



SUBDIVISION IMPROVEMENTS AGREEMENT

GABEL SUBDIVISION, SECOND FILING

THIS AGREEMENT is made and entered into this 24 day of August 1998, by and between **MONTANA TRADEPORT AUTHORITY**, Billings, Montana 59101, hereinafter referred to as "Subdivider", and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, at a meeting held by the Yellowstone County Board of Planning on February 23, 1993, the Board recommended for approval, subject to certain conditions, an area known as Gabel Subdivision Second Filing (the "Subdivision") located in the City of Billings, Yellowstone County, Montana, and recommended its approval to the City Council of the City of Billings; and

WHEREAS, at a regular meeting held on March 8, 1993, the City Council approved, subject to certain conditions of the Board and the City Council, a preliminary plat of the Subdivision, and

WHEREAS, a Subdivision Improvements Agreement is required prior to approval of the final plat by the City.

NOW, THEREFORE, the parties to this Agreement, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

1. The provisions of this Agreement shall be effective and applicable to Gabel Subdivision Second Filing upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana.
2. The Subdivider has requested and the City hereby grants variances from the strict interpretation of the subdivision regulations in the Billings Montana City Code, as follows:
 - A. Variance from development requirements to permit phased construction of improvements within the public right-of-way in and adjacent to the Subdivision. The Phase I improvements, more specifically described in paragraph 3-A(1) below, will include only limited improvements to and under Hesper Road.
 - B. Variance from Section 23-605(d) of the Billings City Code ("BCC") for the no-access requirements on Gabel Road to permit driveways at the locations and in the widths more particularly set forth on the plat of the Subdivision.



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C. Variance from Section 26-601(2)(k), BCC, for the Principal Arterial requirements of a one hundred twenty foot (120') wide right-of-way on Gabel Road to allow for an eighty-four foot (84') wide right-of-way consistent with previously platted portions of Gabel Road.

D. Variance from Section 23-602, BCC, for the requirement of plating alleys in commercial or industrial zones.

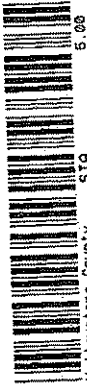
3. Subdivider hereby agrees to construct the following improvements as required and in conformance with the City of Billings Subdivision Regulations:

A. STREETS:

(1) Phases and Required Improvements. The lots in the Subdivision will be developed in phases, which for the purposes of this Agreement are designated as follows:

Phase I of the Subdivision shall consist of the development of Lots 2 through 6, inclusive, in Block 1 (the "Phase I Lots"). The improvements required in connection with said Phase I (the "Phase I Improvements") shall include (i) construction and installation of trunk water and sewer lines in and under Hesper Road, (ii) following installation of said trunk water and sewer lines, the entire existing twenty-six foot (26') wide road section from South 32nd Street West to Gabel Road will be restored and centerline grades will be established to match future full-width construction (including future curb and gutter on both sides), and (iii) widening of the turn radius at the northwest corner of the intersection of Hesper Road and South 32nd Street West. With respect to the Phase I Improvements for Hesper Road, the existing Canyon Creek Ditch and the lateral ditches within and adjacent to the Subdivision will not be relocated or rerouted, but such ditches will remain in their present location. The Subdivider shall be responsible for obtaining all necessary approvals from the Canyon Creek Ditch Company with respect to required improvements affecting said ditches.

Phase II of the Subdivision shall consist of the development of Lot 1 and Lots 11 through 19, inclusive, in Block 1, Lots 1 through 8, inclusive, in Block 2, and Lots 1 through 3, inclusive, in Block 3 (the "Phase II Lots"). The improvements required in connection with said Phase II (the "Phase II Improvements") shall include (i) the improvements to and under Gabel Road within the Subdivision, including paving, curb and gutter on both sides of said street, sanitary sewer and water lines, storm drain lines, street lights, and either a five foot (5') boulevard sidewalk or a seven foot (7') curbwalk on both sides



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of said street for its full length within the Subdivision (but construction and installation of said sidewalks will be deferred until development of the lots), which improvements shall also include a culvert crossing for the Canyon Creek Ditch, with the size of the culvert based on a hydraulic analysis of the ditch and subject to approval of the City Engineer; (ii) the improvements to and under South 35th Street West within the Subdivision, including paving, curb and gutter on both sides of said street, any necessary sanitary sewer and water lines and storm drain lines, (iii) for South 32nd Street West, widening of the street and turn radius, including curb and gutter, on the west side of said street adjacent to the Subdivision, and paving for the transition of the west side of South 32nd Street West to the existing pavement north of Lot 1 in Block 2 and south of Lot 19 in Block 1, and (iv) construction and installation of a storm drain line in and under South 32nd Street West from its intersection with Gabel Road north to the Hogan Slough. In connection with the foregoing, Gabel Road shall be constructed to a sixty-four foot (64') back-to-back curb width within the eight-four foot (84') right-of-way. The Subdivider shall be responsible for obtaining all necessary approvals from the Canyon Creek Ditch Company with respect to required improvements affecting said ditches.

Phase III of the Subdivision shall consist of completion of remaining improvements for the Subdivision. The improvements required in connection with said Phase III (the "Phase III Improvements") shall include (i) construction and installation of a storm drain line in and under Hesper Road from its intersection with Gabel Road east to South 32nd Street West, and then in and under South 32nd Street West from its intersection with Hesper Road north to the connection with the storm drain line installed as part of the Phase II Improvements, (ii) relocating and rerouting the existing irrigation ditches within and adjacent to the Subdivision east to South 32nd Street West, and (iii) completion of the improvements to Hesper Road from Gabel Road east to South 32nd Street West, including paving, curb and gutter on both sides of said street, street lights, and five foot (5') curbwalk on the north side of said street. In connection with the foregoing, Hesper Road and South 35th Street West shall have a minimum right-of-way width of seventy feet (70') and shall be constructed to a forty-nine foot (49') back-to-back curb width within said right-of-way. The Subdivider shall be responsible for obtaining all necessary approvals from the Canyon Creek Ditch Company with respect to required improvements affecting said ditches.

- (2) **Construction.** All dedicated streets shall be built to grade with satisfactory subbase, base course, curb and gutter, and asphalt surface. The design cross section of the streets shall be determined from actual



field tests conducted by a responsible testing laboratory. The design section shall be submitted to, and approved by, the City Engineer.

- (3) **Hesper Road Improvements.** Subdivider agrees to pay the costs (less any portion thereof paid from sources other than payments by adjacent property owners or from contributions by the City or on behalf of such adjacent property owners) of constructing one-half of that portion of Hesper Road adjacent to the boundary of the Subdivision. As provided in paragraph 3.A(1) above, the trunk water and sewer lines, street restoration and intersection widening shall be constructed and installed in conjunction with the Phase I Improvements. The City of Billings Public Utilities Department is contributing the sum of \$808,000 to the costs and expenses of said Phase I Improvements and the Subdivider shall be responsible for obtaining or providing funds for the balance of such costs and expenses. Subject to paragraph 6(a) below, the foregoing Phase I Improvements will be constructed and installed utilizing a private contract and the Subdivider may not proceed with the Phase I Improvements until said private contract has been executed and necessary funding guarantees have been provided. In addition, the Subdivider shall include the improvements to Hesper Road in the Waiver referenced in paragraph 7 below, and the City shall be entitled to rely on said Waiver in initiating and forming a special improvement district to construct and install said improvements in the event the Subdivider fails or refuses to complete the same.

Pursuant to paragraph 3.A(1) above, the remaining improvements to and under Hesper Road, including the storm drain line in Hesper Road and South 32nd Street West to its connection with the storm drain line installed in the Phase II Improvements, and the relocation and rerouting of the irrigation ditches, shall be constructed and installed in conjunction with the Phase III Improvements. The City and the Subdivider anticipate that the Phase III Improvements (including the improvements adjacent to the Subdivision) will be constructed and installed through a combination area-wide special improvement district and other funding mechanisms, which special improvement district will be formed at the earlier of either (i) the initiation of such district by the City, or (ii) when sixty percent (60%) of the lots within the Subdivision have been developed by the construction of buildings or other structures, including parking, loading and storage improvements, on such lots. In the event the foregoing special improvement district is not or cannot be created, the owners of the property affected by the Phase III Improvements may construct and install said improvements by private contract as provided in the immediately succeeding subparagraph. The Subdivider shall include the improvements to Hesper Road in the Waiver referenced in paragraph 7 below, and the



City shall be entitled to rely on said Waiver in initiating and forming a special improvement district to construct and install said improvements.

The Subdivider expressly acknowledges that at such time as sixty percent (60%) of the lots within the Subdivision have been developed by the construction of buildings or other structures, no further building permits shall be issued with respect to any remaining lots until either the special improvement district referenced above has been created and the bonds sold, or if such special improvement district is not or cannot be created, until the Subdivider has executed a private contract and has provided necessary funding guarantees, for the construction and installation of the following Phase III Improvements: (i) paving, curb, gutter and street widening on the north side of Hesper Road, (ii) a five foot (5') curbwalk on the north side of said street, and (iii) relocation or rerouting of the existing irrigation ditches along the north side of Hesper Road and within the right-of-way of said Hesper Road, and (iv) such storm drain line in South 32nd Street West in order to adequately drain Hesper Road. In connection with storm drain improvements, the Subdivider acknowledges that the owners of lots fronting on Hesper Road will have to provide on-site storm retention in conjunction with the development of such lots, which on-site retention may be permanent.

- (4) **Gabel Road Improvements.** Subdivider agrees to pay the costs (less any portion thereof paid from sources other than payments by adjacent property owners or from contributions by the City on behalf of such adjacent property owners) of constructing that portion of Gabel Road within the boundary of the Subdivision. As provided in paragraph 3.A(1) above, the improvements to and under Gabel Road, as well as the storm drain line in South 32nd Street West from Gabel Road to the Hogan Slough, shall be constructed and installed in conjunction with the Phase II Improvements. Subject to paragraph 6(b) below, the foregoing Phase II Improvements will be constructed and installed utilizing a private contract and the Subdivider may not proceed with the Phase II Improvements until said private contract has been executed and necessary funding guarantees have been provided. In addition, the Subdivider shall include the improvements to Gabel Road in the Waiver referenced in paragraph 7 below, and the City shall be entitled to rely on said Waiver in initiating and forming a special improvement district to construct and install said improvements in the event the Subdivider fails or refuses to complete the same.

- (5) **South 32nd Street West Improvements.** Subdivider agrees to pay the costs of constructing the widening of South 32nd Street West adjacent to the Subdivision, widening of the turn radius at the northwest corner

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of the intersection of Hesper Road and South 32nd Street West, and the transition of such street improvements to match existing improvements. As provided in paragraph 3.A(1) above, the improvements to South 32nd Street West shall be constructed and installed in conjunction with the Phase II Improvements. In addition, the Subdivider shall include the improvements to South 32nd Street West in the Waiver referenced in paragraph 7 below, and the City shall be entitled to rely on said Waiver in initiating and forming a special improvement district to construct and install said improvements in the event the Subdivider fails or refuses to complete the same.

- (6) **South 35th Street West Improvements.** Subdivider agrees to pay the costs of constructing that portion of South 35th Street West within the boundary of the Subdivision. As provided in paragraph 3.A(1) above, the improvements to and under South 35th Street West shall be constructed and installed in conjunction with the Phase II Improvements. In addition, the Subdivider shall include the improvements to South 35th Street West in the Waiver referenced in paragraph 7 below, and the City shall be entitled to rely on said Waiver in initiating and forming a special improvement district to construct and install said improvements in the event the Subdivider fails or refuses to complete the same.

- (7) **Conrad Road Improvements.** The City and the Subdivider acknowledge that improvements to Conrad Road are impractical at this time, since that street is not constructed or improved east of Lot 6 in Block 1 of the Subdivision. Further, the City and the Subdivider anticipate that the improvements to Conrad Road (including the improvements adjacent to the Subdivision) will be constructed and installed through either a private contract or a special improvement district or other mechanism which includes properties north and east of the Subdivision. Notwithstanding the foregoing, the improvements to Conrad Road will be constructed and installed at the time Lot 6 in Block 1 is developed by the construction of buildings or other structures if, at that time, (i) the owners of the other lots adjacent to Conrad Road have already constructed and installed their respective improvements to Conrad Road, or (ii) if the owner of said Lot 6 desires access to and from Conrad Road. The Subdivider shall include the improvements to Conrad Road in the Waiver referenced in paragraph 7 below, and the City shall be entitled to rely on said Waiver in initiating and forming a special improvement district to construct and install said improvements. The foregoing improvements to Conrad Road include, but are not limited to, asphalt paving, curb and gutter, and any necessary sidewalks, water mains, sewer main, storm drain mains and street lights.



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- (8) **Sidewalks.** Sidewalks for Hesper Road will be installed in conjunction with the Phase III Improvements, as provided in paragraph 3.A(1) above. Other sidewalks within or adjacent to the Subdivision, including sidewalks along Gabel Road, will not be installed until building construction occurs on the lots, and the responsibility for said installation will be with the owners of the lots at the time of development of the lot. This statement will be included in the Buy/Sell Agreement of such lots. In addition, construction of sidewalks will be included in the Waiver referenced in paragraph 7 below.

- (9) **Street Name Signs.** Street name signs for streets within the Subdivision or located immediately adjacent thereto shall be furnished and installed in accordance with the specifications of the City Engineer.

- (10) **Traffic Control Devices.** Traffic control devices located within the Subdivision or on streets adjacent thereto shall be furnished and installed in accordance with the plans and specifications as approved by the City Engineering Department. In the event that any site-specific development of a lot will generate more than 500 trips per day, then a traffic accessibility study shall be prepared and submitted to the City with respect to such development. The owner of the lot shall be required to pay their proportionate share of traffic control devices required at such future time as they are warranted. Further, if the development of a lot will necessitate the construction of specific traffic control devices limited to and directly attributable to such development (as opposed to merely contributing to the needs or warrants for area-wide traffic control devices), then the owner of such lot shall pay the entire cost of said required traffic control devices. The required devices, time of installation, trigger dates, and cost sharing shall be identified in site-specific traffic accessibility studies prepared and approved at the time of each individual lot development. Said traffic control devices shall be included in the Waiver referenced in paragraph 7 below.

- (11) **Controlled Access.** Access to and from Gabel Road shall be limited to the driveways identified on the plat of the Subdivision. Variations in location or width may be approved by the City Engineer at the time of site plan approval for each lot development.

- (12) **Street Lighting.** Street lights on both sides of Gabel Road shall be constructed and installed in the Phase II Improvements. Other street lights within or adjacent to the Subdivision shall not be required at this time, but street lights shall be included in the Waiver referenced in paragraph 7 below for construction of the same in the future. Said



Waiver shall also include a maintenance district for street light energy and the maintenance of street lights.

- (13) **Landscaping.** Open areas in the public right-of-way adjacent to the Subdivision will be landscaped in accordance with landscape plans approved by the City of Billings. As part of the Phase I Improvements, borrow ditches will be seeded with native grass and maintained adjacent to developed lots until such time as formal landscaping takes place along the future sidewalks and curb and gutter. The lot owners shall be responsible for maintenance of the landscaping that is adjacent to their respective lot or lots.

B. UTILITIES:

- (1) **Water.** The Subdivision will be served by extending the twenty-four inch (24") trunk water main in Hesper Road from South 32nd Street West to Gabel Road, to be installed in conjunction with the Phase I Improvements. A twelve inch (12") water main will be installed in Gabel Road from the existing main at South 32nd Street West to Hesper Road, to be installed in conjunction with the Phase II Improvements. Fire hydrants will be installed on both lines at required spacing. Water services will be installed to the lots included in Phase I or Phase II, as the case may be, in conjunction with the improvements for such phase.
- (2) **Sanitary Sewer.** The Subdivision will be served by extending the eighteen inch (18") trunk sanitary sewer main in Hesper Road from South 32nd Street West to Gabel Road, to be installed in conjunction with the Phase I Improvements. An eight inch (8") sewer main will be extended either in Gabel Road from its intersection with South 30th Street West or in South 32nd Street West from its intersection with Hesper Road, and then in Gabel Road within the Subdivision to the lot line between Lots 1 and 11, in Block 1, all of which improvements shall be installed in conjunction with the Phase II Improvements.
- (3) **Standards.** The water and sewer mains and storm drains will be connected to existing mains at appropriate places, sizes, locations and standards as approved by the Utilities Director and City Engineer, and shall be installed in conformance with the design standards, specifications, rules and regulations of the City of Billings and the Montana State Department of Health and Environmental Sciences, provided, however, that the Subdivider acknowledges that the sizes of such water and sewer mains and storm drains may need to be modified from the diameters identified in paragraphs 3(A)(1), 3(B)(1), 3(B)(2), and 3(C).



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(4) Power, Telephone, Gas and Cable Television. All power, telephone, gas and cable television lines within the public right-of-way shall be installed prior to street paving. Appropriate utility easements will be provided across the Subdivision lots for service to the proposed development.

(5) System Development and Franchise Fees. The Subdivider acknowledges that the Subdivision shall be subject to applicable System Development Fees and Franchise Fees in effect at the time new water and/or sewer service connections are made.

(6) Extensions to Lot Lines. All utility service lines to be installed within the public right-of-way pursuant to this Agreement shall be extended or stubbed to the property lines of adjacent lots prior to street paving.

C. STORM DRAIN SYSTEM:

Storm drainage shall be provided by a combination of surface drainage, curbs and gutters, and underground storm drains as follows:

- (1) Drainage on South 32nd Street West will discharge to the Hogan Slough through a future trunk storm drain. The trunk drain will extend south from the Hogan Slough to Hesper Road. Pursuant to paragraph 3(A)(1) above, the foregoing trunk drain will be installed in conjunction with the Phase II and Phase III Improvements.
- (2) Drainage on Hesper Road will discharge to an extension of the trunk storm drain on South 32nd Street West. This trunk will be approximately fifty-four inches (54") in diameter as determined by the area storm drain study and shall be installed in conjunction with the Phase III Improvements.
- (3) Drainage on Gabel Road and South 35th Street West will discharge to lateral storm drains connecting to a discharge structure located on the Hogan Slough, all of which shall be installed in conjunction with the Phase II Improvements. The sizing and location of the storm drains and the exact location of the discharge structure will be based on an area storm drain study. Said study, and any necessary plans and specifications, shall be approved by the City Engineer.
- (4) All on-site and off-site storm drain improvements for the Subdivision will meet the criteria of the City of Billings Stormwater Management Manual.

- (5) The Subdivider and the City acknowledge that storm drain improvements for the Phase I Lots will be constructed and installed in conjunction with the Phase III Improvements. Accordingly, any development or construction on said Phase I Lots shall utilize on-site storm water retention, and no building permits shall be issued for any of said Phase I Lots until a site plan for such development and on-site storm water retention has been prepared and approved by the City Engineer.

D. SURVEY MONUMENTS:

Survey monuments shall be installed as required by the City Subdivision Ordinance and the Montana Subdivision and Platting Act.

4. The Subdivider agrees to provide for any necessary adjustment or alteration of existing improvements which are necessary and limited to those improvements required to make the improvements contemplated by this Agreement, without cost to the City.
5. The Subdivider agrees to notify the City Engineer and Utilities Director of the date and hour construction is anticipated to begin on the required improvements and to keep the City Engineer and Utilities Director informed of the progress of construction. If the construction is stopped for any reason other than overnight, holidays, and weekends, the Subdivider agrees to notify the City Engineer and the Utilities Director of the stoppage. Further, Subdivider agrees to notify the City Engineer and the Utilities Director not less than four (4) hours before construction is scheduled to resume.

6. The Subdivider does not desire to commence development of all the lots within the Subdivision, but does desire to file the approved final plat for Gabel Subdivision Second Filing, and to sell and convey lots in said Subdivision in phases. In accordance with the foregoing, the Subdivider and the City agree as follows:

- (a) The final plat shall not be filed until a publicly advertised and competitively bid private contract for the construction and installation of the improvements to serve the Phase I Lots has been executed. The remaining improvements required by this Agreement shall be constructed on a phased basis in accordance with a timetable commensurate with market conditions and individual lot development requirements. The Phase I Improvements will be financed through a combination of up to \$808,000 contribution from the City of Billings Public Utilities Department, a \$500,000 Inter-cap loan to the Subdivider and other available funds, including funds contributed by the Subdivider.
- (b) The Phase II Improvements within the Subdivision shall be constructed and installed utilizing a publicly advertised and competitively bid private contract, to be financed through a combination funds from a Tax Increment Financing



Industrial District and other available funds, including grants to and funds of the Subdivider. Notwithstanding the foregoing, the Subdivider shall not be entitled to proceed with that phase of the development until either a special improvement district has been created and the bonds sold, or a private contract has been executed and necessary funding guarantees have been provided, as the case may be, for the construction and installation of the public improvements to serve the Phase II Lots.

- (c) It is anticipated that the Phase III Improvements will be constructed and installed utilizing funds available through a combination of the Tax Increment Financing Industrial District and an area-wide special improvement district to be formed at the time directed by the City of Billings, including within said special improvement district all of the lots in the Subdivision, as well as properties to the south and east of the Subdivision. In the event the foregoing special improvement district is not or cannot be created, the owners of the property affected by the Phase III Improvements may construct and install said improvements by private contract. In addition, the Subdivider agrees to hold-back and deposit a portion of the sale proceeds or rentals from the Phase I Lots and the Phase II Lots in accordance with paragraph 6(f) below. The Subdivider and the City agree that at such time as sixty percent (60%) of the lots within the Subdivision have been developed by the construction of buildings or other structures, including parking, loading and storage improvements, no further building permits shall be issued with respect to any remaining lots until either the special improvement district has been created and the bonds sold, or the private contract has been executed and necessary funding guarantees have been provided, as the case may be, for the construction and installation of the Phase III Improvements.

- (d) Both the Phase II Improvements and the Phase III Improvements will be installed by the Subdivider in the future. The Subdivider agrees not to sell or convey any of the Phase II Lots, and the Subdivider further acknowledges that no building permits for lots within Phase II shall be issued, until either a special improvement district has been created and the bonds sold, or a private contract has been executed and necessary funding guarantees have been provided, as the case may be, for the construction and installation of the public improvements to serve said Phase II Lots. Further, no occupancy permits will be issued for any buildings or improvements constructed on the Phase II Lots until water and sewer mains and services, as well as street improvements, have been installed, approved and accepted by the City.

Pursuant to the foregoing agreement, the Subdivider shall execute and record a Declaration of Restrictions on Transfers and Conveyances for said Phase II Lots, substantially in the form of Exhibit A attached hereto, to be recorded concurrently with the recording of this Agreement. Said Declaration notifies all third parties that said lots may not be legally sold, conveyed or transferred



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until a Release executed by the City of Billings and substantially in the form of **Exhibit B** attached hereto has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No Phase II Lots shall be released until a Certificate substantially in the form of **Exhibit C** attached hereto has been executed by the Department of Public Works stating that the above conditions have been met, which Certificate must accompany any request for a Release. By the acceptance and recording of the Agreement, the City does hereby authorize the Department of Public Works, and the Mayor and City Clerk of the City, to review any request for release and to execute such Certificates and Releases as may be necessary to evidence a release from the restriction against sale, conveyance and transfer of lots in the Subdivision.

- (e) All engineering and legal work in connection with such districts and improvements shall be paid by special improvement districts or by the Subdivider, as the case may be, and such improvements shall be installed as approved by the City Engineer and Utilities Director.
- (f) The City and the Subdivider acknowledge and agree that the Phase III Improvements will be constructed and installed in the future. It is anticipated that the Phase III Improvements will be financed, in part, by a special improvement district including within its boundaries all of the Phase I Lots and the Phase II Lots. Based on current calculations, it is estimated that the assessments to the Phase I Lots and the Phase II Lots with respect to the Phase III Improvements will be equal to \$0.3353 per square foot of land contained within said lots (the "Estimated SID Assessments"). In order to further guarantee the construction of said Phase III Improvements, the Subdivider does hereby agree:
 - (i) That in the event of the sale of any Phase I Lot or Phase II Lot prior to the creation of the special improvement district for the Phase III Improvements, an amount equal to the Estimated SID Assessments with respect to such lot will be deposited into a separate bookkeeping account of the Subdivider and held for application to the portion of the Phase III Improvements to be financed by the future special improvement district. If the actual amount of the special improvement district assessments for the Phase III Improvements is greater than the Estimated SID Assessments for a particular lot, then said difference will be levied against the affected lot. If the actual amount of the special improvement district assessments for the Phase III Improvements is less than the Estimated SID Assessments for a particular lot, then the Subdivider shall be entitled to retain such excess after payment of the full amount of the actual assessments.
 - (ii) That in the event of a lease of any Phase I Lot or Phase II Lot prior to the creation of the special improvement district for the Phase III



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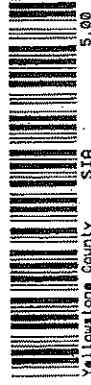
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Improvements, the Subdivider will deposit a portion of each rental payment for such lot, calculated in accordance with this subparagraph (f)(ii), as and when received, into a separate bookkeeping account of the Subdivider and held for application to the portion of the Phase III Improvements to be financed by the future special improvement district. The portion of each rental payment to be deposited and held will be determined by first dividing the Estimated SID Assessments by ten (10), in order to spread such deposits over a ten-year period (such annual amounts being referred to as the "Annual Estimated SID Assessments"). The amount of such Annual Estimated SID Assessments shall then be divided by the number of lease payments payable to Subdivider during each lease year (such lease years being consecutive twelve-month periods commencing with the commencement date of the lease) for purposes of calculating the amount that will be deposited from each rental payment to Subdivider (the "Rental Deposits"). **Example, for illustration only:** If the Estimated SID Assessments are \$15,000 and the Subdivider leases a Phase II Lot for a period of 15 years with monthly rental payments, then the amount of the Annual Estimated SID Assessments would be \$1,500 ($\$15,000 \div 10$) and the Rental Deposits from each monthly rental payment would be \$125 ($\$1,500 \div 12$). If the special improvement district is created and the assessments levied prior to the expiration of the ten-year period for the Rental Deposits with respect to an affected lot, then the aggregate amount of the Rental Deposits for such lot shall be applied to the actual assessments. If the actual amount of the special improvement district assessments for the Phase III Improvements is greater than the Rental Deposits held with respect to a particular lot, then said difference will be levied against the affected lot. If the actual amount of the special improvement district assessments for the Phase III Improvements is less than the Rental Deposits for a particular lot, then the Subdivider shall be entitled to retain such excess after payment of the full amount of the actual assessments.

(iii)

In the event the special improvement district is not or cannot be created, then the amounts held on deposit by the Subdivider in accordance with subparagraphs (i) and (ii) above shall be applied to the payments under the private contract for the Phase III Improvements. The Subdivider and the City shall execute an interlocal agreement to govern the investment, use and expenditure of the deposited sums, which interlocal agreement shall include provisions requiring the approval of the City for the withdrawal or disbursement of any of those deposited sums.



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7. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owners specifically agree that they are waiving valuable rights and do so voluntarily. In the event the Subdivider fails or refuses to create a special improvement district as required by this Agreement or to commence construction under a private contract, the City shall be entitled to rely on the Waiver and create the district or districts necessary to install said improvements.

8. In the event the improvements are constructed through private contract, then the Subdivider will be held responsible for the care and maintenance of all improvements until completion and final acceptance by the City. If the improvements are constructed utilized a Special Improvement District, then the Special Improvement District shall be responsible for the care and maintenance of all improvements until completion and final acceptance by the City.

9. While the improvements are being constructed hereunder, the construction site shall be kept free and clear of all unsightly accumulation of rubbish and debris, and the public shall be protected by the use and maintenance of sufficient and proper barricades, lights and related construction items as specified in the manual of uniform traffic control devices during the course of construction.

10. Subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by the City of Billings by a requirement in the special improvement district or private contract that the contractor must guarantee improvements for a period of one (1) year after final acceptance by the City.

11. The owners of the properties involved in this proposed Subdivision by signature subscribed hereinbelow agree, consent and shall be bound by the provisions of this Agreement.

12. The covenants, agreements and all statements in this Agreement shall run with the land and shall be binding on the heirs, personal representatives, successor and assigns of the respective parties.

13. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

14. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

15. The Subdivider agrees to comply with all requirements of the Billings Montana City Code and all laws and administrative rules of the State of Montana.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

MONTANA TRADEPORT AUTHORITY

By [Signature]
Its: Executive Director
By [Signature]
Its: City Clerk

"Subdivider"

CITY OF BILLINGS, MONTANA

By [Signature]
Mayor

By [Signature]
City Clerk

"City"



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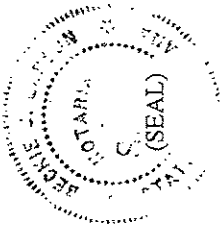
Page: 16 of 18
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STATE OF MONTANA)

: ss.

County of Yellowstone)

This instrument was acknowledged before me on Aug. 25, 1998, by
James Thomas and Libby Skowdell, as the
President Director and Chairman, respectively, of
the MONTANA TRADEPORT AUTHORITY.



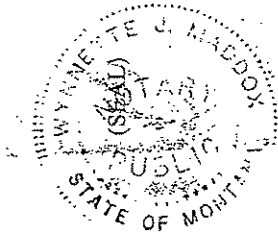
Charles F. Tooley
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: Sept 22, 2000

STATE OF MONTANA)

: ss.

County of Yellowstone)

This instrument was acknowledged before me on Aug 25, 1998, by
Charles F Tooley and Marita Herald, as the Mayor
and the City Clerk of the CITY OF BILLINGS, MONTANA.



