

Klamath Falls, OR
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1 WHEN RECORDED RETURN TO:

2
3 Kay L. Brossard, Esq.
4 Wolfstone, Panchot & Bloch, P.S., Inc.
5 1500 Norton Building
6 801 Second Avenue
7 Seattle, WA 98104-1577

R-49974

8
9 DECLARATION OF CROSS EASEMENTS
10 AND
11 RESTRICTIVE COVENANTS
12

13 THIS DECLARATION is made as of this 10th day of March, 1997, by and
14 between OZ INVESTMENT, L.L.C, an Oregon limited liability company (hereinafter
15 called "OZ") and NO APPLES I - Klamath, L.L.C., a Washington limited liability
16 company (hereinafter called "NAI").
17

18 RECITALS:
19

20 A. The property subject to this Declaration is referred to herein as
21 Parcels 1 and 2 (said parcels are legally described in Exhibit A attached
22 hereto and are collectively referred to as the "Real Estate").
23

24 B. OZ is the fee owner of the Real Estate. In conjunction with the
25 recording of this Declaration, OZ will sell and convey Parcel 2 of the Real
26 Estate to NAI and will retain ownership of Parcel 1 of the Real Estate.
27 Parcels 1 and 2 are depicted on the plot plan attached hereto marked Exhibit B.
28

29 C. Ownership of Parcels 1 and 2 may be further separated in the future.
30 The fee owner from time to time of any portion of the Real Estate is
31 hereinafter sometimes referred to as an "Owner".
32

33 D. It is also contemplated and expected that OZ will acquire fee
34 ownership of Parcel 3 and Parcel 4 (as said parcels are legally described in
35 Exhibit A attached hereto and are depicted on Exhibit B). At such time as said
36 parcels are acquired, the terms of Article 7 below shall apply.
37

38
39 NOW THEREFORE:
40

41 In consideration of the premises and the various undertakings hereinafter
42 set out, and of the mutual covenants and agreements hereinafter contained, the
43 parties hereto, on behalf of themselves and their successors and assigns, do
44 hereby establish the covenants, conditions, and restrictions hereinafter set
45 forth, and grant to each other the easements hereinafter described.
46
47

48 1. ARTICLE 1 - EASEMENTS
49

50 1.1. Monument Sign Easement on Parcel 1. OZ does hereby grant to NAI,
51 its successors and assigns, for the benefit of Parcel 2, an easement for the
52 purpose of erecting and maintaining a monument sign to be located within ninety

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(90) feet of the northeastern corner of Parcel 2, as depicted and identified on Exhibit C attached hereto as the "Monument Easement." Said monument sign shall be of such size, design and materials as shall comply with all governmental requirements and shall be subject to the prior approval of both OZ and NAI, which approval shall not be unreasonably withheld. OZ shall have the right to grant sign panel representation rights on said monument sign to up to two (2) other occupants of Parcel 1, provided that the costs of manufacturing, installing and maintaining said sign and the cost of any utilities to said sign shall be shared by the users of said sign in the same proportion as OZ and the occupant of Parcel 2 are entitled to use the available sign panel area. The occupant of Parcel 2 shall have the right to be represented on the top most panel on said sign, which panel shall occupy fifty percent (50%) of the total of all sign panel area. Said easement in favor of Parcel 2 shall include rights of access over the strip of land running north and south as depicted and identified on Exhibit C attached hereto as the "Monument Easement", for the purpose of installing and maintaining said sign and for the purpose of excavating and installing utility lines to the location of said sign. Said utility lines shall be located and any excavation shall be done in such manner as to reasonably minimize the disruption to any existing improvements to Parcel 1, and any existing improvements to Parcel 1 at the time of such excavation shall be restored to their condition prior to such excavation. Notwithstanding the foregoing, in the event the owner or occupant of Parcel 2 does not install a monument sign as provided in this Section 1.1, OZ shall have the right to install a monument sign at the location set forth in, and pursuant to the other terms of, this Section 1.1; subject to the occupant of Parcel 2 having the same rights of panel representation as if said occupant had erected the monument sign itself; provided, however, in the event the occupant of Parcel 2 does not install a panel on said monument sign within 12 months following receipt of written notice from OZ that the monument sign is completed and ready to receive sign panels, then the occupant of Parcel 2 shall be deemed to have waived its right of representation on said monument sign. It is understood and agreed that if the right of representation of the occupant of Parcel 2 is waived, then the occupant of Parcel 2 shall not be obligated to contribute toward the cost of installing or maintaining said sign and shall be entitled to a full refund of any sums paid by it towards the cost of said monument sign. It is further understood and agreed that if the right of representation of the occupant of Parcel 2 is waived, NAI and said occupant shall execute a recordable quit claim instrument acknowledging that the Monument Easement is canceled and terminated.

1.2. Pylon Sign on Parcel 1. If OZ shall erect and maintain a pylon sign on Parcel 1 (which sign is expected to be located approximately five hundred fifty (550) feet north of the building contemplated on Parcel 2 and adjacent to the entrance opposite Onyx Road, as depicted on Exhibit B attached hereto), said pylon sign shall be of such size, design and materials as shall comply with all governmental requirements. In the course of obtaining governmental approvals for such sign, OZ shall use its best efforts to obtain sign panel representation rights for the occupant of Parcel 2. Subject to governmental approval, OZ shall have the right to grant sign panel representation rights on said pylon sign to up to five (5) occupants of the Shopping Center. If OZ's best efforts result in governmental approval of sign representation rights for the occupant of Parcel 2, OZ and NAI hereby grant sign panel representation rights on said pylon sign to the occupant of Parcel 2, in the fifth and bottom most position thereon, which shall represent at

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1 least twenty (20%) of the sign panel area of the pylon sign. Notwithstanding
2 the foregoing, in the event the occupant of Parcel 2 does not install a panel
3 on said pylon sign within 12 months following receipt of written notice from OZ
4 that the pylon is completed and ready to receive sign panels and boxes, then
5 the occupant of Parcel 2 shall be deemed to have waived its right of
6 representation on said pylon. The costs of manufacturing, installing and
7 maintaining said sign and boxes and the cost of any utilities to said sign
8 shall be shared by OZ and the occupant of Parcel 2 in the same proportion as OZ
9 and the occupant of Parcel 2 are entitled to use the available sign panel area,
10 it being understood and agreed that if the right of representation of the
11 occupant of Parcel 2 is waived, then the occupant of Parcel 2 shall be entitled
12 to a full refund of any sums paid by it towards the cost of said pylon sign.
13 It is further understood and agreed that if the right of representation of the
14 occupant of Parcel 2 is waived, NAI and said occupant shall execute a
15 recordable quit claim instrument acknowledging that the right of representation
16 is canceled and terminated. If despite OZ's best efforts, governmental
17 approval of sign representation rights for the occupant of Parcel 2 is denied,
18 OZ shall have the right to grant sign panel representation rights on said fifth
19 and bottom most position on the pylon sign to another occupant of the Shopping
20 Center.

