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Skagit County Auditor

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LAND TITLE COMPANY OF SKAGIT COUNTY

RECIPROCAL EASEMENT AND COVENANT AGREEMENT

THIS RECIPROCAL EASEMENT AND COVENANT AGREEMENT (this "Agreement") is made and entered into as of the 3<sup>rd</sup> day of May, 2002, by and between FIRST HORIZON GROUP LIMITED PARTNERSHIP, a Delaware limited partnership ("First Horizon") and PEMCOR HOLDINGS [BURLINGTON], LLP, a Washington limited liability partnership ("Pemcor").

RECITALS:

- A. First Horizon is the owner of the Pacific Edge Outlet Center (the "Center") located in Burlington, Skagit County, Washington, as more particularly described in Exhibit A attached hereto.
- B. Pemcor, by transfer from First Horizon simultaneously herewith, is or is about to be the owner of Lot 2 which is adjacent and contiguous to the Center, and more particularly described on Exhibit B attached hereto.
- C. First Horizon is also the owner of Lot 1 which is adjacent and contiguous to the Center, and more particularly described on Exhibit C attached hereto.
- D. In connection with the sale of Lot 2 by First Horizon to Pemcor, First Horizon and Pemcor have entered into this Agreement for the purposes of addressing issues that may arise because of separate ownership of the Center and the Lots or parts thereof and to provide for certain easements between the Center and the Lots as more particularly described herein.
- E. This Agreement is intended to replace the existing easements and covenants set forth in the Master Declaration and Agreement of Easements, Covenants, Conditions and Restrictions recorded with the Skagit County Auditor in Auditor File Number 890717003 (the "Existing Covenants"), in its entirety solely with respect to the Lots, but the Existing Covenants shall continue in full force and effect with respect to the Center.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, and in furtherance of the understanding of the parties, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE I DEFINITIONS

Section 1.01 - Certain Definitions. The Parties agree that the following capitalized terms as used in this Agreement shall have the following meanings:

- A. "Access Easement Area" shall have the meaning set forth in Section 3.01.
- B. "Additional Parking Area" shall have the meaning set forth in Section 2.01.
- C. "Agreement" shall mean this Agreement together with Exhibits A, B, C, D, E, F and G, each of which is attached hereto and made a part hereof.
- D. "Annual Contribution" shall have the meaning set forth in Section 3.04.
- E. "Center" shall have the meaning set forth in Recital A.
- F. "Consumer Price Index" shall have the meaning set forth in Section 3.04.
- G. "First Horizon" shall mean the entity defined as such in Recital A to this Agreement and its successors and assigns as Owner of the Center.
- H. "Lots" shall mean Lot 1 and Lot 2.
- I. "Lot 1 Owner" shall mean the owner of Lot 1 and its successors and assigns as the Owner of Lot 1.
- J. "Lot 1 Parking Area" shall have the meaning set forth in Section 2.01.
- K. "Lot Owners" shall mean the Lot 1 Owner and Pemcor.
- L. "Mortgage" shall mean any mortgage, deed of trust, deed to secure debt or similar lien instrument recorded with the clerk of the court of Skagit County, Washington.
- M. "Mortgagee" shall mean the Person or Persons secured by a Mortgage.



- N. "Occupant(s)" shall mean any person from time to time entitled to the use and occupancy of any portion of the Center or the Lots, or under any lease, license, concession agreement or other similar agreement.
- O. "Owner" shall mean the then-current owner of Lot 1, Lot 2 or the Center, as applicable.
- P. "Pemcor" shall mean the entity defined as such in Recital B to this Agreement and its successors and assigns as Owner of Lot 2.
- Q. "Person" shall mean any individual, partnership, firm, limited liability company or partnership, association, corporation, trust or any form of business or governmental entity.
- R. "Utility" and "Utilities" shall have the meanings set forth in Section 5.01.

ARTICLE II  
PARKING AND LOADING DOCK EASEMENTS;  
TEMPORARY CONSTRUCTION EASEMENT

Section 2.01 - Grant of Parking and Temporary Construction Easements.