Wynnette J. Maddox
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: 9-16-98

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WAIVER

FOR VALUABLE CONSIDERATION, the undersigned, being the subdivider and all of the owners of the hereinafter described real property, does hereby waive the right to protest the formation of one or more special improvement districts for street light maintenance and energy, and for the construction of streets (including without limitation Gabel Road, Hesper Road, Conrad Road, South 35th Street West and South 32nd Street West within or adjacent to the Subdivision), street widening, sidewalks, survey monuments, street name signs, curb, gutter, street lights, driveways, traffic lights and traffic control devices, sanitary sewer lines, water lines, storm drains (either within or outside the area to provide drainage for runoff water for the Subdivision), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows, to-wit:

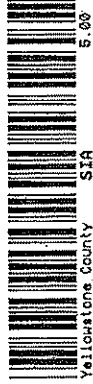
Gabel Subdivision Second Filing, situated in the SE $\frac{1}{4}$ of Section 14,
Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana,

DATED this 22 day of July, 1998.

MONTANA TRADEPORT AUTHORITY

By [Signature]
Its: Director

By [Signature]
Its: [Signature]



Yellowstone County

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SIR

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Page: 18 of 18
08/26/1998 03:56P

STATE OF MONTANA)

: ss.

County of Yellowstone)

This instrument was acknowledged before me on Sept 22, 1998, by
James E. Weaver and Elizabeth A. Weaver, as the
Executive Director and Chairman, respectively, of
the MONTANA TRADEPORT AUTHORITY.



Robert J. Weaver
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: April 2000

**GABEL SUBDIVISION, SECOND FILING
TRANSTECH CENTER**



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THE UNDERSIGNED

DATED _____

TO

FILED _____, 199_, AT _____

THE PUBLIC

REC. BOOK _____, PAGE _____

DOCUMENT NO. _____

WHEREAS, the undersigned are the owners of all of the lots in Gabel Subdivision,
Second Filing; and

WHEREAS, the aforesaid owner desires to place building and use restrictions on the
above-described premises;

NOW, THEREFORE, in consideration of the premises, the undersigned hereby
establishes and declares the following building restrictions and protective covenants which shall
be applicable to all of the above-described real estate.

1. PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS

All persons, corporations, or other entities who shall hereafter acquire any interest
in and to the above described real estate, shall be taken and held to agree and
covenant with the owners of the lots and with their heirs, devisees, trustees, and
assigns to conform to and observe the following covenants, restrictions, and
stipulations as to the use thereof, and as to the construction of residences and
improvements thereon.

2. REAL ESTATE TO WHICH COVENANTS APPLY

The covenants shall apply equally to all lots described in Gabel Subdivision,
Second Filing.

3. PURPOSE

The following covenants are set forth for the purpose of maintaining fair and
adequate values of said land, preventing nuisances, and thereby securing to each
such owner, present and future, the full benefit and enjoyment of his land, in
consideration of our mutual interest as owners of said real estate, we do hereby
covenant and agree that the parties hereto, their heirs, personal representatives,
successors, and assigns will be bound by and comply with the restrictive
covenants set forth herein.

4. USE OF PREMISES

- A. Fuel oil, gasoline, and petroleum products bulk storage for sale.
- B. Gases or liquefied petroleum gases in approved portable metal storage containers for sale.

5. SITE SIZE

Parcels of property shall, under no circumstances, be subdivided or resubdivided into parcels which directly, or as a remainder, create parcels less than 20,622 square feet in size. Upon purchase of subdivided property from the Grantor herein or upon purchase thereafter, no resubdivision of any kind shall occur. However, notwithstanding anything to the contrary, it is understood that Grantor herein reserves the right to subdivide or resubdivide the property into parcels meeting the 20,622 square feet requirement herein.

6. BUILDING TO LAND RATIO

The maximum portion of a site that may be covered by buildings shall not exceed 60 percent and shall be sufficient to allow off-street parking for the vehicles of all employees, customers, or invitees.

7. SETBACKS, PRIVATE LANDSCAPE, and SIGNAGE/ENTRY FEATURE EASEMENTS

Building setbacks are variable depending on lot size and configuration. Building setbacks are defined by setback requirements outlined in the uniform zoning code, private utility easements and the private landscape easement documented on the plat and described in these CCRs. In all instances, the front yard setback resulting from the private landscape easement exceeds setback requirements of the unified zoning code. The setbacks resulting from the required private landscape and utility easements are illustrated on Exhibits B, C and D and described below:

LOT & BLOCK	GABEL RD. SETBACK	HESPER RD. SETBACK	SIDE UTIL. SETBACK	REAR YD.	
				UTIL SETBACK	SETBACK
1-1	50'		0		8'
1-2	50'		8'		8'
1-3	NA	50'	8'		16'
1-4	NA	50'	0'		16'
1-5	NA	50'	0'		16'
1-6	NA	50'	16'		16'
1-7	32'	NA	0'		0'
1-8	32'	NA	16'		0'
1-11	50'	NA	8'		0'

LOT & BLOCK	GABEL RD. SETBACK	HESPER RD. SETBACK	SIDE UTIL. SETBACK	REAR YD. UTIL SETBACK
1-12	50'	NA	8'	0'
1-13	50'	NA	0'	0'
1-14	50'	NA	16'	0'
1-15	32'	NA	0'	0'
1-16	32'	NA	0'	0'
1-17	32'	NA	0'	0'
1-18	32'	NA	0'	0'
1-19	32'	NA	0'	0'
2-1	32'	NA	16'	0'
2-2	32'	NA	0'	0'
2-3	32'	NA	0'	0'
2-4	32'	NA	0'	0'
2-5	32'	NA	0'	0'
2-6	32'	NA	0'	0'
2-7	32'	NA	0'	0'
2-8	32'	NA	16'	0'
3-1	20'	NA	0'	0'
3-2	32'	NA	0'	0'
3-3	32'	NA	0'	0'

No structures or parking areas are permitted in the private landscape easement. Public sidewalks may be constructed in either the utility or private landscape easements. Development signs will be constructed in identified signage and entry feature easements. For the purpose of presenting a cohesive image of the development, undulating earth mounds shall be constructed by the property owner between the right of way and the inside edge of the private landscape easement as described under Item 8. Landscaping and stormwater management will be permitted in both the private landscape and utility easements, provided the requirement for mounding and screening has been achieved.

8. BOULEVARD LANDSCAPE

Each building owner/tenant will be responsible to install and maintain the setback areas and boulevard landscape between the back of the curb line and the inside edge of the private landscape setback in the following manner:

- A. Undulating landforms an average of 3 feet, 6 inches high, minimum of 3 feet high, a maximum of 5 feet high with maximum slopes of 3:1.
- B. All boulevard areas shall be seeded with an approved seed-mix of drought tolerant grasses and wildflowers.
- C. All grass areas within the setback area will have a simple rotor spray irrigation system with drip irrigation provided to all trees and shrubs. The irrigation plan must be approved by the Tradeport.



D. Groves of canopy trees (a minimum of 8-foot height, 1-1/2-inch caliper) and evergreen trees (5-foot height minimum) shall be planted in informal arrangements. The tree location shall be shown on an approved site plan and shall include a minimum of one evergreen and canopy tree per 15 linear feet of street frontage and one small/ornamental per 50 linear feet. Ornamental trees shall be grouped a minimum of three trees per group. Additional rockwork, shrub and flower planting will be reviewed and approved by the owner. Use of sandstone rockwork, shrubs and flowers is encouraged near site entry drives and signs. All shrubs and ornamental flower plantings must be located in edged, mulched and maintained beds. Drainage facilities shall be developed as long linear swales, naturalized with low maintenance grasses, rockwork and wildflowers and designed to provide supplemental water to trees.

Acceptable tree species include:

Canopy Trees	Evergreen Trees	Small Ornamental Trees
Black Ash	Ponderosa Pine	Quaking Aspen
Green Ash	Scotch Colorado Spruce	Canada Red Chokecherry
Cottonwood	Austrian Pine	
Catalpa		

A landscape plan showing all proposed grading, planting and drainage improvements shall be reviewed and approved by the Tradeport prior to construction. The plan must respect all proposed lighting (Exhibit G), signage/entry feature easements (Exhibit F) and entry access points (Exhibit A) documented herein. Local government requirements for clear vision zones and future improvements to the street right-of-way should be recognized and adhered to.

Requirements for side buffer yard and landscaping shall be waived.

Off-street parking lot landscape requirements shall be as described below:

- (1) Landscape requirements related to amount of landscaping shall be reduced to 50 percent of outlined requirements for visitor and employee parking areas located in the rear or side yards. Required area (not required minimum dimensions) shall be reduced.
- (2) The requirement for internal landscaped islands or divider strips shall be waived in areas serving as outdoor warehousing or vehicle storage areas.
- (3) Requirements for shrub planting along street frontage will be waived. Earth forms will provide the required screening.

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9. DEVELOPMENT STANDARDS

A. Buildings

- (1) All buildings shall conform to the guidelines set forth in Exhibit E herein.
- (2) All buildings are to be "earth tone" color hues.
- (3) A minimum of 40 percent of the front of all buildings shall be constructed or dressed with bricks, wood, glass, texturized concrete, tile or block.
- (4) Buildings shall be restricted in height only as required by zoning. This shall not prohibit basements, daylight basements, or basements which are partially underground.

B. Services

All permanent utilities shall be placed underground.

C. Loading Areas and Equipment

The architecture of loading docks must be separately reviewed and approved prior to installation as provided for in paragraph 12.

D. Signs

(1) Development Entrance Signage

- (a) *Monument Signage.* Entrance signs shall have 100 square feet total sign area with heights no taller than 5 feet. Signs shall be built into landscape berms at development entrances. Areas immediately surrounding berms shall be landscaped using trees, shrubs, ground covers, and/or turf. Monument signs shall be illuminated with ground mounted accent lighting. See Exhibit F.

(2) Parcel Signage

- (a) *Monument/Directional Signage.* Signs shall be constructed with large boulders approximately 4 to 5 feet in height. Boulders shall have sufficient surface area for the attachment or inseting of directional information plaques with company names, logos, etc. Boulder colors shall be light to resemble the local rock formations "The Rims." Basic messages shall be brief and any symbols should match standardized symbols. Ground mounted accent lights shall be used to display signs at night. See Exhibit G.

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(b) Secondary Directional Signage. Total sign area should not exceed 28 square feet. Maximum sign height should be 4 feet. No two directional signs of neighboring parcels shall be closer than 40 feet. Secondary directional signs shall consist of post and panel construction with anodized aluminum, bronze finish, and white lettering (see Exhibit G).

(c) Regulatory Signage. Regulatory signs shall not exceed 6 feet in height. Use of standardized symbols is strongly recommended. Regulatory signs shall consist of post and panel construction with anodized aluminum, bronze finish, and white lettering (see Exhibit G).

(d) Wall Signage. One wall mounted identification sign may be placed flat against the building. Text shall not extend above the height of the building, with the address of the facility clearly marked. Signs may be lighted but shall not rotate, blink, or move in any fashion. Signage shall be restricted to advertising only the person, firm, company, or corporation occupying the site. Signs are not to exceed allowable dimensions as outlined in the City of Billings sign ordinance.

E. Lighting

(1) Roadway Lighting

Roadway lighting shall consist of "shoebox" fixtures with a 30-inch pole height. Metal finishes shall be bronze. Poles shall be located 120 feet o.c. for straight alignments and 85 feet o.c. along curves with fixtures placed on the inside radius of the road. A High Pressure Sodium (HPS) fixture shall be used as the luminaire with foot candles rated at 1.3 FTC per IES recommendations (classification = major, road surface = R3). See Exhibit G.

(2) Interior Circulation/Parking Lighting

Parking lighting shall consist of "shoebox" fixtures with a 20-foot pole height. Metal finishes shall be bronze. Poles shall be located 100 feet o.c. for multiple fixtures (on approximately 2200 square feet of parking area). A Metal Halide fixture shall be used as the luminaire with foot candles rated at .6 FTC per IES recommendations for medium activity. See Exhibit G.

F. Fencing

Ornamental fencing shall be used for front yards. Front yard fencing shall be black or bronze steel fencing, not to exceed 6 feet in height. Front yard fencing is intended to screen side yards and back yards from front entry. An additional vegetative buffer shall be located on the front yard side of the ornamental fencing. Vegetation should mature to approximately 4 feet in



height (see Exhibit H). Rear yard or storage yard fencing may exceed 6 feet in height if necessary for security or screening purposes, subject to review and approval by the Tradeport.

G. Refuse Collection Areas

All outdoor refuse collection areas shall be visually screened from streets and adjacent property by an opaque screen.

H. Storage of Equipment and Materials

All materials, parts, equipment, and like items shall be placed inside storage buildings or, if stored outside, shall be kept in a neat and orderly fashion and screened with suitable fences built in conformity with the set back requirements set forth herein; provided, however, that this restriction shall not apply to new or used equipment or machinery held for sale or lease to the public. Such equipment and machinery may be displayed without regard to the set back requirements so long as such displays are in a neat and orderly fashion and do not impede the flow of traffic into and out of the industrial park.

I. Site Organization

Owners/tenants are required to organize the site in a manner which minimizes the visibility of large parking areas and service function from the public roadways. All parking located in front of the building, between the public street right-of-way and the building front, shall be constructed and landscaped to standards outlined in the Uniform Zoning Code. Parking and service areas located behind the building shall be exempted from the requirements of the unified code as described in Item J.

J. Landscape Development

Landscape and landscape maintenance requirements shall be as outlined in Section 8, Boulevard Landscape. All parking located in front of the building, between the public street right-of-way and the building front, shall be constructed and landscaped to standards outlined in the Uniform Zoning Code. This exemption is approved by the City/County Planning Department in exchange for the increased requirements for landscaping along public street right-of-ways.

K. Stormwater Management

All on-site and off-site storm drain improvements for Gabel Subdivision, Second Filing will meet the criteria of the City of Billings Stormwater Management Manual. No City storm drain will be available for Phase I lots (fronting Hesper Road). These lots will incorporate complete on-site retention in their site design meeting City criteria. Refer to Exhibits C and D for guidelines to this development. Phase II lots (fronting Gabel Road) will have a storm drain service stubbed to the property line. Use of the

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storm drain services will be subject to the discharge restrictions outlined in the Stormwater Management Manual and site development will still require on-site stormwater detention.

10. MAINTENANCE

The Tradeport will provide maintenance requirements and a recommended schedule addressing mowing, tree care and irrigation amount and scheduling. Any proposed deviations from the design and maintenance standards shall be reviewed and approved by the Tradeport. The tenants/property owners shall each maintain their grounds to standards provided by the Tradeport including:

- A. Adherence to uniform mowing schedule to include more frequent mowing of areas adjacent to curbs or walks and between the sidewalk and curb line and less frequent mowing of the grassed mounds. The mowing schedule of the mounds will be tied to rainfall, flower bloom, time of year and maximum height of 16 inches. A fall mowing will be required no later than October 1.
- B. Routine maintenance of trees, removal and replacement of unhealthy, poorly formed or dead trees. Fertilizing of trees for the for the first three years following planting. Owners/tenants are required to install and maintain the minimum number of required trees in perpetuity. If the owner fails to comply with the maintenance requirements, the Tradeport reserves the right to perform deferred maintenance and bill the owner/tenant.

11. OWNER'S ASSOCIATION

An Owner's Association may be established for the purpose of establishing and maintaining all of the boulevard landscaping areas required by this Agreement, whether situated on public or private land, and/or for the purpose of carrying out the other purposes of this Agreement. The manner of establishing said Owner's Association shall be as follows:

- A. The definitions with respect to the establishment of the Owner's Association are as follows:

- (1) Lot. A lot is any lot in Gabel Subdivision, Second Filing.
- (2) Notice. A Notice shall be in written form and shall state the time, place, and purpose of the meeting. Said Notice shall be signed by the persons calling the meeting.
- (3) Owner. An Owner shall be the holder of fee simple title in and to a lot or, if there is a notice of record as to a contract of sale for a lot, then, and in that event, an Owner shall be contract purchaser.
- (4) Owner's Association. The Owner's Association shall be a nonprofit corporation formed as provided for hereunder.

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(5) Quorum. A Quorum shall be reached if there are Owners and/or persons holding proxies present at a meeting which represent in excess of 60 percent of all the lots.

(6) Proxy. A Proxy is a written document executed by the Owner or Owners of a lot authorizing the designated holder thereof to vote the interest of the Owner or Owners so signing. All such proxies must be acknowledged to be valid.

(7) Service of Notice. Service of Notice means the placing of a copy of the Notice in the first class mail addressed to the last known address of any one of the Owners of a particular lot. The last known address shall be conclusively determined if it is the same as the address specified in the records of the Yellowstone County Assessor's office on the day of service. Service shall be deemed to have been made on the day said Notice is placed in the first class mail.

B. The Owners of any 10 lots may execute a Notice calling for an election to determine whether or not an Owner's Association should be established and the purpose of said Owner's Association. The Service of Notice shall be made at least 10 days prior to the scheduled meeting.

C. All proxies must be presented to the Owners calling the meeting prior to the meeting. Said Owners shall be present for one hour prior to the meeting for purpose of receiving any such proxies and verifying their authenticity.

D. The meeting shall be called to order by the Owners of the lots calling the same. Said Owners calling said meeting shall initially determine if a quorum is present. In the event a quorum is present, the meeting shall be authorized to conduct business on behalf of the Owners. Any business so transacted shall be binding upon all Owners and their lots.

E. The first order of business shall be the election of a chairman and a secretary. The chairman shall preside over the meeting, and the secretary shall keep minutes of the meeting. Roberts Rules of Order shall govern the meeting procedure except where expressly in conflict with these covenants.

F. The vote of Owners and proxies, present at the meeting and owning a majority of the lots, shall be sufficient to carry any measure properly before the meeting. All votes shall be in writing and shall be cast by the designation of the lot and block number represented thereby. In the event lots are jointly owned, only one vote may be cast relative to such lots and no split votes will be counted.

G. In the event it is determined at such meeting that an Owner's Association be established, the chairman and secretary shall be authorized to act as representatives of all Owners. They shall have authority to call meetings and make Service of Notice relative to the adoption of corporate articles, by-laws, and governing declarations. They shall be authorized to hire professionals for the purpose of drafting all documents necessary to establish the Owner's Association, and shall be authorized to incur expenses



and costs relative to such establishment on behalf of all Owners and their lots.

H. Any costs, fees, and expenses incurred by the chairman and secretary in organizing the Owner's Association shall be assessable to all lots equally, no matter what their square footage may be, upon establishment of the Owner's Association.

I. It is understood that all assessments to be charged by the Owner's Association against lots, upon its establishment, shall be on an equal basis, no matter what the square footage of the different lots are and no matter how much planting areas are being maintained by the Association as to each lot.

J. In the event it is not determined at a meeting called for that purpose to establish the Owner's Association, all Owners shall be prohibited from calling a like meeting within 6 months from the date of the prior meeting.

K. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. All of the requirements of this paragraph shall be included in any Owner's Association documents adopted in the future.

12. CONSTRUCTION, DESIGN, AND ALTERATIONS TO STRUCTURE

All plans and specifications for the construction and/or alterations of structures on the aforesaid property shall be submitted to Montana Tradeport Authority, or its designated representative for review and approval at least 30 days prior to the commencement of construction. If formal approval or rejection of the proposed construction is not received by the Applicant within the 30 day period set forth herein, the plans and specifications shall be deemed to be approved.

The plans and specifications shall be completed within 24 months from the date of commencement of such construction, unless an exception to such time limit is requested by the Applicant and approved by Montana Tradeport Authority. Architectural review may be performed by an Owner's Association in the event an Owner's Association is established for that purpose.

13. MAINTENANCE ENFORCEMENT

The individual Owners shall be responsible for maintenance of their tract or tracts, including landscaping and structures. Any party failing to properly maintain his tract will be notified in writing by Montana Tradeport Authority or the Owner's Association. In the event it is established, and shall have 30 days in which to correct the deficiency. If not corrected in that time, Montana Tradeport Authority

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or the Owner's Association, if established, may cause the deficiency to be corrected and the costs of such corrective work will constitute a lien on the property affected, and Montana Tradeport Authority or the Owner's Association, if established, may proceed to collect the amount due.

14. AMENDMENT OF AGREEMENT

The Owners may amend any provision of this Agreement if persons owning at least 60 percent of all lots totaling 40.7853 acres (1,776,608 square feet) of the net area in the Subdivision vote in favor of the amendment. The intent of the amendment is not to change the concept of these covenants, but to allow a margin of flexibility in evaluating special circumstances.

15. EFFECT OF NON-ENFORCEMENT

Failure of any party to enforce any restriction, condition, covenant, or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto.

16. DURATION AND EFFECT OF AGREEMENT

This contract constitutes a mutual covenant running with the land, and all successive future Owners shall have the same right to invoke and enforce its provisions as the original parties hereto. This contract shall take effect and be in full force and effect when executed by the parties hereto, and shall be placed of record in Billings, Montana; and shall continue in force for a period of 20 years from the date of said filing, and so long thereafter as the Owners shall deem it necessary and reasonable to maintain their property rights purchased and acquired hereunder.

17. CONVEYANCE IN VIOLATION OF AGREEMENT

Any deed, lease, conveyance, or contract made in violation of this Agreement shall be void and may be set aside by petition of one or more of the parties hereto, and all successors in interest, assigns, heirs, and personal representatives shall be deemed to the same effect as the original signers; and when such conveyance or other instrument is set aside by decree of any Court or competent jurisdiction, all costs and all expenses of such proceedings shall be charged against the grantors and shall be declared by the Court or constitute a lien against said real estate so wrongfully deeded, sold, leased, or conveyed, until paid, and such lien may be enforced in such manner as the Court may order.

18. REMEDY FOR BREACH

The parties hereto and every person hereinafter having any right, title, or interest in lands or the Owner's Association, if established, shall have the right to prevent or stop violation of any said restrictions by injunction or other lawful procedure, and to recover any damages resulting from such violation. All costs and expenses of such proceedings shall be charged against the violators, and shall be declared



by the Court to constitute a lien against the real estate of the violator, until paid, and such lien may be enforced in such a manner as the Court may order.

19. EFFECT OF PARTIAL INVALIDITY

It is expressly agreed that in the event any covenant, condition, or restriction hereinabove contained, or any portion thereof, is invalid or void, such shall in no way effect any other covenant, condition, or restriction.

MONTANA TRADepORT AUTHORITY
a Montana Corporation

By [Signature]

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this 24th day of August, 1998, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Clay Skudatel, known to me to be the Chairman of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

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



[Signature]
Notary Public for the State of Montana
Residing at Yellowstone County
My commission expires August 2, 2000

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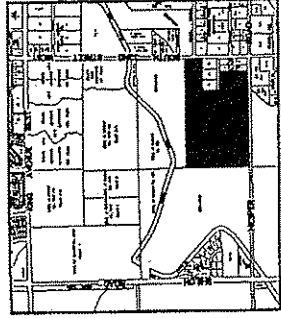
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GABEL SUBDIVISION

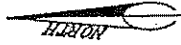
BEING TRACTS 1-6, 11-21, 25-33, 36 AND THE WESTERLY LOTS 5, 6, 11 & 12, BLOCK SITUATED IN THE SE 1/4 OF

YELLOWSTON

PREPARED FOR : MONTANA TRADEPORT AU
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 100'



VICINITY MAP



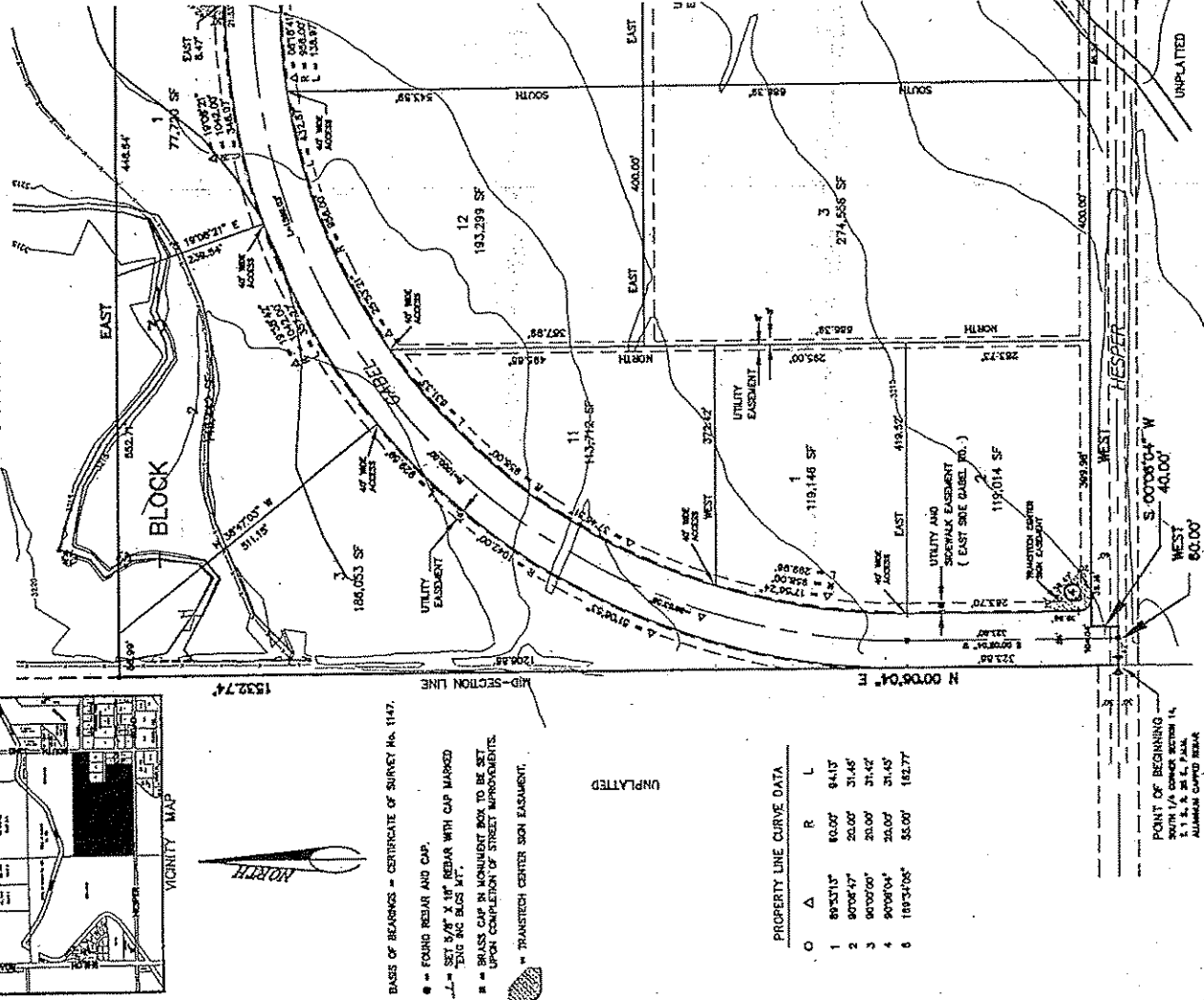
BASES OF BEARINGS - CERTIFICATE OF SURVEY No. 1147.

● = FOUND REBAR AND CAP.

△ = SET 5/8" X 16" REBAR WITH CAP MARKED "ENG INC BLOS MT."

■ = BRASS CAP IN MONUMENT BOX TO BE SET UPON COMPLETION OF STREET IMPROVEMENTS.

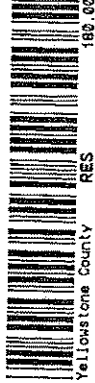
— TRANSITION CENTER SIGN EASEMENT.