21
22 1.3. Pylon Sign and Public Utility Easement on Parcel 2. NAI does
23 hereby grant to OZ, its successors and assigns, for the benefit of Parcel 1, an
24 easement for the purpose of erecting and maintaining a pylon sign to be located
25 at the southeastern corner of Parcel 2, as depicted on Exhibit D attached
26 hereto. Said pylon sign shall be of such size, design and materials as shall
27 comply with all governmental requirements and shall be subject to the prior
28 approval of both OZ and NAI. OZ shall have the right to grant sign panel
29 representation rights on said pylon sign to up to three (3) occupants of the
30 shopping center, provided that the costs of manufacturing, installing and
31 maintaining said sign and the cost of any utilities to said sign shall be paid
32 for by OZ or the occupants of the shopping center using the pylon. The
33 occupant of Parcel 2 shall have no right to be represented on said sign and
34 shall bear no costs in relation thereto. Said easement in favor of Parcel 1
35 shall include rights of access over a ten (10') foot wide strip of land running
36 north and south as depicted on Exhibit D attached hereto, for the purpose of
37 installing and maintaining said sign and for the purpose of excavating and
38 installing utility lines to the location of said sign and for the purpose of
39 excavating and installing other public utility lines serving Parcel 1 and
40 Parcel 2. Said utility lines shall be located and any excavation shall be done
41 in such manner as to reasonably minimize the disruption to any existing
42 improvements to Parcel 2, and any existing improvements to Parcel 2 at the time
43 of such excavation shall be restored to their condition prior to such
44 excavation.

45
46 1.4. Parking Easement on Parcel 2. NAI does hereby grant to OZ, its
47 successors and assigns, for the benefit of that portion of Parcel 1 designated
48 as the "Benefitted Parcel" on Exhibit E attached, a non-exclusive easement on
49 and over the thirteen (13) parking spaces designated as the "Parking Easement
50 Area" on Exhibit D attached, for the purpose of parking vehicles owned or
51 operated by OZ, its successors, assigns, the occupant of the Benefitted Parcel,
52 and their agents, customers, invitees, licensees, and employees, while such
53 persons are shopping, working or providing services to the Benefitted Parcel.

1 From and after the date a building is constructed on the Benefitted Parcel, the
2 Owner or occupant of the Benefitted Parcel shall be responsible for reimbursing
3 the Owner or occupant of Parcel 2 for one-half (1/2) of the reasonable costs
4 incurred by said party in maintaining, repairing and replacing the paving,
5 bumpers, stripping and other parking area improvements located in the Parking
6 Easement Area. The foregoing easement is revocable by the Owner of Parcel 2,
7 upon one hundred twenty (120) days written notice to the Owner of Parcel 1, in
8 the event the exclusive use of said Parking Easement Area by the Owner or
9 occupant of Parcel 2 is necessary to comply with the parking ratio requirements
10 of the ECR or codes or ordinances that are applicable to Parcel 2 at the time
11 of such notice, unless the Owner of Parcel 1 is able to provide to the Owner of
12 Parcel 2, within said one hundred twenty (120) day period, evidence
13 satisfactory to the Owner of Parcel 2 that the ECR, codes and ordinances do not
14 require, or have been modified to allow, the non-exclusive use of the Parking
15 Easement Area for the benefit of the Benefitted Parcel without causing Parcel 2
16 to violate the parking ratio requirements then applicable to Parcel 2.

17
18 1.5. Storm Sewer Easement on Parcel 2. NAI does hereby grant to OZ,
19 its successors and assigns, for the benefit of Parcel 1, an easement for the
20 purpose of installing and maintaining an underground storm sewer to be located
21 along the western boundary of Parcel 2, as depicted and identified on Exhibit D
22 attached hereto as the "Storm Sewer Easement". Said storm sewer shall be
23 installed and maintained in compliance with all governmental requirements,
24 with the cost and expense of such storm sewer improvements on Parcel 2 to be
25 shared equally by OZ and NAI. Any excavation shall be done in such manner as
26 to reasonably minimize the disruption to any existing improvements to Parcel 2,
27 and any existing improvements to Parcel 2 at the time of such excavation shall
28 be restored to their condition prior to such excavation.

29
30 1.6. Separate Access Easement. In addition to, and not in derogation of
31 any easement granted pursuant to the ECR (as hereinafter defined) OZ does
32 hereby grant to NAI, its successors and assigns, for the benefit of Parcel 2, a
33 perpetual non-exclusive easement for the purpose of ingress and egress over and
34 across the area designated "Separate Access Easement" as depicted and
35 identified on Exhibit B attached hereto. Said easement area shall be
36 maintained in accordance with the requirements of the ECR and OZ shall not
37 close, alter or restrict movement through the Separate Access Easement Area
38 without the prior written consent of NAI, which consent shall not be
39 unreasonably withheld.

40
41 1.7. Ratify Other Existing Easements. The parties hereby ratify and
42 confirm the benefits and burdens of the ingress/egress and other easements set
43 forth in Sections 5.a., 5.c., 5.d. and 6.a.(3) of that certain Easements with
44 Covenants and Restrictions Affecting Land ("ECR") dated May 21, 1991, recorded
45 on June 25, 1991, in Volume M-91 at page 12081 in the real estate records of
46 Klamath County, Oregon, which easements benefit and burden Parcel 1 and
47 Parcel 2 pursuant to the terms of the ECR. The parties also hereby ratify and
48 confirm the ingress/egress easement reserved to the grantor under that certain
49 Statutory Warranty Deed from OZ to NAI dated _____, 1997, which deed
50 conveys Parcel 2 to NAI, recorded on _____, 1997, as Document
51 Number _____, in the real estate records of Klamath County, Oregon.
52 Subject to Article 2, Article 4 and Article 5 hereof and the sign design
53 approval rights set forth in this Article 1, nothing herein grants to NAI, its

successors or assigns, any rights of approval with respect to the development of Parcel 1.

1.8. Indemnity. Each party (the "Indemnitor") hereto hereby agrees to indemnify, defend and hold the other party (the "Indemnatee") harmless from and against any loss, cost, liability, damages, expense, claim, or cause of action, for personal or bodily injury, death or damage to property, incurred by or made or asserted against the Indemnatee, and which arises out of or from any act or omission, negligence or intentional act of the Indemnitor, or its employees, contractors, guests or invitees, in connection with the installation or maintenance of improvements pursuant to the easements herein granted, or arising otherwise out of activities engaged in pursuant to the easements herein granted.

1.9. Other. The easements herein granted in each instance shall be perpetual and shall be appurtenant to each designated Parcel of the grantee of such easement and in each instance shall be non-exclusive and for the use and benefit, in common with grantor and others, of such grantee, its heirs, executors, administrators, successors, assigns, tenants, and subtenants.

2. ARTICLE 2 - SPORTING GOODS RESTRICTION

2.1. OZ and its successors and assigns shall not sell, lease, sublease or assign any portion of Parcel 1 to a merchant that is generally known or identified in the industry as being predominately in the business of selling "Sport Merchandise" as defined in Paragraph 2.4 below, and no portion of Parcel 1 nor any building or other improvement at anytime situated thereon shall be used for the sale of Sport Merchandise except as allowed under Paragraphs 2.2, 2.3 and 2.5 below.