A. Additional Parking Area. First Horizon hereby grants, conveys and reserves unto each of the Lot Owners, a perpetual, non-exclusive easement, right and privilege for ingress and egress over the driveways, and for the parking of vehicles in the marked parking areas, by each of the Lot Owners and the Occupants of the Lots and its and their agents, contractors, employees and invitees (the "Permitees"), on that portion of the Center shown cross-hatched on Exhibit D attached hereto and made a part hereof (the "Additional Parking Area"). Notwithstanding the foregoing, after the 210<sup>th</sup> day after the date hereof, the Permitees may not use the Additional Parking Area for the parking of construction trailers or equipment or for the ingress or egress of construction traffic of any kind. On or before that date which is two hundred ten (210) days after the date hereof, Pemcor shall realign and restripe the Additional Parking Area to designate approximately 46 parking spaces thereon. The initial design and layout, and any subsequent changes to the initial design and layout of the parking and driveways on the Additional Parking Area, shall be subject to First Horizon's prior written approval, such approval not to be unreasonably withheld. No changes in the existing curb cuts for the Additional Parking Area shall made unless first approved in writing by First Horizon.

B. Lot 1 Parking Area. First Horizon hereby grants, conveys and reserves unto Pemcor, a perpetual, non-exclusive easement, right and privilege for ingress and egress over Lot 1, and for the parking of vehicles in marked parking areas, by its Permitees, on that portion of Lot 1 shown cross-hatched on Exhibit E attached hereto and made a part hereof (the



"Lot 1 Parking Area"), provided, however, that Pemcor shall be permitted to use parking spaces in the Lot 1 Parking Area for parking code requirements, if and only if the parking spaces provided on the Lot 2, the Lot 1 Parking Area and the Additional Parking Area are sufficient, for parking code compliance purposes, to permit both the building and use contemplated by Pemcor on Lot 2 and either an 8,000 square foot retail building or a 5,000 square foot sit-down restaurant on Lot 1. Notwithstanding the foregoing, after the 210<sup>th</sup> day after the date hereof, the Permittees may not use the Lot 1 Parking Area for the parking of construction trailers or equipment or for the ingress or egress of construction traffic of any kind. First Horizon shall have no obligation whatsoever to construct any driveways and/or parking spaces on Lot 1. The initial design and layout, and any subsequent changes to the initial design and layout, of the parking and driveways on the Lot 1 Parking Area shall be subject to First Horizon's prior written approval, such approval not to be unreasonably withheld. No changes in the existing curb cuts for the Lot 1 Parking Area shall be made unless first approved in writing by First Horizon, such approval not to be unreasonably withheld.

C. Temporary Construction Easement on Lot 1 and Construction Obligation. First Horizon, as the Owner of Lot 1, hereby grants, conveys and reserves unto Pemcor, as the Owner of Lot 2, a temporary construction easement over Lot 1 and the Additional Parking Area for use (i) as a construction staging area for the benefit of Lot 2, including the storage of construction materials and the placement of construction trailers, (ii) for the construction and installation by Pemcor of drive aisles, parking areas, landscaping, lighting and curb cuts in the Lot 1 Parking Area (the "Lot 1 Parking Improvements"), and (iii) to make improvements to Lot 1 to render it in a "Ready to Park" (filled, graded, drained, paved for parking with curbs, gutters and striping, lighted and landscaped), and "Ready to Build" (building pad properly compacted and graded with utilities located within 25 feet of the pad) condition (the "Lot 1 Pad Work"). Such easement shall absolutely expire, without possibility of revival, on the two hundred tenth (210<sup>th</sup>) day after the date hereof. Pemcor covenants and agrees, on or before that date which is two hundred ten (210) days after the date hereof, to construct and complete the installation of the Lot 1 Parking Improvements and the Lot 1 Pad Work in accordance with (x) plans and specifications therefore approved in writing by First Horizon, such approval not to be unreasonably withheld, and (y) all applicable laws, orders, rules and regulations of governmental authorities or public utility companies. Prior to exercising any of the easements granted under this Section 2.02.C, Pemcor shall deliver to First Horizon insurance certificates evidencing that Pemcor has in effect commercial general liability insurance written on an occurrence basis in the amount of \$2,000,000 naming First Horizon and First Horizon's management agent, mortgagee and partners as additional insureds, and Pemcor shall maintain such insurance in effect until the Lot 1 Parking Improvements and the Lot 1 Pad Work is complete.

Section 2.02 - Loading Dock Easement.