PROPERTY LINE CURVE DATA

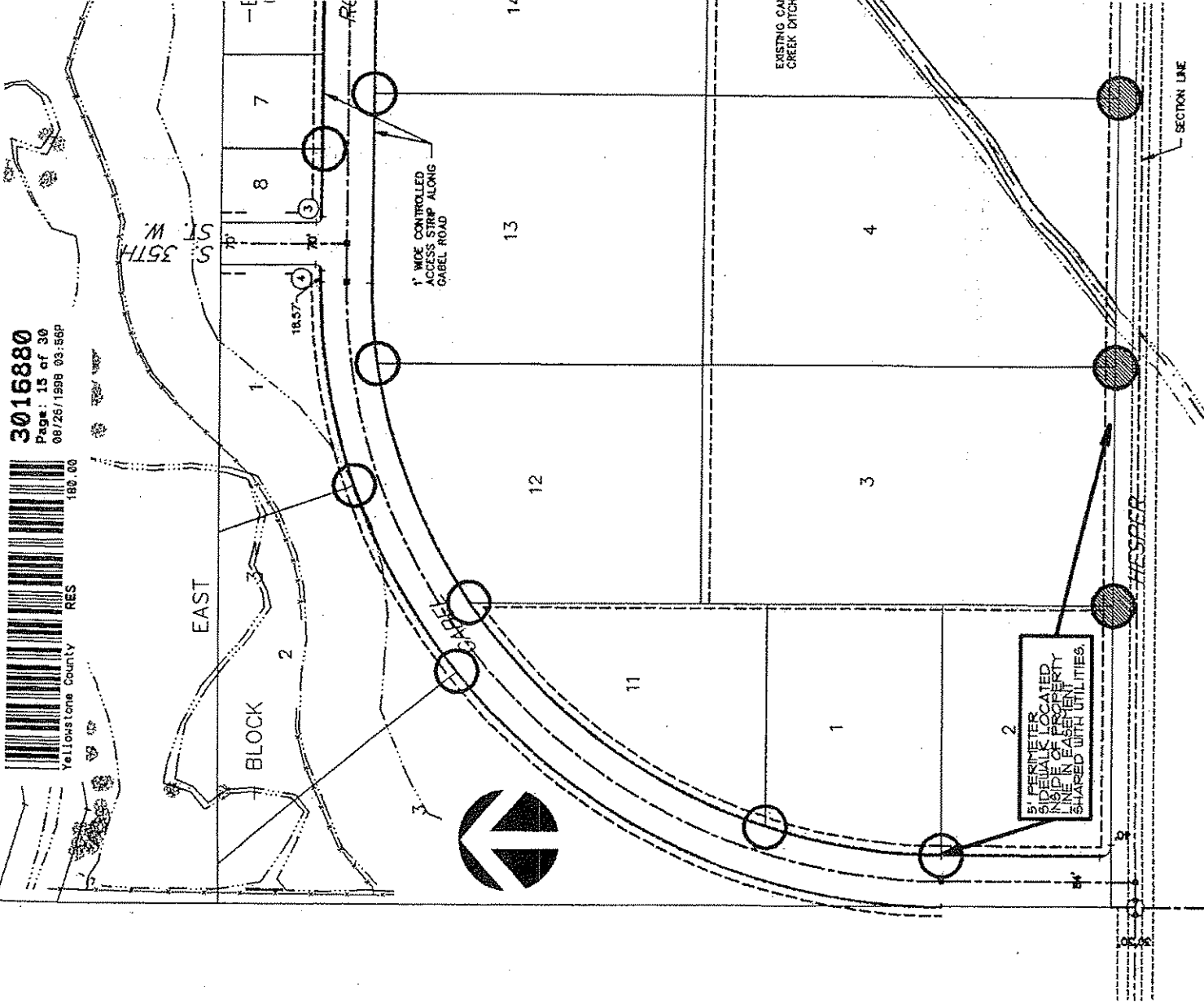
O	Δ	R	L
1	89°33'15"	60.00'	84.13'
2	90°08'47"	20.00'	31.45'
3	90°00'00"	20.00'	31.42'
4	90°08'04"	20.00'	31.45'
5	189°34'05"	55.00'	182.77'

POINT OF BEGINNING
S 00°08'04" W
40.00'
WEST
60.00'



3016880

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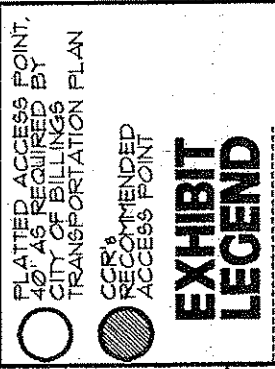
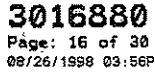


TRANSTECH CENTER

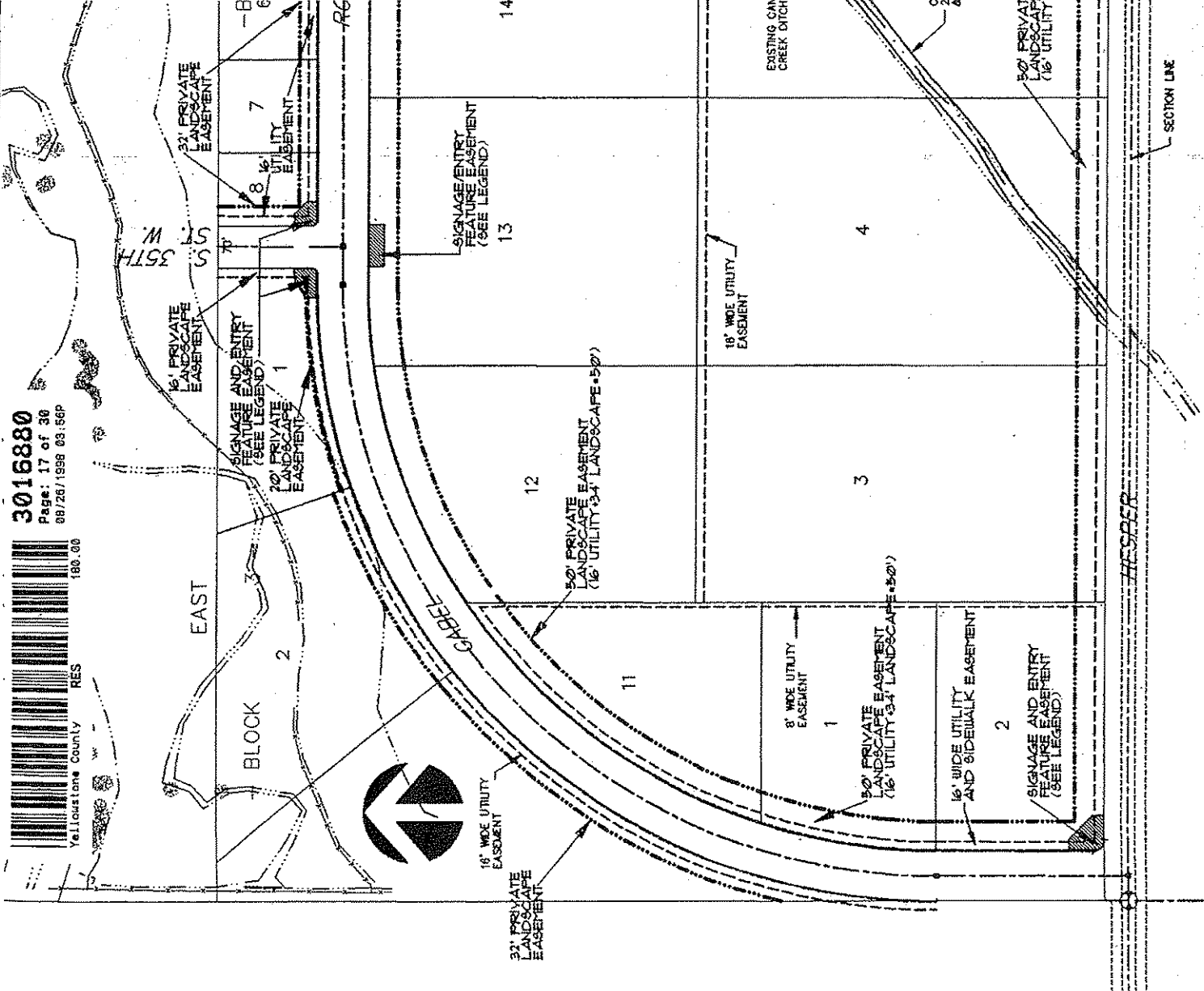
EXHIBIT A

- Anderson Associates Architects
- Coxwell Architect
- CTA Architects Engineers
- Fletcher & Associates, Landscape Architects
- Hahn-Alwood Architects & Planners
- Spectrum Group Architects
- Base information provided courtesy of Engineering, Inc.

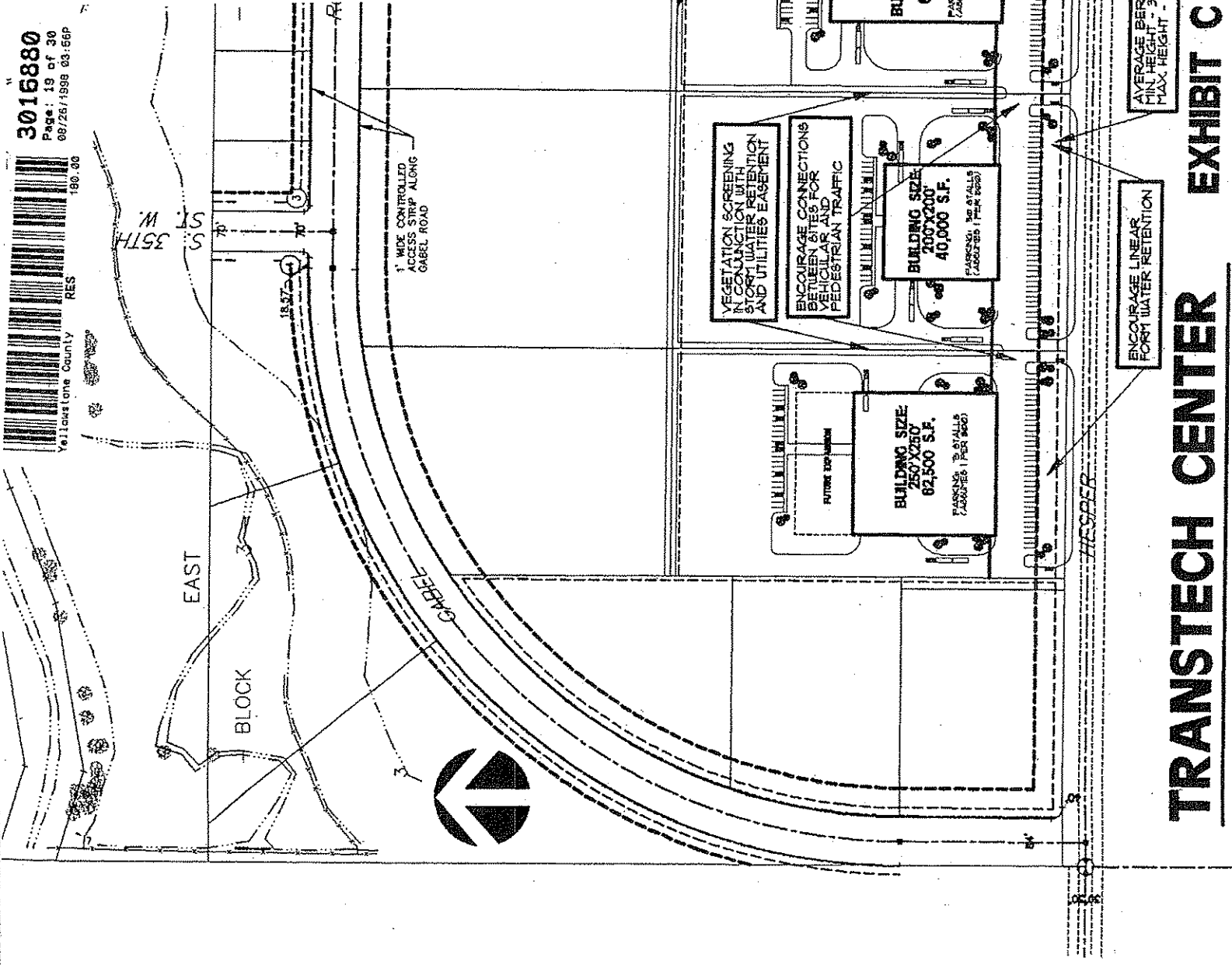
1' WIDE NO ACCESS
5MB



- SUBDIVISION ACCESS PLAN



TRANSTECH CENTER EXHIBIT B - E

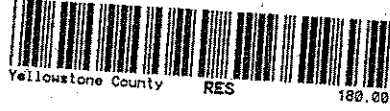


TRANSTECH CENTER

EXHIBIT C

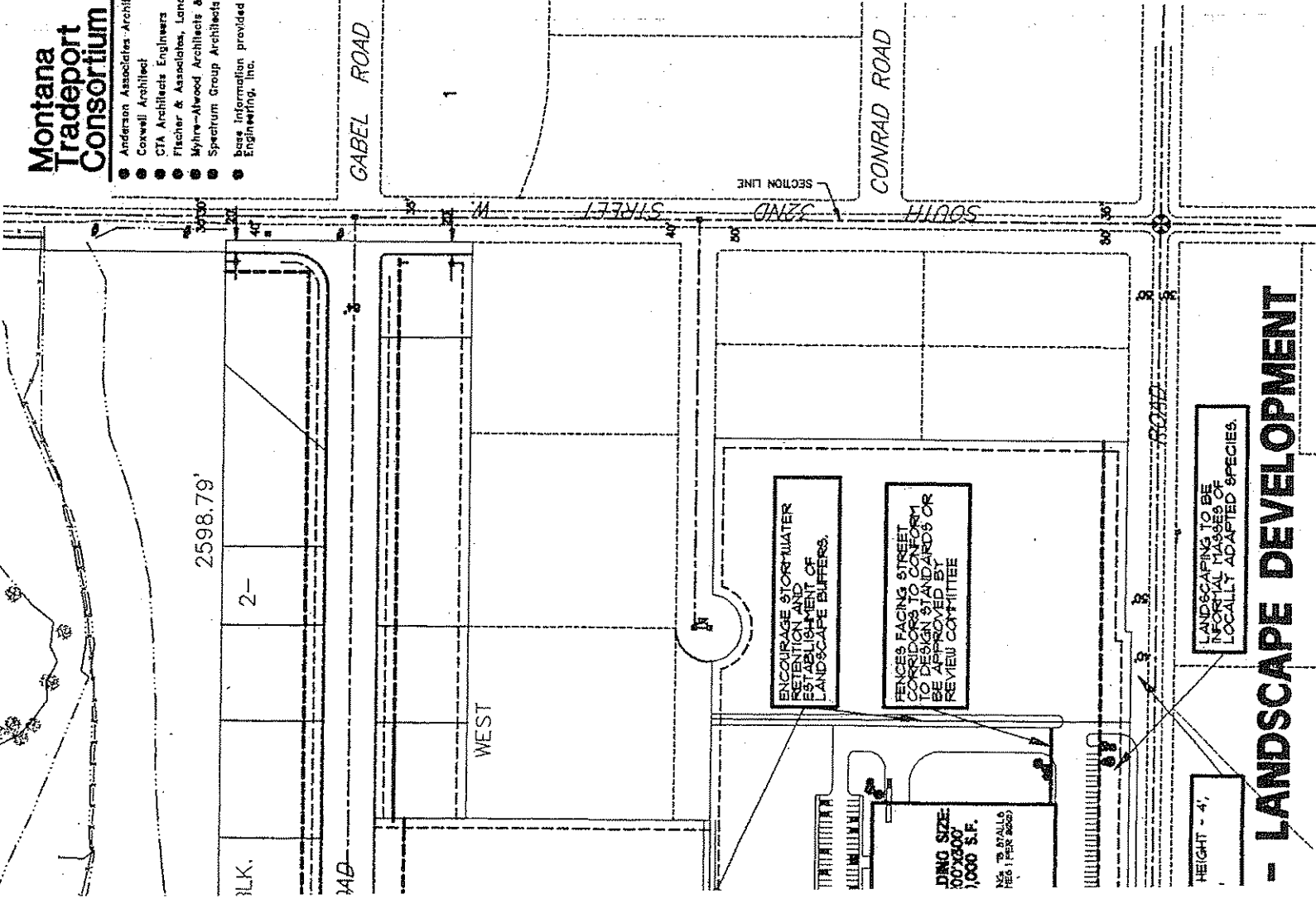
Montana Tradeport Consortium

- Anderson Associates Architects
- Corwell Architect
- CTA Architects Engineers
- Fischer & Associates, Landscape Architects
- Myhre-Alwood Architects & Planners
- Spectrum Group Architects
- Base information provided courtesy of Engineering, Inc.



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- LANDSCAPE DEVELOPMENT

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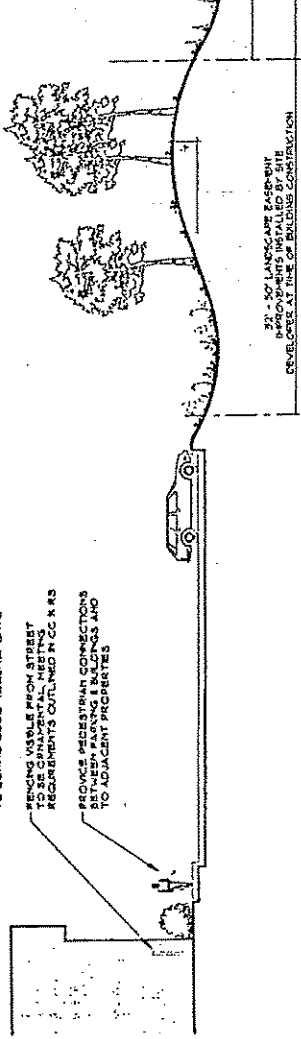


180.00

Yellowstone County RES

SITE DEVELOPMENT WITHIN
BUILDING SETBACK SUBJECT
TO ZONING CODE REQUIREMENTS

FENCING VISIBLE FROM STREET
TO BE ORNAMENTAL MEETING
REQUIREMENTS OUTLINED IN CC & RS
PROVIDE PEDESTRIAN CONNECTIONS
BETWEEN BUILDINGS AND
TO ADJACENT PROPERTIES

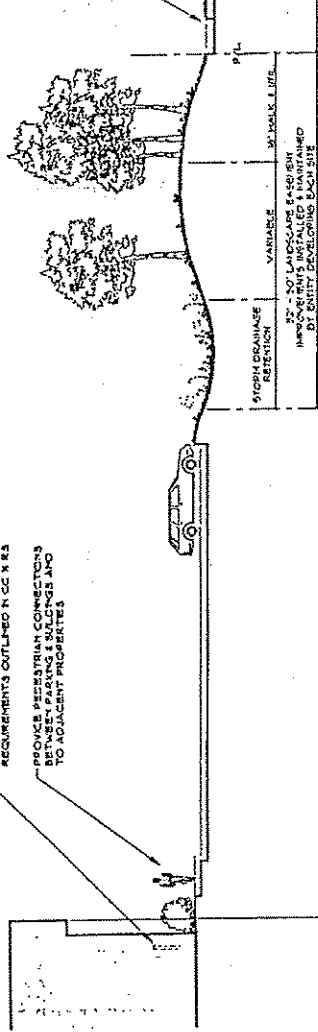


20' - NO LANDSCAPE BASEMENT
PROPOSED HERE INSTALLED & MAINTAINED
BY ENTITY DEVELOPING EACH SITE

SITE DEVELOPMENT WITHIN
BUILDING SETBACK SUBJECT
TO ZONING CODE REQUIREMENTS

FENCING VISIBLE FROM STREET
TO BE ORNAMENTAL MEETING
REQUIREMENTS OUTLINED IN CC & RS

PROVIDE PEDESTRIAN CONNECTIONS
BETWEEN BUILDINGS AND
TO ADJACENT PROPERTIES



20' - NO LANDSCAPE BASEMENT
PROPOSED HERE INSTALLED & MAINTAINED
BY ENTITY DEVELOPING EACH SITE

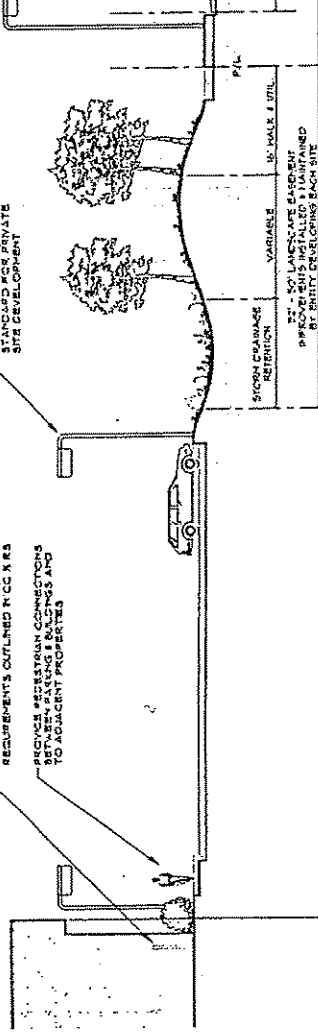
SITE DEVELOPMENT PERMITTED IN SETBACK

VARIABLE BUILDING SETBACK

SITE DEVELOPMENT WITHIN
BUILDING SETBACK SUBJECT
TO ZONING CODE REQUIREMENTS

FENCING VISIBLE FROM STREET
TO BE ORNAMENTAL MEETING
REQUIREMENTS OUTLINED IN CC & RS

PROVIDE PEDESTRIAN CONNECTIONS
BETWEEN BUILDINGS AND
TO ADJACENT PROPERTIES



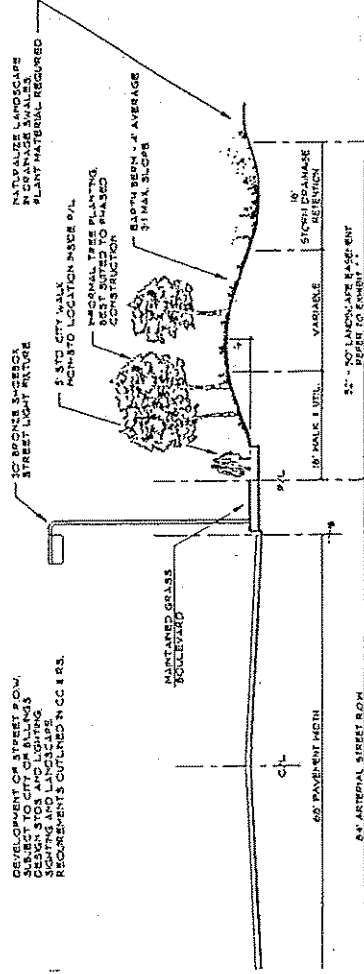
20' - NO LANDSCAPE BASEMENT
PROPOSED HERE INSTALLED & MAINTAINED
BY ENTITY DEVELOPING EACH SITE

SITE DEVELOPMENT PERMITTED IN SETBACK

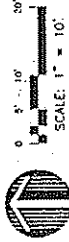
VARIABLE BUILDING SETBACK



DEVELOPMENT ON STREET ROW,
SUBJECT TO CITY CHANGING
DESIGN SIGN AND LIGHTING
SIGNAGE AND LANDSCAPE
REQUIREMENTS OUTLINED IN CCR 12.5.

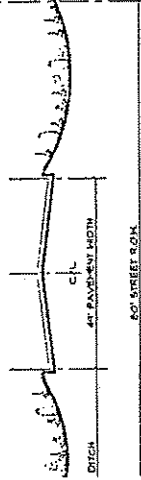


TYPICAL CABLE ROAD
CROSS SECTION 1"=10'-0"
EXHIBIT "D"

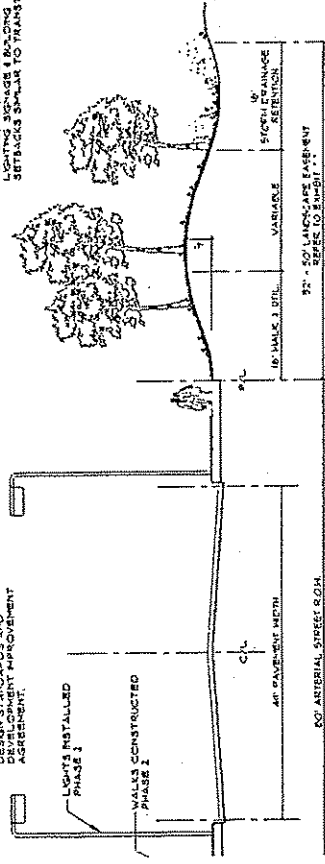


SCALE: 1" = 10'

DEVELOPMENT ON STREET IMPROVEMENTS - PHASE I
SUBJECT TO DEVELOPMENT AGREEMENT



DEVELOPMENT ON STREET ROW.
SUBJECT TO CITY ORDINANCES
DESIGN STANDARDS AND
DEVELOPMENT IMPROVEMENT
AGREEMENT.



NO. ANYERIAL STREET R.O.W.

DEVELOPMENT ON PRIVATE LANDS
SUBJECT ONLY TO REQUIREMENTS
OF LOWWELD ZONING CODE
ENCOURAGE ADJACENT LAND OWNERS
TO REMOVE LANDSCAPE BERMING
LOADING SIGNAGE & BULKING
SETRACKS SIMILAR TO TRANSITECH CO # 193.

DEVELOPMENT OF PRIVATE LANDS
SUBJECT ONLY TO REQUIREMENTS
OF UNBUILT LIGN CODE
ENCOURAGE ADJACENT LAND OWNERS
TO RECOVER LANDSCAPE BEHIND
LIGHTING SIGNAGE & BOLLARD
SETBACKS SIMILAR TO TRANSITECH CC 115

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TYPICAL CROSS SECTIONS

HESSPER ROAD & S. 32ND. STREET AND GABLE ROAD
YELLOWSTONE COUNTY, MONTANA

DRAWING	PROJECT	OWNER
PROJECT NO. 96-	ISSUE DATE 7/27/9	REVISIONS

Forster & Associates, P.C.
Landscape Architecture
Land Planning

2815 Montana Avenue
Billings, Montana 59101
Phone 406-238-9141
Fax 406-230-4963

DRAWN
CHECKED
APPROVED

13315



BUILDING DESIGN STANDARDS

The intent of these standards and the accompanying sketches is to provide the developer with a guide which will maintain the aesthetic quality of the development and yet allow for flexibility in the building design. Each development site and project will have particular characteristics that may suggest some guidelines be emphasized more than others.

A. These standards apply to finishes on all sides of buildings. The following materials are acceptable: brick, fluted block, colored and or textured block, architectural concrete panels, glass, stucco, architectural concealed fastener metal panels, exterior insulation and finishing systems (i.e. Dryvit, etc.), stone or wood. Exposed fastener, ribbed panel metal wall systems are not encouraged for more than 25% of the exposed and visible wall surface.

B. Visible roofs shall be finished with a material that is architecturally compatible in color and design with the wall materials. Metal roofs, fascia and mansards shall be limited to the following:

1. standing seam
 2. metal shakes or shingles
 3. architectural metal treatments.
- All mechanical equipment placed on top of any roof shall be screened by a parapet or other similar architectural apparatus being at least the heights of the mechanical equipment.

C. Varied building massing is encouraged to break down the scale of large buildings. Public entrances should be visible and emphasized.

D. Long, flat facades, visible from local streets or arterials, having more than one hundred (100) lineal feet are not encouraged. Buildings over one hundred (100) feet in length shall incorporate one of the following: recesses, off-sets, angular forms, landscaping features or other architectural features which break up the massing of the building. The break in the facade shall be minimum of eight (8) feet in length. A single uninterrupted length of a facade shall not exceed one hundred (100) lineal feet. It is encouraged that each offset area contain landscaping or other similar amenities which will complement the offset area.

E. Architectural building lighting is encouraged to enhance the nighttime appearance of the development.

Exhibit E-1

Montana Tradeport Consortium

- Anderson Associates Architects
- Cowell Architect
- CTA Architects Engineers
- Fischer & Associates, Landscape Architects
- Myre-Alstead Architects & Planners
- Spectrum Group Architects
- base information provided courtesy of Engineering, Inc.

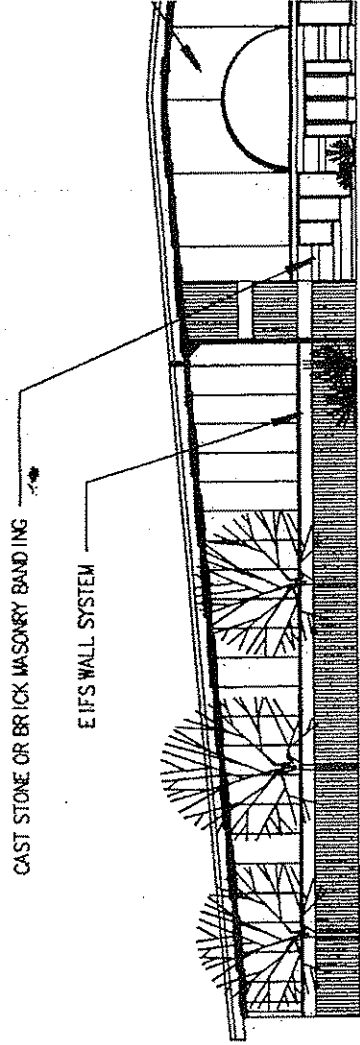
PROTO-TYPE BUILDING ELEVATIONS TRANS - TECH CENTER

JUNE 1998

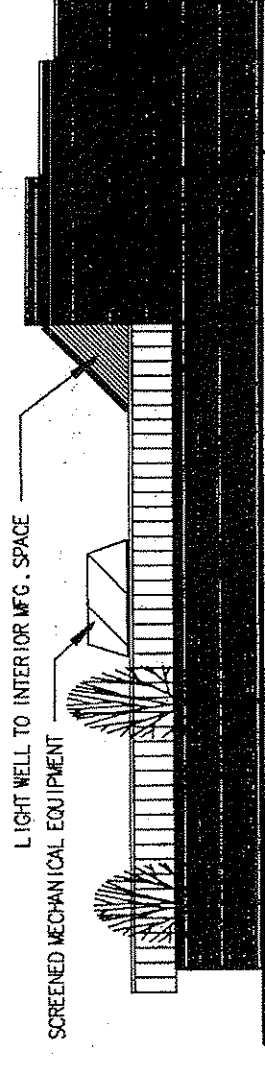
SHEET

1

OF 3



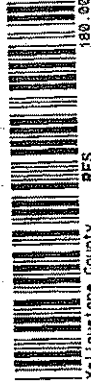
TYPICAL PRE-ENGINEERED METAL BUILDING STRUCTURE



STEPPED WALL , 3' EACH STEP

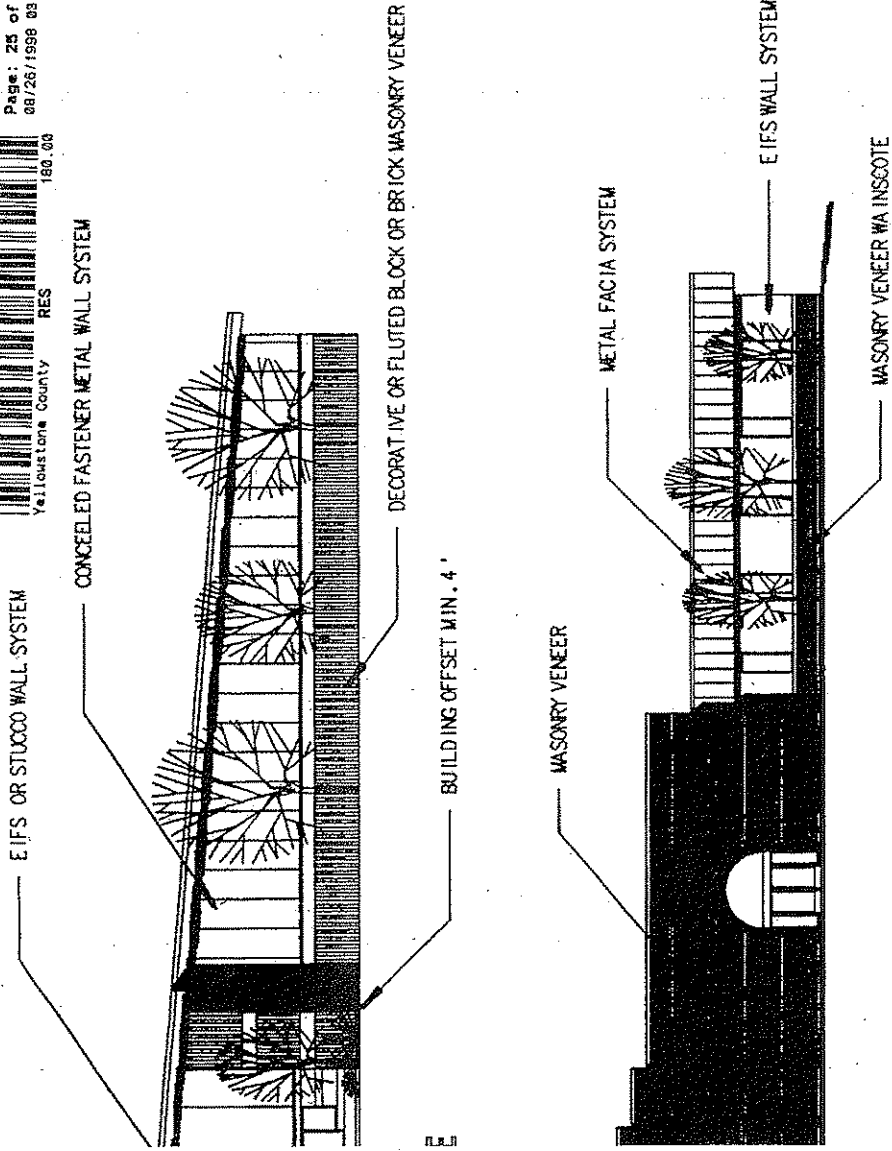
LOW SLOPED RO

3016880
 Page: 24 of 30
 08/26/1998 03:56P



190.00

Yellowstone County RES



OF WITH TYPICAL POST AND BEAM CONSTRUCTION

Exhibit E-2

Montana Tradeport Consortium

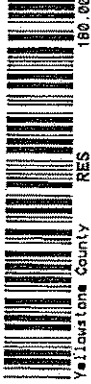
- Anderson Associates Architects
- Coxwell Architect
- CTA Architects Engineers
- Fischer & Associates, Landscape Architects
- Wyre-Abrook Architects & Planners
- Spectrum Group Architects
- base information provided courtesy of Engineering, Inc.