2.2. The foregoing restriction shall not apply to a tenant, Owner or occupant operating on the Real Estate, if (a) such party occupies 40,000 square feet or more of space in the Shopping Center and (b) at the time such occupant takes occupancy and opens for business in the Shopping Center such occupant is not generally known or identified in the industry as being predominately in the business of selling Sport Merchandise. Accordingly, any such occupant who meets the conditions set forth in (a) and (b) may sell Sport Merchandise in its premises in the Shopping Center without restriction as to percentage of sales or allocation of sales area and may evolve to or become, after the date it takes occupancy and opens for business in the Shopping Center, generally known or identified in the industry as being predominately in the business of selling Sport Merchandise. However, such occupant shall not sell, assign or sublease to a party that is, at the time of such sale, assignment or sublease, generally known or identified in the industry as being predominately in the business of selling Sport Merchandise.

2.3. The foregoing restriction shall not apply to a tenant, Owner or occupant operating on the Real Estate, if (a) such party occupies less than 40,000 square feet of space in the Shopping Center, and (b) at the time such occupant takes occupancy and opens for business in the Shopping Center such occupant is not generally known or identified in the industry as being predominately in the business of selling Sport Merchandise, and (c) the sale

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1 of Sport Merchandise is not, and does not become, more than an incidental part
2 of its business as defined in Paragraph 2.4 below.

3
4 2.4. For purposes of this Article, "Sport Merchandise" shall mean
5 sporting goods and equipment, athletic shoes or athletic apparel. For purposes
6 of Paragraph 2.3.(c) above, the sale of Sport Merchandise shall be deemed
7 "incidental" if the sale of such merchandise neither accounts for more than
8 twenty percent (20%) of the gross sales of the business in question nor
9 occupies more than 5,000 square feet of sales area at the location in
10 question. The square footage of sales area shall be calculated by computing
11 (i) the square footage of the "footprint" of all display areas used for the
12 sale of Sport Merchandise, counting only once for multiple vertical levels or
13 shelves, plus (ii) a share of aisle, walkway and other non-display occupied
14 sales area in the same ratio as the total of all non-display areas in the store
15 relates to the total of all sales areas in the store, provided, however, that
16 said component (ii) shall not exceed twenty percent (20%) of the total.

17
18 2.5. Notwithstanding the foregoing, up to 2,000 square feet of space
19 located on Parcel 1 may be sold or leased to, or occupied by, a party in the
20 business (predominately, primarily or incidentally) of selling athletic
21 footwear, provided that the sale of Sport Merchandise other than athletic
22 footwear, if any, in such space does not account for more than forty percent
23 (40%) of the gross sales of the business in question.

24
25 2.6. The foregoing exclusive right shall remain in effect until such
26 date as that certain Lease dated as of March 7, 1997 (the "UMC Lease") between
27 NAI, as Lessor, and United Merchandising Corp. ("UMC"), as Lessee, is
28 terminated either at expiration of the term thereof, plus any option period or
29 further extensions thereof, or under other circumstances pursuant to which said
30 Lease may be terminated at an earlier date. The foregoing shall not impede the
31 parties to said Lease, or their successors or assigns, from modifying or
32 amending said Lease to extend the term thereof and preserve and extend the
33 foregoing restriction. Upon expiration or termination of the UMC Lease, NAI or
34 OZ may cause UMC to file a recordable quit claim instrument to acknowledge the
35 expiration and termination of the UMC Lease. In such event that the UMC Lease
36 has expired or terminated, then this Article 2 shall cease and be rescinded
37 upon the recording of the recordable quit claim instrument referred to in the
38 preceding sentence.

39
40
41 3. ARTICLE 3 - HONOR OTHER EXCLUSIVES:

42
43 3.1. The Owner, tenant or other occupant of Parcel 2 shall take subject
44 to the following restriction, namely in the event OZ, or its successor or
45 assign, grants to any future tenant or occupant of Parcel 1, who leases or
46 occupies space consisting of 5,000 square feet or more, a right of exclusive
47 use of its premises for a particular business or purpose, the Owner, tenant or
48 occupant of Parcel 2 shall not use its premises located on Parcel 2 for a
49 primary purpose in conflict with any such exclusive right restriction, nor
50 shall said Owner, tenant or occupant sell, assign or sublet Parcel 2 to any
51 other party for use of the premises located on Parcel 2 for a primary purpose
52 in conflict with any such exclusive right restriction. However, said Owner,
53 tenant or occupant of Parcel 2 shall not be precluded from selling, and said

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1 party does not agree to honor an exclusive to the extent the same would purport
2 to restrict said party from selling, any line, item or category of merchandise
3 which it now carries or which it may carry in the future, so long as such item,
4 category or line of merchandise is not said party's primary business in its
5 premises located on Parcel 2.

6
7 3.2. OZ shall provide to NAI, within fifteen (15) days of NAI's written
8 request, a list of all then currently operative exclusives granted by OZ which
9 are evidenced by leases or binding contracts, and NAI agrees to honor such
10 leases or binding contracts subject to the terms of Paragraph 3.1 above,
11 provided, however, that there still exists in effect the UMC Lease. In such
12 event that the UMC Lease has expired or terminated, then the last sentence of
13 Paragraph 3.1 hereof shall cease and be rescinded upon the recording of the
14 recordable quit claim instrument referred to in Paragraph 2.6 above. OZ shall
15 be required to furnish such list on a basis no more frequent than annually,
16 unless NAI has a legitimate business purpose for requesting an updated list
17 within any annual period.

18
19
20 4. ARTICLE 4 - CONTROL AREA

21
22 4.1. OZ covenants and agrees that it shall not construct or erect any
23 buildings or other improvements, except for such improvements as are allowed in
24 paragraph 4.2 below, in the area delineated on Exhibit F as the "Control Area"
25 except with NAI's prior written consent. In any situation under this Article
26 in which NAI's consent is required, NAI may grant or withhold its consent in
27 its discretion, exercised in good faith, except in the specific cases indicated
28 below in which it is stated that its consent may not be unreasonably withheld.

29
30 4.2. Notwithstanding the foregoing, OZ is permitted to construct or
31 erect the following improvements in the Control Area, namely: (a) typical
32 shopping center parking areas, curb cuts, drives lanes, landscaping,
33 hardscaping, lightpoles, ballards, flags, banners and directional signs,
34 provided the same do not interfere with site lines from or to the building and
35 signs located on Parcel 2, and (b) a building of up to 7,000 square feet, if
36 operated for retail sales purposes, or of up to 5,000 square feet, if operated
37 for restaurant purposes, provided the same is located on the Benefitted Parcel
38 referred to in Paragraph 1.4 above and is constructed within the area
39 delineated as "Future Building Area" on Exhibit E attached hereto and said
40 building otherwise complies with the other conditions set forth herein:

41
42 (a) The building constructed on the Benefitted Parcel shall not exceed
43 twenty-four (24) feet in height;

44
45 (b) No improvements shall be constructed, erected, expanded or altered
46 on the Benefitted Parcel until the plans for same (including site layout,
47 exterior building materials and colors and parking) have been approved in
48 writing by NAI, which approval shall not be unreasonably withheld. No building
49 or structure of any kind shall be erected on the Benefitted Parcel except
50 within the Future Building Area; provided, there may be constructed and
51 maintained a canopy or canopies projecting from said building area; normal
52 foundations and doors for ingress and egress may project from such building

