which the Party shall have received from any governmental agency concerning the use, storage, release and/or disposal of Hazardous Materials; (b) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to such Tract(s); and (c) any release of Hazardous Materials in a reportable quantity on or about the Shopping Center which such Party knows of or reasonably believes may have occurred. Such notice shall be accompanied by copies of any notices, inquiries or other documentation issued to the notifying Party in connection with such matters.

6.2. Permitted Use, Storage, Handling and Disposal of Hazardous Materials. Notwithstanding anything contained in Section 6.1 to the contrary, any Party, Operator, or any Occupant or Permittee may sell, store and use products containing Hazardous Materials in, on or about the Tract occupied by such Party, Occupant or Permittee or the Common Areas to the extent such products and/or equipment are incidental to normal shopping center or retailer operations, and are sold, stored or used in compliance with all applicable Environmental Laws. By way of example, and not limitation, such permitted materials may include paints, oils, solvents, sealers, adhesives and finishes, fertilizers, medicines, insecticides and rodent poisons and the like, which may be or contain Hazardous Materials, so long as such products are produced, packaged and purchased for retail sale and generally merchandised or sold in retail outlets or are normally used in maintaining or repairing shopping center improvements. A Party or an Occupant may also use other Hazardous Materials in connection with its use of its Tract if such Party or Occupant has received the Approving Party's prior consent to the same. The Approving Party shall not unreasonably withhold its consent provided: (i) the Party demonstrates to the Approving Party's reasonable satisfaction that such Hazardous Materials (1) are necessary or useful to the Party's or its Occupant's business, (2) will be monitored, used, stored, handled and disposed of in compliance with all Environmental Laws, (3) will not endanger any persons or property, and (4) will not invalidate or limit the coverage or increase the premiums of any insurance policy affecting or covering any portion of the Shopping Center; (ii) the Party or Occupant provides the Approving Party with such security as may be reasonably required by the Approving Party to help secure such Party's or Occupant's performance of its obligations under Section 6.3; and (iii) such Party or Occupant satisfies any other requirements any other Party may reasonably impose with respect to the Party's or Occupant's use of the subject Hazardous Materials.

6.3. Cleanup of Hazardous Materials. In the event Hazardous Materials are released within the Shopping Center in violation of any Environmental Laws and such release occurred as a direct or indirect result of a Party's or its Occupant's or Permittee's use, handling, storage, or transportation of such Hazardous Material, as between the Parties, such Party or Occupant engaged in such activity shall be solely responsible and shall be liable for (and shall indemnify the other Parties and their Occupants and Permittees with respect to) the prompt cleanup and remediation of any resulting contamination and all claims, costs, expenses (including reasonable attorney and consultant fees) and damages, including consequential damages, suffered by the other Party, Occupants and Permittees.



7. MISCELLANEOUS.

7.1. Default.

(a) The occurrence of any one or more of the following events shall constitute a material default and breach of this DEC by the non-performing Party (the "Defaulting Party"):

(i) The failure to make any payment required to be made hereunder within ten (10) days of the due date; or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this DEC, other than as described in Section (i) above, within thirty (30) days after the issuance of a written notice by another Party (the "Non-Defaulting Party") specifying the nature of the default claimed.

(b) With respect to any default under Section (a) above, any Non-Defaulting Party which is an Approving Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an Emergency Condition, any such Non-Defaulting Party, 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. An "Emergency Condition" is a condition which threatens a Tract or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons. To effectuate any such cure, any such Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses actually incurred in connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

(c) No waiver by any Party of any default under this DEC 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 (1) or more written waivers or any default under any provision of this DEC shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this DEC.

(d) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this DEC, and to recover damages for any such violation or default. Such proceeding shall include the right to seek restraint by injunction of any violation or threatened violation by another of any of the terms, covenants, or conditions of this DEC, or to seek a decree to compel performance of any such terms, covenants, or conditions. All of the remedies permitted or available to a Party under this DEC 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.

7.2. Interest.

Except as otherwise provided herein, any time a Party shall not pay any sum payable hereunder to another within ten (10) days of the due date, such delinquent Party shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of:

(a) the highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, whichever is less; or

(b) two percent (2%) per annum in excess of the prime rate from time to time publicly announced by Bank of America (or if it no longer exists, then its immediate successor or, at Approving Party's election, a comparable national bank having multiple locations in Alaska).



7.3. Estoppel Certificate.

Each Party agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

- (a) whether it knows of any default under this DEC by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (b) whether this DEC has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- (c) whether this DEC is in full force and effect; and
- (d) any other reasonable factual matter requested by the requesting Party or its prospective mortgagee or successor.

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to either request an audit of the Common Area Maintenance Costs for any year it is entitled to do so, or challenge acts committed by other Parties for which approval by the Approving Party was required but not sought or obtained.

7.4. Notices.

All notices under this DEC shall be in writing and delivered either: (a) in person; (b) by reputable over-night delivery service, so long as delivery is made by obtaining a signed receipt; (c) by certified mail; or (d) by facsimile transmission, so long as the original notice is also forwarded by the method described in (a), (b), or (c). Kimco's initial address for notices is as follows:

IF TO KIMCO: Kimco/POB Glenn Square Anchorage, LLC
c/o Kimco Realty Corporation
3333 New Hyde Park Road, Suite 100
New Hyde Park
New York 11042-0022
Attn: General Counsel
Telephone: (516) 869-9000
Fax: (516) 869-7202

And to: Kimco Developers, Inc.
1111 Burlington Avenue, Suite 113
Lisle, Illinois 60532
Attn: Daniel Slattery
Telephone: (630) 322-9200
Fax: (630) 322-9204

And to: P.O'B, Montgomery & Company
Attn: David Irwin
3220 Carillon Point
Kirkland, WA 98033
Telephone: (425) 576-5208
Fax: (425) 576-5260

With a copy to: Laura P. Sims
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
Telephone: (214) 855-4700
Fax: (214) 855-4300

Any notice give pursuant to this DEC shall be deemed effective the day it is personally delivered or transmitted by facsimile, the day after it is delivered to the overnight delivery service, or three (3) business days after the date it is deposited in the United States mail system.



Upon at least ten (10) days' prior written notice, each Person shall have the right to change its address to any other address within the United States of America.

7.5. Approval Rights.

(a) Nothing contained in this DEC shall limit the right of a Party to exercise its business judgment, or act, in a subjective manner, with respect to any matter as to which it has specifically been granted such right, or the right to act in its sole discretion or sole judgment, whether "objectively" reasonable under the circumstances, and any such exercise shall not be deemed inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be part of this DEC; and the Parties intend by this DEC to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

(b) Unless provision is made for a specific time period, each response to a request for an approval or consent shall be given by the Person to whom directed within thirty (30) days of receipt. Each disapproval shall be in writing and, subject to (a) above, the reasons shall be clearly stated. If a response is not given by Kimco within the required time period, the requesting Party shall provide a second notice (specifically referencing the first notice and its details) and if a response is not given by Kimco within fifteen (15) days after receipt of said second notice, Kimco shall be deemed to have given its approval. With respect to all other Persons, if a response is not given within the original 30 day period, such Person shall be deemed to have given its approval.

7.6. Condemnation. In the event any portion of the Shopping Center shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that: (a) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition; and (b) if the taking includes easement rights which are intended to extend beyond the term of this DEC, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this DEC which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.

7.7. Binding Effect. The terms of this DEC and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. This DEC is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

7.8. Construction and Interpretation.

(a) This DEC and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. The provisions of this DEC and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(b) Whenever required by the context of this DEC: (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

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

(d) Invalidation of any of the provisions contained in this DEC, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(e) This DEC may be amended by, and only by, a written agreement signed by the then-current Approving Party, and shall be effective only when recorded in the county or applicable recording district and state where the Shopping Center is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of any other Party or its Tract without the consent of such other Party. No consent to the amendment of this DEC shall ever be required of any Occupant or Person other than the Parties.



(f) This DEC may be executed in several counterparts, each of which shall be deemed an original. The signatures to this DEC may be executed and notarized on separate pages, and when attached to this DEC shall constitute one complete document.

7.9. Negation of Partnership. None of the terms or provisions of this DEC 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. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

7.10. 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 Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

7.11. Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, extreme and unusual weather conditions, war, civil commotion, riots, terrorism, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this DEC or the performance of any indemnity obligations hereunder.

7.12. Mitigation of Damages. In all situations arising out of this DEC, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this DEC.

7.13. DEC Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this DEC shall: (a) entitle any Party to cancel, rescind, or otherwise terminate this DEC; or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

7.14. Time. Time is of the essence of this DEC.

7.15. Limitation of Liability.

(a) Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, employees or agents of a party hereto with respect to any of the terms, covenants, conditions, and provisions of this DEC. In the event of default by a Defaulting Party hereunder (as defined in Section 7.1) any Non-Defaulting Party (as defined in Section 7.1) who seeks recovery from a Defaulting Party hereto shall look solely to the interest of such Defaulting Party, its successors and assigns, in the Shopping Center for the satisfaction of each and every remedy of the Non-Defaulting Party; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party:

(i) to pursue equitable relief in connection with any term, covenants or condition of this DEC, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance; and

(ii) to recover from another Party all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Party not funding its self insurance obligations which were assumed pursuant to Section 5.4.

8. TERM

8.1. Term of this DEC. This DEC shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2066; provided, however, that the easements referred to in Article 2 which are specified as being perpetual or as continuing beyond the term of this DEC shall continue in force and effect as provided therein. Upon termination of this DEC, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this DEC, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this DEC shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this DEC prior to the date of such termination.



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

KIMCO/POB GLENN SQUARE ANCHORAGE, LLC,
a Delaware limited liability company

By: KIMCO GLENN SQUARE 1360, INC.,
a Delaware corporation, its Managing Member

By: [Signature]
Name: BRUCE M. KAUDERER
Its: Vice President

STATE OF New York
County of Nassau)ss.

On this 19th day of May, 2006, before me, a Notary Public, personally appeared Bruce M. Kauderer, known or proved to me to be the Vice President of KIMCO GLENN SQUARE 1360, INC., a Delaware corporation, Manager of KIMCO/POB GLENN SQUARE ANCHORAGE, LLC, a Delaware limited liability company, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Roseanne Dwyer
Notary Public for _____
Residing at _____
Comm. Expires _____

ROSEANNE DWYER
Notary Public, State of New York
No. 4508302
Qualified in Nassau County 2010
Commission Expires January 11, 2010