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April 24, 2002

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SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

MAY 03 2002

Amount Paid \$  
Skagit Co. Treasurer  
By *[Signature]* Deputy



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First Horizon hereby grants, conveys and reserves unto Pemcor, a perpetual, non-exclusive easement, right and privilege to construct, install, maintain, repair and replace a loading dock and trash compactor for the building to be constructed on Lot 2, in that portion of the Additional Parking Area shown for such purpose on Exhibit F, provided the plans and specifications therefor are first approved by First Horizon and such improvements do not affect the ability of First Horizon to construct and operate at its election either an 8,000 square foot retail building or a 5,000 square foot sit-down restaurant on Lot 1, nor affect compliance by the Center (assuming full occupancy for its contemplated uses) with all zoning and parking requirements.

Section 2.03 - Maintenance of Additional Parking Area and Lot 1 Parking Area.

The Additional Parking Area shall be maintained by Pemcor, at its sole expense, unless and until the Owner of the Center exercises its right to maintain the Additional Parking Area in accordance with Section 2.05 hereof. If the Owner of the Center so elects to maintain the Additional Parking Area, then Pemcor shall thereafter reimburse the Owner of the Center for all costs and expenses incurred in maintaining, repairing and replacing the Additional Parking Area, in accordance with Section 3.04 of this Agreement. Regardless of the party responsible for maintaining the Additional Parking Area under the foregoing provisions, Pemcor, at its sole cost and expense, shall be responsible for maintaining, cleaning, repairing and replacing the loading dock and trash compactor areas in the Additional Parking Area.

The Lot 1 Parking Area shall be maintained by Pemcor, at its sole cost and expense, unless and until Pemcor receives written notice from the Owner of Lot 1 to the contrary. If the Lot 1 Owner so elects to maintain the Lot 1 Parking Area, then Pemcor shall thereafter contribute to the cost of the maintenance, repair and replacement of the Lot 1 Parking Area performed by the Lot 1 Owner, in accordance with Section 3.04 this Agreement.

Section 2.04 - Maintenance Covenants. The Owner responsible for maintaining the Additional Parking Area or the Lot 1 Parking Area, pursuant to Section 2.03 above, shall at all times maintain such area in a neat, attractive and first-class condition of at least the same standard used by First Horizon to maintain the Center. The foregoing covenant includes, but is not limited to:

A. Keeping and maintaining all paved surfaces, including all sidewalks, walkways, driveways, parking surfaces, and curbing related thereto, in good order and repair and in a safe condition, including patching, restriping, repairing and resurfacing such areas when appropriate;

B. Removing papers, debris, filth, refuse, ice and snow, and sweeping such areas to the extent necessary to keep such areas in a first-class, clean, neat and orderly condition;



C. Mowing and otherwise maintaining and tending all landscaped and planted areas, and promptly removing and replacing diseased or dead shrubs and other landscaping as necessary;

D. Storing all trash and garbage in adequate containers, maintaining all areas near trash containers in a clean, neat and safe condition, and arranging for the regular removal of all such trash and garbage; and

E. Placing, keeping in repair and replacing when reasonably necessary any appropriate directional signs, markers and lines.

Section 2.05 - Failure to Maintain.

If Pemcor fails to maintain the Additional Parking Area in accordance with all of the standards set forth in Sections 2.03 and 2.04 and does not correct such failure within thirty (30) days after written notice of such failure from the Owner of the Center, then the Owner of the Center, in addition to any other rights or remedies available to it under this Agreement or at law or in equity, may elect, by written notice to Pemcor, to thereafter maintain the Additional Parking Area in accordance with the provisions of Sections 2.03, 2.04 and 3.04 of this Agreement.

Section 2.06 - Maintenance of the Center and Access Easement Area. The Owner of the Center covenants and agrees to maintain the Access Easement Area and the parking lots and drive aisles of the Center in a neat, attractive and first-class condition. The foregoing covenant includes, but is not limited to:

A. Keeping and maintaining all paved surfaces, including all sidewalks, walkways, driveways, parking surfaces, and curbing related thereto, in good order and repair and in a safe condition, including patching, restriping, repairing and resurfacing such areas when appropriate;

B. Removing papers, debris, filth, refuse, ice and snow, and sweeping such areas to the extent necessary to keep such areas in a first-class, clean, neat and orderly condition;

C. Mowing and otherwise maintaining and tending all landscaped and planted areas, and promptly removing and replacing diseased or dead shrubs and other landscaping as necessary;

D. Storing all trash and garbage in adequate containers, maintaining all areas near trash containers in a clean, neat and safe condition, and arranging for the regular removal of all such trash and garbage; and

E. Placing, keeping in repair and replacing when reasonably necessary any appropriate directional signs, markers and lines.