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1 area; and signs may be erected upon said canopy or canopies, so long as said
2 signs do not obstruct the signs of the occupant of Parcel 2;
3

4 (c) In developing and using the Benefitted Parcel, NAI and OZ agree
5 between themselves that the Benefitted Parcel may be developed and maintained
6 with parking on the Benefitted Parcel in a ratio of five (5) spaces per
7 thousand (1,000) square feet of building space, if operated for retail sales
8 purposes. In addition, the Owner of the Benefitted Parcel shall cause
9 landscaping areas to be added and maintained in conjunction with any building
10 or other improvement constructed on the Benefitted Parcel.
11

12 4.3. Subject to Wal-Mart's rights previously granted in the ECR, OZ
13 covenants and agrees that it will not alter or change, or grant its permission
14 to alter or change, any curb cuts, drive lanes or other common area
15 improvements located in the Control Area that service and benefit Parcel 2
16 except with NAI's prior written consent, which consent NAI may grant or
17 withhold in its discretion.
18
19

20 5. ARTICLE 5 - APPROVAL AREA
21

22 5.1. OZ hereby agrees that to the extent that it has any rights of
23 approval over changes to the improvements located on Outparcel 1, as defined in
24 the ECR, and as depicted on Exhibit F, it shall not exercise such rights of
25 approval unless and until it has consulted with NAI and has received NAI's
26 consent and approval of such changes. OZ shall notify NAI promptly upon
27 learning of any proposed or contemplated change to the improvements located on
28 Outparcel 1. OZ makes no representation or warranty to NAI, its successors or
29 assigns, that it has any rights of approval over changes to the improvements
30 located on Outparcel 1, as defined in the ECR, and any such rights of approval
31 as may exist shall be pursued at the cost and expense of NAI and NAI shall
32 reimburse OZ for any costs and expenses incurred by OZ in connection with the
33 pursuit of any said rights of approval.
34

35 5.2. Subject to Article 2, Article 4 and Article 5 hereof and such sign
36 design approval rights as are expressly set forth in Article 1, nothing herein
37 grants to NAI, its successors or assigns, any rights of approval with respect
38 to the development of Parcel 1. In addition, subject to Article 4 and Article
39 5 hereof and such sign design approval rights as are expressly set forth in
40 Article 1, NAI hereby waives any express or implied rights of approval with
41 respect to the development of Parcel 1 outside the Control Area that may exist
42 under the ECR. The foregoing waiver is not intended to waive any rights that
43 NAI may have as an owner of a portion of the Shopping Center to be a necessary
44 party future amendments to the ECR or a waiver of any other express or implied
45 benefits under the ECR.
46
47

48 6. ARTICLE 6 - CHANGES IN USE
49

50 6.1. Notwithstanding Paragraph 4 e.(9) of the ECR, but subject to
51 Article 3 above, OZ hereby consents to the use of Parcel 2 for any retail or
52 commercial use allowed under Paragraph 2 of the ECR (the "Permitted Uses").
53 Any future change in use of Parcel 2, as long as such change in use is a

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1 Permitted Use and does not violate Article 3 hereof, shall not require the
2 consent of OZ.
3
4

5 7. ARTICLE 7 - AFTER ACQUIRED PROPERTY
6

7 7.1. The parties contemplate and intend that OZ shall acquire Parcel 3
8 and Parcel 4 legally described on Exhibit A attached hereto, which additional
9 property shall be part of the Shopping Center under the ECR and which
10 additional property will be the location of construction of buildings and
11 improvements to be occupied by retail businesses. The parties covenant and
12 agree that at such time as OZ acquires Parcel 3 and/or Parcel 4, said property,
13 when so transferred and conveyed, shall automatically and without the execution
14 or recording of any further document or instrument, thereupon be deemed a part
15 of Parcel 1 for purposes of this Declaration, so that as of and from the date
16 of such conveyance said Parcel 3 and Parcel 4 and any future Owner thereof
17 shall be subject to the terms, covenants and conditions of this Declaration.
18

19 7.2. It is the intention of the parties that the foregoing inclusion of
20 Parcel 3 and Parcel 4 to the terms and conditions of this Declaration shall be
21 automatic upon transfer and conveyance to OZ to the fullest extent allowed by
22 law. Notwithstanding the foregoing, each Owner agrees upon the request of the
23 other to join in the execution and recording of an amendment to this
24 Declaration confirming the date and recording of the conveyances of Parcel 3
25 and Parcel 4 to OZ and the date of their inclusion and addition to the terms
26 and conditions of this Declaration.
27

28 7.3. OZ and any successor Owner of Parcel 1, as "Developer" under the
29 ECR, covenants and agrees that Parcel 3 and Parcel 4 shall not be entitled to
30 the cross-easements and benefits of the ECR without an amendment to that effect
31 to the ECR and that OZ and any successor Owner of Parcel 1 shall not enter into
32 a modification or amendment to the ECR to allow either Parcel 3 or Parcel 4 to
33 become a portion of the Shopping Center subject to the ECR unless and until OZ
34 and/or any successor Owner of Parcel 1, enters into with the Owner of Parcel 2
35 and records an amendment and joinder to this Declaration adding Parcel 3 and
36 Parcel 4 to the description of Parcel 1 so that the terms and conditions of
37 this Declaration, as they pertain to Parcel 1, shall also pertain to Parcel 3
38 and Parcel 4. The Owner of Parcel 2 shall not unreasonably withhold its
39 consent to an amendment to this Declaration adding Parcel 3 and Parcel 4 to the
40 description of Parcel 1.
41
42

43 8. ARTICLE 8 - GENERAL PROVISIONS
44

45 8.1. The Owners of the Real Estate shall maintain, or cause to be
46 maintained, their respective portions of the Real Estate they own from time to
47 time in a manner, quality and condition as required under the ECR.
48

49 8.2. Each and all of the agreements, rights, and covenants created in
50 this Declaration shall be binding upon and shall inure to the benefit of the
51 parties hereto, their respective heirs, successors, assigns, devisees, admin-
52 istrators, representatives, tenants and all other persons acquiring the Real
53 Estate or any part thereof, whether by operation of law or in any manner

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1 whatsoever. All the provisions of this Declaration shall be covenants running
2 with the land pursuant to applicable law. It is expressly agreed that each
3 covenant to do or refrain from doing some act on the Real Estate as to the
4 covenantor (a) is for the benefit of the land of the covenantee, (b) runs with
5 both the land owned by the covenantor and the land owned by the covenantee, and
6 (c) shall benefit or be binding upon each successive Owner, during his Owner-
7 ship, of any portion of the land affected hereby and each person having an
8 interest therein derived through any Owner of the land affected hereby.

9
10 8.3. This Declaration may be cancelled, changed, modified or amended in
11 whole or in part only by a written and recorded agreement executed by the then
12 Parcel 2 Owner and at least seventy-five percent (75%) of the record fee Owners
13 of Parcel 1. "Owners of Parcel 1" shall be allowed one (1) vote no matter how
14 many parcels or acres of Parcel 1 they may own.