EXHIBITS

EXHIBIT A
EXHIBIT B

Land/Shopping Center
Site Plan



EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

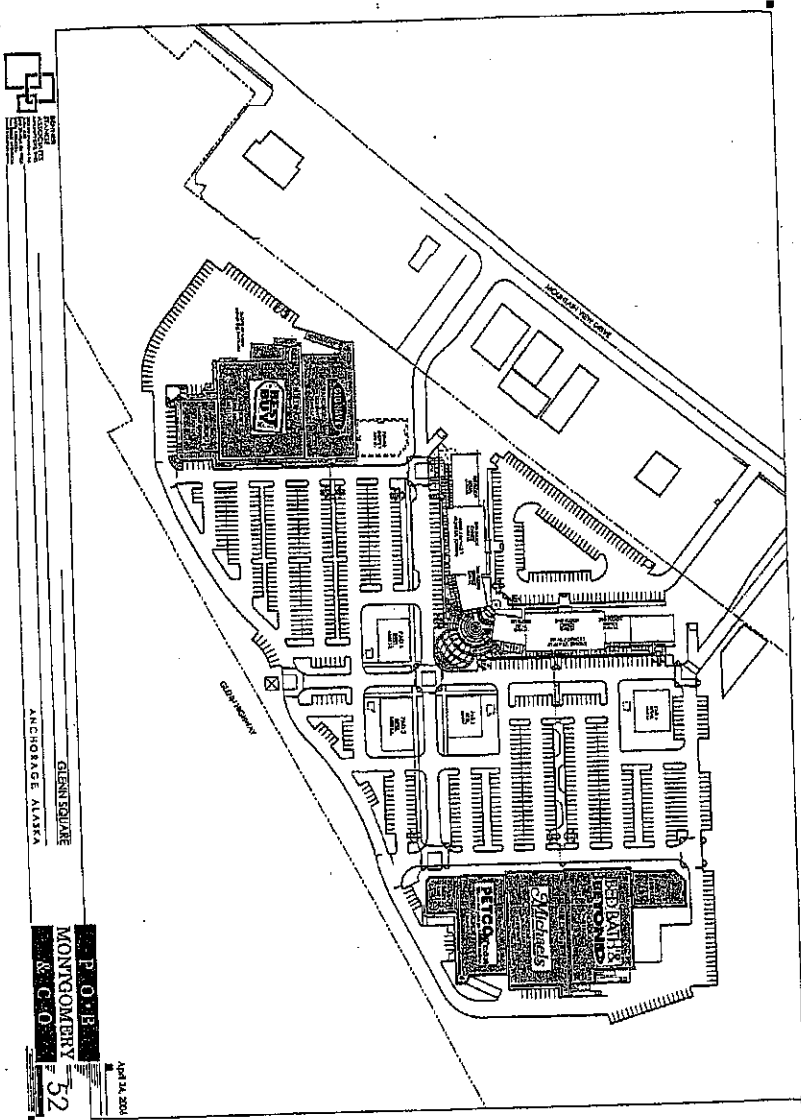
Fragment Lots 2, 4, 5, 6, 10, 11, 13 and ground floor only of 7 & 8, within Tract 1, MT VIEW DEVELOPMENT SUBDIVISION, located in the North ½, Section 16, T13N, R3W, Seward Meridian, containing approximately 1,073,093 square feet, situated in the Anchorage Recording District, Third Judicial District, State of Alaska

Plot # 2006-64



EXHIBIT B

SITE PLAN



cc

A
L
A
S
K
A

2012-040534-0

Recording District 301 ANCHORAGE
07/23/2012 12:53 PM Page 1 of 14



After recording, return to:
Patricia Gregory
Pachter, Gregory & Raffaldini, P.C.
790 Estate Drive
Suite 150
Deerfield, Illinois 60015

**FIRST AMENDMENT TO
DECLARATION OF EASEMENTS AND CONDITIONS**

STATE OF ALASKA §
 §
ANCHORAGE
RECORDING
DISTRICT §

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND CONDITIONS (this "Amendment") is made as of the 16th day of July, 2012, by KIMCO GLENN SQUARE ANCHORAGE, LLC, a Delaware limited liability company, successor-in-interest to KIMCO/POB GLENN SQUARE ANCHORAGE, LLC, a Delaware limited liability company ("Kimco"), the Approving Party under the Declaration (as hereinafter defined).

WHEREAS, the Approving Party executed and recorded that certain Declaration of Easements and Conditions dated as of May 19, 2006 and recorded on June 1, 2006 as Instrument No. 2006-035835-0 in the Anchorage Recording District, Anchorage Alaska (the "DEC") with respect to certain fragment lots of land in the Municipality of Anchorage, State of Alaska more particularly described therein.

WHEREAS, the Approving Party has, through that certain Re-Plat No. 2009-80, recorded in the Anchorage Recording District, Third Judicial District, Alaska on October 14, 2009 (the "Re-Plat"), created Fragment Lot 11B, Tract 1A, Mountain View Development Subdivision ("Fragment Lot 11B"), over which Fragment Lot 11B the Approving Party granted to the Municipality of Anchorage, in its capacity as Municipal Light & Power ("ML&P") and its successors and assigns (collectively, the "Substation Grantee") a perpetual easement for construction and operation of a new electrical substation pursuant to that certain Electric Systems Easement - - Overhead/Underground And Surface Facilities For An Electrical Substation dated December 17, 2007 and recorded on January 4, 2008 as Instrument No. 2008-000358-0 in the Anchorage Recording District, Anchorage Alaska (the "Substation Easement").

WHEREAS, the Approving Party desires to amend the DEC to, among other things, update the Site Plan attached to the DEC and acknowledge the electrical substation on Fragment Lot 11B.

NOW, THEREFORE, the Approving Party hereby amends the DEC as follows:

1. All capitalized terms used but not expressly defined herein shall have the meanings assigned thereto in the DEC.

2. The legal description of the Land attached to the DEC as Exhibit "A" is hereby replaced and superseded for all purposes under the DEC by the legal description attached to this Amendment as Exhibit "A" (the "Revised Legal Description").

3. The Site Plan attached to the DEC as Exhibit "B" is hereby replaced and superseded for all purposes under the DEC with the revised Site Plan attached as Exhibit "B" to this Amendment (the "Revised Site Plan"). Those portions of the Land, as described in the Revised Legal Description, and identified on the Revised Site Plan, shall hereafter constitute the "Shopping Center" wherever referenced in the DEC.

4. Section 1.25 of the DEC is hereby amended to read as follows:

• "1.25. "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors, assigns and/or transferees of an ownership interest in any portion of the Shopping Center or a lessee of any Tract pursuant to a lease having a term of at least twenty (20) years ("Lease") provided that the fee owner of such Tract has designated such lessee as the "Party" for said Tract for purposes of this DEC pursuant to an instrument recorded against the Shopping Center. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center owned (or leased as the case may be) by it which accrue during the period of such ownership (or leasehold as the case may be), and such liability shall continue with respect to any portion transferred (or leased as the case may be) until the notice of lease as provided above or notice of transfer set forth below is given, at which time the transferring Party's (or lessor's) liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its ownership interest in the Shopping Center (or leasing any Tract) shall give notice to all other Parties of such transfer (or lease) and shall include therein at least the following information:

the name and address of the new Party; and

• a copy of the legal description of the portion of the Shopping Center transferred.

• If a Tract is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Tract shall designate one (1) of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this DEC only) be the transferee's agent. Upon the termination or expiration of any Lease, the fee owner of any such Tract shall



once again be obligated for liabilities thereafter accruing with respect to such Tract under this DEC."

5. The last sentence in Section 2.4 of the DEC is hereby deleted in its entirety and the following provision substituted in lieu thereof: "Provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to governmental or quasi-governmental authorities or to public utilities which are granted and/or dedicated in whole or in part for the benefit of the Shopping Center or otherwise approved in writing by the Approving Party."

6. (a) Section 2.1 of the DEC as it relates to cross-parking shall not apply to Fragment Lot 11B; it being understood and agreed that Fragment Lot 11B shall at all times, except for temporary servicing needs of the electrical substation thereon, satisfy all parking requirements with respect to the uses on Fragment Lot 11B, solely on Fragment Lot 11B (i.e. Fragment Lot 11B shall self-park) and no other Tract in the Shopping Center shall be permitted to satisfy its parking requirements through the parking spaces located on Fragment Lot 11B. Notwithstanding anything to the contrary in Section 3.2(e) of the DEC, the parking requirements applicable to Fragment Lot 11B shall be those generally applicable in the Municipality of Anchorage to similar users without variation.

(b) The following sentence shall be inserted as the last sentence in Section 2.1 of the DEC: "Notwithstanding anything in this Section 2.1 to the contrary, Fragment Lot 9 shall be reserved for the exclusive ingress, egress, passage, accommodation and parking use of the upper levels of the buildings located on Fragment Lots 7 and 8 and the Parties, Permittees and Occupants thereof, and for no other use or users; it being understood and agreed that no Parties, Permittees or Occupants of the ground floors of the buildings located on Fragment Lots 7 and 8 or the Parties, Permittees or Occupants of any other Tract shall be permitted to use Fragment Lot 9 for ingress, egress, passage, accommodation and/or parking.

7. The following provisions of the DEC shall not apply to, benefit and/or burden Lot 11B, so long as an electrical substation owned by the Substation Grantee is located on Lot 11B:

(a) Section 2.3, to the extent it authorizes encroachment easements on Fragment Lot 11B (and if an encroachment should occur it may be removed by the Party owning Lot 11B at the expense of the encroaching Party);

(b) Section 3.2(a)(as amended hereby) and Section 3.2(e);

(c) Sections 3.3(b);

(d) Sections 4.2 (a) - (h), to the extent any of said sections may impose a cost burden or other burden on Fragment Lot 11B with respect to the maintenance of or access to Common Areas located thereon, which burden of maintenance and costs therefore of the



Common Areas on Fragment Lot 11B shall be borne by the Party owning Fragment Lot 11A;

- (e) Section 4.3(a), to the extent it requires the Fragment Lot 11B substation be maintained in conformance with retail developments;
- (f) Sections 5.1(b)(i) shall in no event be interpreted as restricting the construction and/or operation of an electrical substation as determined by the Substation Grantee;
- (g) Section 5.1(e) to the extent "a tax assessment or other form of charge applicable to parking spaces or parking lots may be deemed by the Approving Party an imposition required by law."
- (h) Sections 5.2; and 5.3, if and to the extent in conflict with requirements imposed by relevant Substation Grantee operating codes, standard practices or Conditional Use Permit(s);
- (i) Section 5.4, it being agreed that Substation Grantee's self-insured status through the Municipality is accepted in lieu of compliance with Section 5.4 of the DEC.

8. Section 3.2(a) of the DEC is hereby deleted in its entirety and replaced with the following:

"The lighting system shall be designed to produce a minimum maintained lighting intensity, measured at grade at all points in the Common Area, consistent with that approved by the Municipality of Anchorage. Subject to the provisions of Section 5.2, each Party may elect to control the lighting system located on its Tract. The type and design of the Common Area light standards shall be approved by the Approving Party."

9. The following is added to the DEC as a new Section 3.2(g):

"(g) Notwithstanding anything to the contrary contained in this DEC, Substation Grantee may construct and operate (or cause to be constructed and operated) on Lot 11B, an electrical substation with above-ground, underground and surface facilities in the location as shown on the Revised Site Plan, as such substation may be modified from time to time by Substation Grantee in its sole discretion (subject to relevant codes, standard practices and Conditional Use Permits). Substation Grantee may limit access to such substation as reasonably necessary to insure the safety of the public and said substation improvements, including, without limitation, by the construction of fencing or walls as shown on the Revised Site Plan. In no event shall that portion of the southwest corner of Fragment Lot 11B lying outside the walled/fenced area shown on the Revised Site Plan ("Common Area Drive Section"), and constituting a



portion of a paved drive serving portions of the Shopping Center, be permanently changed or improved in any manner that would interfere with any use of the Common Area Drive Section as a paved drive without the prior, written consent of the Approving Party; provided that except during the months of November and December (or during the months of November or December but only in the case of an emergency), Substation Grantee may temporarily disturb the Common Area Drive Section if reasonably necessary in order to construct, maintain and repair improvements on Fragment Lot 11B, so long as Substation Grantee, at its sole expense, promptly returns the Common Area Drive Section to its condition immediately prior to commencement of such work. With the exception of the Common Area Drive Section, Substation Grantee shall be solely responsible for the construction, maintenance and repair of the electrical substation and areas lying inside the walled/fenced area located on Fragment Lot 11B and shown on the Revised Site Plan. The Fragment Lot 11B electrical substation is hereby excluded from the definition of "Utility Lines," as defined in this DEC."