PROTO-TYPE BUILDING ELEVATIONS TRANS - TECH CENTER

JUNE 1998

SHEET

2
 OF 3



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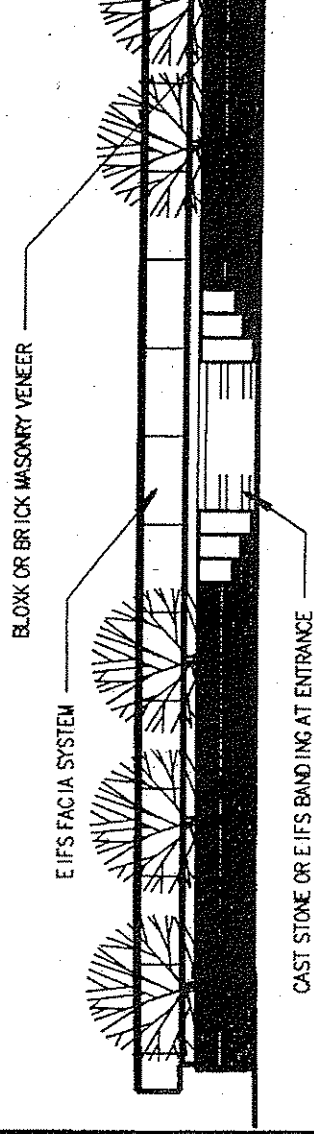
Page: 26 of 30

08/26/1998 03:55p

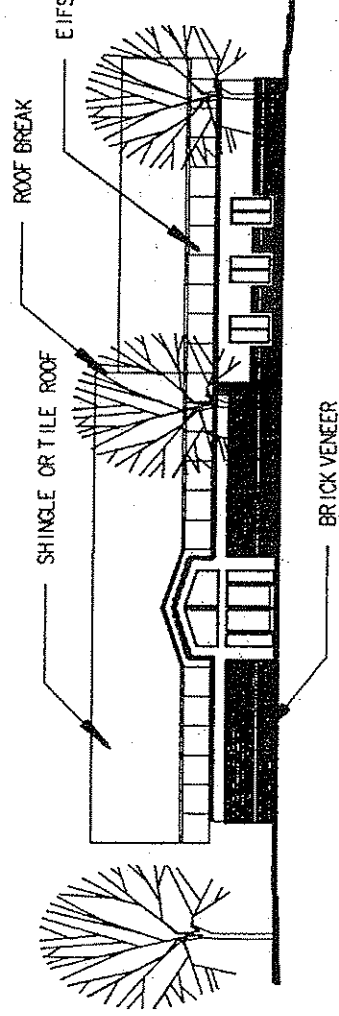
RES

Yellowstone County

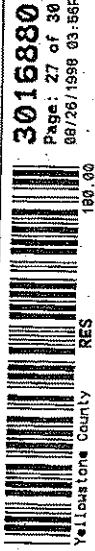
150.00



TYPICAL STRUCTURE UTILIZING MASONRY AND TILE

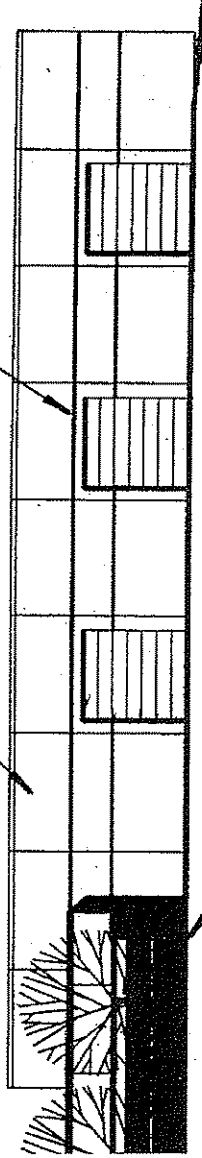


TYPICAL SMALLER STRUCTURE (6,000 TO 10,000 S.F.) UTILIZING MASONRY



TILT UP CONC. WALL PANELS WITH
DECORATIVE FINISH AND OR RUSTICATION STRIPS

RUSTICATION STRIPS



BUILDING BREAK BETWEEN LOW AND HIGH WALLED STRUCTURES

TILT UP CONCRETE

FACIA SYSTEM

Exhibit E-3

Montana Tradeport Consortium

- Anderson Associates Architects
- Coxwell Architect
- CTA Architects Engineers
- Fischer & Associates, Landscape Architects
- Myre-Alwood Architects & Planners
- Spectrum Group Architects
- base information provided courtesy of Engineering, Inc.

PROTO-TYPE
BUILDING ELEVATIONS
TRANS - TECH CENTER

JUNE 1998

SHEET

3

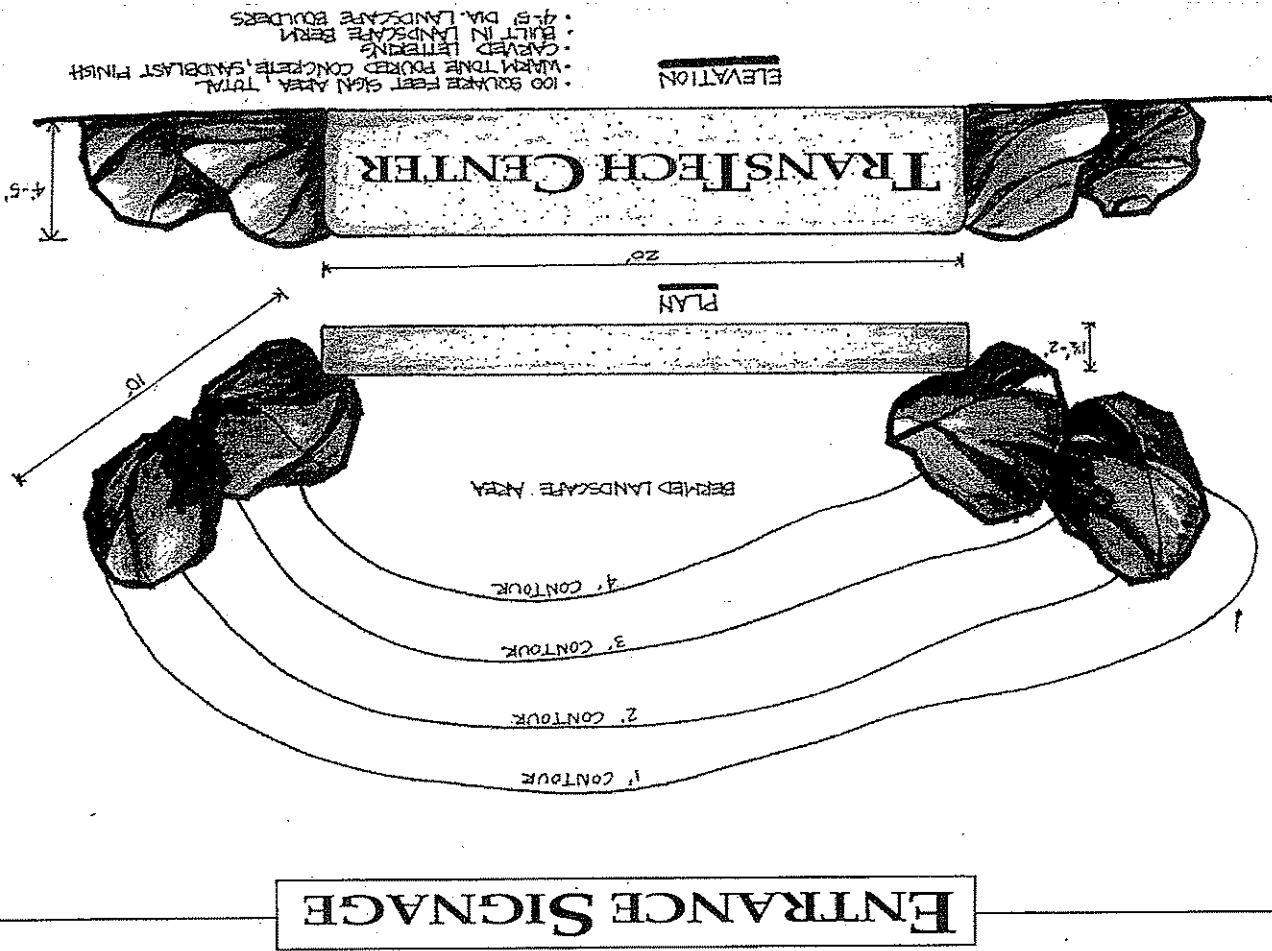
OF 3

RY AND FRAME CONST.



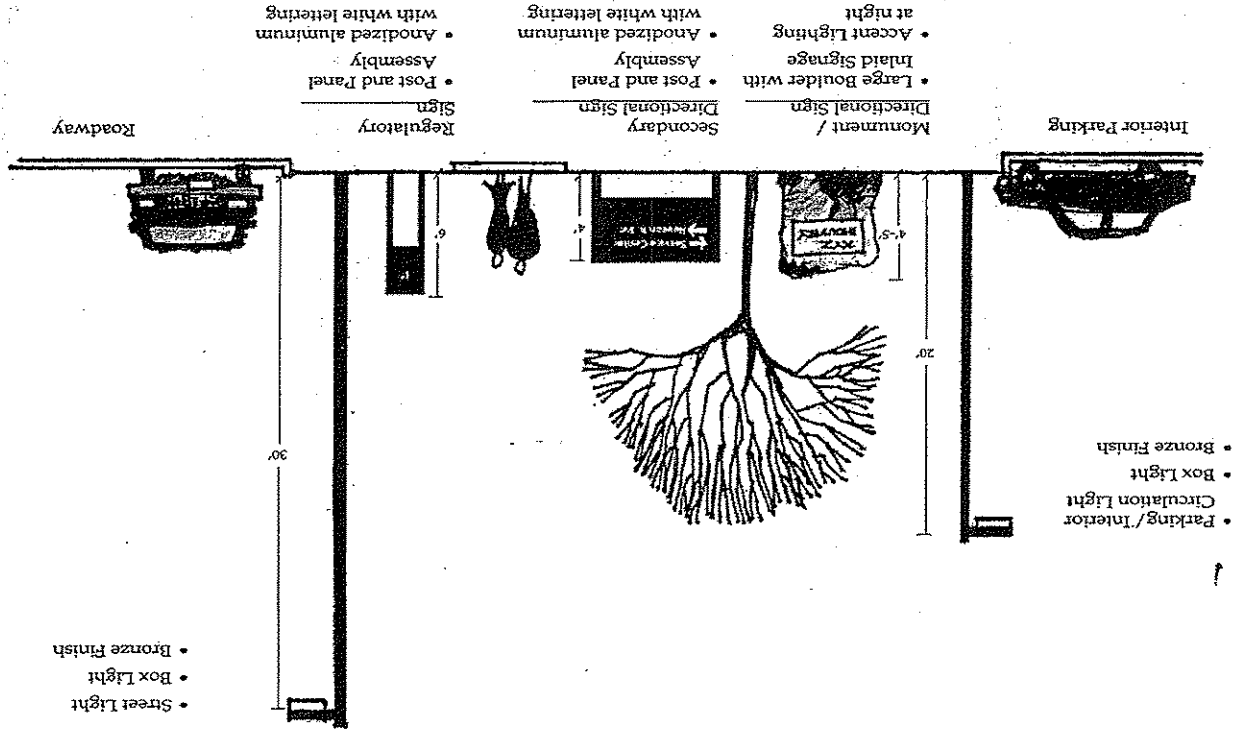
Yellowstone County RES 180.00

Exhibit F



PARK LIGHTING & SIGNING

- Street Light
- Box Light
- Bronze Finish



- Parking / Interior Circulation Light
- Box Light
- Bronze Finish

Interior Parking

- Monument / Directional Sign
- Large Boulder with Inlaid Signage
- Accent Lighting at night

- Secondary Directional Sign
- Post and Panel Assembly
- Anodized aluminum with white lettering

- Regulatory Sign
- Post and Panel Assembly
- Anodized aluminum with white lettering

Roadway

Exhibit C

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Yellowstone County RES 180.00

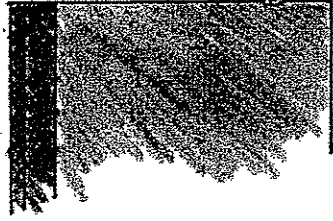
FENCING



3016880

Page: 30 of 30
08/26/1998 03:56P

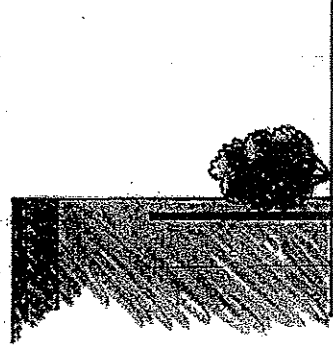
Yellowstone County RES 150.00



Elevation



60"



Section

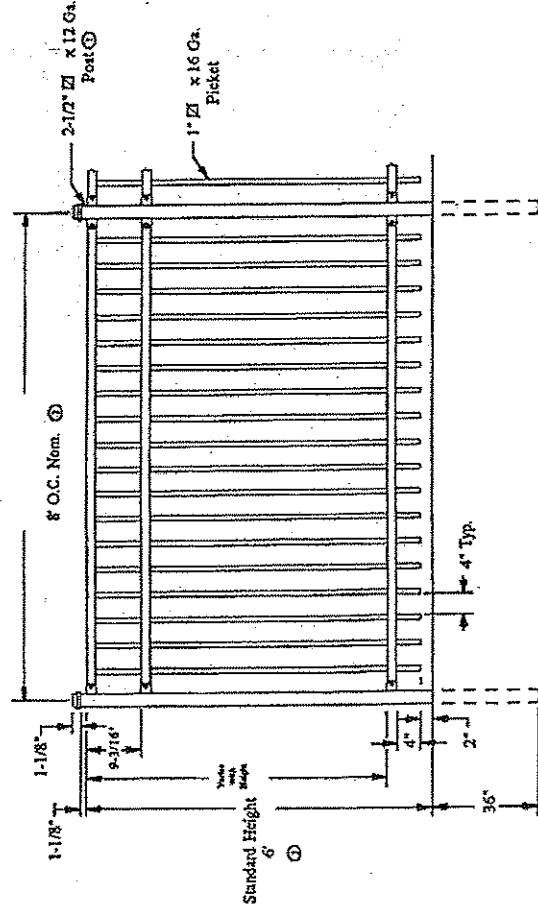


Exhibit H

Return to:
HERNDON, SWEENEY, & HALVERSON
ATTN: KEVIN SWEENEY
PO BOX 80270
BILLINGS, MT 59108-0270
3-74334

DESIGNATION OF SUCCESSOR
UNDER DECLARATION OF RESTRICTIONS

THIS DESIGNATION is given this 28 day of November, 2000, by **BIG SKY ECONOMIC DEVELOPMENT AUTHORITY** (formerly known as Montana Tradeport Authority), a duly organized and existing local port authority under the laws of the State of Montana ("BSEDA"), to **BOTTRELL FAMILY INVESTMENTS LIMITED LIABILITY PARTNERSHIP**, a Montana limited liability partnership ("Developer").

WITNESSETH:

WHEREAS, BSEDA is the owner of certain lots in Gabel Subdivision, Second Filing and Third Filing, commonly referred to as the TransTech Center; and

WHEREAS, BSEDA has agreed to sell and convey to Developer all of its right, title and interest in and to the majority of the lots in the TransTech Center, more particularly described as follows (hereinafter referred to as the "Developer Lots"):

Lots 1 through 5, inclusive, Lot 11, and Lots 13 through 19, inclusive, in Block 1; Lots 1 through 8, inclusive, in Block 2; and Lots 1 through 3, inclusive, in Block 3; all in Gabel Subdivision, Second Filing, City of Billings, Yellowstone County, Montana, according to the plat thereof on file and of record in the office of the County Clerk and Recorder of Yellowstone County, Montana; and

Lot 2 in Block 1 of Gabel Subdivision, Third Filing, City of Billings, Yellowstone County, Montana, according to the plat thereof on file and of record in the office of the County Clerk and Recorder of Yellowstone County, Montana.

WHEREAS, BSEDA will retain from the above described sale two (2) lots in the TransTech Center, more particularly described as follows (hereinafter referred to as the "BSEDA Lots"):

Lots 6 and 12 in Block 1 of Gabel Subdivision, Second Filing, City of Billings, Yellowstone County, Montana, according to the plat thereof on file and of record in the office of the County Clerk and Recorder of Yellowstone County, Montana.

WHEREAS, the Developer Lots and the BSEDA Lots in Gabel Subdivision, Second Filing, are subject to that certain Declaration of Restrictions and Protective Covenants recorded August 26, 1998, under Document No. 3016880, records of Yellowstone County, Montana (the "Declaration of Restrictions"); and

WHEREAS, Section 12 of the Declaration of Restriction requires that all plans and specifications for the construction and/or alteration of structures on said lots be submitted to



3110871

Page: 1 of 3
11/28/2000 04:17P

1

BSEDA, or its designated representative, for review and approval at least thirty (30) days prior to the commencement of construction; and

WHEREAS, because of the foregoing sale, BSEDA desires to designate Developer as its successor and representative for purposes of reviewing plans and specifications relating to proposed construction and/or alteration of structures on the Developer Lots, but otherwise retaining the right and power to review plans and specifications relating to the BSEDA Lots.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BSEDA does hereby irrevocably designate Developer as its successor to and representative for all of BSEDA's rights, powers and privileges to review and approve plans and specifications relating to construction and/or alteration of structures on the Developer Lots. Notwithstanding the foregoing, BSEDA is retaining and shall continue to exercise all rights, powers and privileges to review and approve plans and specifications relating to construction and/or alteration of structures on the BSEDA Lots; provided, however, that while BSEDA shall retain the rights, powers and privileges with respect to review and approval, BSEDA shall provide to Developer copies of all plans and specifications for construction and/or alteration of structures on BSEDA Lots.

Developer does hereby agree to indemnify and hold harmless BSEDA, and BSEDA's agents, directors, officers and employees, from and against all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including attorney fees and consultant and expert fees, whether incurred prior to trial, at trial or on appeal) resulting from or in any way arising out of any acts or omissions by Developer, or its officers, directors, employees or agents, in the review and approval of plans and specifications relating to construction and/or alteration of structures on the Developer Lots.

IN WITNESS WHEREOF, the parties have caused this Designation to be executed by their duly authorized representatives effective as of the day and year first above written.

BOTTRELL FAMILY INVESTMENTS
LIMITED LIABILITY PARTNERSHIP

By: *Donald Bottrell*
Its: *General Partner*

"Developer"

BIG SKY ECONOMIC DEVELOPMENT AUTHORITY, a
local port authority

By: *Tom Emerling, Chairman*
Its: *Board of Commissioners*

"BSEDA"



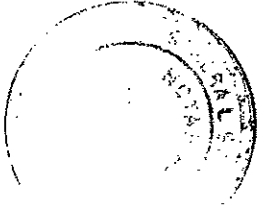
3110871
Page: 2 of 3
11/28/2000 04:17P

STATE OF MONTANA)

: ss.

County of Yellowstone)

This instrument was acknowledged before me on November 28, 2000, by
Donald Bottrell, as the General Partnership of the BOTTRELL
FAMILY INVESTMENTS LIMITED LIABILITY PARTNERSHIP.



Andrea Z. Severance
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: 2-18-02

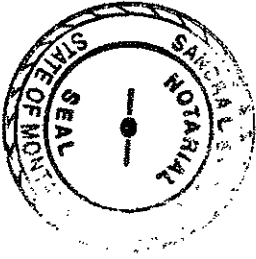
(SEAL)

STATE OF MONTANA)

: ss.

County of Yellowstone)

This instrument was acknowledged before me on November 28, 2000, by
Tom Emerline, as the Chairman, Board of Commissioners of the BIG SKY
ECONOMIC DEVELOPMENT AUTHORITY.



Andrea Z. Severance
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: 2-18-02

(SEAL)



3110871
Page: 3 of 3
11/28/2000 04:17P



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Page: 1 of 25
05/02/2002 10:14A

**FIRST AMENDMENT
TO
GABEL SUBDIVISION, SECOND FILING
TRANSTECH CENTER
COVENANTS AND RESTRICTIONS**

The undersigned, being the owner of at least sixty percent (60%) of all lots totaling 40.7853 acres (1,776,608 square feet) of the net area of Gabel Subdivision Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3016877 (the "Subdivision"), hereby amend the Covenants, Conditions and Restrictions affecting Gabel Subdivision, Second Filing, which were recorded August 26, 1998, in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document #3016880 (the "Covenants"), as follows:

1. Article 9A and Exhibit E of the Covenants, a copy of which is attached hereto and by this reference incorporated hereto, are amended to prohibit the use of metal siding on any building within the Subdivision. In all other respects, Article 9A and Exhibit E of the Covenants remain the same and remain binding on all owners of all lots within the Subdivision.
2. Lots 1, 2, and 3, Block 3, of the Subdivision, are hereby released from the Covenants, and the Covenants shall no longer apply in any respect to Lots 1, 2, and 3, Block 3, of the Subdivision.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 30 day of April, 2002.

BOTTRELL FAMILY INVESTMENTS
LIMITED LIABILITY PARTNERSHIP, a
Montana Limited Liability Partnership

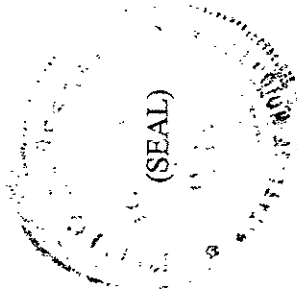
By: *Donald G. Bottrell*
Donald G. Bottrell, General Partner

Return to:
HERNDON, SWEENEY & HALVERSON, P.C.
P.O. Box 80270
Billings, MT 59108-0270

STATE OF MONTANA)
: SS
County of Yellowstone)

On this 30 day of April, 2002, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Donald G. Bottrell, known to me to be a General Partner of Bottrell Family Investments Limited Liability Partnership, and the person who executed the foregoing instrument on behalf of the Partnership, and acknowledged to me that the Partnership executed the same.

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


Kevin C. Sweeney

Notary Public for the State of Montana
Residing at Billings, Montana
My commission expires: 6-25-03

KCSjsa21629 012

GABEL SUBDIVISION, SECOND FILING
TRANSTECH CENTER



THE UNDERSIGNED
TO
THE PUBLIC

DATED _____
FILED _____, 199_, AT _____
REC. BOOK _____, PAGE _____
DOCUMENT NO. _____

WHEREAS, the undersigned are the owners of all of the lots in Gabel Subdivision,
Second Filing; and

WHEREAS, the aforesaid owner desires to place building and use restrictions on the
above-described premises;

NOW, THEREFORE, in consideration of the premises, the undersigned hereby
establishes and declares the following building restrictions and protective covenants which shall
be applicable to all of the above-described real estate.

1. PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS

All persons, corporations, or other entities who shall hereafter acquire any interest
in and to the above described real estate, shall be taken and held to agree and
covenant with the owners of the lots and with their heirs, devisees, trustees, and
assigns to conform to and observe the following covenants, restrictions, and
stipulations as to the use thereof, and as to the construction of residences and
improvements thereon.

2. REAL ESTATE TO WHICH COVENANTS APPLY

The covenants shall apply equally to all lots described in Gabel Subdivision,
Second Filing.

3. PURPOSE

The following covenants are set forth for the purpose of maintaining fair and
adequate values of said land, preventing nuisances, and thereby securing to each
such owner, present and future, the full benefit and enjoyment of his land, in
consideration of our mutual interest as owners of said real estate, we do hereby
covenant and agree that the parties hereto, their heirs, personal representatives,
successors, and assigns will be bound by and comply with the restrictive
covenants set forth herein.

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4. USE OF PREMISES



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That said premises and any structures erected thereon shall be used for the purposes specified and allowed for property in the City of Billings as zoned from time to time, except for the following uses which will not be allowed:

- A. Fuel oil, gasoline, and petroleum products bulk storage for sale.
- B. Gases or liquefied petroleum gases in approved portable metal storage containers for sale.

5. SITE SIZE

Parcels of property shall, under no circumstances, be subdivided or resubdivided into parcels which directly, or as a remainder, create parcels less than 20,622 square feet in size. Upon purchase of subdivided property from the Grantor herein or upon purchase thereafter, no resubdivision of any kind shall occur. However, notwithstanding anything to the contrary, it is understood that Grantor herein reserves the right to subdivide or resubdivide the property into parcels meeting the 20,622 square feet requirement herein.

6. BUILDING TO LAND RATIO

The maximum portion of a site that may be covered by buildings shall not exceed 60 percent and shall be sufficient to allow off-street parking for the vehicles of all employees, customers, or invitees.

7. SETBACKS, PRIVATE LANDSCAPE, and SIGNAGE/ENTRY FEATURE EASEMENTS

Building setbacks are variable depending on lot size and configuration. Building setbacks are defined by setback requirements outlined in the uniform zoning code, private utility easements and the private landscape easement documented on the plat and described in these CCRs. In all instances, the front yard setback resulting from the private landscape easement exceeds setback requirements of the unified zoning code. The setbacks resulting from the required private landscape and utility easements are illustrated on Exhibits B, C and D and described below:

LOT & BLOCK	GABEL RD. SETBACK	HESPER RD. SETBACK	SIDE UTIL. SETBACK	REAR YD.	
				UTIL. SETBACK	SETBACK
1-1	50'		0		8'
1-2	50'		8'		8'
1-3	NA	50'	8'		16'
1-4	NA	50'	0'		16'
1-5	NA	50'	0'		16'
1-6	NA	50'	16'		16'
1-7	32'	NA	0'		0'
1-8	32'	NA	16'		0'
1-11	50'	NA	8'		1 0'

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LOT & BLOCK	OABEL RD. SETBACK	HESPER RD. SETBACK	SIDE UTIL. SETBACK	REAR YD. UTIL. SETBACK
1-12	50'	NA	8'	0'
1-13	50'	NA	0'	0'
1-14	50'	NA	16'	0'
1-15	32'	NA	0'	0'
1-16	32'	NA	0'	0'
1-17	32'	NA	0'	0'
1-18	32'	NA	0'	0'
1-19	32'	NA	0'	0'
2-1	32'	NA	16'	0'
2-2	32'	NA	0'	0'
2-3	32'	NA	0'	0'
2-4	32'	NA	0'	0'
2-5	32'	NA	0'	0'
2-6	32'	NA	0'	0'
2-7	32'	NA	0'	0'
2-8	32'	NA	16'	0'
3-1	20'	NA	0'	0'
3-2	32'	NA	0'	0'
3-3	32'	NA	0'	0'

No structures or parking areas are permitted in the private landscape easement. Public sidewalks may be constructed in either the utility or private landscape easements. Development signs will be constructed in identified signage and entry feature easements. For the purpose of presenting a cohesive image of the development, undulating earth mounds shall be constructed by the property owner between the right of way and the inside edge of the private landscape easement as described under Item 8. Landscaping and stormwater management will be permitted in both the private landscape and utility easements, provided the requirement for mounding and screening has been achieved.