15
16 8.4. The Owner of any Parcel may, at any time, designate the holder of a
17 leasehold interest in its Parcel (a) to act in the manner and at the time
18 provided in such designation with complete authority and in the place of the
19 Owner of said Parcel for any or all actions to be taken, rights, interests and
20 powers to be exercised, and performance to be exercised; and (b) as the
21 recipient of any or all performance to which the Owner is entitled as required
22 or permitted in this Declaration, as the Owner of said Parcel. The exercise of
23 any such powers, interests and rights by the designee will be binding on all
24 parties having an interest in the Real Estate. Such designation shall be in
25 writing, signed by the Owner of the affected Parcel and shall be recorded in
26 the real property records of the County in which the Real Estate is located.

27
28 8.5. For so long as United Merchandising Corp., or its successor or
29 assign ("UMC"), has and retains a leasehold interest in Parcel 2, the Owner of
30 Parcel 2 hereby designates UMC as the party to (a) exercise all of said Owner's
31 rights under this Declaration, including but not limited to the right to
32 execute and record any and all documents permitted or required to be executed
33 by said Owner under this Declaration, and (b) to accept performance of all
34 duties owed said Owner under this Declaration.

35
36 8.6. Breach of any of the covenants or restrictions contained in this
37 Declaration shall not defeat nor render invalid the lien of any mortgage or
38 deed of trust made in good faith and for value as to the Real Estate or any
39 part thereof; but all the foregoing provisions, restrictions and covenants
40 shall be binding and effective against any Owner of any said Real Estate, or
41 any part thereof, whose title thereto is acquired by foreclosure, trustee's
42 sale or otherwise.

43
44 8.7. Any person or persons owning or holding any interest in any portion
45 of the Real Estate may prosecute any proceedings at law or in equity against
46 any person or entity violating, or attempting to violate, any of the covenants,
47 conditions and restrictions herein.

48
49 8.8. Invalidation of any one of the covenants, conditions, restrictions
50 or other provisions herein contained by judgment or court order shall in no way
51 affect any of the other covenants, conditions, restrictions, or provisions
52 hereof, and the same shall be in full force and effect.

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8.9. This Declaration shall create privity of contract and estate with and among all grantees of all or any part of the Real Estate, and their respective heirs, executors, administrators, successors, and assigns. In the event of a breach, or attempted or threatened breach, by any Owner or occupant of any part of said Real Estate, in any of the terms, covenants and conditions hereof, any one or all of the Owners and tenants of the Real Estate shall be entitled forthwith to full and adequate relief by injunction and all such other available legal and equitable remedies from the consequences of such breach; and any deed, lease, assignment, conveyance or contract made in violation of this Declaration shall be void and may be set aside upon petition of one or more of the Owners or tenants of the Real Estate. All costs and expenses of any such suit or proceedings including attorneys' fees, as hereinafter provided, shall be assessed against the non-prevailing party in any such suit or proceeding and shall constitute a lien against the real property or the interest therein of such non-prevailing party until paid to the prevailing party, effective upon recording notice thereof in the office of the county recorder of the county in which the Real Estate is located, but any such lien shall be subordinate to any bona fide mortgage or deed of trust covering any portion of the Real Estate, and any purchaser at any foreclosure or trustee's sale (as well as any grantee of deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such lien, but otherwise subject to the provisions hereof. The remedies permitted at law or equity of any one or all such Owners and tenants specified herein shall be cumulative as to each and as to all.

8.10. In the event that suit is brought for the enforcement of this Declaration or as the result of any alleged breach thereof, the successful party or parties to such suit shall be entitled to be paid reasonable attorneys' fees by the losing party or parties, and any judgment or decree rendered shall include an award thereof.

8.11. The captions heading the various sections of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

8.12. This Declaration, executed as of the date hereof, shall take effect only upon, from and after the recording of a conveyance of Parcel 2 to NAI and the recording this instrument in the office of the county recorder of the county in which the Real Estate is situated. In the event that the UMC Lease is not mutually executed and a memorandum of the UMC Lease has not been recorded between NAI and UMC within thirty (30) days after the recording of this Declaration, then all of Article 2, all of Article 4 and Paragraphs 8.4 and 8.5 shall cease and become null and void, as if they were never a part of this Declaration.

8.13. There shall be no merger of any easements, rights, interests or estates created by this Declaration by reason of the fact that the entire Real Estate property may be owned or held directly or indirectly by or for the account of the same person or entity, and no such merger shall occur unless and until all persons and entities at the time having an interest in the entire Real Estate property (including, but not limited to, the holders of any bona fide first deed of trust or first mortgage, having an interest in, or an encumbrance on, all or any portion of said entire Real Estate property) shall

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3-6-97 (11D)

7222

1 join in a written instrument affecting such merger and shall duly record the
2 same.
3

4 8.14. This Declaration and the signature pages hereto may be executed in
5 one or more separate counterparts by the parties hereto, which when assembled
6 and taken together, shall constitute one fully executed, original document.
7
8
9

10 SEE SIGNATURE PAGES ATTACHED HERETO
11

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7223

DECLARATION OF CROSS EASEMENTS AND RESTRICTIVE COVENANT

Signature Page counterpart of OZ Investment, L.L.C.

IN WITNESS WHEREOF, THIS DECLARATION is executed by the undersigned as of
the day and year first above written.

OZ INVESTMENT, L.L.C., an Oregon limited
liability company

By:

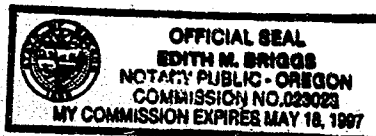
By:

State of ~~California~~ Oregon)
County of Washington) SS.

On March 10, 1997, before me, Edith M. Briggs,
Notary Public, personally appeared Steven J. Oliva,
and Mark S. Zimek personally known to me (or 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.

WITNESS my hand and official seal.

Signature



Klamath Falls, OR
3-6-97 (11D)

DECLARATION OF CROSS EASEMENTS AND RESTRICTIVE COVENANT

Signature Page counterpart of No Apples I - Klamath, L.L.C.

IN WITNESS WHEREOF, THIS DECLARATION is executed by the undersigned as of
the day and year first above written.

NO APPLES I - Klamath, L.L.C., a Washington
limited liability company

By Nicholson Investment Properties, Inc., a
Washington corporation,

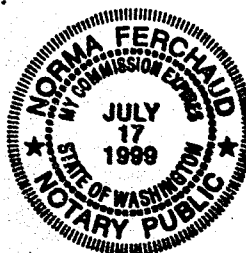
By *Brent C. Nicholson*
Brent C. Nicholson
President

State of Washington)
County of King) ss.

On March 7th, 1997, before me, Norma Ferchaud,
Notary Public, personally appeared BRENT C. NICHOLSON personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument and acknowledged to me that he
executed the same in his authorized capacity, and that by his signature on the
instrument the person, or the entity upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.

Signature *Norma Ferchaud*



**EXHIBIT A
LEGALS**

PARCEL 1 - A TRACT OF LAND BEING IN LOTS 1 THROUGH LOT 15 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN KLAMATH COUNTY, OREGON.

PARCEL 2 - A TRACT OF LAND BEING IN LOT 16 AND LOT 17 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN KLAMATH COUNTY, OREGON.