10. Section 3.3(d) of the DEC is hereby deleted in its entirety and replaced with the following:

"No building or other structure (exclusive of any light poles, clock tower, free standing signs referred to in Section 5.3, flag poles referred to in Section 5.3(a), or electrical substation on Fragment Lot 11B) shall exceed the following size and height restrictions:

<u>TRACT</u>	<u>HEIGHT</u>	<u>ALLOWABLE FLOOR AREA</u>
On frag. lots 4, 5 & 6	24 feet	6,000 square feet (f.l. 4); 7,000 square feet (f.l. 5); 6,000 square feet (f.l. 6)
On frag. lots 2 & 11A	43 feet	83,000 square feet (f.l. 2); 92,000 square feet (f.l. 11A)
On frag. lots 7 & 8	60feet	48,000 square feet (f.l. 7) and 64,000 square feet (f.l. 8)



6,000 square feet

On frag. lot
11B-w/o
Substation

24 feet

Notwithstanding the foregoing, the height restrictions set forth herein shall not prevent any Occupant of a Tract occupying more than 8,000 square feet of building Floor Area from installing from time to time its then prototype exterior signage for its applicable trade name, so long as the same shall have been approved by Approving Party and otherwise comply with all laws and other governmental rules and regulations. The height of any building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment, or similar appurtenance located on the roof of such building; provided, however, the height of each building pad shall be subject to the prior written approval of the Approving Party. Any Party shall have the right to install, maintain, repair, replace, and remove Communications Equipment on the top of the building on its Tract so long as it does not extend above the height limits established above; provided, however, such Communication Equipment shall be screened so that it is not visible to customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas, and laser heads, together with associated equipment and cable.

11. Section 3.3(e) is hereby deleted in its entirety and the following provision substituted in lieu thereof: "No building or other structure on any Tract (other than fragment lots 2, 7, 8, 11A and 11B) shall exceed one (1) story."

12. The first sentence of Section 5.1(i) [page 13] of the DEC is hereby deleted in its entirety and replaced with the following:

"Subject to the limitations set forth in Section 5.1, no part of the Shopping Center (other than Fragment Lot 11B during such periods as the same is used for operation of an electrical substation) shall be used or occupied for purposes other than retail sales (or other retail purpose), Business Offices, Financial Retail Offices, Fast Food Restaurants (defined below), and sit down Restaurants; provided, however, and notwithstanding anything to the contrary in the DEC as amended herby, there shall be no restrictions or limitations on office use on Fragment Lots 7 and/or 8."



13. Section 5.3(a) and 5.3(a)(i) are each hereby deleted in their entirety and replaced with the following:

"(a) No freestanding sign shall be permitted within the Shopping Center except that one (1) Pylon Sign designated on the Revised Site Plan as Pylon Sign, and those two (2) Monument Signs designated on the Revised Site Plan as Monument Signs."

14. Section 6.2 is hereby amended to add the following as the final sentence:

"Notwithstanding anything to the contrary contained herein, so long as Fragment Lot 11B is used as an electrical substation, the Substation Grantee shall have the right to utilize and store thereon all Hazardous Materials as are reasonably necessary for the operation of said electrical substation, so long as such use and storage complies with all applicable Environmental Laws."

15. Section 7.4 of the DEC is hereby amended to reflect the following updated notice addresses:

IF TO APPROVING PARTY:

Kimco Glenn Square Anchorage, LLC
c/o Kimco Realty Corporation
3333 New Hyde Park Road , Suite 100
New Hyde Park
New York 11042-0022
Attn: General Counsel
Fax: (516) 869-7202

And to:

Kimco Realty Corporation
1621 B South Melrose Drive
Vista CA 92081
Attn: Kevin J. Smith,
Regional General Counsel Western Region
Fax: (760) 727 1430

With a copy to:

Patricia Gregory
Pachter, Gregory & Raffaldini, P.C.
790 Estate Drive, Suite 150
Deerfield, Illinois 60015
Fax: (847) 317-7355



16. Except as expressly modified by the terms and provisions of this Amendment, each of the terms and provisions of the DEC are hereby ratified and shall remain in full force and effect; provided, however, that any reference in the DEC to any defined terms shall be deemed, from and after the date hereof, to refer to the defined terms as modified hereby.

17. THE TERMS AND PROVISIONS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALASKA.

[Remainder of page intentionally left blank]



ACKNOWLEDGMENT

State of California
County of SAN DIEGO)

On July 14 2012 before me, NICOLE ANN CLARK
(insert name and title of the officer)

personally appeared Kevin Smith
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature N Clark (Seal)



EXHIBIT "A"

REVISED LEGAL DESCRIPTION

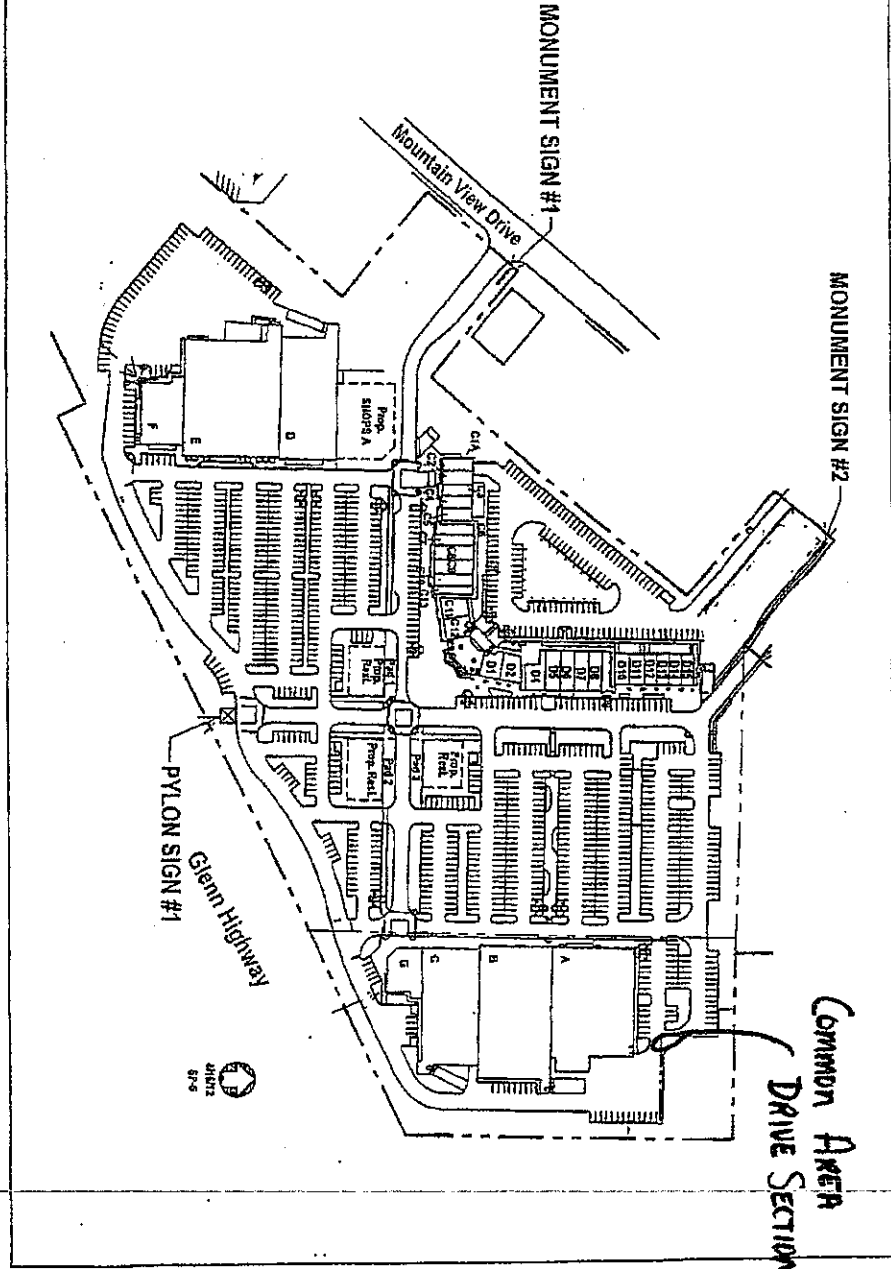
FRAGMENT LOTS 2, 4, 5, 6, 7, 8, 9, 11A, 11B, AND 13A, WITHIN TRACT 1A, MOUNTAIN VIEW DEVELOPMENT SUBDIVISION, LOCATED IN THE NORTH ½, SECTION 16, T13N, R3W, SEWARD MERIDIAN, ACCORDING TO [RE]PLAT OF COMMERCIAL TRACT FRAGMENT LOT SITE PLAN FOR MOUNTAIN VIEW DEVELOPMENT SUBDIVISION, TRACT 1A, PLAT NO. 2009-80, FILED IN THE ANCHORAGE RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA ON October 14, 2009.



EXHIBIT B

This site plan is intended to be an approximate depiction of the Shopping Center. No representation or warranty is made with respect to the actual location, number or configuration of Buildings, Curb Cuts, Abutting Thoroughfares, Parking Areas, Traffic Patterns, or of the Tenants intended to be within the Shopping Center. The Landlord specifically reserves the right to change the content and configuration of the Shopping Center from time to time and at any time the Landlord desires in its sole and absolute discretion, or as is required to conform to Local Governing Agencies.

The leased premises shall be the area identified below.



KIMCO
REALTY

Site #1360

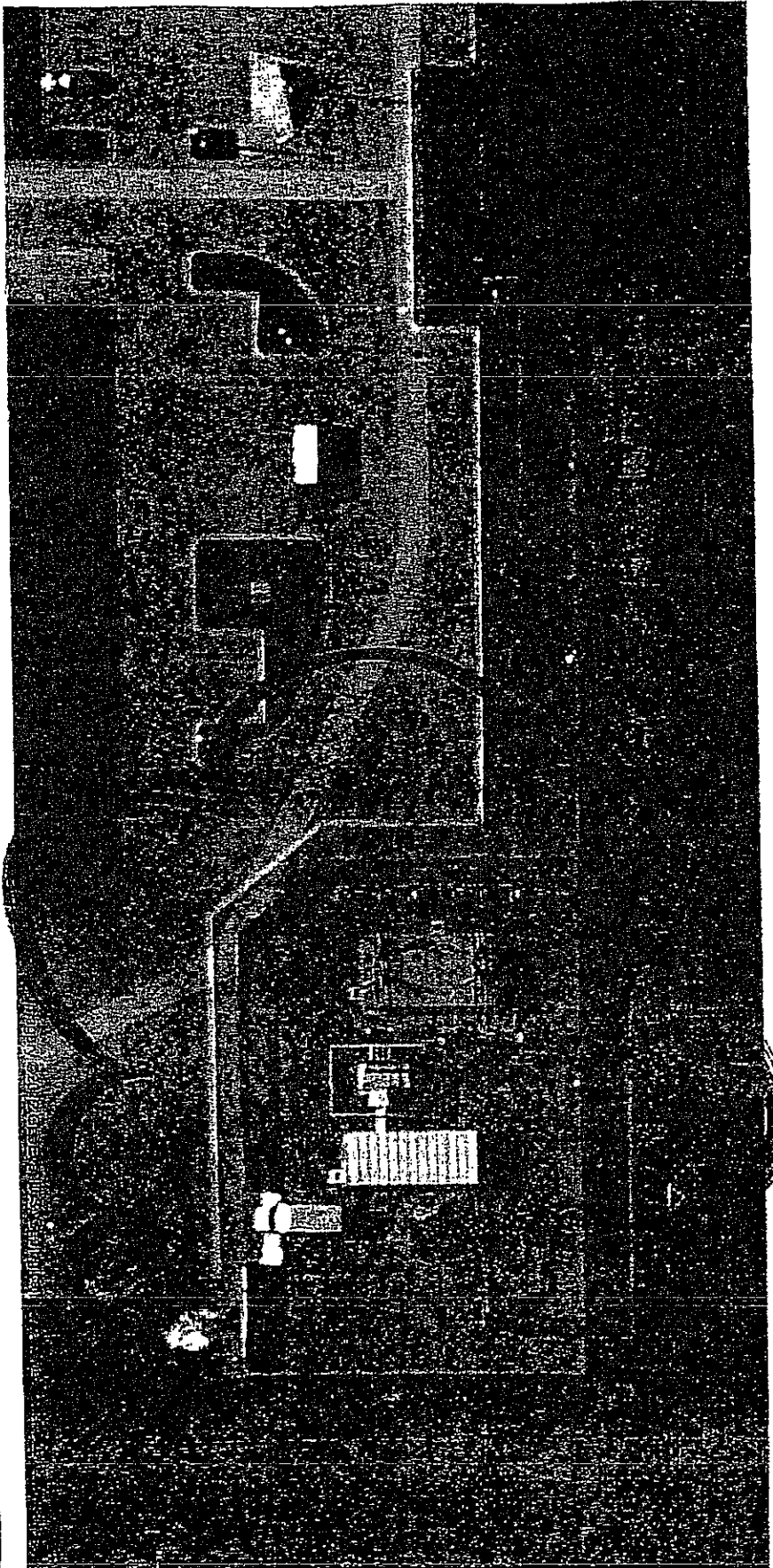
EXHIBIT B

PD: 5/24/12

PAGE 1

PAGE 1 OF 3

Barcode
Page 12 of 14
2012-040534-0



To see all the details that are visible on the screen, use the "Print" link next to the map.