8. BOULEVARD LANDSCAPE

Each building owner/tenant will be responsible to install and maintain the setback areas and boulevard landscape between the back of the curb line and the inside edge of the private landscape setback in the following manner:

- A. Undulating landforms an average of 3 feet, 6 inches high, minimum of 3 feet high, a maximum of 5 feet high with maximum slopes of 3:1.
- B. All boulevard areas shall be seeded with an approved seed mix of drought tolerant grasses and wildflowers.
- C. All grass areas within the setback area will have a simple rotor spray irrigation system with drip irrigation provided to all trees and shrubs. The irrigation plan must be approved by the Tradeport.

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D. Groves of canopy trees (a minimum of 8-foot height, 1-1/2-inch caliper) and evergreen trees (5-foot height minimum) shall be planted in informal arrangements. The tree location shall be shown on an approved site plan and shall include a minimum of one evergreen and canopy tree per 15 linear feet of street frontage and one small/ornamental per 50 linear feet. Ornamental trees shall be grouped a minimum of three trees per group. Additional rockwork, shrub and flower planting will be reviewed and approved by the owner. Use of sandstone rockwork, shrubs and flowers is encouraged near site entry drives and signs. All shrubs and ornamental flower plantings must be located in edged, mulched and maintained beds. Drainage facilities shall be developed as long linear swales, naturalized with low maintenance grasses, rockwork and wildflowers and designed to provide supplemental water to trees.

Acceptable tree species include:

Canopy Trees	Evergreen Trees	Small Ornamental Trees
Black Ash	Ponderosa Pine	Quaking Aspen
Green Ash	Scotch Colorado Spruce	Canada Red Chokecherry
Cottonwood	Austrian Pine	
Catalpa		

A landscape plan showing all proposed grading, planting and drainage improvements shall be reviewed and approved by the Tradeport prior to construction. The plan must respect all proposed lighting (Exhibit G), signage/entry feature easements (Exhibit F) and entry access points (Exhibit A) documented herein. Local government requirements for clear vision zones and future improvements to the street right-of-way should be recognized and adhered to.

Requirements for side buffer yard and landscaping shall be waived.

Off-street parking lot landscape requirements shall be as described below:

- (1) Landscape requirements related to amount of landscaping shall be reduced to 50 percent of outlined requirements for visitor and employee parking areas located in the rear or side yards. Required area (not required minimum dimensions) shall be reduced.
- (2) The requirement for internal landscaped islands or divider strips shall be waived in areas serving as outdoor warehousing or vehicle storage areas.
- (3) Requirements for shrub planting along street frontage will be waived. Earth forms will provide the required screening.

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9. DEVELOPMENT STANDARDS

A. Buildings

- (1) All buildings shall conform to the guidelines set forth in Exhibit E herein.
- (2) All buildings are to be "earth tone" color hues.
- (3) A minimum of 40 percent of the front of all buildings shall be constructed or dressed with bricks, wood, glass, texturized concrete, tile or block.
- (4) Buildings shall be restricted in height only as required by zoning. This shall not prohibit basements, daylight basements, or basements which are partially underground.

B. Services

All permanent utilities shall be placed underground.

C. Loading Areas and Equipment

The architecture of loading docks must be separately reviewed and approved prior to installation as provided for in paragraph 12.

D. Signs

(1) Development Entrance Signage

- (a) Monument Signage. Entrance signs shall have 100 square feet total sign area with heights no taller than 5 feet. Signs shall be built into landscape berms at development entrances. Areas immediately surrounding berms shall be landscaped using trees, shrubs, ground covers, and/or turf. Monument signs shall be illuminated with ground mounted accent lighting. See Exhibit F.

(2) Parcel Signage

- (a) Monument/Directional Signage. Signs shall be constructed with large boulders approximately 4 to 5 feet in height. Boulders shall have sufficient surface area for the attachment or inseting of directional information plaques with company names, logos, etc. Boulder colors shall be light to resemble the local rock formations "The Rims." Basic messages shall be brief and any symbols should match standardized symbols. Ground mounted accent lights shall be used to display signs at night. See Exhibit G.

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(b) Secondary Directional Signage. Total sign area should not exceed 28 square feet. Maximum sign height should be 4 feet. No two directional signs of neighboring parcels shall be closer than 40 feet. Secondary directional signs shall consist of post and panel construction with anodized aluminum, bronze finish, and white lettering (see Exhibit G).

(c) Regulatory Signage. Regulatory signs shall not exceed 6 feet in height. Use of standardized symbols is strongly recommended. Regulatory signs shall consist of post and panel construction with anodized aluminum, bronze finish, and white lettering (see Exhibit G).

(d) Wall Signage. One wall mounted identification sign may be placed flat against the building. Text shall not extend above the height of the building, with the address of the facility clearly marked. Signs may be lighted but shall not rotate, blink, or move in any fashion. Signage shall be restricted to advertising only the person, firm, company, or corporation occupying the site. Signs are not to exceed allowable dimensions as outlined in the City of Billings sign ordinance.

E. Lighting

(1) Roadway Lighting

Roadway lighting shall consist of "shoebox" fixtures with a 30-inch pole height. Metal finishes shall be bronze. Poles shall be located 120 feet o.c. for straight alignments and 85 feet o.c. along curves with fixtures placed on the inside radius of the road. A High Pressure Sodium (HPS) fixture shall be used as the luminaire with foot candles rated at 1.3 FTC per IES recommendations (classification = major, road surface = R3). See Exhibit G.

(2) Interior Circulation/Parking Lighting

Parking lighting shall consist of "shoebox" fixtures with a 20-foot pole height. Metal finishes shall be bronze. Poles shall be located 100 feet o.c. for multiple fixtures (on approximately 2200 square feet of parking area). A Metal Halide fixture shall be used as the luminaire with foot candles rated at .6 FTC per IES recommendations for medium activity. See Exhibit G.

F. Fencing

Ornamental fencing shall be used for front yards. Front yard fencing shall be black or bronze steel fencing, not to exceed 6 feet in height. Front yard fencing is intended to screen side yards and back yards from front entry. An additional vegetative buffer shall be located on the front yard side of the ornamental fencing. Vegetation should mature to approximately 4 feet in

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height (see Exhibit H). Rear yard or storage yard fencing may exceed 6 feet in height if necessary for security or screening purposes, subject to review and approval by the Tradeport.

G. Refuse Collection Areas

All outdoor refuse collection areas shall be visually screened from streets and adjacent property by an opaque screen.

H. Storage of Equipment and Materials

All materials, parts, equipment, and like items shall be placed inside storage buildings or, if stored outside, shall be kept in a neat and orderly fashion and screened with suitable fences built in conformity with the set back requirements set forth herein; provided, however, that this restriction shall not apply to new or used equipment or machinery held for sale or lease to the public. Such equipment and machinery may be displayed without regard to the set back requirements so long as such displays are in a neat and orderly fashion and do not impede the flow of traffic into and out of the industrial park.

I. Site Organization

Owners/tenants are required to organize the site in a manner which minimizes the visibility of large parking areas and service function from the public roadways. All parking located in front of the building, between the public street right-of-way and the building front, shall be constructed and landscaped to standards outlined in the Uniform Zoning Code. Parking and service areas located behind the building shall be exempted from the requirements of the unified code as described in Item J.

J. Landscape Development

Landscape and landscape maintenance requirements shall be as outlined in Section 8, Boulevard Landscape. All parking located in front of the building, between the public street right-of-way and the building front, shall be constructed and landscaped to standards outlined in the Uniform Zoning Code. This exemption is approved by the City/County Planning Department in exchange for the increased requirements for landscaping along public street right-of-ways.

K. Stormwater Management

All on-site and off-site storm drain improvements for Gabel Subdivision, Second Filing will meet the criteria of the City of Billings Stormwater Management Manual. No City storm drain will be available for Phase I lots (fronting Hesper Road). These lots will incorporate complete on-site retention in their site design meeting City criteria. Refer to Exhibits C and D for guidelines to this development. Phase II lots (fronting Gabel Road) will have a storm drain service stubbed to the property line. Use of the

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storm drain services will be subject to the discharge restrictions outlined in the Stormwater Management Manual and site development will still require on-site stormwater detention.

10. MAINTENANCE

The Tradeport will provide maintenance requirements and a recommended schedule addressing mowing, tree care and irrigation amount and scheduling. Any proposed deviations from the design and maintenance standards shall be reviewed and approved by the Tradeport. The tenants/property owners shall each maintain their grounds to standards provided by the Tradeport including:

- A. Adherence to uniform mowing schedule to include more frequent mowing of areas adjacent to curbs or walks and between the sidewalk and curb line and less frequent mowing of the grassed mounds. The mowing schedule of the mounds will be tied to rainfall, flower bloom, time of year and maximum height of 16 inches. A fall mowing will be required no later than October 1.
- B. Routine maintenance of trees, removal and replacement of unhealthy, poorly formed or dead trees. Fertilizing of trees for the first three years following planting. Owners/tenants are required to install and maintain the minimum number of required trees in perpetuity. If the owner fails to comply with the maintenance requirements, the Tradeport reserves the right to perform deferred maintenance and bill the owner/tenant.

11. OWNER'S ASSOCIATION

An Owner's Association may be established for the purpose of establishing and maintaining all of the boulevard landscaping areas required by this Agreement, whether situated on public or private land, and/or for the purpose of carrying out the other purposes of this Agreement. The manner of establishing said Owner's Association shall be as follows:

- A. The definitions with respect to the establishment of the Owner's Association are as follows:

- (1) Lot. A lot is any lot in Gabel Subdivision, Second Filing.
- (2) Notice. A Notice shall be in written form and shall state the time, place, and purpose of the meeting. Said Notice shall be signed by the persons calling the meeting.
- (3) Owner. An Owner shall be the holder of fee simple title in and to a lot or, if there is a notice of record as to a contract of sale for a lot, then, and in that event, an Owner shall be contract purchaser.
- (4) Owner's Association. The Owner's Association shall be a nonprofit corporation formed as provided for hereunder.

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- (5) Quorum. A Quorum shall be reached if there are Owners and/or persons holding proxies present at a meeting which represent in excess of 60 percent of all the lots.
- (6) Proxy. A Proxy is a written document executed by the Owner or Owners of a lot authorizing the designated holder thereof to vote the interest of the Owner or Owners so signing. All such proxies must be acknowledged to be valid.

- (7) Service of Notice. Service of Notice means the placing of a copy of the Notice in the first class mail addressed to the last known address of any one of the Owners of a particular lot. The last known address shall be conclusively determined if it is the same as the address specified in the records of the Yellowstone County Assessor's office on the day of service. Service shall be deemed to have been made on the day said Notice is placed in the first class mail.

- B. The Owners of any 10 lots may execute a Notice calling for an election to determine whether or not an Owner's Association should be established and the purpose of said Owner's Association. The Service of Notice shall be made at least 10 days prior to the scheduled meeting.

- C. All proxies must be presented to the Owners calling the meeting prior to the meeting. Said Owners shall be present for one hour prior to the meeting for purpose of receiving any such proxies and verifying their authenticity.

- D. The meeting shall be called to order by the Owners of the lots calling the same. Said Owners calling said meeting shall initially determine if a quorum is present. In the event a quorum is present, the meeting shall be authorized to conduct business on behalf of the Owners. Any business so transacted shall be binding upon all Owners and their lots.

- E. The first order of business shall be the election of a chairman and a secretary. The chairman shall preside over the meeting, and the secretary shall keep minutes of the meeting. Roberts Rules of Order shall govern the meeting procedure except where expressly in conflict with these covenants.

- F. The vote of Owners and proxies, present at the meeting and owning a majority of the lots, shall be sufficient to carry any measure properly before the meeting. All votes shall be in writing and shall be cast by the designation of the lot and block number represented thereby. In the event lots are jointly owned, only one vote may be cast relative to such lots and no split votes will be counted.

- G. In the event it is determined at such meeting that an Owner's Association be established, the chairman and secretary shall be authorized to act as representatives of all Owners. They shall have authority to call meetings and make Service of Notice relative to the adoption of corporate articles, by-laws, and governing declarations. They shall be authorized to hire professionals for the purpose of drafting all documents necessary to establish the Owner's Association, and shall be authorized to incur expenses

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and costs relative to such establishment on behalf of all Owners and their lots.

H. Any costs, fees, and expenses incurred by the chairman and secretary in organizing the Owner's Association shall be assessable to all lots equally, no matter what their square footage may be, upon establishment of the Owner's Association.

I. It is understood that all assessments to be charged by the Owner's Association against lots, upon its establishment, shall be on an equal basis, no matter what the square footage of the different lots are and no matter how much planting areas are being maintained by the Association as to each lot.

J. In the event it is not determined at a meeting called for that purpose to establish the Owner's Association, all Owners shall be prohibited from calling a like meeting within 6 months from the date of the prior meeting.

K. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lien thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. All of the requirements of this paragraph shall be included in any Owner's Association documents adopted in the future.

12. CONSTRUCTION, DESIGN, AND ALTERATIONS TO STRUCTURE

All plans and specifications for the construction and/or alterations of structures on the aforesaid property shall be submitted to Montana Tradeport Authority, or its designated representative for review and approval at least 30 days prior to the commencement of construction. If formal approval or rejection of the proposed construction is not received by the Applicant within the 30 day period set forth herein, the plans and specifications shall be deemed to be approved.

The plans and specifications shall be completed within 24 months from the date of commencement of such construction, unless an exception to such time limit is requested by the Applicant and approved by Montana Tradeport Authority. Architectural review may be performed by an Owner's Association in the event an Owner's Association is established for that purpose.

13. MAINTENANCE ENFORCEMENT

The individual Owners shall be responsible for maintenance of their tract or tracts, including landscaping and structures. Any party failing to properly maintain his tract will be notified in writing by Montana Tradeport Authority or the Owner's Association, in the event it is established, and shall have 30 days in which to correct the deficiency. If not corrected in that time, Montana Tradeport Authority

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or the Owner's Association, if established, may cause the deficiency to be corrected and the costs of such corrective work will constitute a lien on the property affected, and Montana Tradeport Authority or the Owner's Association, if established, may proceed to collect the amount due.

14. AMENDMENT OF AGREEMENT

The Owners may amend any provision of this Agreement if persons owning at least 60 percent of all lots totaling 40.7853 acres (1,776,608 square feet) of the net area in the Subdivision vote in favor of the amendment. The intent of the amendment is not to change the concept of these covenants, but to allow a margin of flexibility in evaluating special circumstances.

15. EFFECT OF NON-ENFORCEMENT

Failure of any party to enforce any restriction, condition, covenant, or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto.

16. DURATION AND EFFECT OF AGREEMENT

This contract constitutes a mutual covenant running with the land, and all successive future Owners shall have the same right to invoke and enforce its provisions as the original parties hereto. This contract shall take effect and be in full force and effect when executed by the parties hereto, and shall be placed of record in Billings, Montana; and shall continue in force for a period of 20 years from the date of said filing, and so long thereafter as the Owners shall deem it necessary and reasonable to maintain their property rights purchased and acquired hereunder.

17. CONVEYANCE IN VIOLATION OF AGREEMENT

Any deed, lease, conveyance, or contract made in violation of this Agreement shall be void and may be set aside by petition of one or more of the parties hereto, and all successors in interest, assigns, heirs, and personal representatives shall be deemed to the same effect as the original signers; and when such conveyance or other instrument is set aside by decree of any Court or competent jurisdiction, all costs and all expenses of such proceedings shall be charged against the grantors and shall be declared by the Court or constitute a lien against said real estate so wrongfully deeded, sold, leased, or conveyed, until paid, and such lien may be enforced in such manner as the Court may order.

18. REMEDY FOR BREACH

The parties hereto and every person hereinafter having any right, title, or interest in lands or the Owner's Association, if established, shall have the right to prevent or stop violation of any said restrictions by injunction or other lawful procedure, and to recover any damages resulting from such violation. All costs and expenses of such proceedings shall be charged against the violators, and shall be declared

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by the Court to constitute a lien against the real estate of the violator, until paid, and such lien may be enforced in such a manner as the Court may order.

19. EFFECT OF PARTIAL INVALIDITY

It is expressly agreed that in the event any covenant, condition, or restriction hereinabove contained, or any portion thereof, is invalid or void, such shall in no way effect any other covenant, condition, or restriction.

MONTANA TRADEPORT AUTHORITY
a Montana Corporation

By *Carlyle*

STATE OF MONTANA)
) ss.
County of Yellowstone)

On this 24th day of August, 1998, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Clay Skeddle, known to me to be the Chairman of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

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



Becki D. Dawson
Notary Public for the State of Montana
Residing at Yellowstone County
My commission expires Sept 2, 2001

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ALL INFORMATION CONTAINED
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Year	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100																																																												
Population	1,000,000	1,050,000	1,100,000	1,150,000	1,200,000	1,250,000	1,300,000	1,350,000	1,400,000	1,450,000	1,500,000	1,550,000	1,600,000	1,650,000	1,700,000	1,750,000	1,800,000	1,850,000	1,900,000	1,950,000	2,000,000	2,050,000	2,100,000	2,150,000	2,200,000	2,250,000	2,300,000	2,350,000	2,400,000	2,450,000	2,500,000	2,550,000	2,600,000	2,650,000	2,700,000	2,750,000	2,800,000	2,850,000	2,900,000	2,950,000	3,000,000	3,050,000	3,100,000	3,150,000	3,200,000	3,250,000	3,300,000	3,350,000	3,400,000	3,450,000	3,500,000	3,550,000	3,600,000	3,650,000	3,700,000	3,750,000	3,800,000	3,850,000	3,900,000	3,950,000	4,000,000	4,050,000	4,100,000	4,150,000	4,200,000	4,250,000	4,300,000	4,350,000	4,400,000	4,450,000	4,500,000	4,550,000	4,600,000	4,650,000	4,700,000	4,750,000	4,800,000	4,850,000	4,900,000	4,950,000	5,000,000	5,050,000	5,100,000	5,150,000	5,200,000	5,250,000	5,300,000	5,350,000	5,400,000	5,450,000	5,500,000	5,550,000	5,600,000	5,650,000	5,700,000	5,750,000	5,800,000	5,850,000	5,900,000	5,950,000	6,000,000	6,050,000	6,100,000	6,150,000	6,200,000	6,250,000	6,300,000	6,350,000	6,400,000	6,450,000	6,500,000	6,550,000	6,600,000	6,650,000	6,700,000	6,750,000	6,800,000	6,850,000	6,900,000	6,950,000	7,000,000	7,050,000	7,100,000	7,150,000	7,200,000	7,250,000	7,300,000	7,350,000	7,400,000	7,450,000	7,500,000	7,550,000	7,600,000	7,650,000	7,700,000	7,750,000	7,800,000	7,850,000	7,900,000	7,950,000	8,000,000	8,050,000	8,100,000	8,150,000	8,200,000	8,250,000	8,300,000	8,350,000	8,400,000	8,450,000	8,500,000	8,550,000	8,600,000	8,650,000	8,700,000	8,750,000	8,800,000	8,850,000	8,900,000	8,950,000	9,000,000	9,050,000	9,100,000	9,150,000	9,200,000	9,250,000	9,300,000	9,350,000	9,400,000	9,450,000	9,500,000	9,550,000	9,600,000	9,650,000	9,700,000	9,750,000	9,800,000	9,850,000	9,900,000	9,950,000	10,000,000

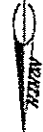
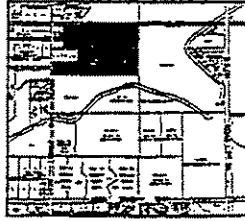
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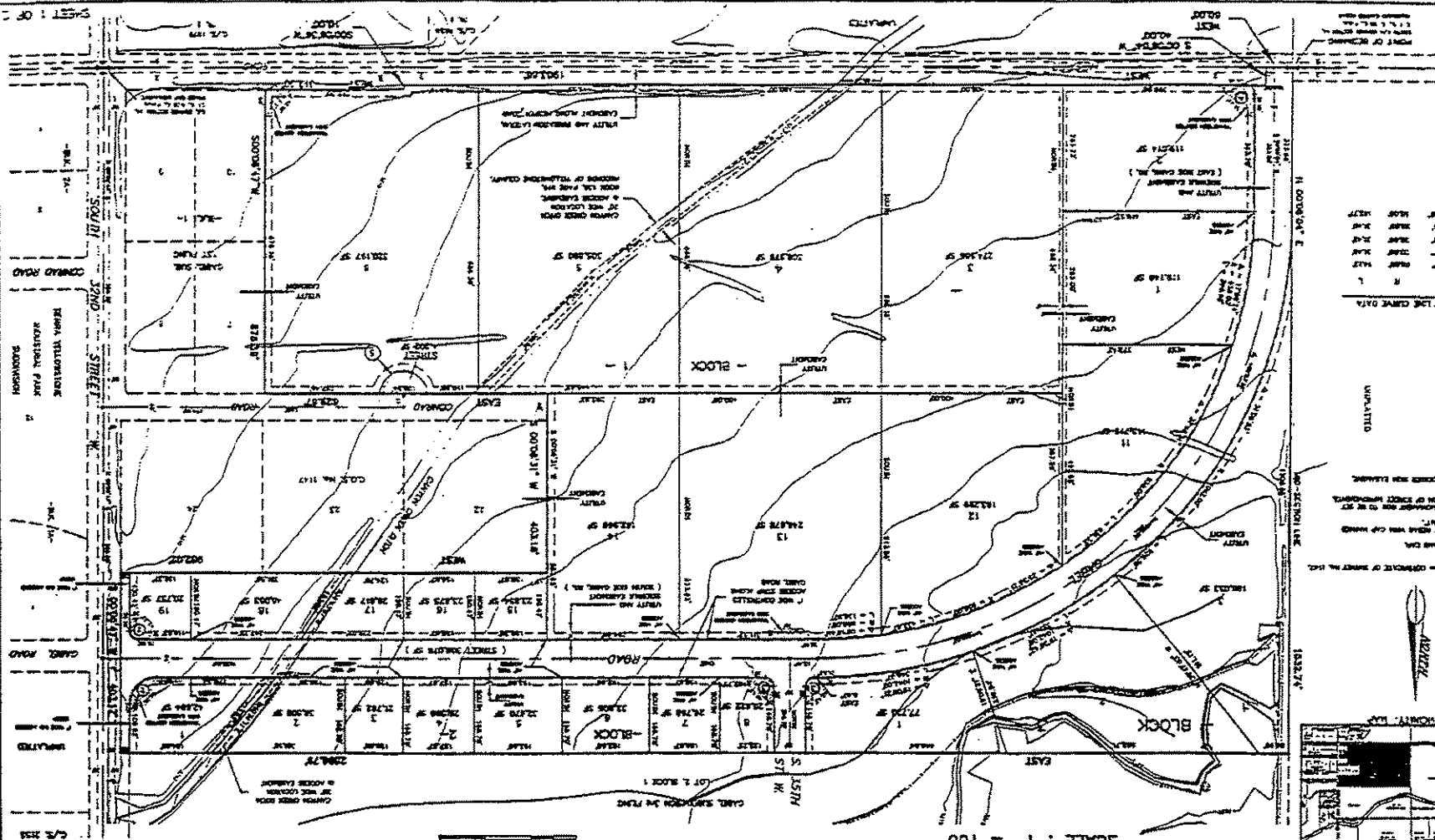
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- American Association AIA/INTA
- Council Architect
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- International Architects & Planners
- Spectrum Group Architects

* These information provides courtesy of Engineering, Inc.

UTILITY
EASEMENT
STORAGE AND ENTRY
FEATURE EASEMENT
(SEE LEGEND)

GABEL ROAD

Author's address: Department of Psychology, University of York, York YO1 5DD, UK.

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CONRAD ROAD

EASEMENT.

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EXHIBIT

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1. **ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԱՐԴԱՐԱԴԱՐԱՆԻ ԱՊԵՏԱԿԱՆ ԿՈՄԻՏԵ**
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3. **ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԱՐԴԱՐԱԴԱՐԱՆԻ ԱՊԵՏԱԿԱՆ ԿՈՄԻՏԵ**

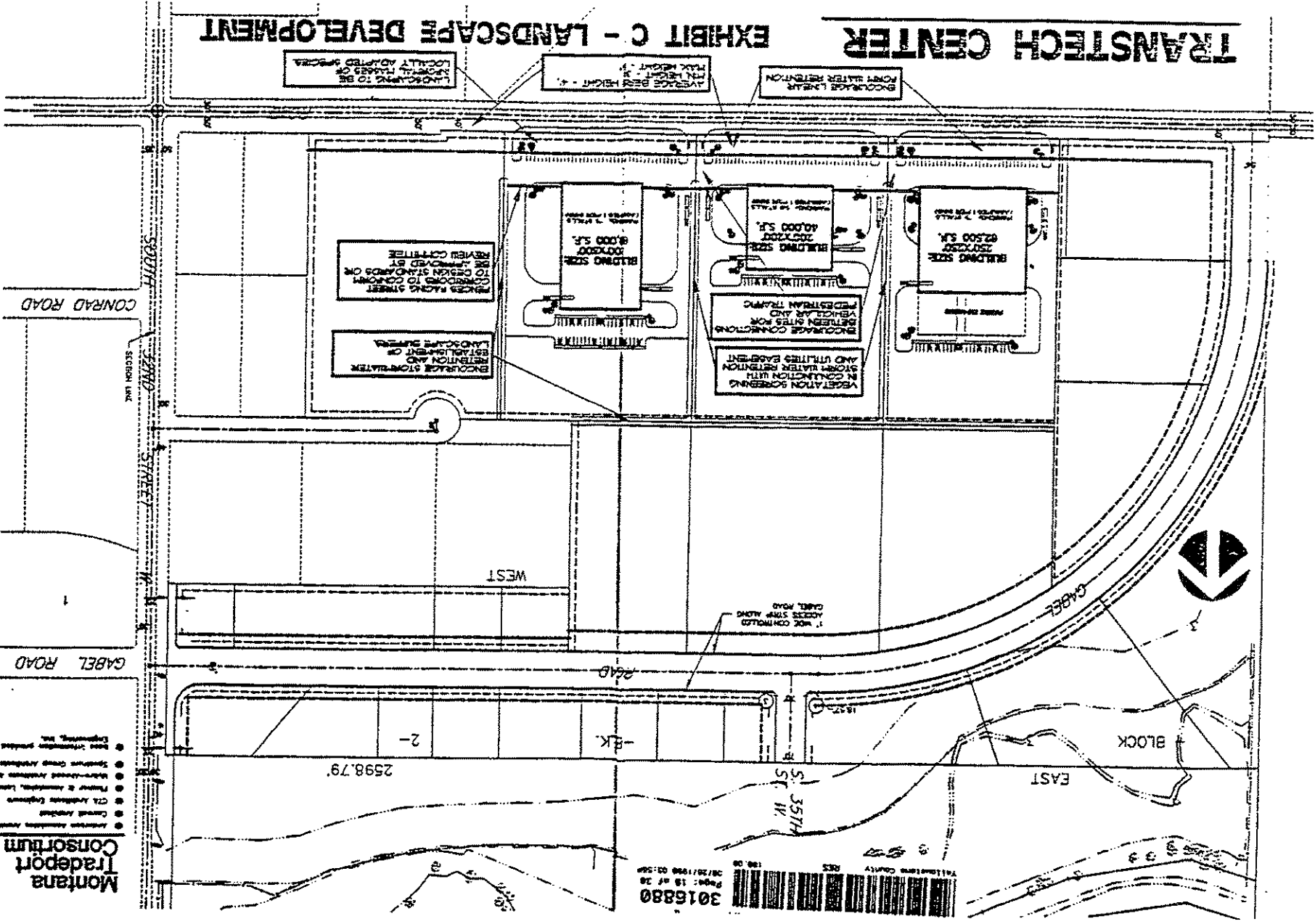
LANDSCAPE

1. *Journal of Management Education* 2000; 24(1): 10-11

TRANSTECH CENTER EXHIBIT B - EASEMENTS (UTILITY, SIGNAGE AND LANDSCAPE)

TRANSTECH CENTER

EXHIBIT C - LANDSCAPE DEVELOPMENT

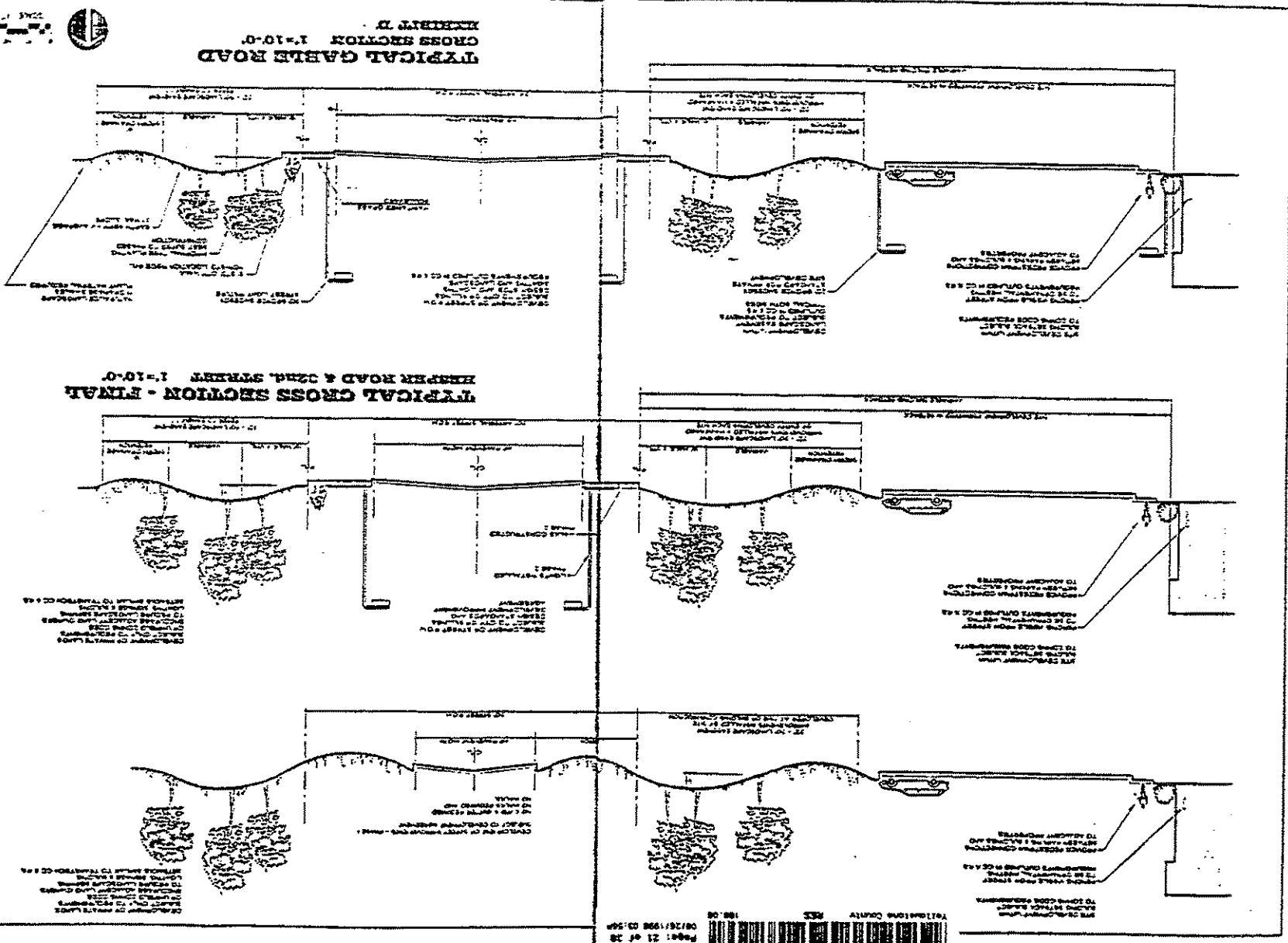


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Yellowstone County RES 180.00
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Montana Tradeport Consortium
 American Association of Architects
 Council Architects
 Civil Engineers
 CTS Architects Engineers
 Planner & Architects, Landscape Architects
 Urban-Designed Architects & Planners
 Spokane Group Architects
 Reed Williamson provided courtesy of





BUILDING DESIGN STANDARDS

The intent of these standards and the accompanying sketches is to provide the developer with a guide which will maintain the aesthetic quality of the development and yet allow for flexibility in the building design. Each development site and project will have particular characteristics that may suggest some guidelines be emphasized more than others.