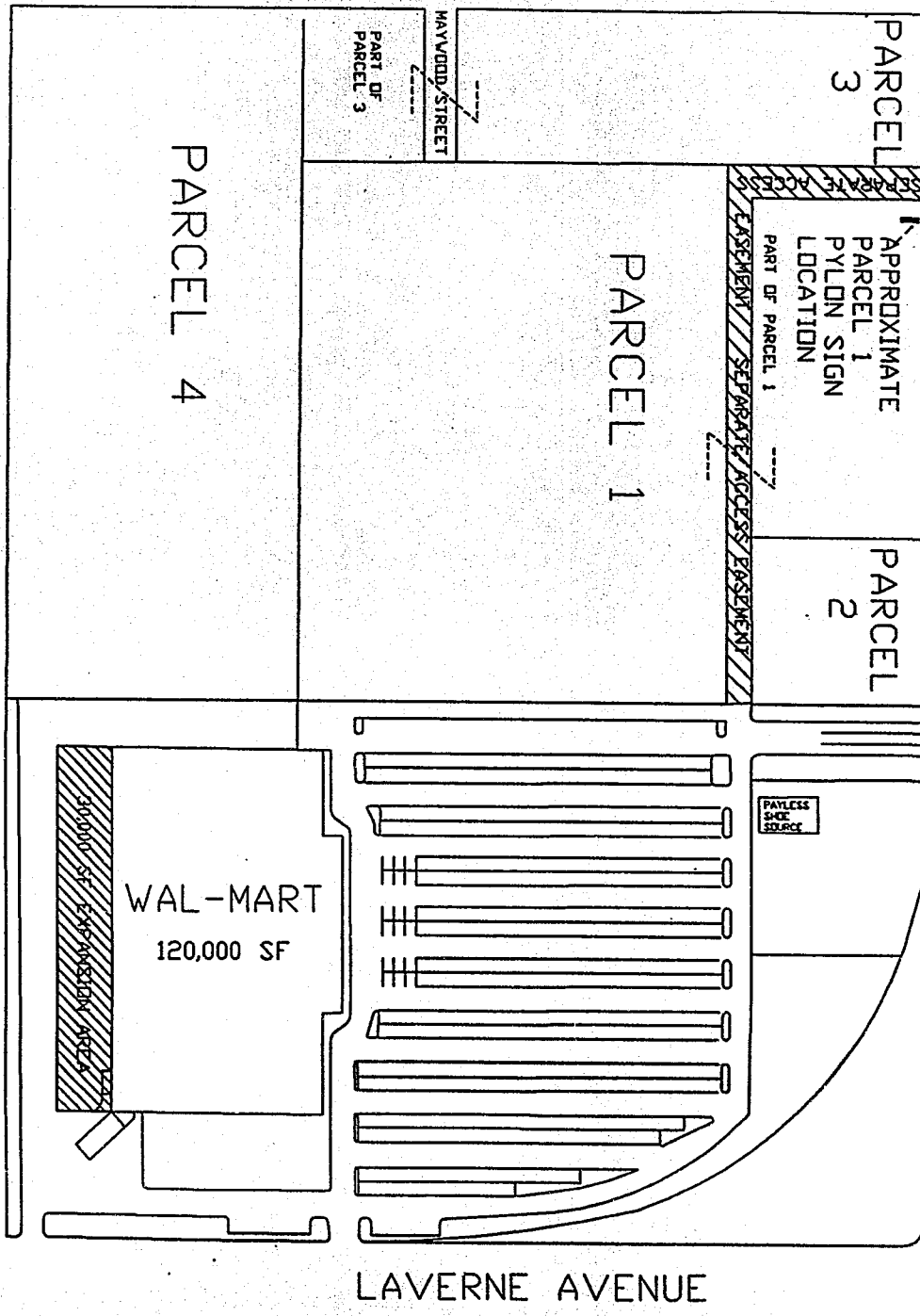
PARCEL 3 - A TRACT OF LAND BEING IN LOT 4 AND LOT 5, BLOCK 1 AND LOT 4, BLOCK 2 OF "TRACT 1249", A DULY RECORDED SUBDIVISION, SITUATED IN KLAMATH COUNTY, OREGON.

PARCEL 4 - A TRACT OF LAND SITUATED IN THE E1/2 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT A 5/8" IRON PIN WITH A TRU-LINE SURVEYING PLASTIC CAP MARKING THE SOUTHWEST CORNER OF LOT 4 BLOCK 2 OF "TRACT 1249, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 3 BLOCK 1 OF "WASHBURN PARK -- TRACT 1080"; THENCE S 00 DEGREES 07'15"E 667.16 FFET, MORE OR LESS, TO A POINT FROM WHICH THE SOUTHWEST CORNER OF SAID LOT 3 BEARS S 00 DEGREES 07'15"E 32.00 FEET; THENCE N89 DEGREES 25'35"W 359.98 FEET, THENCE N 00 DEGREES 07'15"W 828.35 FEET; THENCE N89 DEGREES 58'00"E 359.95 FEET TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE S 00 DEGREES 07'15"E 165.00 FEET TO THE POINT OF BEGINNING, CONTAINING 6.86 ACRES, MORE OR LESS.

MRB
84

EXHIBIT B



**EXHIBIT B
PAGE 2**

**LEGAL DESCRIPTION FOR A
SEPARATE ACCESS EASEMENT**

A 30 FOOT WIDE ACCESS EASEMENT IN LOT 9 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN THE SE1/4 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 30 FEET OF SAID LOT 9 OF "TRACT 1276".

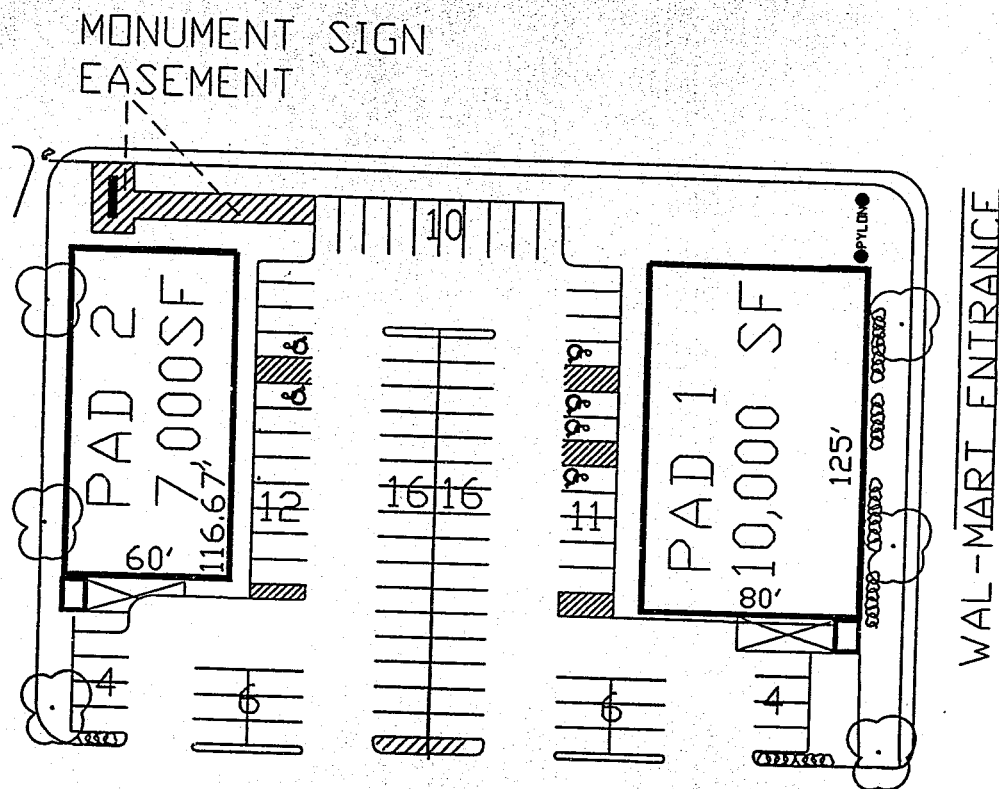
PLUS A 40 FOOT WIDE ACCESS EASEMENT IN LOT 10 OF "TRACT 1276", A DULY RECORDED SUBDIVISION SITUATED IN THE SE1/4 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 40 FEET OF SAID LOT 10 OF "TRACT 1276".