N
↑

IMPROVEMENTS ON
FRAGMENT LDT 11B

EXHIBIT B
PAGE 3





**ELECTRIC AND TELECOMMUNICATIONS SYSTEMS
EASEMENT---UNDERGROUND AND OVERHEAD FACILITIES** CC

THIS AGREEMENT made this 4th day of July 2006 by and between **ANCHORAGE COMMUNITY DEVELOPMENT AUTHORITY** hereinafter called the **GRANTOR(S)**, whose address is 700 West 6th Avenue, Suite 206, Anchorage Alaska 99501, for good and valuable consideration, the receipt of which is hereby acknowledged, conveys and warrants to **ANCHORAGE, D/B/A MUNICIPAL LIGHT & POWER**, whose address is P.O. Box 196650, Anchorage, Alaska, 99519-6650, a municipal corporation of the State of Alaska, hereinafter called the **GRANTEE**, and to its successors and assigns an easement(s) in perpetuity to the following described real property that is more particularly described as follows and depicted on Exhibit "A" attached hereto and made a part thereof:

A strip of land 5 feet in width over that portion of Tract 1, Mountain View Development Subdivision according to the official plat thereof, filed under Plat 2006-62, records of the Anchorage Recording District, Third Judicial District, State of Alaska, the centerline of which is more particularly described as follows;

Commencing at the property corner designated M-24 as shown on said plat; thence along the property line designated L2 on said plat S 39°15'34" W a distance of 24.00 feet to the True Point of Beginning; thence departing said property line S 50°44'36" E a distance of 75 feet ending said centerline. This easement embraces an area of 375 square feet more or less.

to construct, reconstruct, maintain, repair, operate, improve, and update beneath, on and above the surface of the above described lands and/or all streets, roads, or abutting said lands, an electric transmission or distribution line(s) or systems and/or telecommunications line(s) or systems including but not limited to, cables, transformers, pads, pedestals, poles, overhead wires and associated apparatus, and such other structures as the Grantee may now or shall from time to time deem necessary, together with the right:

1. Of ingress and egress to said lands as may be reasonably necessary for the purposes described above.
2. To cut, trim, remove and control the growth of trees, shrubs, and other vegetation on, above or adjoining said lands which, in the sole, good faith judgment of Grantee, might interfere with the proper functioning and maintenance of said line or system.

3. To clear and keep the above-described lands free from fences, buildings, pavement, or other permanent structures, which, in the sole, good faith judgment of the Grantee, might interfere with the proper functioning and maintenance of said line or system. Grantor, upon written request to Grantee, shall be entitled to a written, revocable permit to locate specific improvements on these lands, which do not so interfere with the line or system.

4. To license, permit or otherwise agree to the exercise of these rights by any other authorized person, or entity.

All improvements placed on the property at the Grantee's expense shall remain the property of the Grantee and removable at its option. The failure of the Grantee, its successors or assigns, to exercise any of the rights herein granted shall not be construed as a waiver or abandonment of the right thereafter at any time and from time to time to exercise any or all of such rights.

IN WITNESS WHEREOF, the Grantor has hereunto set her hand and seal this 7TH day of July, 2006.

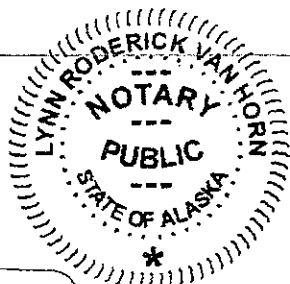
GRANTOR:
Anchorage Community Development Authority


Wendy Mikowski, Project Manager
Development Director

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this 7th day of July 2006, by Wendy Mikowski, Project Manager of the Anchorage Community Development Authority.

Notary Public Lynn Roderick Van Horn
My commission expires: 12/01/2009



After Recording Return to:
Kim A. Watsjold
Municipal Light & Power
1200 East 1st Ave.
Anchorage, Alaska 99501



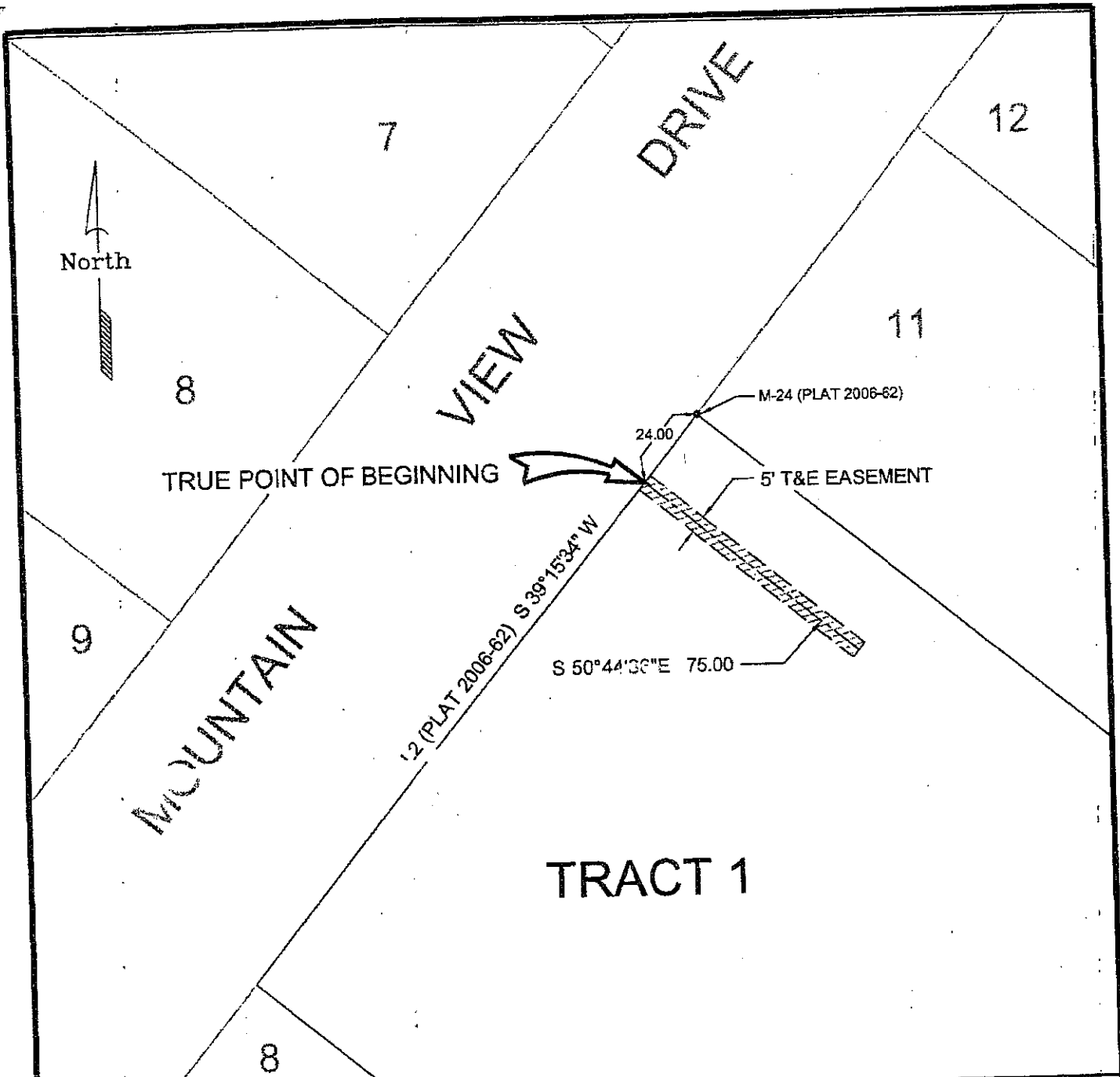


EXHIBIT A

MUNICIPALITY OF ANCHORAGE
MUNICIPAL LIGHT & POWER

LOT _____ TRACT 1 BLOCK _____
SUBDIVISION Mountain View Development Subdivision



2006-045570-0

SCALE: 1:40	DR. BY ADM	FILE NO. 06-29
DATE: 6/28/06	CKD. BY KAW	PAGE 3 of 3

A
L
A
S
K
A

2006-058728-0

Recording Dist: 301 - Anchorage
8/29/2006 1:46 PM Pages: 1 of 4



RETURN TO: Anchorage Water & Wastewater Utility
Private Development - (Bitsy Lawhorn)
3000 Arctic Blvd
Anchorage, AK 99503

Anchorage Recording District

CC

Anchorage Water & Wastewater Utility
EXTENDED WATER SERVICE CONNECTION AGREEMENT

File No. ECW 2006-03

Mountain View Development Subdivision, Tract 1,
N½ Section 16, T13N, R3W, S.M. Alaska
(Plat 2006-62, Anchorage Recording District)

THIS AGREEMENT between Kimco/POB Glenn Square Anchorage, LLC ("Owner") and Anchorage Water & Wastewater Utility (AWWU) is for the purpose of providing water service to Mountain View Development Subdivision, Tract 1 ("Property"), located in the N½ Section 16, T13N, R3W, S.M. Alaska per Plat 2006-62 recorded with the Anchorage Recording District, and commonly located northeast of the intersection of Glenn Highway and Mountain View Drive in Anchorage, Alaska. P.O'B. Montgomery & Company is the current owner of the Property. The Property is within a water service area certificated to AWWU by the Regulatory Commission of Alaska (RCA); and

WHEREAS, AWWU operates under rates, rules and regulations approved by the RCA, promulgated in the AWWU Water Tariff, which from time to time is subject to change; and

WHEREAS, the Property is located in the benefited area of a water main placed in Mountain View Drive right-of-way located west of and abutting the Property. However, Owner desires to connect the Property to the water main in Mountain View Drive right-of-way at its intersection with Porcupine Drive right-of-way. This connection would require the water service to be extended from Mountain View Drive east in Porcupine Drive right-of-way to the Property at the east terminus of Porcupine Drive right-of-way; and,

WHEREAS, AWWU has the capacity to extend water service to the Property through an extended water service connection;

WHEREAS, AWWU has no existing obligations to extend water services to the Property; and

WHEREAS, Daniel C. Slattery, Vice-President for the Owner, warrants that he has the authorization and the authority to enter into this Agreement for the Owner;

NOW THEREFORE, in consideration of the covenants contained herein, AWWU and the Owner agree as follows:

1. Owner will connect the Property to the AWWU water main located at the intersection of Mountain View Drive and Porcupine Drive;
2. Owner will excavate and construct the extended water service connection from the water main to the Property, aligning the extended water service connection southeast through Porcupine Drive right-of-way to the Property. All work shall be at Owner's sole cost and expense and shall be in accordance with AWWU standards, engineered plans to be presented to and approved by AWWU, and subject to the normal connection permitting and inspection by AWWU;
3. Owner shall obtain all necessary approvals, agreements and permits to include, but not necessarily limited to, right-of-way, building, construction, "wetland", and utility connection permits, and pay all fees prior to any construction;
4. Owner shall reimburse AWWU for any and all costs encumbered by AWWU and incident to Owner's construction and installation of the extended water service connection and service extension, and modifications thereto. Reimbursement shall become due within 30 days after the date of connection of the Property to the AWWU water main;
5. Owner shall assume all liability for damage, disruption, and interruption caused by construction and any reconstruction of the extended water service connection and shall

assume all responsibility for future operation, maintenance and repair of the extended water service connection (and service extension) from a water valve to be located at the Mountain View Drive southeast right-of-way line (extended) across Porcupine Drive to a valve to be located at the Property and then to the structure(s) on the Property, (Reference AWWU plan set 8349), to include, but not limited to, the following: thawing of the service (see 6 below), frost and flooding damage to public or private property, and erosion or damage caused, or cleanup required, by flooding or flushing;

6. In the event the service line to the Property becomes frozen, Owner shall be responsible for thawing the Property's service connection, extended water service connection, and service extension unless the freezing was caused by an act of the Utility not in conformity with its Water Tariff;
7. Owner shall submit a design drawing of the proposed extended water service connection and the on-property water service extension at the time of connection permit application. The design drawing shall comply with Water Tariff rules and regulations, and will include, but will not necessarily be limited to, the horizontal and vertical location of the service line and appurtenances, valve locations, pipe length, diameter, depth, and materials; and if applicable, backflow preventors;
8. The design and construction of the extended water service connection shall conform to AWWU's 2004 Design and Construction Practices Manual, the Municipality of Anchorage Standard Specifications (MASS), and the Uniform Plumbing Code and adopted local amendments thereto. The extended water service connection shall be not less than eight inches (8") in diameter. All water facilities shall be separated from any sewer service line sewer main, or sewer appurtenance by a distance of 10 feet or more (horizontally) and 18" or more (vertically), and shall be inspected in accordance with permit requirements. The Owner shall be responsible for repair and cost of repair to any and all utility piping encountered and damaged during the installation of the extended water service connection;
9. AWWU agrees to furnish water service to the Property at such rates and under such conditions as are set forth within the AWWU Water Tariff as approved by the RCA, or its successors. Owner acknowledges that tariff rates and conditions are subject to change. However, in no event shall this Agreement be construed to require AWWU to continue service to Owner in the event that Owner breaches any of the terms or conditions of this Agreement;
10. Owner shall provide AWWU with a record drawing upon completion of construction which shall include, but not necessarily limited to, the final extended connection location. The record drawing must show changes in stations or elevations, dimensions in relationship to distance from the platted road centerline or property line for any angle points or bends of pipe within the right-of-way. The record drawing shall also show horizontal and vertical locations of any utility crossings encountered during construction and the Owner shall update said record drawing should configuration change for future building accommodations;
11. In no event will Owner allow additional connections by other properties into this extended connection or the service extension thereof onto the Property;
12. In no event will Owner allow buildings with permanent foundations to be built over the extended service connection;
13. Owner agrees to hold harmless, indemnify and defend at Owner's expense, AWWU and the Municipality of Anchorage from any liability or responsibility for any loss or damage which may arise out of Owner's performance and satisfaction of any terms and conditions of this Agreement;
14. Owner of the Property may change from time to time. In the event Owner sells and/or conveys the Property to another, the subsequent owner shall be the Owner for purposes of this Agreement, and so on and so on with each Property conveyance or transfer. At any given time, the Owner and its grantees and assigns of the Property at that time shall be responsible for and subject to all the covenants, conditions, and stipulations specified herein pertaining to the Property;
15. The terms, conditions, and covenants contained in this Agreement shall transfer with the Property and from Owner (Seller) to Owner (Buyer) to be binding upon the successor, heir and/or assign hereto, to include all transfers of the subject Property, whether or not for



ECW #2006-03
Mountain View Development Subd., Tract 1
3 of 3

consideration, and a copy of this agreement shall be filed with the Anchorage District Recorder's Office, 550 West 7th Avenue, Suite 1200, Anchorage, Alaska 99501.

The clauses contained herein shall constitute the entire Agreement between the Owner and AWWU.

DATED at Anchorage, Alaska, this 15th day of August, 2006.

REQUESTED BY: David Irwin, Executive Vice President, P.O'B Montgomery & Co.
PROPERTY OWNER: Kimco/POB Glenn Square Anchorage, LLC
MAILING ADDRESS: 3220 Carillon Point
Kirkland, WA 98033

Subdivision	Tract	Grid	Tax Identification No.
Mountain View Development	1	NW1235	004-082-13

APPROVED BY:

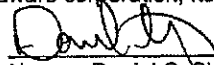
AGREED:

KIMCO/POB GLENN SQUARE ANCHORAGE, LLC
a Delaware limited liability company

By: Kimco Glenn Square 1360, Inc
a Delaware corporation, its managing member



General Manager
Anchorage Water & Wastewater Utility

By: 

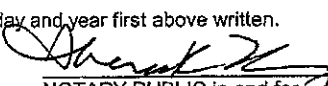
Name: Daniel C. Slattery
Title: Vice President

STATE OF Illinois)
County of DuPage) ss.

THIS IS TO CERTIFY that on this 15th day of August, 2006, before me, the undersigned, a Notary Public in and for the State of Illinois, duly commissioned and sworn as such, personally appeared Daniel C. Slattery, named in the foregoing instrument, and he acknowledged to me that he had in his official capacity aforesaid executed the foregoing instrument as the free act and deed of the said partnership for the uses and purposes therein stated.

WITNESS my hand and official seal on the day and year first above written.



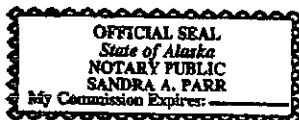


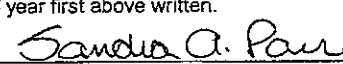
NOTARY PUBLIC in and for Illinois
My Commission Expires: 11-21-09

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on this 15th day of August, 2006, before me, the undersigned, Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Mark Premo, known to me to be the General Manager for the Anchorage Water and Wastewater Utility of the Municipality of Anchorage, Alaska, the corporation that executed the foregoing instrument, and he acknowledged to me that he executed said instrument, as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and that he is authorized to execute said instrument.

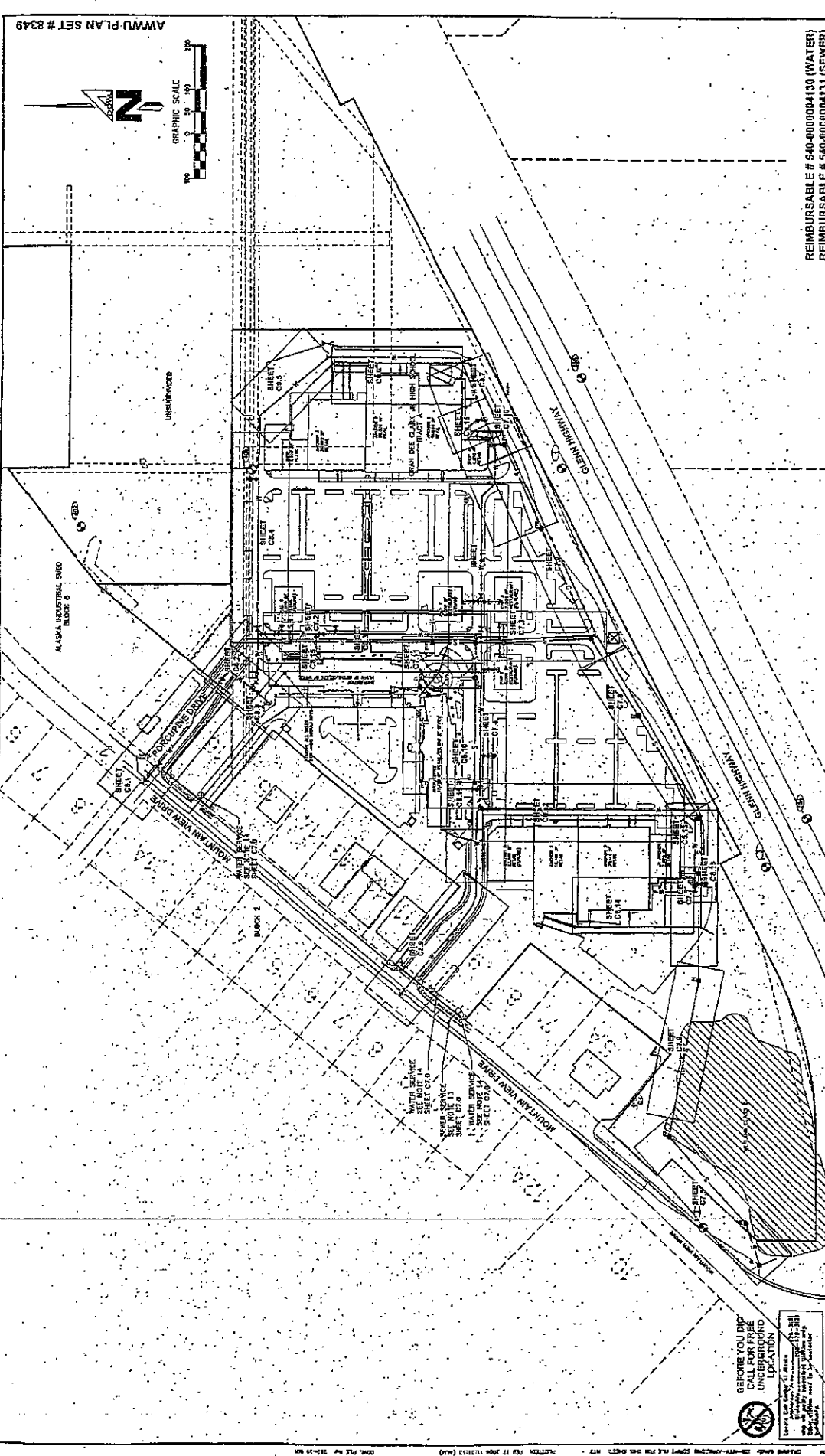
WITNESS my hand and official seal on the day and year first above written.





NOTARY PUBLIC in and for Alaska
My Commission Expires: 1-14-2010





AWWU PLAN SET # 8349



REIMBURSABLE # 540-000004130 (WATER)
REIMBURSABLE # 540-000004131 (SEWER)



ADOWL
ENGINEERS
3100 STREET, ANCHORAGE, ALASKA 99503
(907) 562-2000

THIS DOCUMENT AND THE INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF ADOWL ENGINEERS AND SHALL NOT BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF ADOWL ENGINEERS.