A. These standards apply to finishes on all sides of buildings. The following materials are acceptable: brick, fluted block, colored and or textured block, architectural concrete panels, glass, stucco, architectural concealed fastener metal panels, exterior insulation and finishing systems (i.e. Dryvit, etc.), stone or wood. Exposed fastener, ribbed panel metal wall systems are not encouraged for more than 25% of the exposed and visible wall surface.

B. Visible roofs shall be finished with material that is architecturally compatible in color and design with the wall materials. Metal roofs, fascia and eaves shall be limited to the following:

1. standing seam
2. metal shakes or shingles
3. architectural metal treatments.

All mechanical equipment placed on top of any roof shall be screened by a parapet or other similar architectural apparatus being at least the height of the mechanical equipment.

C. Varied building massing is encouraged to break down the scale of large buildings. Public entrances should be visible and emphasized.

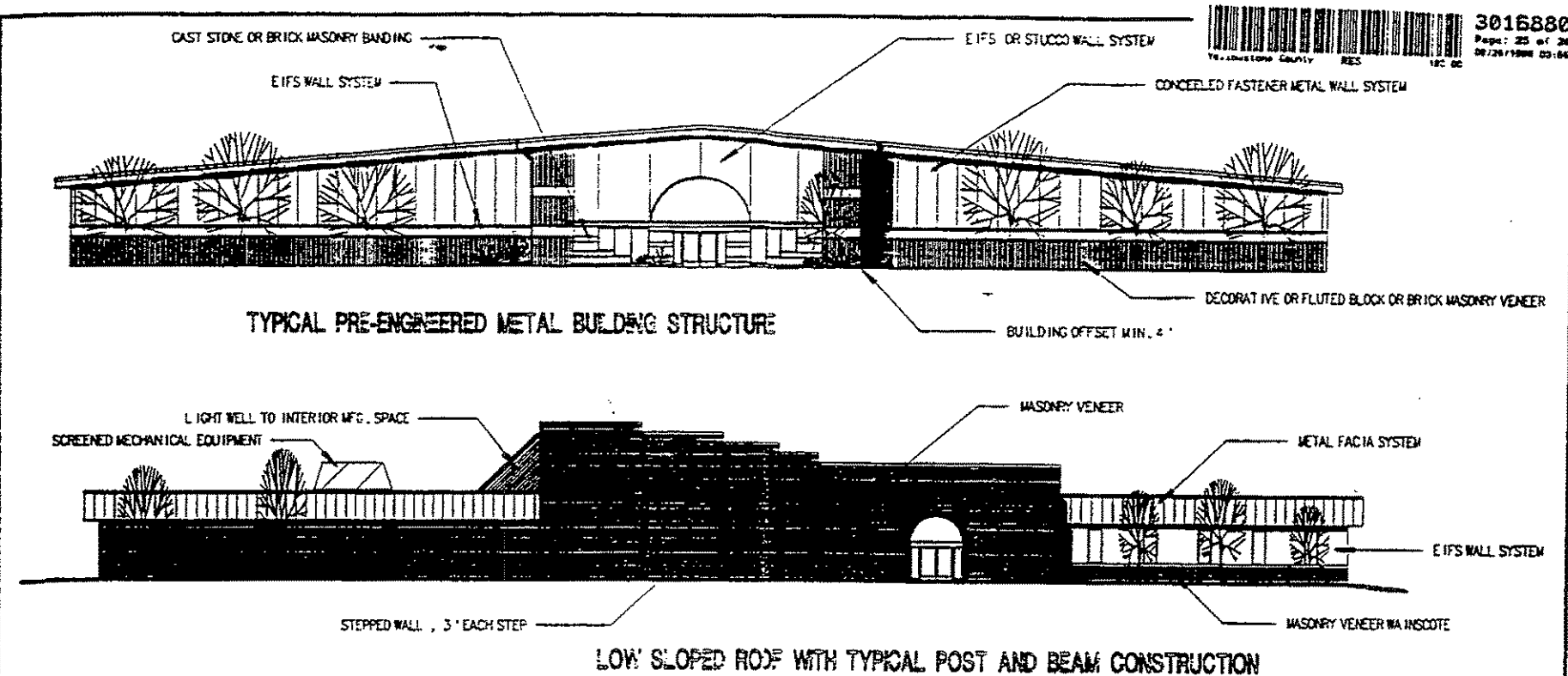
D. Long, flat facades visible from local streets or arterials, having more than one hundred (100) lineal feet are not encouraged. Buildings over one hundred (100) feet in length shall incorporate one of the following: recesses, off-sets, angular forms, landscaping features or other architectural features which break up the massing of the building. The break in the facade shall be a minimum of eight (8) feet in length. A single uninterrupted length of a facade shall not exceed one hundred (100) lineal feet. It is encouraged that each offset area contain landscaping or other similar amenities which will complement the offset area.

E. Architectural building lighting is encouraged to enhance the nighttime appearance of the development.

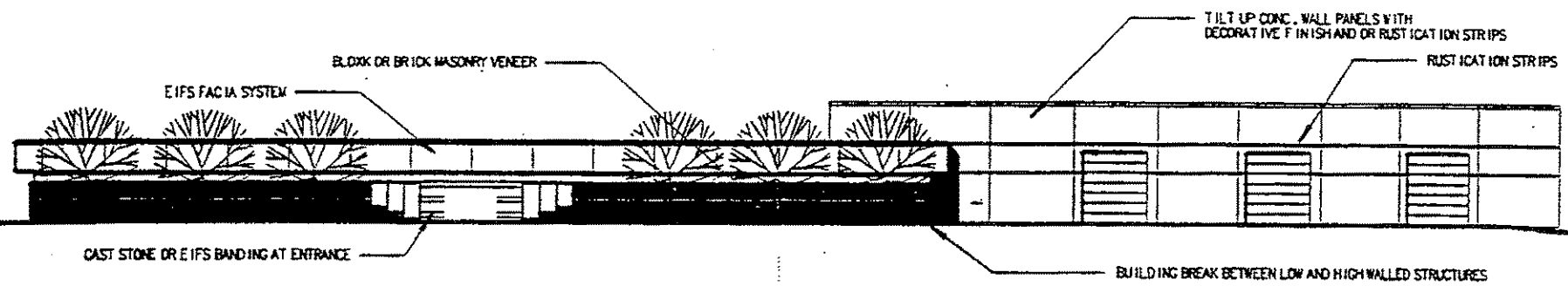
Exhibit E-d

Montana Tradeport Consortium • Anderson Associates Architects • Cornwell Architect • CTA Architects Engineers • Fischer & Associates, Landscape Architects • Wyre-Atwood Architects & Planners • Spectrum Group Architects • Boag International provided courtesy of Engineering, Inc.	PROTO-TYPE BUILDING ELEVATIONS TRANS - TECH CENTER JUNE 1998	SHEET 1 OF 3
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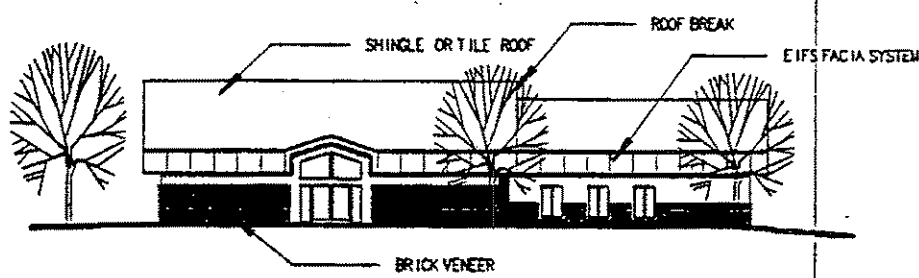




Montana Tradeport Consortium • Anderson Associates Architects • Corwell Architect • CTA Architects Engineers • Fischer & Associates, Landscape Architects • Hyre-Atwood Architects & Planners • Spectrum Group Architects • base information provided courtesy of Engineering, Inc.	Exhibit E-2 PROTO-TYPE BUILDING ELEVATIONS TRANS - TECH CENTER JUNE 1998 SHEET 2 OF 3
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TYPICAL STRUCTURE UTILIZING MASONRY AND TILT-UP CONCRETE



TYPICAL SMALLER STRUCTURE (6,000 TO 10,000 S.F.) UTILIZING MASONRY AND FRAME CONST.

Exhibit E-3

Montana
 Tradeport
 Consortium

- Anderson Associates Architects
- Cowell Architect
- CTA Architects Engineers
- Fischer & Associates, Landscape Architects
- Myren-Atwood Architects & Planners
- Spectrum Group Architects
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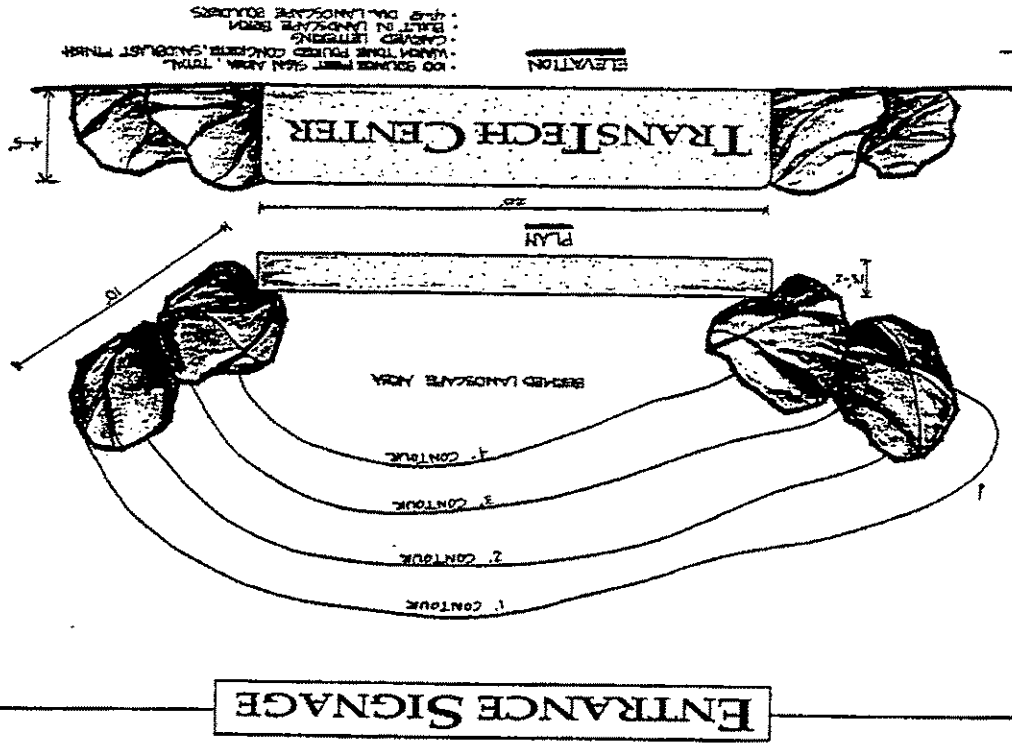
PROTO-TYPE
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Exhibit F



PARK LIGHTING & SIGNING

- Street Light
- Box Light
- Bronze Finish

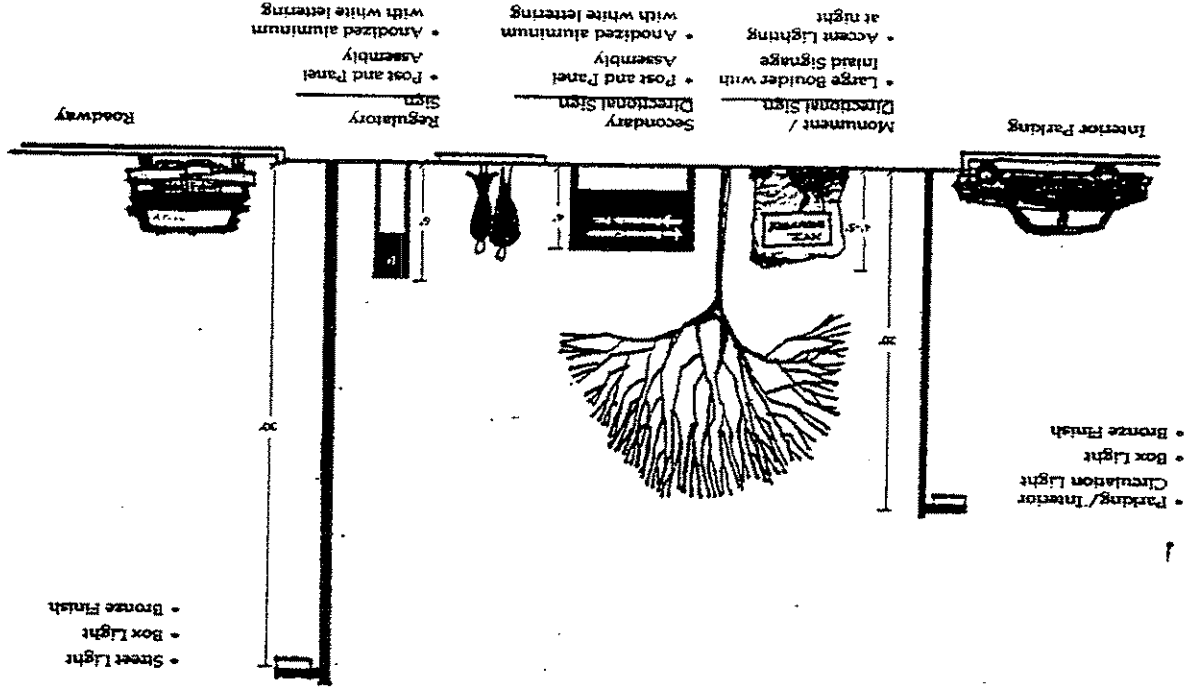


Exhibit C

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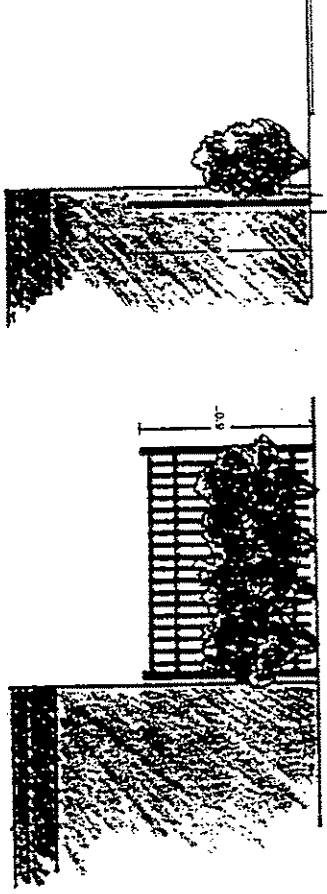
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Elevation

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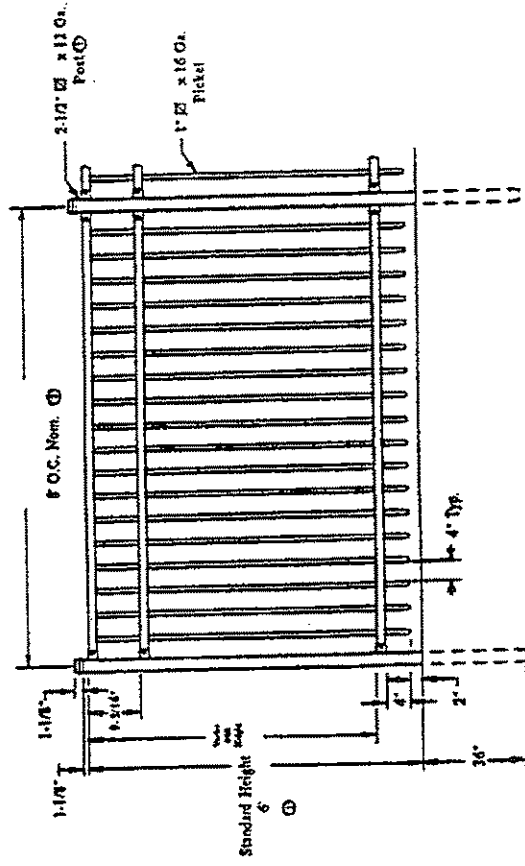


Exhibit H

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PO Box 80270
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Yellowstone County RES

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**SECOND AMENDMENT
TO
GABEL SUBDIVISION, SECOND FILING
TRANSTECH CENTER
COVENANTS AND RESTRICTIONS**

The undersigned, as Developer, is the owner of at least sixty percent (60%) of all lots totaling 35.11 acres (1,529,279 square feet) of the net area of Gabel Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3016877 (the "Subdivision"). Certain Covenants, Conditions and Restrictions, affecting Gabel Subdivision, Second Filing, were recorded August 26, 1998, in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document #3016880 (the "Covenants"). The Covenants were amended by a certain First Amendment to Gabel Subdivision, Second Filing Transtech Center Covenants and Restrictions, recorded May 2, 2002, in the offices of the Clerk and Recorder of Yellowstone County, Montana, as Document No. 3174912 (the First Amendment). The undersigned, as Developer, now wishes to further amend the Covenants and First Amendment, as follows:

1. Article 8.D. of the Covenants, a copy of which is attached hereto and by this reference incorporated herein, is hereby deleted and the following shall be substituted in place thereof:

'D. Lot Landscaping

The design intent for landscaping each lot shall be to provide continuity of landscape and irrigation development throughout the subdivision among individual lots. Each lot owner shall be responsible to install and maintain landscape and automatic irrigation within that individual's lot lines. Landscaping shall blend with other lot landscaping to provide continuous transition and visual continuity among individual lots.

- i. Natural landforms an average of 3'-6" high, minimum of 3' high maximum of 5' high with a maximum slope of 3:1 are encouraged.
- ii. All landscape areas shall have an automatic irrigation system. Central irrigation connection will be provided by Developer to each lot. If an individual lot owner chooses to connect to the central irrigation system, such individual lot owner will be subject to connection and use fees.
- iii. Existing Trees are to be protected and incorporated into the proposed site development to the extent possible.
- iv. Lot landscape shall be planted in a manner consistent with adjacent lots.

- v. The use of native sandstone or granite is encouraged throughout the areas of landscape development.
- vi. Perennial and annual planting areas shall be located in edged, mulched and maintained beds.

Landscape and Irrigation Plan Requirements:

A landscape and irrigation plan must be submitted to and approved by the Developer. The use of a Landscape Architect in the development of the plan is encouraged. The landscape and irrigation plans shall contain at a minimum the following:

- i. Scale: appropriate to illustrate proposed design intent
- ii. Lot lines, easements, rights-of-way (including vision triangles)
- iii. Buildings (proposed and existing)
- iv. Drive approaches, parking areas, light standards and walkways
- v. Irrigation materials and proposed location for key system components.
- vi. Landscaping materials:
 - a. Location and spacing of proposed plant materials including common and botanical names and proposed sizes
 - b. Location of existing trees or landscaping to be preserved or eliminated
 - c. Location of walls, fences and solid waste facilities
 - d. Coordination with proposed and existing common area landscape development

Parking Lot Landscaping

- i. Landscape islands at the end of parking rows and/or divider strips between parking rows to help disperse landscaping throughout the parking lot is encouraged.
- ii. The minimum width or length of any landscape area shall be five (5) feet with a recommended minimum size of eight (8) feet.
- iii. Deciduous trees are encouraged within parking lots.
- iv. No parking stall shall be more than eighty (80) feet from a required landscape area.”

- 2. Article 9.A.(3) is amended to provide that a minimum of forty percent (40%) of the front of all buildings shall be constructed with brick, or decorative rock masonry. In addition, any building side wall visible from a street or arterial shall be constructed with a minimum of forty percent (40%) of brick, wood, glass, textured concrete, tile, decorative concrete block or decorative rock masonry.



3. Article 9.E. shall be amended to provide as follows:

“E. Lighting

(1) Roadway Lighting

Roadway lighting shall consist of “shoebox” or other approved fixtures with a 30-foot pole height. Metal finishes shall be bronze, green or black. Poles shall be located 120 feet o.c. for straight alignments and 85 feet o.c. along curves with fixtures placed on the inside radius of the road. A High Pressure Sodium (HPS) fixture shall be used as the luminaire with foot candles rated at 1.3 FTC per IES recommendations (classification = major, road surfaces = R3). See Exhibit G.

(2) Interior Circulation/Parking Lighting

Parking lighting shall consist of “shoebox” or other approved fixtures with a 20-foot pole height. Metal finishes shall be bronze, green or black. Poles shall be located 100 feet o.c. for multiple fixtures (on approximately 2200 square feet of parking area). A Metal Halide fixture shall be used as the luminaire with foot candles rated at .6 FTC per IES recommendations for medium activity. See Exhibit G.”

4. Article 9.G. shall be amended to provide as follows:

“G. Refuse Collection Areas

All outdoor refuse collection areas shall be visually screened from streets and adjacent property by a masonry wall or material similar to the building, on three (3) sides, and the opening must have a screened gate constructed from metal other than chain link fencing.”

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 12 day
of JANUARY, 2004.

BOTTRELL FAMILY INVESTMENTS LIMITED
PARTNERSHIP, formerly known as Bottrell Family
Investments Limited Liability Partnership

By Diamond B Companies, Inc., a Montana corporation
general partner

By: *Donald G. Bottrell*
Donald G. Bottrell, President





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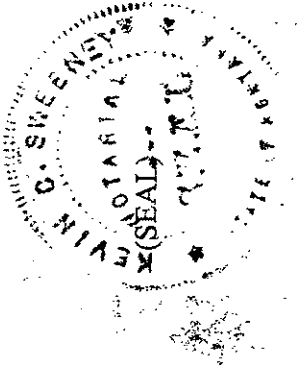
STATE OF MONTANA)

: ss

County of Yellowstone)

On this 12 day of JANUARY, 200 4, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Donald G. Bottrell, known to me to be a President of Bottrell Family Investments Limited Partnership, and the person who executed the foregoing instrument on behalf of the Partnership, and acknowledged to me that the Partnership executed the same.

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





Notary Public for the State of Montana
Residing at Billings, Montana
My commission expires: 6-25-2007

KCS:jlp 21629 004 second amendment 1-12-04



Yellowstone County

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**THIRD AMENDMENT AND RESTATEMENT
OF COVENANTS AND RESTRICTIONS
GABEL SUBDIVISION, SECOND FILING**

THE UNDERSIGNED TO THE PUBLIC

The undersigned, as Developer, is the owner of at least sixty percent (60%) of all lots totaling 35.11 acres (1,529,279 square feet) of the net area of Gabel Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3016877 (the "Subdivision"). Certain Covenants, Conditions and Restrictions, affecting Gabel Subdivision, Second Filing, were recorded August 26, 1998, in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document #3016880 (the "Covenants"). The Covenants were amended by a certain First Amendment to Gabel Subdivision, Second Filing Transtech Center Covenants and Restrictions, recorded May 2, 2002, in the offices of the Clerk and Recorder of Yellowstone County, Montana, as Document No. 3174912 (the First Amendment). The Covenants were further amended by a certain Second Amendment to Gabel Subdivision, Second Filing, Transtech Center Covenants and Restrictions recorded January 13, 2004, in the offices of the Clerk and Recorder of Yellowstone County, Montana, as Document No. 3271580 (the "Second Amendment"). The undersigned, as Developer, now wishes to further amend and restate the Covenants, First Amendment, and Second Amendment as follows:

The Covenants, the First Amendment, and the Second Amendment are hereby deleted in their entirety and the following shall be substituted in place thereof:

The undersigned hereby establishes and declares that the following covenants and restrictions shall be applicable to all of the lots in Gabel Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, subject to the exceptions set forth herein.



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1. PERSONS BOUND BY THESE COVENANTS AND RESTRICTIONS

All persons, partnerships, limited liability companies, corporations, and other entities who shall now own or hereafter acquire interest in and to the above described real property shall be taken and held to agree and covenant to conform to and observe the following covenants and restrictions as to the use thereof, and as to the construction of buildings and improvements thereon.

2. REAL PROPERTY TO WHICH COVENANTS AND RESTRICTIONS APPLY

These covenants and restrictions shall apply to all lots described in Gabel Subdivision, Second Filing, except that existing buildings and existing improvements need not be modified to comply with these covenants and restrictions, but any future modification or alteration to existing buildings and improvements shall comply with these covenants and restrictions.

3. PURPOSE

These covenants and restrictions are set forth for the purpose of maintaining fair and adequate values of lots for all lot owners and preventing nuisances, and thereby securing to each owner, present and future, the full benefit and enjoyment of said owner's lot or lots. The additional purpose of these covenants and restrictions is to provide a certain degree of continuity between the lots described in Gabel Subdivision, Second Filing, and the Units and Common Area of Transtech Center, a condominium development on the north side of Gabel Road.

4. PERMITTED USES AND PROHIBITED USES OF LOTS

A. Permitted Uses:

All lots and buildings and all improvements constructed thereon may be used for the following purposes:

- (1) Accounting, Auditing, and Bookkeeping Offices, Advertising Offices
- (2) Banks and Financial Institutions
- (3) Business and Management Consultant Offices
- (4) Business, Professional or Public Offices
- (5) Chiropractic Offices
- (6) Civic/Social and Fraternal Association Offices
- (7) Consumer and Mercantile Credit Reporting Services Offices
- (8) Contractors Offices
- (9) Dental Offices
- (10) Detective and Protecting Agency Offices



- (11) Distribution Centers
- (12) Educational and Scientific Research Offices
- (13) Employment Agency Offices
- (14) Engineering and Architectural Offices
- (15) Financial Offices
- (16) Governmental Offices
- (17) Health and Fitness Facilities
- (18) Insurance Services Offices
- (19) Investment Services Offices
- (20) Laboratories, Medical/Dental with Accessory Researching and Testing Offices
- (21) Legal Services Offices
- (22) Library and Art Galleries
- (23) Light Manufacturing
- (24) Medical Offices
- (25) Medical/Dental Clinics
- (26) Osteopathic Offices
- (27) Optometric Offices
- (28) Post Offices
- (29) Professional Membership Organizations
- (30) Real Estate Sales, Management and Leasing Offices
- (31) Restaurants, Lounges and Casinos
- (32) Studios for Photography, Painting, Music, or Sculpture
- (33) Uses not explicitly listed in this section which are reviewed and approved in writing by the Design Review Committee (DRC), as hereafter defined.