MAS
ON

EXHIBIT C

7228



LEGAL DESCRIPTION FOR MONUMENT SIGN EASEMENT

A PARCEL OF LAND SITUATED IN LOTS 14 AND 15 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN THE SE1/4 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON.

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID LOT 15 FROM WHICH THE SOUTHEAST CORNER OF SAID LOT 15 BEARS N89 DEGREES 58'00"E 10.00 FEET; THENCE N 00 DEGREES 02'00" 66.00 FEET; THENCE N89 DEGREES 58'00"E 10.00 FEET; THENCE N 00 DEGREES 02'00"W 15.00 FEET; THENCE S89 DEGREES 58'00"W 25.00 FEET; THENCE S 00 DEGREES 02'00"E 15.00 FEET; THENCE N89 DEGREES 58'00"E 5.00 FEET; THENCE S 00 DEGREES 02'00"E 66.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 15; THENCE N89 DEGREES 58'00"E 10.00 FEET TO THE POINT OF BEGINNING.

MA'S
82

EXHIBIT D

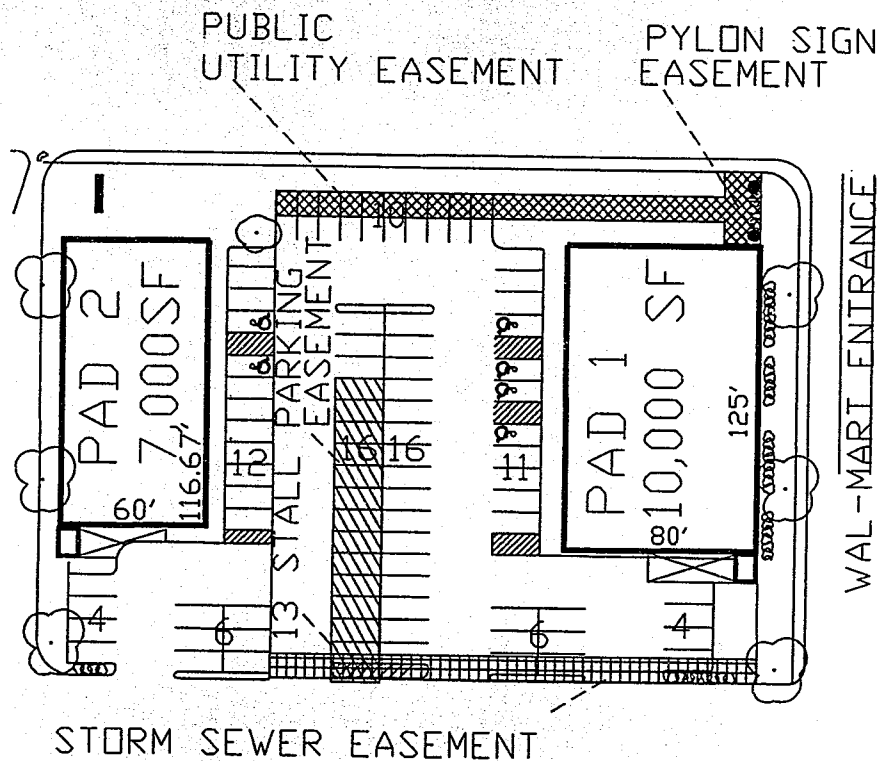


EXHIBIT D - PAGE 2

LEGAL DESCRIPTION FOR A
13 STALL PARKING EASEMENT

A 20 FOOT WIDE PARCEL OF LAND FOR A PARKING EASEMENT SITUATED IN LOT 16 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN THE SE1/4 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 16 FROM WHICH THE SOUTHWEST CORNER OF SAID LOT 16 BEARS S 00 DEGREES 02'00"E 77.76 FEET; THENCE N89 DEGREES 58'00"E 125.00 FEET; THENCE N 00 DEGREES 02'00"W 20.00 FEET; THENCE S89 DEGREES 58'00"W 125.00 FEET; THENCE S 00 DEGREES 02'00"E 20.00 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION FOR A
10 FOOT WIDE STORM SEWER EASEMENT

A 10 FOOT WIDE STORM SEWER EASEMENT BEING IN LOTS 16 AND 17 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN THE SE1/4 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WESTERLY 10 FEET OF SAID LOTS 16 AND 17 OF "TRACT 1276".