RECORD DRAWING - Note: To be used for record purposes only. This drawing is not to be used for construction purposes. It is based on periodic field observations by the engineer and is not a representation of the project or construction. DATA TRANSMITTED BY: [blank] DATE: [blank] TITLE: [blank] DRAWN BY: [blank] CHECKED BY: [blank] DATE: [blank] TITLE: [blank] COMPANY: [blank]

SCALE
SCALE: AS SHOWN
DATE: 10/1/98
DRAWN BY: [blank]
CHECKED BY: [blank]
DATE: [blank]
TITLE: [blank]
COMPANY: [blank]

NO.	DATE	BY	DESCRIPTION
1	10/1/98	[blank]	ISSUED FOR PERMITS
2	10/1/98	[blank]	ISSUED FOR CONSTRUCTION
3	10/1/98	[blank]	ISSUED FOR RECORD

BEFORE YOU DIG
CALL FOR FREE
UNDERGROUND
LOCATION

VERIFY THE SAN ADVERTISEMENTS
SCALE: AS SHOWN
DATE: 10/1/98
DRAWN BY: [blank]
CHECKED BY: [blank]
DATE: [blank]
TITLE: [blank]
COMPANY: [blank]



06-26
Tract 1,
ML View
Development

A
L
A
S
K
A

2007-032967-0

Recording Dist: 301 - Anchorage
5/25/2007 2:25 PM Pages: 1 of 4



**ELECTRIC AND TELECOMMUNICATIONS SYSTEMS
EASEMENT---UNDERGROUND AND SURFACE FACILITIES**

ee

THIS AGREEMENT made this 10th day of OCTOBER 2006 by and between KIMCO/PO'B GLENN SQUARE ANCHORAGE, LLC, hereinafter called the GRANTOR, whose address is 3220 Carillon Point, Kirkland, Washington 98033, for good and valuable consideration conveys and warrants to ANCHORAGE, D/B/A MUNICIPAL LIGHT & POWER, whose address is P.O. Box 196650, Anchorage, Alaska, 99519-6650, a municipal corporation of the State of Alaska, hereinafter called the GRANTEE, and to its successors and assigns an easement(s) in perpetuity to the following described real property, to wit:

A strip of land over that portion of Tract 1, Mountain View Development Subdivision according to the official plats, 2006-62 and 2006-64, records of the Anchorage Recording District, Third Judicial District, State of Alaska, the centerline of which is more particularly described as follows and depicted on Exhibit "A" attached hereto and made a part thereof:

Commencing at the property corner designated M-22 on plat 2006-62; thence along the northern property line of Fragment Lot 3 as shown on plat 2006-64 N39°15'34"E 94.99 feet; thence S50°44'26"E 225.00 feet to a point on the southern property line of Fragment Lot 3 and the True Point of Beginning; thence on the centerline of a 10 foot wide easement S50°44'26"E 5.00 feet to Point A; thence on the centerline of a 15 foot wide easement East 35.65 feet to Point B; thence on the centerline of a 12 foot wide easement N37°09'48"E 38.74 to Point C; thence on the centerline of a 10 foot wide easement East 426.27 feet; thence South 87.35 feet; thence East 272.90 feet to Point D; thence N77°30'47"E 305.33 feet; thence S89°59'55"E 111.45 feet; thence North 48.08 feet to Point E; thence S88°14'08"E 99.13 feet to the terminus of said easement at a point on the existing western edge of the T&E easement line as shown on plat 2006-62, said point bearing S73°35'18"W 41.65 feet from the southeast corner of said Tract 1 designated M-8 on plat 2006-62, together with:

Parcel A: A 10 foot wide easement, the centerline of which begins at the hereinabove described Point A; thence S39°15'37"W 160.22 feet; thence S51°17'05"E 61.91 feet; thence S39°45'47"W 16.27 feet; thence South 168.71 feet; thence S89°59'52"E 126.23 feet.

Parcel B: A 15 foot wide easement, the centerline of which begins at the hereinabove described Point B; thence East 16.50 feet.

Parcel C: A 12 foot wide easement, the centerline of which begins at the hereinabove described Point C; thence N37°09'48"E 57.86 feet; thence N11°09'07"E 34.60 feet; thence N39°44'03"E 65.16 feet; thence N46°59'57"E 71.70 feet; thence N50°44'23"W 16.95 feet; thence N39°15'37"E 427.49 feet; thence S83°54'15"E 95.36 feet; thence N89°52'50"E 14.67 feet; thence N00°07'10"W 16.32 feet; thence N89°52'50"E 113.64 feet; thence South 44.01 feet; thence East 399.13 feet; thence South 56.89 feet; thence East 190.77 feet to the terminus of said Parcel C at a point on the existing western edge of the T&E easement line as shown on plat 2006-62, said point bearing S14°35'30"W 156.27 feet from the property corner designated M-38 on plat 2006-62.

Parcel D: A 10 foot wide easement, the centerline of which begins at the hereinabove described Point D; thence North 212.05 feet; thence West 25.74 feet.

Parcel E: A 10 foot wide easement, the centerline of which begins at the hereinabove described Point E; thence North 15.19 feet; thence West 17.00 feet.

The sidelines of the described strip are to be lengthened or shortened to terminate on said property and existing easement lines. This easement contains an area of 41,742.2 square feet more or less.

to construct, reconstruct, maintain, repair, operate, improve, and update beneath and on the surface of the above described lands and/or all streets, roads, or highways abutting said lands, an electric transmission or distribution line(s) or systems, including but not limited to, cables, transformers, pads, pedestals and associated apparatus, and such other structures as the GRANTEE may now or shall from time to time deem necessary, together with the right:

1. Of ingress and egress to said lands as may be reasonably necessary for the purposes described above.
2. To cut, trim, remove and control the growth of trees, shrubs, and other vegetation on, above or adjoining said lands which, in the sole, good faith judgment of Grantee, might interfere with the proper functioning and maintenance of said line or system.
3. To clear and keep the above-described lands free from fences, buildings, pavement, or other permanent structures, which, in the sole, good faith judgment of the GRANTEE, might interfere with the proper functioning and maintenance of said line or system. GRANTOR, upon written request to GRANTEE, shall be entitled to a written, revocable permit to locate specific improvements on these lands, which do not so interfere with the line or system.



4. To license, permit or otherwise agree to the exercise of these rights by any other authorized person, or entity.

All improvements placed on the property at the GRANTEE'S expense shall remain the property of the GRANTEE and removable at its option. The failure of the GRANTEE, its successors or assigns, to exercise any of the rights herein granted shall not be construed as a waiver or abandonment of the right thereafter at any time and from time to time to exercise any or all of such rights.

GRANTOR: KIMCO/PO'B GLENN SQUARE ANCHORAGE, LLC
BY: ~~KIMCO GLENN SQUARE 1360, INC., its MEMBER~~

BY: Daniel C. Slattery

NAME: DANIEL C. SLATTERY

ITS: VICE PRESIDENT

STATE OF ^{Illinois} WASHINGTON)
COUNTY OF ^{DuPage} KING) ss.

Illinois

THIS IS TO CERTIFY that on this 10th day of October 2006, before me, the undersigned, a Notary Public in and for the State of ~~Washington~~, duly commissioned and sworn as such, personally appeared Daniel C. Slattery known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he signed the foregoing instrument as a free and voluntary act and for the uses and purposes therein mentioned, and that he was authorized to execute said instrument.

WITNESS my hand and seal on the day of the year first above written.

Theresa R. Zukowski
NOTARY PUBLIC in and for ~~Washington~~ Illinois
My commission expires: 11-21-09



After Recording Return to:
Kim A. Watsjold
Municipal Light & Power
1200 East 1st Ave.
Anchorage, Alaska 99501

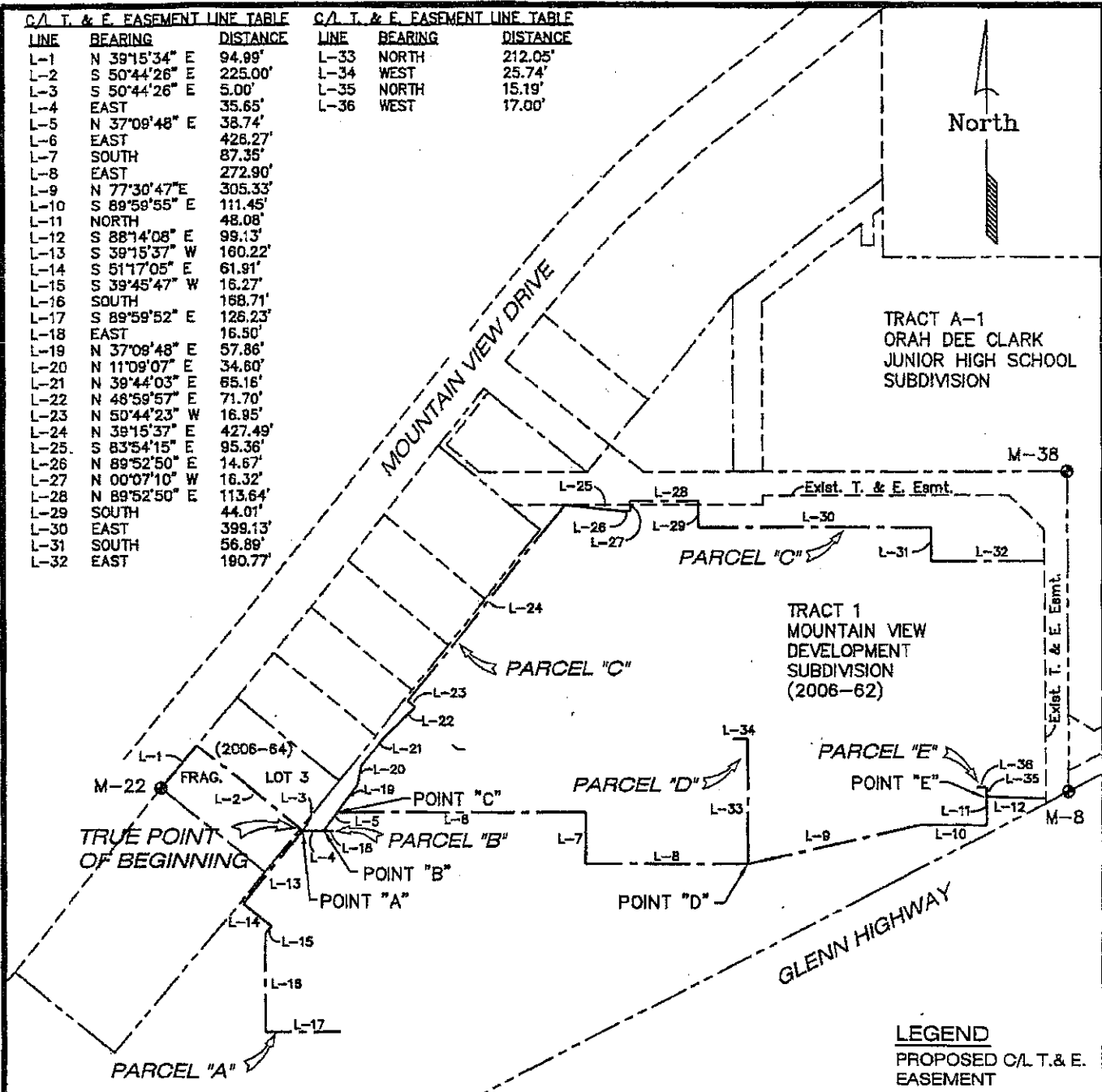


C/L T. & E. EASEMENT LINE TABLE

LINE	BEARING	DISTANCE
L-1	N 39°15'34" E	94.99'
L-2	S 50°44'26" E	225.00'
L-3	S 50°44'26" E	5.00'
L-4	EAST	35.65'
L-5	N 37°08'48" E	38.74'
L-6	EAST	426.27'
L-7	SOUTH	87.35'
L-8	EAST	272.90'
L-9	N 77°30'47" E	305.33'
L-10	S 89°58'55" E	111.45'
L-11	NORTH	48.08'
L-12	S 88°14'08" E	99.13'
L-13	S 39°15'37" W	160.22'
L-14	S 51°17'05" E	61.91'
L-15	S 39°45'47" W	16.27'
L-16	SOUTH	168.71'
L-17	S 89°58'52" E	126.23'
L-18	EAST	16.50'
L-19	N 37°08'48" E	57.86'
L-20	N 11°09'07" E	34.60'
L-21	N 39°44'03" E	65.16'
L-22	N 48°59'57" E	71.70'
L-23	N 50°44'23" W	16.95'
L-24	N 39°15'37" E	427.49'
L-25	S 83°54'15" E	95.36'
L-26	N 89°52'50" E	14.67'
L-27	N 00°07'10" W	16.32'
L-28	N 89°52'50" E	113.64'
L-29	SOUTH	44.01'
L-30	EAST	399.13'
L-31	SOUTH	56.89'
L-32	EAST	190.77'

C/L T. & E. EASEMENT LINE TABLE

LINE	BEARING	DISTANCE
L-33	NORTH	212.05'
L-34	WEST	25.74'
L-35	NORTH	15.19'
L-36	WEST	17.00'



EASEMENT
ATTACHMENT
EXHIBIT A

MUNICIPALITY OF ANCHORAGE
MUNICIPAL LIGHT & POWER

LOT _____ TRACT 1 BLOCK _____
SUBDIVISION MOUNTAIN VIEW DEVELOPMENT SUBD.