B. The following are specifically prohibited:

- (1) Fuel oil, gasoline, and petroleum products bulk storage for sale.
- (2) Gases or liquefied petroleum gases in approved portable metal storage containers for sale.
- (3) Crematoriums
- (4) Mortuaries
- (5) Rendering plants
- (6) Adult Shops
- (7) Recycling Plants
- (8) Auto Dealerships
- (9) Pawn Shops
- (10) Auto Mechanics Repair Shops
- (11) Auto Body Repair Shops
- (12) Adult Entertainment Facilities
- (13) Uses not specifically prohibited in this section may be prohibited upon review and denial in writing by the DRC.



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5. SITE SIZE

Lots shall, under no circumstances, be subdivided or re-subdivided into parcels which directly, or as a remainder, create parcels less than one-half (1/2) acre in size. Upon purchase of a lot from Developer or upon subsequent purchase thereafter, no re-subdivision of any kind shall occur. However, notwithstanding this provision, Developer reserves the right to subdivide and re-subdivide lots into parcels meeting the one-half (1/2) acre minimum lot size requirement herein.

6. BUILDING TO LAND RATIO

The maximum portion of a lot that may be covered by buildings shall not exceed 40 percent.

7. SETBACKS, HEIGHT RESTRICTIONS, PARKING, PRIVATE LANDSCAPING, OUTSIDE STORAGE, FENCING, AND SIGNAGE/ENTRY FEATURE EASEMENTS / SPECIAL DEVELOPMENT REQUIREMENTS BY AREA

Subject to Section 7.I, the following apply:

- A. Building setbacks are variable depending on lot size and configuration, as set forth in Section 7.I.
- B. Maximum building height shall not be more than forty-three (43) feet.
- C. Parking:
 - i. Each lot shall be provided with adequate paved off-street vehicle parking area as may be approved by the DRC, and no parking will be permitted on any street, driveway, or any place other than in approved parking spaces. Parking shall in all cases be in accordance with the provisions established under the City of Billings Zoning Ordinance, except where these covenants exceed those provisions.
 - ii. Unless otherwise approved by the DRC in writing prior to the construction or alteration of any building or improvement, parking setbacks must comply with Section 7. I.
 - iii. Landscape islands shall be constructed at the end of parking rows and between parking rows to help disperse landscaping throughout parking areas.
 - iv. The minimum width or length of any landscape area shall be five (5) feet with a recommended minimum size of eight (8) feet.



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v. Deciduous trees are required within landscaped islands inside parking areas.

vi. No parking stall shall be more than seventy-five (75) feet from a required landscape area.

D. Private Landscaping:

The design intent of landscaping each lot shall be to provide continuity of landscape and irrigation development throughout the subdivision among individual lots. Each lot owner shall be responsible to install and maintain landscape and automatic irrigation within that individual's lot lines. Landscaping shall blend with other lot landscaping to provide continuous transition and visual continuity among the individual lots.

- i. Natural landforms (berms) an average of 3'-6" high, minimum of 3' high maximum of 5' high with a maximum slope of 3:1 are required.
- ii. All private landscape areas shall have an automatic irrigation system. A central irrigation system connection will be provided by Developer to each lot. If an individual lot owner chooses to connect to the central irrigation system, such individual lot owner will be subject to connection and use fees, prorated among all lot owners connected to the system, based on usage.
- iii. Existing trees are to be protected and incorporated into the proposed site development.
- iv. Lot landscaping shall be planted in a manner consistent with adjacent developed lots.
- v. The use of native sandstone or granite boulders is required throughout landscape development areas.
- vi. Perennial and annual planting areas shall be located in edged, mulched and maintained beds.
- vii. All open areas of any lot not used for parking, driveways, or storage, shall be landscaped with trees, shrubs, berms, and planted ground covers.

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The minimum tree and shrub sizes are as follows: shade trees - 2 1/2" caliper; ornamental trees - 2" caliper; evergreen - eight (8) feet; shrubs - five (5) gallon pots.

- ix. Each lot owner shall be responsible to keep the private landscaping other than boulevard landscaping on that owner's lot in an attractive and well maintained condition. The lot owner shall also replace any dead or damaged trees or shrubs with a similar or like species. Any dead or damaged sod shall also be replaced by the lot owner. Replacement shall be no later than thirty (30) days after notice from the Lot Owner's Association, unless the notice provides a later replacement date.
- x. All vacant lots or vacant portions of lots shall be maintained by the lot owner thereof in an orderly manner, free of litter and debris.
- xi. All lots shall have a landscaped yard. This yard shall be kept clear of all structures, storage, and off-street parking. Except for driveways, the yard shall extend around the entire boundaries of the lot. This yard shall have a minimum width of not less than fifteen (15) feet on the sides, not less than twenty-five (25) feet on the front, and not less than five (5) feet on the rear.
- xii. Landscaping, as approved by the DRC, shall be installed within 90 days of occupancy or substantial completion of the building, whichever occurs first, weather permitting, which shall include appropriate planting seasons.
- xiii. Private landscaping in the boulevard shall be constructed in conformance with the criteria set forth below.

E. Boulevard Landscaping

The boulevard consists of the twenty-five (25) foot strip of land along a major arterial. Construction of boulevard landscaping will be the responsibility of each lot owner. Maintenance of all boulevard landscaping will be the responsibility of the Lot Owner's Association. Boulevard landscaping will include:

- i. No structures or parking areas are permitted in the boulevard. Public sidewalks may be constructed in the boulevard. Development signs may be constructed in identified signage and entry feature easements, in accordance with the signage provisions. For the purpose of presenting a cohesive image of the development, undulating earth

mounds shall be constructed by the lot owner between the arterial right of way and the inside edge of the private landscape. Landscaping and storm water management will be permitted in both the private landscape and boulevard, provided the requirement for mounding and screening has been achieved.

- ii. Undulating landforms (berms) an average of 3 feet 6 inches high, minimum of 3 feet high, a maximum of 5 feet high with maximum slopes of 3:1.
- iii. All boulevard areas shall be sodded with approved turf sod.
- iv. The boulevard area has or will have an automatic irrigation system, which is connected or will be connected to the central irrigation system, and each lot owner will be subject to use and maintenance fees, based on usage.

F. Outside Storage:

- i. Open outdoor storage of materials, products, or equipment is prohibited, except on Lots 3, 4, 5, and 6, Block 1, Gabel Subdivision, Second Filing.
- ii. All trash containers or dumpsters must be enclosed by a wall of solid materials that matches the facade of the principal building on the lot and provides a suitable screen. Such wall shall be of sufficient height to cover the material stored and shall be maintained so as to present a good appearance at all times. As an alternative to screening by use of a wall, with the prior written approval of the DRC a combination of berms and other landscaping may be used to screen trash containers and/or dumpsters.

G. Fencing:

Except for screening of trash receptacles under F above, and fencing around parts of Lots 3, 4, 5, and 6, Block 1, Gabel Subdivision, Second Filing, fences are prohibited.

H. Signs:

- i. Prohibited Signs

No signs, other than company identification signs and directional signs, are permitted on any lot. Roof mounted billboards or signs are prohibited. Wall mounted billboards are prohibited. No sign shall be



attached to exterior glass, but may be etched in door glass. Building signs may be attached to a building in such locations as approved by the DRC.

ii. Permitted Signs

a. Ground Signs

Each lot may have one (1) ground sign per street frontage.

The overall height of the sign structure (base and sign face wall panel) shall not exceed ten (10) feet. Ground mounted signs must include a landscaped setting of ornamental shrubs and/or flowers in an area equal to two (2) times the area of the total sign face square footage.

b. Wall Signs

Each principal building on a lot may have one (1) wall mounted sign per public street frontage, with the total square footage of the sign area not to exceed ten (10) percent of the wall façade on which the sign is mounted.

iii. Approval of Sign Design

All sign designs must be submitted to the DRC for approval and to the City of Billings for sign permit review and issuance prior to construction or installation.

I. Special Development Requirements by Area: Notwithstanding the general requirements set forth above, the following shall apply, if applicable:

i. Lots 3-6, Block 1, Gabel Subdivision, Second Filing:

a. Buildings Requirements:

- (1) Large acre lots designed for large buildings. Building heights restricted to three levels, not to exceed a maximum height of 43 feet.
- (2) Flat roofs will be allowed.
- (3) Building Setbacks (Minimums)
 - a. From Hesper Road – 50 feet
 - b. Side – 25 feet
 - c. Rear – 25 feet



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b. Site & Landscape Requirements:

- (1) Ditch areas on the lots facing Hesper Road require special attention. The three lateral ditches must be placed in pipe along the north side of Hesper Road running the entire length of Lots 4-6. A plan for these improvements has been developed and these individual lots must participate in the cost of the improvements.
- (2) Lot 4, Block 1, west side must develop a parking and access plan to connect to the north/south road on the west side of Lots 13A & 14A.
- (3) Lot 5, Block 1, must design its parking, access, and site plan to accommodate a connection to the north/south roadway system on the east side of Lot 14A.
- (4) Lots 4 & 5, Block 1, must address the Canyon Creek ditch that crosses diagonally across the lots. The improvement plan is to place the ditch in pipe, extend it in an easterly direction with the three lateral ditches noted above, and then extend it north to the northeast corner of lot of Lot 5.
- (5) Parking, Access Road Setbacks
 - a. From Hesper Road – 10 feet
 - b. Side – 8 feet
 - c. Rear – 8 feet
- (6) Landscape should be complete to the property lines.
- (7) On-site storm water retention is required on these lots
- (8) Fencing around parts of Lots 3, 4, 5, and 6, Block 1, Gabel Subdivision, Second Filing, shall be subject to the following criteria:
 - a. Fencing shall be dark metallic color and ornamental in nature. No chain link fencing shall be allowed.
 - b. Fencing shall only be permitted in areas approved by DRC.
 - c. Fencing shall not exceed six (6) feet in height.
 - d. Fencing shall be constructed of steel, iron, or aluminum. Vinyl fencing may be used if approved by the DRC.



- ii. Lots 1, 2, 11, 12, 13A, 14A, Block 1, Gabel Subdivision, Second Filing:
- a. Building Requirements:
- (1) Building height limited to three levels with a maximum height of 43 feet
 - (2) Minimum of 50% of roof area must be sloping, except for Lot 14A
 - (3) Building Setbacks
 - a. From Gabel Road – 32 feet
 - b. From Hesper Road (Lot 2 only) – 32 feet from Hesper & 25 feet from Transtech Center Sign Easement
 - c. Side – 25 feet
 - d. Rear – 25 feet
- b. Site & Landscape Requirements:
- (1) On Lots 12, 13A, and 14A the buildings are encouraged to be close to Gabel Road. Therefore, parking is required to be at the rear or side of the building.
 - (2) Landscaping is required to extend to the lot line.
 - (3) Arterial access to Gabel Road for Lots 1 & 11 is restricted to one central location.
 - (4) Lots 12, 13A, and the west half of 14A is accessible to Gabel Road at a central location between Lots 12 and 13A.
 - (5) The east half of 14A is accessible to Gabel Road at the eastern edge of Lot 14A.
- iii. Lots 15, 16, 17, 18, & 19, Block 1, Gabel Subdivision, Second Filing:
- a. Building Requirements:
- (1) Building height will be limited to 32 feet. A second floor level shall be limited in size to 50% of the first floor footprint.
 - (2) Minimum of 50% of roof area shall be sloping
 - (3) Building setbacks will be as follows:
 - a. From Gabel Road – 20 feet
 - b. Side – 12.5 feet
 - c. Rear – 25 feet
 - d. Lot 19 – 32 feet from South 32nd St. West
 - (4) Buildings are required to be located close to Gabel Road with parking in the rear.



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b. Site & Landscape Requirements:

- (1) Lot 15 road access will be from the west side of the lot. There is no direct access from Gabel Road. Lot 15 will be required to participate in a private road access from Gabel with Lot 14A along the west side of the Lot 15 and east side of Lot 14A to the point where it enters into Lot 15. Lot 15 will be required to dedicate land for this road easement and share in the road construction cost.
- (2) Lots 16 & 17 have shared accesses from Gabel Road. These lots shall be required to dedicate land for this shared access and to share in their respective costs for developing this access.
- (3) Lots 18 and 19 have shared accesses from Gabel Road. These lots shall be required to dedicate land for this shared access and to share in their respective costs for developing this access.
- (4) Canyon Creek Ditch separates Lots 17 and 18. If the ditch remains open, then these lots will be required to landscape to the ditch bank and keep the ditch bank free of weeds.
- (5) All of these lots will be required to have parking in the rear.

iv. Lots 1A, 2, 3, 4, 5, 6, 7, & 8, Block 2, Gabel Subdivision, Second Filing:

a. Building Requirements:

- (1) Building height restricted to a maximum height of 32 feet, except for Lot 8, which shall have a maximum height of 26 feet. A second floor level shall be limited in size to 50% of the first floor footprint, except for Lot 8. No second floor shall be built on Lot 8.
- (2) Minimum of 50% of roof area must be sloping, except for Lot 8
- (3) Building setbacks for Lots 3, 4, 5, 6, 7, & 8 will be as follows:
 - a. From Gabel Road – 20 Feet
 - b. Rear – 10 Feet
 - c. Side – 12.5 Feet
 - d. From Transtech Way (Lot 8) – 20 Feet



- (4) Building setbacks for Lots 1A & 2
- a. From Gabel Road – 20 Feet
 - b. From S. 32nd St. W (Lot 1A) – 32 Feet
 - c. Rear – 10 Feet
 - d. Side – 12.5 Feet
- b. Site & Landscape Requirements:
- (1) If Canyon Creek Ditch Area between Lots 1A & 2 remains open, then these lots will be required to landscape to the ditch bank and keep the ditch bank free of weeds.
 - (2) Parking for Lots 3, 4, 5, 6, 7, & 8 will be required to be located between the building and Gabel Road. Also these parking lots should provide for connecting access extending from Lot 1A to and through Lot 8 eventually connecting to Transtech Way.
 - (3) The sign easement for Lot 8 is larger than the required size to place a stone sign identifying the road Transtech Way. Therefore, the landscaping and parking configuration around this easement will be allowed in extend into this easement area.
 - (4) Lots 3 & 4 have shared accesses from Gabel Road. These lots shall be required to dedicate land for this shared access and to share in their respective costs for developing this access.
 - (5) Lots 5 and 6 have shared accesses from Gabel Road. These lots shall be required to dedicate land for this shared access and to share in their respective costs for developing this access.
 - (6) Lots 7 & 8 have shared accesses from Gabel Road. These lots shall be required to dedicate land for this shared access and to share in their respective costs for developing this access.

8. PRE CONSTRUCTION REQUIREMENTS

A. Building and Improvements Plan Approval

No building improvements, signs, or other exterior physical features shall be erected, placed or altered on any lot until the building or other improvements plans, specifications, and plan showing the location of such improvements on the particular lot have been submitted to and approved in writing by the DRC as to conformity and continuity of external design with existing structures in the Subdivision, and as to location of the improvements on the lot, giving due



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regard to the anticipated use thereof as same may affect adjoining structures, uses and operations, and as to the location of the improvements with respect to topography, grade, and finished ground elevation.

B. Landscape and Irrigation Plan Approval:

A landscape and irrigation plan must be submitted to and approved in writing by the DRC prior to any construction. The use of a Landscape Architect in the development of the plan is required. The landscape and irrigation plans shall contain at a minimum the following:

- i. Scale: appropriate to illustrate proposed design intent
- ii. Lot lines, easements, rights-of-way (including vision triangles)
- iii. Buildings (proposed and existing)
- iv. Drive approaches, parking areas, light standards and walkways
- v. Irrigation materials and proposed location for key system components.
- vi. Landscaping materials:
 - a. Location and spacing of proposed plant materials including common and botanical names and proposed sizes
 - b. Location of existing trees or landscaping to be preserved or eliminated
 - c. Location of walls, fences and solid waste facilities
 - d. Coordination with proposed and existing common area landscape development

9. MAINTENANCE

Each owner or lessee of any lot shall have the duty and responsibility for keeping the lot, buildings, improvements, appurtenances and landscaping, in a well maintained, safe, clean, and attractive condition at all times. All grass, trees and shrubbery must be kept watered in dry weather and in good appearance at all times. All grass must be cut whenever necessary. All weeds must be eliminated.

If, in the opinion of the Lot Owner's Association, any such owner and lessee fails in this duty and responsibility, then the Lot Owner's Association may give such owner or lessee, or both, notice of such fact and such owner and lessee must, within 10 days of such notice, undertake the care and maintenance required to restore said owner's or lessee's property to a safe, clean, and attractive condition.

In the event that such owner or lessee fails to so restore the lot after said notice, the Lot Owner's Association shall have the right and power to perform such care and maintenance as it deems necessary or desirable to restore the lot, and the owner or



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lessee, or both, of the lot upon which such work is performed by the Lot Owner's Association shall be liable for the cost of such work.

In the event that the owner and lessee fails to reimburse the Lot Owner's Association for the cost of such work within 30 days after billing, the cost shall be a lien against such owner's and lessee's property which lien shall be subordinate to any first mortgage against the property.

10. BUILDING MATERIALS AND DESIGN

A. Any building wall shall be constructed with a minimum of forty percent (40%) of brick or rock or stone masonry, unless waived in writing by the DRC. No metal siding shall be permitted

B. Building Exteriors:

Materials shall be approved by the DRC and shall be one or more of the following:

- i. Brick and stone shall be of any size, type, texture, color and placement as shall be approved by the DRC.
- ii. Such other aesthetically appropriate exterior building materials secondary to the primary exterior masonry surface of the building subject to the approval of the DRC.

C. Canopies:

No canopies with visible wall hangers will be permitted. Design of canopies shall be in keeping with the design of the building and approved by the DRC.

D. Roof Mounted Equipment:

Roof mounted equipment shall be so located and/or screened, and/or painted to minimize visibility from the street and surrounding property owners.

E. Loading Docks:

Provision should be made for handling all freight on those sides of the building which do not face a street. Outside loading docks shall not be constructed facing any street unless the face of the truck unloading dock is 100' from the street line. All outside loading docks must be screened from visibility by berm and/or landscaping in a manner approved by the DRC. This shall be applicable to any new construction or alteration of any existing facility.



F. Parking Surfaces, Driveways and Loading Areas:

All parking surfaces for autos or trucks, driveways and loading areas shall be paved with a bituminous or concrete surface no less than six (6) months after occupancy.

11. LIGHTING

A Roadway Lighting

Roadway lighting shall consist of fixtures approved by the DRC with a 30-foot pole height. Metal finishes shall be a dark metallic color. Poles shall be located 120 feet o.c. for straight alignments and 85 feet o.c. along curves with fixtures placed on the inside radius of the road. A High Pressure Sodium (HPS) fixture shall be used as the luminaire with foot candles rated at 1.3 FTC per IES recommendations (classification=major, road surfaces=R3).

B. Interior Circulation/Parking Lighting

Parking lighting shall consist of fixtures approved by the DRC with a 20-foot pole height. Metal finishes shall be a dark metallic color. Poles shall be located where determined to be appropriate by the DRC.

12. OWNER'S ASSOCIATION

An Owner's Association is hereby established for the purpose of establishing and maintaining all of the boulevard landscaping areas required by this Agreement, whether situated on public or private land, and/or for the purpose of carrying out the other purposes of this Agreement. The manner of establishing said Owner's Association shall be as follows:

A. The definitions with respect to the establishment of the Owner's Association are as follows:

- i. Lot/Vote. A Lot is any lot in Gabel Subdivision, Second Filing. Each lot shall be entitled to one (1) vote.
- ii. Notice. A Notice shall be in written form and shall state the time, place, and purpose of the meeting. Said Notice shall be signed by the persons calling the meeting, and shall be given at least ten (10) days prior to the prospective meeting.



- iii. Owner. An owner shall be the holder of fee simple title in and to a lot or, if there is a notice of record as to a contract of sale for a lot, then, and in that event, an owner shall be contract purchaser.
- iv. Owner's Association. The Owner's Association shall be a nonprofit corporation formed as provided for hereunder.
- v. Quorum. A Quorum shall be reached if there are owners and/or persons holding proxies present at a meeting which represent in excess of 60 percent of all lots.
- vi. Proxy. A Proxy is a written document executed by the owner of a lot authorizing the designated holder thereof to vote the interest of the owner so signing. All such proxies must be acknowledged to be valid.
- vii. Service of Notice. Service of Notice means the placing of a copy of the Notice in the first class mail addressed to the last known address of any one of the owners of a particular lot. The last known address shall be conclusively determined if it is the same as the address specified in the records of the Yellowstone County Assessor's office on the day of service. Service shall be deemed to have been made on the day said Notice is placed in the first class mail. The Service of Notice of a meeting shall be made at least ten (10) days prior to the scheduled meeting.
- B. The owners of any five (5) lots may execute a Notice calling for an initial meeting of the Owner's Association.
- C. All proxies must be presented to the owners calling the meeting prior to the meeting. Said owners shall be present for one hour prior to the meeting for purpose of receiving any such proxies and verifying their authenticity.
- D. The meeting shall be called or to order by the owners of the lots calling the same. Said owners calling said meeting shall initially determine if a quorum is present. In the event a quorum is present, the meeting shall be authorized to conduct business on behalf of the owners. Any business so transacted shall be binding upon all owners and their lots.
- E. The first order of business at the initial meeting of the Owner's Association shall be the election of a chairman and a secretary. The chairman shall preside over the meeting, and the secretary shall keep minutes of the meeting. Roberts Rules of Order shall govern the meeting procedure except where expressly in conflict with these covenants.



- F. The vote of owners and proxies, present at the meeting and owning a majority of the lots, shall be sufficient to carry any measure properly before the meeting. All votes shall be in writing and shall be cast by the designation of the lot and block number presented thereby. In the event a lot is jointly owned, only one vote may be cast relative to such lot and no split votes will be counted.
- G. The chairman and secretary shall be authorized to act as representatives of all owners. They shall have authority to call meetings and make Service of Notice relative to the adoption of corporate articles, by-laws, and governing declarations. They shall be authorized to hire professionals for the purpose of drafting all documents necessary to establish the Owner's Association, and shall be authorized to incur expenses and costs relative to such establishment on behalf of all owners and their lots.
- H. Any costs, fees, and expenses incurred by the chairman and secretary in organizing the Owner's Association shall be assessable to all lots equally, no matter what their square footage may be, upon establishment of the Owner's Association.
- I. All assessments to be charged by the Owner's Association against lots, upon its establishment, shall be based on the square footage of each lot.
- J. In the event that any lot owner shall fail to pay an assessment by the Owner's Association when due, such assessment shall be a lien against the lot of the owner who has failed to pay the assessment, and such lien may be foreclosed pursuant to the lien foreclosure statutes of the State of Montana.
- K. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien or such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. All of the requirements of this paragraph shall be included in any Owner's Association documents adopted in the future.

13. DESIGN REVIEW COMMITTEE / DESIGN REVIEW

- A. Design Review

Design Review Committee (DRC) is hereby established for the purposes set



forth herein. Gabel Subdivision, Second Filing, is closely linked with the development of Transtech Center, a condominium development on the north side of Gabel Road, immediately adjacent to Gabel Subdivision, Second Filing, as shown on the site plan attached hereto as Exhibit "A". Developer owns the majority of Units in Transtech Center, and desires to maintain consistency in the development of Gabel Subdivision, Second Filing, and Transtech Center. Gabel Subdivision, Second Filing, and Transtech Center have come to be generally known commonly as "Transtech Center." Therefore, the Design Review Committee shall be composed of owners of lots in Gabel Subdivision, Second Filing, and Unit Owners in Transtech Center. The initial Design Review Committee shall consist of five (5) persons, who shall be the following persons:

<u>Name</u>	<u>Address</u>
Stacey T. Robinson	
James R. Bennett	
Robert Sanderson	
Jerry Thomas	
David Brown	

These persons represent owners of lots in Gabel Subdivision, Second Filing, and/or owners of Units in Transtech Center. The initial Design Review Committee shall serve at the will of the Developer, who shall have the right to terminate any person then serving, and the right to appoint a replacement person. Developer shall also have the right to appoint a replacement person for any person who resigns or is otherwise unable or unwilling to serve on the Design Review Committee. Developer shall retain this right to appoint persons to the Design Review Committee until such time as Developer no longer owns forty percent (40%) or more of the lots in Gabel Subdivision, Second Filing, or forty percent (40%) or more of the Units in Transtech Center. At such time as Developer no longer owns such lots or Units, persons shall be elected to the Design Review Committee by the vote of the Owner's Association of Gabel Subdivision, Second Filing, and by the vote of Unit Owners of Transtech Center. The Owner's Association shall have the right to elect two persons to the Design Review Committee. Nominations



and elections shall take place at special or annual meetings wherein election of persons to the Design Review Committee is designated as the purpose of the meeting or one of the purposes of the meeting.

B. Design Review Steps

In order to implement compliance with these covenants and restrictions, the following procedures shall be followed, which are a series of meetings between a lot owner and the owner's representatives and the DRC. The procedures are set up to be cooperative in nature, with the DRC helping the owner realize the owner's objectives, while implementing the overall vision which distinguishes Transtech Center (both Gabel Subdivision, Second Filing, and Transtech Center Condominium) as one of Montana's premier commercial developments.

i. Step 1. An Initial Meeting

Prior to commencement of any construction or construction planning, the lot owners and/or the owner's representatives will request a meeting with the DRC to review these Covenants and Restrictions and the design review process, exchange ideas, and schedule the "Lot Diagram" meetings.

ii. Step 2. The Lot Diagram

DRC representatives will meet with the owner and a team selected by the owner, typically the owner, and the owner's architect and landscape architect, at the lot. Together they will evaluate the key factors that are to guide the siting of structures and landscaping on a lot, which shall include, but are not limited to, the following:

- a. maintaining existing drainage patterns
- b. minimizing grading and removal of vegetation
- c. optimizing views
- d. protecting view corridors from other properties and/or common areas
- e. protecting sensitive environments
- f. protecting and utilizing distinctive natural features – rocks, vegetation, and topography

Following the completion of the lot diagrams meeting, the owner's team will submit a "Lot Diagram" identifying and illustrating the owner's proposed building setbacks and a "building envelope", which will define the limits of site disturbance and the ways in which the



owner proposed to respond to the key factors identified at the lot diagram meeting.

iii. Step 3. Lot Diagram Review Meeting

A review meeting will then be scheduled by the owner and DRC. The owner's Lot Diagram will be presented and reviewed by the DRC, whose objective will be to approve it or approve with changes at the meeting. However, if the DRC determines that significant changes or more information are needed before a Lot Diagram can be considered for approval, the DRC will require a resubmission and an additional meeting.

iv. Step 4. Plan Submittals

The plan submittals are to include the following:

a. Survey and Site Photographs

Two copies of a property survey (minimum scale: 1"=20'-0") prepared by a licensed surveyor indicating property boundaries, the area of the property, all easements of record, applicable local government regulations, topography at two foot intervals and any significant natural features such as watercourses, or existing trees of 8 inches in diameter or greater, together with the building envelope and other information from the approved Lot Diagram that influences the owner's site plan.

b. Proposed Site Plan

Two sets full size and four sets 11" x 17" reductions of the site plan (minimum scale 1"= 20' - 0"), indicating the survey information plus the footprint(s) of buildings relative to the lots/unit area, including calculated percentage of the site covered by improvements, the proposed limits of grading and construction, the trees, topography, refuse dumpsters, and structures on adjoining lots, scale and north direction.

c. Building Plans

Two sets full size and four sets 11"x17" reductions of plans (minimum scale 1/8"=1' -0"), including floor plans for each level of building(s), exterior elevations, roof plan indicating materials and colors, existing and proposed grades, elevations for each floor and the highest roof ridge. Overall building dimensions and distance from



property line should be indicated.

d. Conceptual Landscape Plan

Two sets full size and four sets 11"x17" reductions of the landscape plan (minimum scale 1"=20'-0"), including location and type of existing vegetation, limits of site disturbance, proposed areas of new landscaping, re-vegetation proposals for reseeding and mulching and preliminary concepts for lighting, grading, drainage, and erosion control measures.

The proposed landscape plans should include:

- (1) Grading Plan – Include existing and proposed contours at 2 foot intervals, spot elevations, drainage patterns, rim and invert elevations.
- (2) Planting Plan – Include plant material legend which lists common and botanical names, plant sizes and plant quantities which are keyed to locations on plan.
- (3) Irrigation Plan – Illustrate the proposed type and size of the irrigation zones. The applicant shall provide details that illustrate adequate coverage of planted areas.
- (4) Lighting – Locate in detail all proposed outdoor lights and signs. Submit cut sheets of all proposed light fixtures.
- (5) Identification Sign – Indicate selected type of identification sign from the DRC pre-approved designs.

e. Site Sections

Two sets full size and four sets 11"x17" reductions (minimum scale 1"=20'-0") of cross-sections showing proposed buildings and elevations in relation to the surrounding site, including adjacent lots/units and roads. A minimum of two sections, one in each direction is required.

f. Building Height Calculation

One copy of building height calculations drawn over building elevations, relating to, and coordinated with the required topographic survey. Existing and finished grades should be clearly indicated



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around the perimeter of all proposed structures.

v. Step 5. Evaluation Meetings

The DRC will meet to evaluate the proposals for construction the first Tuesday of every month. Alternative meeting dates may be requested with 48 hours notice to the DRC provided a majority of DRC are available. All plans must be submitted not less than ten (10) days prior to a scheduled meeting.