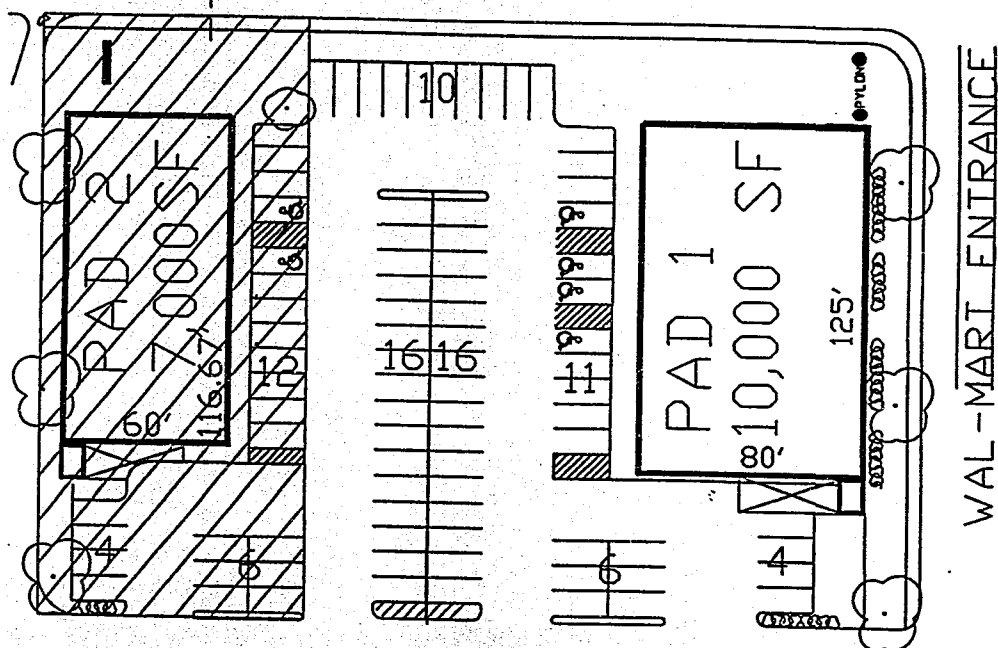
LEGAL DESCRIPTION FOR A
PYLON SIGN AND PUBLIC UTILITY EASEMENT

BEING A PORTION OF LOTS 16 AND 17 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN THE SE1/4 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 16, FROM WHICH THE NORTHEAST CORNER OF SAID LOT 16 ABEARNS N89 DEGREES 58'00"E 10.00 FEET; THENCE S 00 DEGREES 02'00"E, PARALLEL TO THE SAID EAST LINE, 187.00 FEET; THENCE N89 DEGREES 58'00"E, PARALLEL TO THE SOUTH LINE OF SAID LOT 17, 10.00 FEET TO A POINT ON THE SAID EAST LINE OF LOT 17; THENCE S 00 DEGREES 02'00"E 15.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 17; THENCE S89 DEGREES 58'00"W, ALONG SAID SOUTH LINE OF LOT 17 30.00 FEET; THENCE N 00 DEGREES 02'00"W, PARALLEL TO SAID EAST LINE, 15.00 FEET; THENCE N89 DEGREES 58'00"E, PARALLEL TO SAID SOUTH LINE OF LOT 17, 10.00 FEET; THENCE N 00 DEGREES 02'00"W, 187.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 16; THENCE N89 DEGREES 58'00"E 10.00 FEET TO THE POINT OF BEGINNING, CONTAINING 2,320 SQ.FT.

NAB
BN

EXHIBIT E

BENEFITTED
PARCEL

LEGAL DESCRIPTION OF BENEFITTED PARCEL

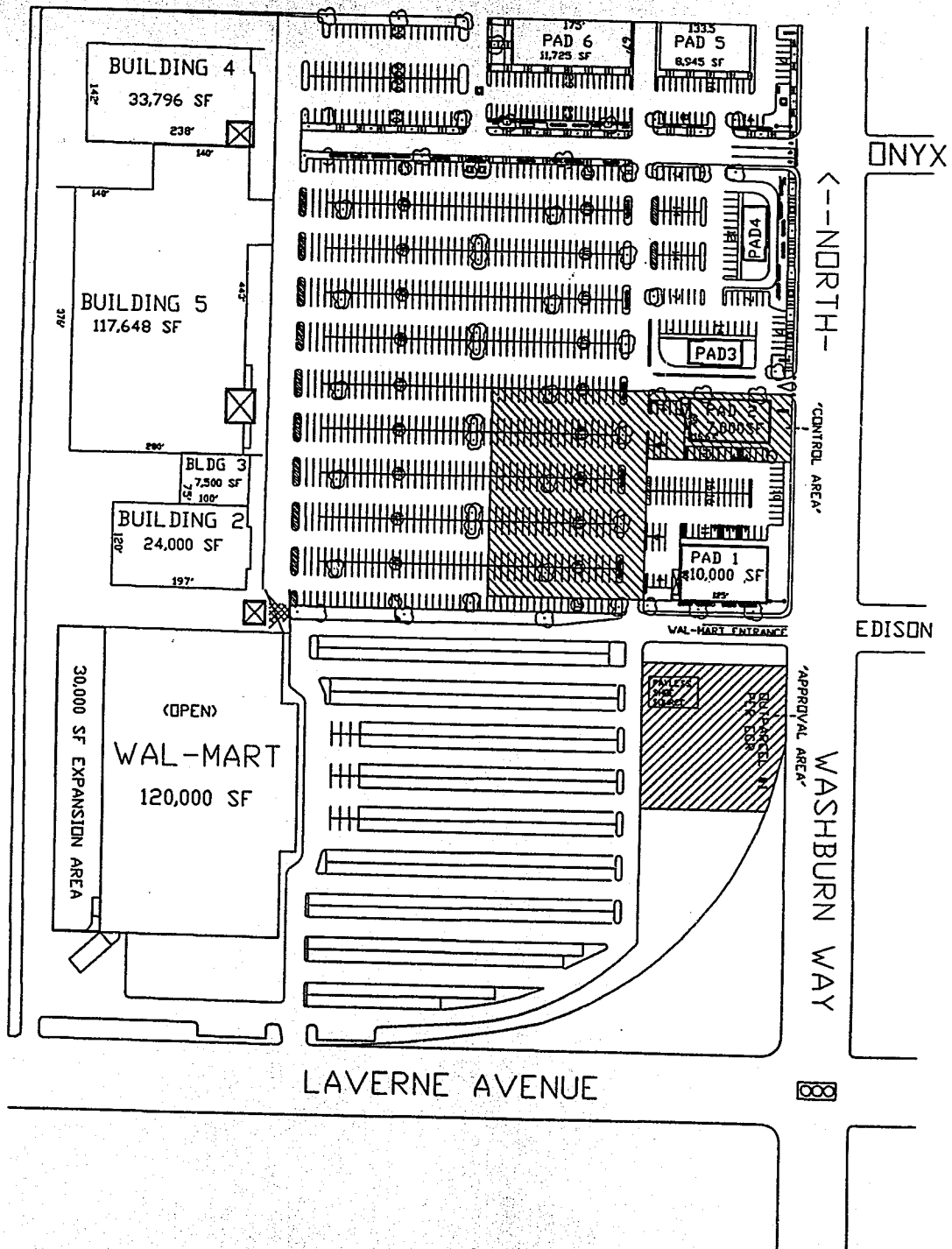
A TRACT OF LAND SITUATED IN LOTS 14 AND 15 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN THE SE1/4 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 15; THENCE N 00 DEGREES 02'00"W 97.00 FEET; THENCE S89 DEGREES 58'00"W 209.00 FEET; THENCE S 00 DEGREES 02'00"E 97.00 FEET; THENCE N89 DEGREES 58'00"E 209.00 FEET TO THE POINT OF BEGINNING.

mb
EW

EXHIBIT F

7232



MB
AN

EXHIBIT F
PAGE 2

LEGAL DESCRIPTION OF
CONTROL AREA EASEMENT

A CONTROL AREA EASEMENT IN LOT 15 AND A PORTION OF LOTS 9 AND 14 OF "TRACT 1276", A DULY RECORDED SUBDIVISION, SITUATED IN THE SE1/4 NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 9; THENCE N 00 DEGREES 02'00"W 202.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 15; THENCE N89 DEGREES 58'00"E 209.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 15; THENCE N 00 DEGREES 02'00"W 97.00 FEET; THENCE S89 DEGREES 58'00"W 439.00 FEET; THENCE S 00 DEGREES 02'00"E 299.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 9; THENCE N89 DEGREES 58'00"E 230.00 FEET TO THE POINT OF BEGINNING.

REFERENCE DESCRIPTION FOR "APPROVAL AREA":

APPROVAL AREA, OUTPARCEL #1 PER "ECR".

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title the 12th day
of March A.D., 19 97 at 1:03 o'clock P. M., and duly recorded in Vol. M97
of Deeds on Page 7211

Bernetha G. Letsch, County Clerk

by Kathleen Ross

FEE \$120.00

11/13/97
84