SCALE: N.T.S.	DR. BY ECB	FILE NO. 06-26
DATE: 10-03-06	CKD. BY ECB	Page 4 of 4



4 of 4
2007-032967-0

A
L
A
S
K
A

2007-074107-0

Recording Dist: 301 - Anchorage

11/29/2007 10:03 AM Pages: 1 of 7



cc

RETURN TO:

NOTE: (send a copy of the recorded document to Municipality of Anchorage, Planning Department, P.O. Box 196650, Anchorage, Alaska 99519)

THIS COVER SHEET HAS BEEN ADDED TO THIS DOCUMENT TO PROVIDE SPACE FOR RECORDING DATA. THIS COVER SHEET APPEARS AS THE FIRST PAGE OF THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD.

DO NOT DETACH

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2005-080

A RESOLUTION GRANTING APPROVAL OF A SITE PLAN REVIEW FOR THE MOUNTAIN VIEW COMMUNITY CENTER; TRACT A, ORAH DEE CLARK JUNIOR HIGH SCHOOL SUBDIVISION; LOTS 9, 10, & 16, BLOCK 7, ALASKA INDUSTRIAL SUBDIVISION; TRACT F, SECTION 16, T13N, R3W MORE PARTICULARLY DESCRIBED AS ALL THAT PORTION OF BUREAU OF LAND MANAGEMENT LOT TWO, THE SW ¼ NW ¼, AND THE SE ¼ NW ¼, SECTION 16, T13N, R3W SEWARD MERIDIAN, ALASKA, BOUNDED ON THE SOUTH BY GLENN HIGHWAY RIGHT OF WAY; ON THE NORTH BY ALASKA INDUSTRIAL SUBDIVISION, AND GLENN HIGHWAY NOW KNOWN AS MT. VIEW DRIVE; AND ON THE EAST BY ORAH DEE CLARK JUNIOR HIGH SCHOOL PLAT 71-257; BEING LOCATED IN THE ANCHORAGE RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA; GENERALLY LOCATED ON MOUNTAIN VIEW DRIVE BETWEEN THE GLENN HIGHWAY AND COMMERCIAL DRIVE.

(Case 2005-150; Tax ID. No. 004-051-02; 004-082-07; 004-051-12; 004-051-01)

WHEREAS, a petition has been received from P.O'B Montgomery, requesting site plan approval for The Mountain View Community Center, generally located on Mountain View Drive between the Glenn Highway and Commercial Drive, and

WHEREAS, a public hearing was held on December 12, 2005, and

WHEREAS, requests for preliminary plats and a rezone were also heard at the public hearing for the subject project and parcel, and

NOW, THEREFORE BE IT RESOLVED, by the Municipal Planning and Zoning Commission that:

- A. The Commission makes the following findings of fact:
1. The developer, P.O'B Montgomery, plans to construct a commercial center generally consisting of large and small retail and professional services and businesses. The commercial center is a major component of the overall intent to create a mixed use commercial and residential development.
 2. According to the definition of Large Retail Establishment in AMC 21.35.020, this development is considered a Large Retail Establishment, and falls under the site plan review requirements of AMC 21.50.320.
 3. A Memorandum of Understanding transfers approximately five acres from the Anchorage School District to the Municipality of Anchorage to facilitate the project. The five acres are an undeveloped portion of Clark Middle School.
 4. The proposed development is located within the Mountain View Arts and Cultural District. The project is envisioned as an undertaking to help revitalize the



Mountain View community by attracting patrons within and outside of the immediate area to support the commercial center.

6. The design consists of three large buildings and four pads totaling approximately 242,821 square feet of gross leaseable area. The L-shaped building is three stories in height with retail on the first floor and office space on the upper two floors.
7. A draft Traffic Impact Analysis was prepared by DOWL Engineers. The TIA concluded that two traffic mitigation measures are needed to facilitate the Mountain View Community Center development: 1) Install a traffic signal at the intersection of Mountain View Drive/South Loop Road and 2) convert Mountain View Drive from a four-lane roadway to a three-lane roadway from the Glenn Highway to Commercial Drive. Vehicular access to the development is proposed from Mountain View Drive which is classified as a Minor Arterial. Two entry/exit drives from Mountain View Drive provide access to the commercial center. Parking lots are located off a loop road that runs through the center parking lot.
8. The elevation difference between Mountain View Drive and the building site is approximately 20 to 25 feet.
9. The site plan aligns the grid to the south to accommodate a pedestrian overpass across the Glenn Highway from the Northway Mall area when the Glenn Highway to Seward Highway project occurs. According to the petitioner's representative, Mr. Tim Potter, the highway project includes a grade separated interchange for the Glenn Highway and Bragaw Street with sidewalk connections at grade with the road. There will also be a grade separation at Airport Heights/Mt. View Drive and the Glenn Highway. There are locations where a vertical bridge could be incorporated, depending on coordination with the highway plan.
10. The plaza and stairs adjacent to the L-shaped building connecting the upper and lower levels will have heated pavement in response to Winter City principles.
11. The Commission questioned at length the parking needs of the center and finds the number of parking spaces proposed is reasonable.
12. Following discussion regarding employee security at the rear parking lot of proposed Building B, the Commission finds that, according to the petitioner's representative Mr. David Irwin, security is handled at multiple levels, including security staffing, lighting. He also stated that some retailers have closed circuit television, and some escort employees out in the evenings. Mr. Irwin further stated that security patrols would be active after hours and he therefore did not believe controlled access to the site after hours is necessary.



B. The Commission approves the site plan for Mountain View Community Center, subject to the following conditions:

1. All construction and improvements related to this approval shall be substantially in compliance with the review application, narrative including the draft Traffic Impact Analysis and Preliminary Subsurface Exploration, and the following plans on file with the Planning Department, except as modified by conditions of this approval:

Mountain View Community Center, prepared by P.O' B Montgomery & Co, Benner Stange Associates, DOWL Engineers; sheet View Looking at Plaza no date, no sheet no.; sheets 1.0, 1.1, 1.2, and C1 dated Oct 11, 2005, L-1 dated October 11, 2005; sheets 2.1, 2.2, 2.3, 2.4, 3.1, and 3.2. dated Oct 11, 2005.

2. All lighting including building lighting shall use full cutoff fixtures as defined by IESNA and metal halide fixtures. Parking lot lighting illumination levels shall not exceed 0.5 footcandle and an average of 2.5 footcandle in accordance with IES Recommended Practices. The maximum illumination shall also meet the Recommended Practices accordingly.
3. No snow shall be stored on site other than temporary storage in the perimeter parking lot. All stored snow shall be removed from the site within 72 hours. Indicate snow storage areas on the landscape plan. Should a residential development border the subject site in the future, no snow removal or plowing shall occur between the hours of 10:00 pm and 7:00 am.
4. Pedestrian access shall be provided between the commercial center and any future residential development adjacent to the center.
5. If entering into a subdivision agreement, submit a copy of the Storm Water Pollution Prevention Plan to Project Management & Engineering.
6. Extend pavement heating to include the stairs linking the upper and lower levels of the L-shaped building.
7. Provide a similar degree of architectural treatment for the rear of Building A as provided for the front and side elevations to the extent possible without interfering with structural requirements.
8. Provide the following:
 - a. details of community spaces including seating and bike rack locations;



5 of 7

2007-074107-0

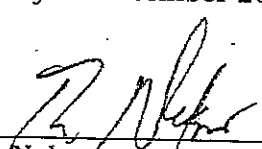
- b. details of all screening walls and fences;
 - c. lighting plan and indicate the proposed lamp wattage and footcandle illuminance;
 - d. parking lot sidewalks a minimum of six feet after accounting for vehicle overhang for the central parking lot island and five feet for all other sidewalks;
 - e. cut sheets for intended building lighting, parking lot, and sidewalk lighting;
 - f. sidewalks along the two entry drives from Mountain View Drive separated from vehicular traffic by a minimum of four feet to provide a buffer from traffic and for snow storage;
 - g. address how and where deliveries will be made to the retail shops planned for the L-shaped building if a loading and delivery area is not provided; and
 - h. final grading and drainage plan integrated with final landscape plan.
 - i. address accessibility in regards to ADA requirements.
 - j. Address with staff the safety and safety features of parking on the east side of Building B.
 - k. Resolve with staff and ASD the need and design for a safe pedestrian connection to the middle school site and ballfields along the north or east edge of the development.
 - l. Provide a transit stop and waiting area at the interior of the site.
 - m. Resolve with staff the need and standards for buffering to screen this site from the highway and school site.
 - n. Resolve with PM&E and Traffic the participation of the developer in intersection upgrades to meet the traffic generated by this site.
9. Resolve the following with the Traffic Department:
- a. The required Traffic Impact Analysis must be approved by the Municipal Traffic Engineer prior to rezone, replat, and development.
 - b. All construction within the surrounding rights of way shall conform to requirements in an approved TIA.
 - c. Vehicular access shall conform to an approved TIA.



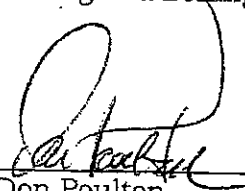
- d. All development shall be constructed to conform to approved TIA requirements.
- e. Outdoor storage areas, landscaping mechanical equipment spaces, loading bay areas, display areas, trash collection areas, recycling areas, and snow storage areas shall not be constructed or arranged in a manner that blocks vehicle or pedestrian lanes of travel or blocks the site distance for vehicle or pedestrian lanes of travel.
- f. Vehicle circulation aisles and vehicle parking stalls shall meet the requirements of AMC 21.45.080.W.4, design standards for parking spaces. Requirements include, but are not limited to, 9'x20' minimum parking stall size, minimum 24' wide vehicle circulation aisles.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 3rd day of April 2006. If the secretary received a written request and intent to appeal, this written decision/resolution of the Planning and Zoning Commission is final and any party may appeal it within twenty (20) days to the Board of Adjustment pursuant to Anchorage Municipal Code 21.30.030 and Anchorage Municipal Code of Regulations 21.10.304. If the secretary did not receive a written request and intent to appeal within seven (7) calendar days of the date the decision was made on the record, December 12, 2005, then this written decision is final and not appealable to any other administrative body. Final administrative decisions with no further administrative remedy may be appealed to the Superior Court within thirty (30) days.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission this 12th day of December 2005.



Tom Nelson
Secretary



Don Poulton
Chair

(Case-2005-150-Tax-ID-No. 004-051-02; 004-082-07; 004-051-12; 004-051-01)

sf



7 of 7

2007-074107-0

CC

A
L
A
S
K
A

2009-066063-0

Recording Dist: 301 - Anchorage

10/14/2009 10:03 AM Pages: 1 of 6



NOTE

Send original recorded document to:

Municipality of Anchorage
Planning Department
PO Box 196650
Anchorage, AK 99519-6650

THIS COVER SHEET HAS BEEN ADDED TO THIS DOCUMENT TO PROVIDE SPACE FOR RECORDING DATA. THIS COVER SHEET APPEARS AS THE FIRST PAGE OF THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD.