The DRC will evaluate the proposals for construction of improvements in terms of these covenants and restrictions. At the same time, the DRC recognizes that each lot has unique characteristics and owners have individual needs. Accordingly, the DRC may, at its sole discretion, approve deviations from the covenants and restrictions provided that the owner demonstrates that the proposal is consistent with these covenants and restrictions, and that such deviation it will not adversely affect adjoining or nearby lots in Transtech Center.

A deviation would be granted in the form of a written "variance." It would apply to a specific set of unique conditions and shall not constitute a precedent.

vi. Step 6. The Final Plan

The final submission package delivered by the owner to the DRC shall include the following:

- a. Final Site Plan. (minimum scale 1"=20')
In addition to the relevant information shown on the survey, this site plan is to show the information required on the Sketch Plan package in its final form plus utility locations, dumpster locations, cut and fill areas and all improvements.
- b. Floor Plans (scale 1/4"=1'-0")
Indicate all building dimensions, door and window locations and sizes, location of mechanical and electrical systems and fire sprinkler and monitoring systems, and the location and type of all exterior lighting fixtures.
- c. Elevations (scale 1/4"=1'-0")
Illustrate the exterior appearance of all views labeled in accordance with the site plan. Indicate the elevation of each floor and existing and finish grades of each elevation. Describe all exterior materials, colors, and finishes and locate all exterior lighting fixtures.



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- d. Perspective Sketches (optional)
It is recommended that one or more ground level perspective sketch(es) of the building be provided from locations representing a primary public exposure to the building. Sketches should indicate exterior shadow patterns, materials, patterns, colors, textures, and trim details.
- e. Building Height Calculations
Submit one copy of building height calculations, drawn over the building elevations.
- f. Roof Plan
Indicated location of all roof mounted mechanical equipment and indicate intent to screen mechanical equipment from view.
- g. Landscape Plans (minimum scale 1"=20') shall include the conceptual plans approved by the DRC.
- h. Erosion Control and Re-vegetation Plan
Indicate the means and time schedule by which the prevention of erosion and stream (Hogan's Slough) sedimentation will be addressed during and after construction, including any of the following that are appropriate for the site in question:
- (1) The limits of construction and the technique proposed for defining that limit prior to and during construction. Orange construction fencing around the perimeter of the construction limits is required;
 - (2) Location and proposed method of tree and vegetation protection;
 - (3) Placement and type of perimeter filters;
 - (4) Water control methods;
 - (5) Vehicular access points and surface treatment;
 - (6) Spoil storage and stabilization measures;
 - (7) Siltation control devices;
 - (8) Proposed re-vegetation methods;
 - (9) Proposed seed and fertilizer types, application rates and methods;
 - (10) Type and location of any permanent or temporary irrigation methods to be used.
- i. Specifications
Provide written specifications, samples and color boards as appropriate for the following items:



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- (1) Roof material;
- (2) Exterior wall materials and colors;
- (3) Windows and exterior doors with colors;
- (4) Exterior trim materials and colors;
- (5) Exterior lighting fixture cut sheets.

j. On-Site Mock-up

An on-site full scale mock-up of principal exterior materials and colors or a sample panel may be required by DRC during the construction phase for final DRC approval.

k. DRC Application

Submit one copy of completed application with drawings.

vii. Step 5. Working Drawings, Stake-Out and Site Meeting

Working Drawings. Upon approval of Final Plans by DRC, the owner will prepare and submit final working drawings to the DRC. The contents of the final working drawings submittal should be consistent with the approved final design plans, while responding to any conditions or revisions imposed by the DRC at final design review. The final working drawing submittal package is to include the following drawings:

- a. Final Working Drawings
- b. Initial Erosion Control Plan
- c. Permanent Erosion Control Plan

Stake-out on-site. At the same time, the Owners will stake out the footprints of the following and request a site inspection by the DRC.

- a. The improvements to be constructed on the site.
- b. The parking, storage, lay down areas and limit of disturbance.
- c. Tree removal/protection.

14. AMENDMENT OF AGREEMENT

The lot owners may amend any provision of this Agreement if persons owning at least 60 percent of all lots in the Subdivision vote in favor of the amendment. The intent of any amendment shall not be to change the concept of these covenants, but to allow a margin of flexibility in evaluating special circumstances, if appropriate.

15. EFFECT OF NON-ENFORCEMENT

Failure of any party to enforce any restriction, condition, covenant, or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter



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as to the same breach or as to one occurring prior or subsequent thereto.

16. DURATION AND EFFECT OF AGREEMENT

This contract constitutes a mutual covenant running with the land, and all successive future owners shall have the same right to invoke and enforce its provisions as the original parties hereto. This contract shall take effect and be in full force and effect when executed by the parties hereto, and shall be placed of record in Billings, Montana; and shall continue in force for a period of 20 years from the date of said filing, and so long thereafter as the owners shall deem it necessary and reasonable to maintain their property rights purchased and acquired hereunder.

17. COVEYANCE IN VIOLATION OF AGREEMENT

Any deed, lease, conveyance, or contract made in violation of this Agreement shall be void and may be set aside by petition of one or more of the parties hereto, and all successors in interest, assigns, heirs, and personal representatives shall be deemed to the same effect as the original signers; and when such conveyance or other instrument is set aside by decree of any Court or competent jurisdiction, all costs and all expenses of such proceedings shall be charged against it the grantors and shall be declared by the Court or constitute a lien against said real estate so wrongfully deeded, sold leased, or conveyed, until paid, and such lien may be enforced in such manner as the Court may order.

18. REMEDY FOR BREACH

The parties hereto and every person hereinafter having any right, title, or interest in lands or the Owner's Association, if established, shall have the right to prevent or stop violation of any said restrictions by injunction or other lawful procedure, and to recover any damages resulting from such violation. All costs and expenses of such proceedings shall be charged against the violators, and shall be declared by the Court to constitute a lien against the real estate of the violator, until paid, and such lien may be enforced in such a manner as the Court may order.

19. EFFECT OF PARTIAL INVALIDITY

It is expressly agreed that in the event any covenant, condition, or restriction hereinabove contained, or any portion thereof, is invalid or void, such shall in no way effect any other covenant, condition, or restriction.



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IN WITNESS WHEREOF, the undersigned has executed this instrument on this 10th day
of November, 2005.

BOTTRELL FAMILY INVESTMENTS LIMITED
PARTNERSHIP, formerly known as Bottrell Family
Investments Limited Liability Partnership
By Diamond B Companies, Inc., a Montana corporation
general partner

By: *Donald G. Bottrell*
Donald G. Bottrell, President

STATE OF MONTANA)
County of Yellowstone) : ss

On this 10th day of November, 2005, before me, the undersigned, a Notary Public
for the State of Montana, personally appeared Donald G. Bottrell, known to me to be a President of
Bottrell Family Investments Limited Partnership, and the person who executed the foregoing
instrument on behalf of the Partnership, and acknowledged to me that the Partnership executed the
same.

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



Jerry S. Thomas
(Signature of Notary Public)
Jerry S. Thomas
(Printed Name of Notary Public)
Notary Public for the State of Montana
Residing at Billings, Montana
My commission expires: 9/17/2006



**DECLARATION OF RESTRICTION ON TRANSFERS
AND CONVEYANCES**

GABEL SUBDIVISION SECOND FILING

THIS DECLARATION, made this _____ day of _____, 1998, by
MONTANA TRADEPORT AUTHORITY, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of all of the lots in Gabel Subdivision Second Filing, situated in the SE¼ of Section 14, Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana, hereinafter referred to as the "Subdivision"; and

WHEREAS, in connection with the filing of the plat for the Subdivision, the Declarant executed that certain Subdivision Improvements Agreement dated _____, 1998, to the City of Billings, which agreement contains restrictions against the sale, conveyance or transfer of certain lots in the Subdivision until such time as a special improvement district or districts or a private contract has been created or executed, as the case may be, providing for the installation and construction of required public improvements; and

WHEREAS, in order to more fully evidence the restriction against sale, conveyance or transfer and to give third parties notice of such restrictions, the Declarant desires to execute and record this Declaration of Restrictions.

NOW, THEREFORE, in consideration of the premises, the Declarant for itself, and its successors and assigns, does hereby declare:

1. Except as hereinafter provided, the Declarant does hereby agree and declare that the following described lots shall not be sold, transferred or conveyed to any third party unless and until a Release has been executed and recorded in accordance with the provisions hereinafter appearing:

Lot 1 and Lots 11 through 19, inclusive, in Block 1, Lots 1 through 8, inclusive, in Block

2, and Lots 1 through 3, inclusive, in Block 3, all in Gabel Subdivision Second Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana.

2. It is the express purpose and intent of this Declaration to restrict or preclude sale, transfer or conveyance of the above-described lots until such time as a special improvement district has been created and the bonds for such district sold, or until a private contract has been executed and necessary funding guarantees provided, as the case may be, providing for the construction and installation of those public improvements required under the above-described



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Subdivision Improvements Agreement which by reference thereto is hereby incorporated herein as though fully set forth at this point. It is anticipated, however, that the Declarant will develop Gabel Subdivision Second Filing in distinct phases, upon providing for the installation and construction of the public improvements necessary to serve the particular phase. In that regard, a Release of some but not all of the above-described lots may be executed and recorded, from time to time, in accordance with the provisions hereinafter appearing, and upon the recording of said Release, the covenants and restrictions contained herein with respect to the lots described in said Release shall be deemed canceled and terminated, and of no further force and effect.

3. Upon compliance with the requirements for a special improvement district or a private contract specified above, a Release for the lot or lots affected thereby shall be executed and recorded by the City of Billings, pursuant to the provisions contained in paragraph 6 of the said Subdivision Improvements Agreement. The execution and recording of said Release shall be deemed conclusive evidence to all third parties purchasing or acquiring any lot described therein that the restriction against sale, conveyance or transfer of said lot has been removed.

4. UNTIL SUCH RELEASE IS EXECUTED AND RECORDED, THIS DECLARATION SHALL SERVE AS NOTICE TO ALL THIRD PARTIES PURCHASING OR ACQUIRING ANY OF THE ABOVE-DESCRIBED LOTS OF THE EXPRESS RESTRICTIONS AGAINST ANY SUCH SALE, CONVEYANCE OR TRANSFER, AND OF THE TERMS AND CONDITIONS OF THE SAID SUBDIVISION IMPROVEMENTS AGREEMENT, AND SHALL FURTHER SERVE AS NOTICE THAT THE CITY OF BILLINGS MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED IN THE SUBDIVISION IMPROVEMENTS AGREEMENT SHOULD THE TERMS OF THIS DECLARATION BE VIOLATED.

5. The terms, conditions and restrictions contained in this Declaration shall not preclude or restrict the ability of the Declarant to (a) sell, convey and transfer all of the above-described lots, or those lots remaining subject to the terms of this Declaration, as one unit or group, to a third party, parties or entities; provided, however, that such sale shall be subject to this Declaration and the lots shall continue to be subject to the restrictions herein provided against the sale, transfer and conveyance for individual lots; provided, however, that the deeds or other conveyance documents shall not be delivered to the prospective buyer nor shall the closing under any such sale and purchase agreements occur until such time as a Release covering the affected lot has been executed and recorded.

6. The terms and conditions of this Declaration shall run with the land, and shall be binding upon and shall inure to the benefit of the Declarant, the City of Billings, and their successors and assigns.

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

MONTANA TRADEPORT AUTHORITY

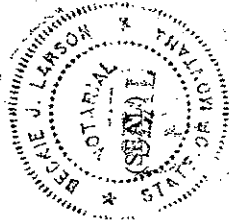
By [Signature]
Its: Director

By [Signature]
Its: Chairman

"Declarant"

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on July 22, 1998, by
Henry J. Larson and Clayton S. Newland, as the
Executive Director and Chairman, respectively, of
the MONTANA TRADEPORT AUTHORITY.



[Signature]
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: Sept 2, 2000

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RES

Yellowstone County

EXHIBIT A

DECLARATION OF RESTRICTION ON TRANSFERS
AND CONVEYANCES

GABEL SUBDIVISION SECOND FILING

THIS DECLARATION, made this 24 day of August, 1998, by
MONTANA TRADEPORT AUTHORITY, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of all of the lots in Gabel Subdivision Second Filing, situated in the SE¼ of Section 14, Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana, hereinafter referred to as the "Subdivision"; and

WHEREAS, in connection with the filing of the plat for the Subdivision, the Declarant executed that certain Subdivision Improvements Agreement dated Aug 24, 1998, to the City of Billings, which agreement contains restrictions against the sale, conveyance or transfer of certain lots in the Subdivision until such time as a special improvement district or districts or a private contract has been created or executed, as the case may be, providing for the installation and construction of required public improvements; and

WHEREAS, in order to more fully evidence the restriction against sale, conveyance or transfer and to give third parties notice of such restrictions, the Declarant desires to execute and record this Declaration of Restrictions.

NOW, THEREFORE, in consideration of the premises, the Declarant for itself, and its successors and assigns, does hereby declare:

1. Except as hereinafter provided, the Declarant does hereby agree and declare that the following described lots shall not be sold, transferred or conveyed to any third party unless and until a Release has been executed and recorded in accordance with the provisions hereinafter appearing:

Lot 1 and Lots 11 through 19, inclusive, in Block 1, Lots 1 through 8, inclusive, in Block 2, and Lots 1 through 3, inclusive, in Block 3, all in Gabel Subdivision Second Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana.

2. It is the express purpose and intent of this Declaration to restrict or preclude sale, transfer or conveyance of the above-described lots until such time as a special improvement district has been created and the bonds for such district sold, or until a private contract has been executed and necessary funding guarantees provided, as the case may be, providing for the

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construction and installation of those public improvements required under the above-described Subdivision Improvements Agreement which by reference thereto is hereby incorporated herein as though fully set forth at this point. It is anticipated, however, that the Declarant will develop Gabel Subdivision Second Filing in distinct phases, upon providing for the installation and construction of the public improvements necessary to serve the particular phase. In that regard, a Release of some but not all of the above-described lots may be executed and recorded, from time to time, in accordance with the provisions hereinafter appearing, and upon the recording of said Release, the covenants and restrictions contained herein with respect to the lots described in said Release shall be deemed canceled and terminated, and of no further force and effect.

3. Upon compliance with the requirements for a special improvement district or a private contract specified above, a Release for the lot or lots affected thereby shall be executed and recorded by the City of Billings, pursuant to the provisions contained in paragraph 6 of the said Subdivision Improvements Agreement. The execution and recording of said Release shall be deemed conclusive evidence to all third parties purchasing or acquiring any lot described therein that the restriction against sale, conveyance or transfer of said lot has been removed.

4. UNTIL SUCH RELEASE IS EXECUTED AND RECORDED, THIS DECLARATION SHALL SERVE AS NOTICE TO ALL THIRD PARTIES PURCHASING OR ACQUIRING ANY OF THE ABOVE-DESCRIBED LOTS OF THE EXPRESS RESTRICTIONS AGAINST ANY SUCH SALE, CONVEYANCE OR TRANSFER, AND OF THE TERMS AND CONDITIONS OF THE SAID SUBDIVISION IMPROVEMENTS AGREEMENT, AND SHALL FURTHER SERVE AS NOTICE THAT THE CITY OF BILLINGS MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED IN THE SUBDIVISION IMPROVEMENTS AGREEMENT SHOULD THE TERMS OF THIS DECLARATION BE VIOLATED.

5. The terms, conditions and restrictions contained in this Declaration shall not preclude or restrict the ability of the Declarant to (a) sell, convey and transfer all of the above-described lots, or those lots remaining subject to the terms of this Declaration, as one unit or group, to a third party, parties or entities; provided, however, that such sale shall be subject to this Declaration and the lots shall continue to be subject to the restrictions herein provided against the sale, transfer and conveyance until a Release has been executed and recorded; or (b) enter into sale and purchase agreements for individual lots; provided, however, that the deeds or other conveyance documents shall not be delivered to the prospective buyer nor shall the closing under any such sale and purchase agreements occur until such time as a Release covering the affected lot has been executed and recorded.

6. The terms and conditions of this Declaration shall run with the land, and shall be binding upon and shall inure to the benefit of the Declarant, the City of Billings, and their successors and assigns.



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

MONTANA TRADEPORT AUTHORITY

By _____
Its: _____

By _____
Its: _____

"Declarant"

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on _____, 1998, by
_____ and _____, as the
_____ and _____, respectively, of
the MONTANA TRADEPORT AUTHORITY.

Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: _____

(SEAL)

EXHIBIT B

RELEASE

THIS RELEASE, made this 24 day of August, 1998, by the undersigned, MONTANA TRADEPORT AUTHORITY and the CITY OF BILLINGS, a municipal corporation.

WHEREAS, the hereinafter described real property is subject to that certain Declaration of Restrictions on Transfers and Conveyances (the "Declaration") dated _____, 1998, and recorded _____, 1998, under Document No. _____, in the office of the Yellowstone County Clerk and Recorder; and

WHEREAS, said real property is also subject to the terms of that certain Subdivision Improvements Agreement by and between the undersigned dated _____, 1998, and recorded _____, 1998, under Document No. _____, in the office of the Yellowstone County Clerk and Recorder; and

WHEREAS, in accordance with the provisions of said Subdivision Improvements Agreement and the Declaration either a special improvement district or districts have been created and the bonds sold, or a private contract has been executed and necessary funding guarantees have been provided, as the case may be, providing for the installation and construction of all required public improvements to serve the hereinafter described real property.

NOW, THEREFORE, in consideration of the premises, the undersigned do hereby declare and agree that all restrictions and conditions contained in said Declaration are hereby released and discharged, and shall be of no further force and effect, as the same relate to the following real property situated in Yellowstone County, Montana:

Lot(s) _____, Block _____, in Gabel Subdivision Second Filing, in the City of Billings, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County, under Document No. _____.

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

THE CITY OF BILLINGS

MONTANA TRADEPORT AUTHORITY

By Charles F. Trolley
Mayor

By _____
Its: _____

ATTEST:

ATTEST:

By Marita Herold
City Clerk

By _____
Its: _____



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STATE OF MONTANA)
County of Yellowstone)

: ss.

This instrument was acknowledged before me on _____, 1998, by
_____ and _____, as the
_____, respectively, of the
MONTANA TRADEPORT AUTHORITY.

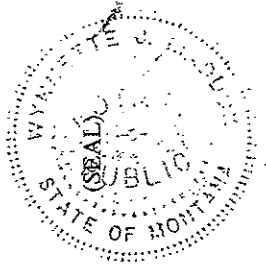
(SEAL)

Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: _____

STATE OF MONTANA)
County of Yellowstone)

: ss.

This instrument was acknowledged before me on Aug 25, 1998, by
Charles F Tooley and Marita Harold, as the Mayor and
the City Clerk of the CITY OF BILLINGS, MONTANA.



Wynnette J. Haddock
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: 9-16-98



EXHIBIT C

CERTIFICATE

The undersigned, the duly authorized representative of the Department of Public Works, City of Billings, Montana, does hereby certify that a special improvement district or districts have been created and the bonds sold, or a private contract has been executed and necessary funding guarantees have been provided, as the case may be, to construct and install the public improvements required to serve the following described property in Yellowstone County, Montana:

Lot(s) _____, Block _____, in Gabel Subdivision Second Filing, in the City of Billings, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County, under Document No. _____.

This Certificate is being executed to show compliance with the terms of that certain Subdivision Improvements Agreement dated _____, 1998, by and between Montana Tradeport Authority and the City of Billings, and that certain Declaration of Restrictions on Transfers and Conveyances, dated _____, 1998, covering Gabel Subdivision Second Filing, and to provide the basis for the execution and recording of a Release from the terms of said Declaration pursuant to the terms of said Agreements.

Dated this _____ day of _____, 1998.

DEPARTMENT OF PUBLIC WORKS,
CITY OF BILLINGS, MONTANA

By: _____
Title: _____

AFTER RECORDING RETURN TO:
HERNDON, SWEENEY & HALVERSON
ATTN: KEVIN SWEENEY
PO BOX 80270
BILLINGS, MT 59108-0270

RELEASE

374334

THIS RELEASE, made this 27th day of November, 2000, by the undersigned, **BIG SKY ECONOMIC DEVELOPMENT AUTHORITY**, formerly known as Montana Tradeport Authority, and the **CITY OF BILLINGS**, a municipal corporation.

WHEREAS, the hereinafter described real property is subject to that certain Declaration of Restrictions on Transfers and Conveyances (the "Declaration") recorded August 26, 1998, under Document No. 3016879, in the office of the Yellowstone County Clerk and Recorder; and

WHEREAS, said real property is also subject to the terms of that certain Subdivision Improvements Agreement by and between the undersigned filed August 26, 1998, under Document No. 3016878, in the office of the Yellowstone County Clerk and Recorder; and

WHEREAS, in accordance with the provisions of said Subdivision Improvements Agreement and the Declaration either a special improvement district or districts have been created and the bonds sold, or a private contract has been executed and necessary funding guarantees have been provided, as the case may be, providing for the installation and construction of all required public improvements to serve the hereinafter described real property.

NOW, THEREFORE, in consideration of the premises, the undersigned do hereby declare and agree that all restrictions and conditions contained in said Declaration are hereby released and discharged, and shall be of no further force and effect, as the same relate to the following real property situated in Yellowstone County, Montana:

Lot 1 and Lots 11 through 19, inclusive, in Block 1, Lots 1 through 8, inclusive, in Block 2, and Lots 1 through 3, inclusive, in Block 3, all in Gabel Subdivision Second Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 3016877.

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

THE CITY OF BILLINGS

BIG SKY ECONOMIC DEVELOPMENT
AUTHORITY

By Charles F. Tuley
Mayor

By Tom Emerling
Its: Chairman, Board of Commissioners

ATTEST:

Marita Herald
City Clerk



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12.00

Yellowstone County RES

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on Nov. 22, 2000, by
Tom Emerling, as the Chairman, Board of of the BIG SKY
ECONOMIC DEVELOPMENT AUTHORITY. Commissioner

Diane Beck
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: 1/25/04
(SEAL)

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on Sept 11, 2000, by
Mark F. Tocky and Maria Heward, as the Mayor and the
City Clerk of the CITY OF BILLINGS, MONTANA.

B. Beck
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: September 2, 2004
(SEAL)



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Return recorded document to:
KEVIN C. SWEENEY
P.O. Box 80050
Billings, MT 59108-0050

**FOURTH AMENDMENT OF COVENANTS AND RESTRICTIONS
GABEL SUBDIVISION, SECOND FILING**

THE UNDERSIGNED TO THE PUBLIC

The undersigned are the owners of at least sixty percent (60%) of all lots totaling 35.11 acres (1,529,279 square feet) of the net area of Gabel Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3016877 (the "Subdivision"). Certain Covenants, Conditions and Restrictions, affecting Gabel Subdivision, Second Filing, were recorded August 26, 1998, in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document #3016880 (the "Covenants"). The Covenants were amended by a certain First Amendment to Gabel Subdivision, Second Filing Transtech Center Covenants and Restrictions, recorded May 2, 2002, in the offices of the Clerk and Recorder of Yellowstone County, Montana, as Document No. 3174912 (the "First Amendment"). The Covenants were further amended by a certain Second Amendment to Gabel Subdivision, Second Filing, Transtech Center Covenants and Restrictions recorded January 13, 2004, in the offices of the Clerk and Recorder of Yellowstone County, Montana, as Document No. 3271580 (the "Second Amendment"). The Covenants were further amended by a certain Third Amendment and Restatement of Covenants and Restrictions Gabel Subdivision, Second Filing, recorded November 14, 2005, in the offices of the Clerk and Recorder of Yellowstone County, Montana, as Document No. 3356843 (the "Third Amendment and Restatement"). Pursuant to Article 14 of the Third Amendment and Restatement, the undersigned, as the owners of at least sixty percent (60%) of all lots of the net area of Gabel Subdivision, now wish to further amend the Third Amendment and Restatement as follows:

The Third Amendment and Restatement is hereby amended as follows:

1. Amendment of Article 7.I.iii b. (1). Article 7.I.iii b. (1) of the Third Amendment and Restatement is deleted in its entirety and the following is substituted in place thereof:
 - (1) Lot 14 A-1 and Lot 15 shall have shared access from Gabel Road as specifically defined in that certain Shared Access Agreement and Easement by and between the owners of Lot 14 A-1, 15 and 12A. Lots 14 A-1 and 15



shall be required to dedicate land for this shared access and to share in their respective costs of developing this access.

2. Addition of Article 20. The Third Amendment and Restatement is further amended by the addition of this Article 20, as follows:

20. CROSS EASEMENTS FOR ACCESS, CIRCULATION, UTILITY SERVICES AND STORM DRAINAGE.

Each owner of a lot in Block 1, Gabel Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, grants to every other owner of a lot in Block 1, Gabel Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, a perpetual non-exclusive limited cross easement for vehicle and pedestrian access and circulation for the sole purpose of the construction, installation, maintenance, repair and replacement of underground utilities and utility services, and underground storm water drainage (the "Development Activity"); provided, however, any such activity shall not unreasonably or materially interfere with a lot owner's use of its lot, and that no lot owner shall be required to remove, reconfigure or relocate any improvement on that lot owner's lot, and the person or persons who utilize this reciprocal cross easement to construct and install underground utilities and underground storm water drainage facilities shall be solely responsible for all installation and construction costs and to repair any damage to any lot where such underground utilities and underground storm water drainage are installed and restore said lot to its prior condition. The person or persons who utilize this reciprocal cross easement to conduct the Development Activity shall indemnify and hold the affected lot owners harmless, against any and all third-party claims, damages, fines, penalties, costs, liabilities or losses (including sums paid in settlement of claims, reasonable attorneys' fees, consultant fees, expert fees and costs) related to the Development Activity.

3. Addition of Article 21. The Third Amendment and Restatement is further amended by the addition of this Article 21, as follows:

21. COMMON WATER AND SEWER AND STORM DRAIN LINES.

The owners ("Owners") of Lot 4A and Lot 14A-1 of Amended Plat of Lots 4 and 14A, Block 1, Gabel Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, and Lot 5, Block 1, Gabel Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, (the "Lots"), as now configured, or as further reconfigured in the future, shall share a common water line, sewer line, and storm drain lines. The common



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water line from Gabel Road shall enter a meter box and the City of Billings, Montana, public utility account shall be held in the name of Bottrell Family Investments Limited Partnership ("BFI"), and BFI will pay the full amount of the monthly public utility bill charged by the City of Billings, Montana for water and sanitary sewer usage by all of the Lots. The common water line shall extend from the meter box to all of the Lots, and may be extended to Hesper Road. Each Owner agrees to install a separate water meter at a point where the common water line enters into an Owner's Lot, prior to commencement of use of water and sanitary sewer lines. Each respective Owner will pay that respective Owner's share of water consumption and sanitary sewer usage, based on meter readings. BFI shall bill each respective Owner for water and sanitary sewer usage on a regular recurring basis. If any Owner fails to reimburse BFI within ten (10) days after billing, a five percent (5%) penalty per day shall accrue in favor of BFI, until such time as the bill is paid. BFI shall be entitled to reimbursement of attorney fees and costs incurred in collecting any amounts due from any Owner hereunder. Each Owner of each Lot shall pay for a proportionate share of the cost of installing, constructing, maintaining and repairing storm drain lines which serve their respective Lot. Payment shall be based on the proportionate square footage of each Owner's Lot, as a percentage of the total square footage of all of the Lots.

4. Addition of Article 22. The Third Amendment and Restatement is further amended by the addition of Article 22, as follows:

22. PEDESTRIAN AND VEHICLE ACCESS AND CIRCULATION.

As each lot is developed, each lot shall be configured to accommodate pedestrian access and circulation, and vehicle access and circulation where appropriate; provided, however, that no reconfiguration of existing improvements on any lot shall be required by this provision.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 21 day of November, 2008.

ADVANCED CARE HOSPITAL OF
MONTANA, INC., a Delaware
Corporation

By: Joseph P. McCh
Office: CEO

BOTTRELL FAMILY INVESTMENTS
LIMITED PARTNERSHIP, formerly known
as Bottrell Family Investments Limited
Liability Partnership
By: Diamond B Companies, Inc., a Montana
Corporation, General Partner

By: Donald G. Bottrell
Donald G. Bottrell, President



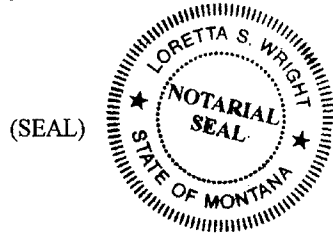
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STATE OF Montana)
: ss
County of Yellowstone)

On this 21 day of November, 2008, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Joseph P. McClure, known to me to be the CEO of ADVANCED CARE HOSPITAL OF MONTANA, INC., and the person whose name is subscribed to the foregoing instrument on behalf of the Corporation, and acknowledged to me that the Corporation executed the same.

IN WITNESS WHEREOF I have set my hand and affixed my Official Seal on the day and year in this certificate first above written.



Loretha S. Wright
(Signature of Notary Public)
Loretha S. Wright
(Printed Name of Notary Public)
Notary Public for the State of Montana
Residing at Billings, Montana
My commission expires: August 14, 2011

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 25 day of November, 2008, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Donald G. Bottrell, known to me to be a President of Diamond B Companies, Inc., the General Partner of Bottrell Family Investments Limited Partnership, and the person who executed the foregoing instrument on behalf of the Partnership, and acknowledged to me that the Partnership executed the same.

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



Jerry S. Thomas
(Signature of Notary Public)
Jerry S. Thomas
(Printed Name of Notary Public)
Notary Public for the State of Montana
Residing at Billings, Montana
My commission expires: 9/17/2010