Anchorage Recording District

DO NOT DETACH

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2008-002

A RESOLUTION APPROVING A PRELIMINARY PLAT TO SUBDIVIDE TWO (2) TRACTS AND ONE (1) LOT INTO TWO DIFFERENT TRACTS AND ONE (1) DIFFERENT LOT WITH VACATION OF A CEA EASEMENT (PER PLAT 65-3), THE NORTH PORTION OF A T&E EASEMENT, AN ML&P EASEMENT AND A 30 FT DRAINAGE EASEMENT (ALL PER PLAT 2006-62) FOR TRACT 1, MOUNTAIN VIEW DEVELOPMENT SUBDIVISION AND TRACT A-1, ORAH DEE CLARK JUNIOR HIGH SCHOOL SUBDIVISION (PLAT 2006-62) AND LOT 2A, BLOCK 8 OF FIRST ADDITION ALASKA INDUSTRIAL SUBDIVISION (PLAT 65-3), GENERALLY LOCATED BETWEEN MOUNTAIN VIEW DRIVE AND THE GLENN HIGHWAY AND BETWEEN BRAGAW STREET AND AIRPORT HEIGHTS DRIVE WITHIN THE N½ OF SECTION 16, T13N, R3W, S.M., ALASKA (PROPOSED TRACT 1A, MOUNTAIN VIEW DEVELOPMENT SUBDIVISION; TRACT A-1A, ORAH DEE CLARK JUNIOR HIGH SCHOOL SUBDIVISION AND LOT 2A-1, BLOCK 8 OF FIRST ADDITION ALASKA INDUSTRIAL SUBDIVISION).

(Case S-11646-1; Tax ID Nos. 004-072-22; 004-082-14; 004-082-15; 004-082-16; 004-082-17; 004-082-18; 004-082-19; 004-051-16; 004-051-17; 004-051-18; 004-051-19; 004-051-20; 004-082-20; 004-051-21; 004-051-14; 004-051-09)

WHEREAS, a request has been received from the Municipality of Anchorage, the Anchorage Community Development Authority (ACDC) and Kimco/POB Glenn Square Anchorage, LLC to subdivide two (2) tracts and one (1) lot into two different tracts and one (1) different lot with vacation of a CEA easement (per plat 65-3), the north portion of a T&E easement, an ML&P easement and a 30 ft drainage easement (all per plat 2006-62) for Tract 1, Mountain View Development Subdivision and Tract A-1, Orah Dee Clark Junior High School Subdivision (Plat 2006-062) and Lot 2A, Block 8 of First Addition Alaska Industrial Subdivision (Plat 65-3), generally located between Mountain View Drive and the Glenn Highway and between Bragaw Street and Airport Heights Drive within the N½ of Section 15, T13N, R3W, S.M., Alaska (proposed Tract 1A, Mountain View Development Subdivision, Tract A-1A, Orah Dee Clark Junior High School Subdivision and Lot 2A-1, Block 8 of First Addition Alaska Industrial Subdivision); and

WHEREAS, notices were published, posted and mailed and a public hearing was held on January 14, 2008.

NOW, THEREFORE, BE IT RESOLVED, by the Municipal Planning and Zoning Commission that:

- A. The Commission makes the following findings of fact:
1. This subdivision adjusts the boundaries of two tracts and one lot. Additional land will be obtained from the Anchorage Community Development Authority (ACDA) which owns Lot 2A, Block 8 of First Addition Alaska Industrial Subdivision (Plat 65-3) and from Tract A-1, Orah Dee Clark Junior High School Subdivision owned by the Anchorage School District (ASD).



2 of 6

2009-066063-0

2. The replat is necessary to adjust the boundaries for the commercial development.
 3. Vacation of utility and drainage easements are requested to allow further development of the site.
 4. Proposed developments within the site include: relocation of the ML&P utility substation from Lot 1, Block 8, First Addition Alaska Industrial Subdivision to the northeastern corner of Tract 1A, Mountain View Development Subdivision, and construction of a one-story, 12-screen movie theater with seating capacity of 2,100 seats proposed to be located at the northern end of the development.
 5. Comments from the Anchorage School District (ASD) stated that there is need for pedestrian access to this site from the Clark Middle School site.
 6. A pedestrian access from this site to Clark Middle School and the ball fields does not need to be required with the tract plat (Case S-11641-1) as it will be addressed during the site plan review (Case 2008-016).
 7. A Traffic Impact Analysis (TIA) has been approved for the entire site; accounting for the traffic generated by the theater is a minor amendment. Follow up to the TIA is currently under way, but the Traffic Department did not have any comments at this time, other than to amend the final TIA in accordance with any approved changes. The Traffic Department had no objection to preliminary plat.
 8. The changes to the tract plat are minor in nature and are necessary for further development of the site.
 9. Vacation of the utility and drainage easements are appropriate given the proposed redevelopment of the site. Their continued existence would impede development. Easements will be rededicated through the final plat process to ensure that utilities are properly accommodated.
- B. The Commission APPROVES the following vacation requests subject to the non-objection of all affected utilities and subject to recording a final plat within 18 months:
1. A 10' x 613'± CEA Easement along the southeasterly boundary of Lot 2A, Block 8, First Addition Alaska Industrial Subdivision dedicated with Plat 65-3.
 2. A 30' storm sewer easement extending south from the location of the new storm drain facilities to the south property boundary. (The dimension of the northern segment of the existing 30-foot easement to be retained is not available as of this writing).
 3. A T&E easement along a portion of the western boundary of existing Tract A-1, Orah Dee Clark Jr. High School Subdivision that is common to



Lot 2A, Block 8, First Addition Alaska Industrial Sub and Tract 1, Mountain View Development Subdivision dedicated with Plat 2006-62.

4. An ML&P Exclusive Electric Easement adjoining Lot 2A, Block 8, First Addition Alaska Industrial Subdivision dedicated with Plat 2006-62.
- C. The Commission APPROVES the preliminary plat for 18 months subject to the following conditions:
1. Resolving utility easements.
 2. Providing a bus stop boarding area within the Glenn Square Development as approved by the Public Transportation Department prior to July 2008.
 3. Dedicating a 30-foot storm sewer easement for the relocated storm drain facilities within Tract A-1A. Orah Dee Clark Junior High School Subdivision.
 4. Dedicating a 4-foot wide footing easement to allow half of the fence footing (around the perimeter of the new ML&P utility subdivision) to be constructed underground on ASD land, and also to accommodate a ground conductor which will be buried approximately 3 foot from the fence and 3 foot below the surface.
 5. Carrying over the following notes from Plat 2006-06:
 - a. "The Type 'C' wetlands boundary shown on this plat is approximate in location and was obtained from 2005 MOA GIS data. The wetlands on Tract 1A, shall not be encroached upon and shall remain undisturbed in a natural state unless as otherwise approved by relevant authorizations from the Corps of Engineers or other permitting agencies."
 - b. "Development of the Type 'C' wetlands will require a hydrology analysis and the installation of a drainage system equivalent to the function that is performed by the wetlands."
 - c. "The Type 'C' wetlands as shown will be the recipient of concentrated discharge flows from Tract 1A."
 - d. "Direct vehicular access to the Glenn Highway from any tract or lot within subdivision is prohibited."
 - e. "Development on any lot or tract within this subdivision shall be in conformance with the final approved Traffic Impact Analysis (TIA) and any future amendment(s) to the approved TIA."

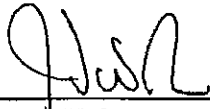


- f. "Any existing or proposed access to right-of-way from any lot or tract within this subdivision shall be in conformance with the approved TIA and any future(s) to the approved TIA or with the approval of the Municipal Traffic Engineer."
 - g. "Landscaping shall be installed with the development of the property in accordance with the approved site and landscaping plan or any amendments to the plan approved by the Planning and Zoning Commission or its designee that is on file in the Planning Department. The required landscaping shall be maintained by the owner and/or his/her designee."
 - h. "Replacement of any vegetation removed as the result of utility repair and/or maintenance shall be the responsibility of the property owner and/or his designee(s). Installation of landscaping shall occur by the following planting season and shall be in conformance with the approved site and landscaping plan on file in the Planning Department, or any amendments to the landscape plan approved by the Planning and Zoning Commission, or its designee."
 - i. "The water easement along the southerly boundary lines of Tract 1A and Tract A-1A is created for an existing 42" concrete cylinder pipe (C.C.P.) waterline. An accurate physical location of said water line was not attainable. A combination of as-built information supplied by Anchorage Water and Wastewater Utility (AWWU drawing Numbers 6868, 6873 and 6876) and limited field survey data was used to position said easement."
6. Making the following drafting corrections:
- a. Street Names: Should be North Bragaw Street.
 - b. Street Names on Vicinity Map: North Bragaw Street should be labeled.



PASSED AND APPROVED by the Municipal Planning and Zoning Commission
on the 14th day of January 2008.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission
this 3rd day of March, 2008. This written decision/resolution of the
Planning and Zoning Commission is final and any party may appeal it within twenty
(20) days to the Board of Adjustment pursuant to Anchorage Municipal Code
21.30.030.



Tom Nelson
Secretary

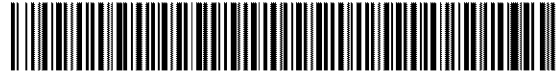


Toni M. Jones
Chair

Case S-11646-1
(Reference Case S-11647-1)
(Tax ID Nos. 004-072-22; 004-082-14; 004-082-15; 004-082-16; 004-082-17;
004-082-18; 004-082-19; 004-051-16; 004-051-17; 004-051-18; 004-051-19;
04-051-20; 004-082-20; 004-051-21; 004-051-14; 004-051-09)

(mo)





WHEN RECORDED RETURN TO

Name Alaska Housing Finance Corporation and
Address 4300 Boniface Parkway, Suite 200, Anchorage, AK 99508

C13-032

QUIT CLAIM DEED

THE GRANTOR **Alaska Housing Finance Corporation, an Alaska corporation**, whose mailing address is: **4300 Boniface Parkway Suite 200, Anchorage, AK 99508**

for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION

conveys and quit claims to **Alaska Corporation for Affordable Housing, an Alaska non-profit corporation**, whose mailing address is: **4300 Boniface Parkway, Suite 200, Anchorage, AK 99508**

the following described real estate, situated in the Recording District of **Anchorage, Third Judicial District, State of Alaska**, together with all other acquired title of the grantor(s) therein:

Parcel 1:

Lot Two "A" One (2A-1), Block Eight (8); First Addition, Alaska Industrial Subdivision, according to the official plat thereof, filed under Plat No. 2009-79 in the records of the Anchorage Recording District, Third Judicial District, State of Alaska

Parcel 2:

Fragment Lot Fourteen "A" (14A), Tract One "A" (1A), Commercial Tract Fragment Lot Site Plan for Mountain View Development Subdivision, according to the official plat thereof filed under Plat No. 2009-80 lying within Tract One "A" (1A) of Mountain View Development Subdivision according to the official plat thereof, filed under Plat No. 2009-79 in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

Dated this 12th day of February, 2013.

Alaska Housing Finance Corporation

Michael Buller

By: Michael Buller
Deputy Executive Director

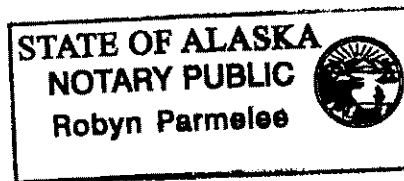
Its:

STATE OF ALASKA)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this 12th day of February, 2013, before me the undersigned Notary Public, personally appeared Michael Buller known to me and to me known to be the Deputy Executive Director of the corporation that executed the within instrument and known to me to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same pursuant to its by-laws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

Robyn Parmelee
Notary Public in and for Alaska
My commission expires: w/office



This instrument is being recorded by Fidelity Title Agency of Alaska as an accommodation only. It has not been examined as to its effect, if any, on the title of the estate herein.