Nothing contained in this Section 2.06 is intended nor shall be constructed as granting to the Lot Owners any right or easement to use the parking lots and drive aisles (other than the Access Easement Area) of the Center or as in any way restricting or prohibiting the Owner of the Center from modifying, enlarging, reducing or eliminating any such parking lots or drive aisles.

### ARTICLE III ACCESS EASEMENT AND CONTRIBUTIONS

#### Section 3.01 - Access Over Fashion Way.

First Horizon hereby grants, conveys and reserves unto each of the Lot Owners, a perpetual, non-exclusive easement, right and privilege for pedestrian and vehicular traffic by the Lot Owners and their Permittees over, across and through that road designated "Fashion Way" on Exhibit G attached hereto (as it may be modified by First Horizon from time to time) providing access from Burlington Boulevard to the curb cuts on the Lots and on the Additional Parking Area, as shown on Exhibit G attached hereto (the "Access Easement Area"). The initial location of the curb cuts for the Lots and any subsequent changes thereto, shall be subject to First Horizon's prior written approval, such approval not to be unreasonably withheld. The Lot Owners and the Permittees shall comply with all traffic signs and regulations adopted by First Horizon with regard to the Access Easement Area.

#### Section 3.02 - Truck Access through Additional Parking Area.

First Horizon hereby grants, conveys and reserves unto each of the Lot Owners, a perpetual, non-exclusive easement, right and privilege for the passage of non-construction trucks over, across and through the driveway portion of the Additional Parking Area for ingress and egress by Permittees from the Access Easement Area, to the rear of the buildings contemplated to be constructed on the south end of Lot 2, subject, however, to Pemcor obtaining the approval of First Horizon as to the layout and design of the Additional Parking Area as provided in Section 2.01.

#### Section 3.03 - Relocation.

First Horizon hereby reserves the right to relocate any roadways, entrances, exits, service drives or sidewalks located on the Center, including those within the Access Easement Area and/or Additional Parking Area, provided that (i) the relocation of such items is in accordance with all applicable governmental rules and regulations, and (ii) such relocation does



not unreasonably interfere with the rights and easements granted to either of the Lot Owners, its successors and assigns under this Agreement.

Section 3.04 - Annual Contribution, Lot 1 Parking Contribution and Additional Parking Contribution.

Because the Access Easement Area is part of the Center and maintained by the Owner of the Center, each of the Lot Owners shall be obligated to make an annual contribution (the "Annual Contribution") to the Owner of the Center for the maintenance, repair and replacement costs, taxes and insurance associated with such facilities. The Annual Contribution for the entire 2002 calendar year shall be Two Thousand Five Hundred Dollars (\$2,500.00) for Lot 2 and One Thousand Dollars (\$1,000.00) for Lot 1. The Annual Contribution for calendar year 2002 shall be due and payable on the date hereof and, for such year, will be pro-rated based upon the number of days from the date hereof through and including December 31, 2002. Thereafter, the Annual Contribution will be due and payable by each of the Lot Owners to the Owner of the Center on January 1<sup>st</sup> of each year, without demand and regardless of whether an invoice for the Annual Contribution is received. Beginning on January 1, 2003 and on each January 1 thereafter, the full Annual Contribution shall be increased based on the Consumer Price Index increase over the preceding year. The "Consumer Price Index" shall mean the Consumer Price Index, All Urban Consumers, U.S. Cities Average, which is presently announced monthly by the Bureau of Labor Statistics, U.S. Department of Labor, and which index is computed using a base period index of 1993-95 = 100. This index is the overall summary Consumer Price Index entitled "All Items." If the Bureau of Labor Statistics changes the base period index for its summary Consumer Price Index (now 1993-95 = 100), the increase in the Annual Contribution will continue to be calculated based on a 1993-95 = 100 base if such information continues to be published by the Bureau of Labor Statistics. In any event, the base used by any new index, or as revised on the existing index, shall be reconciled to the 1993-95 base period index. If the Consumer Price Index is no longer published by the Bureau of Labor Statistics, then another index generally recognized as authoritative shall be substituted by the Owner of the Center, which substitute index shall thereupon be deemed the Consumer Price Index for the purpose of this Agreement. The increase in the Annual Contribution shall be calculated by multiplying the Annual Contribution of the prior year period by a fraction, the numerator of which is the Consumer Price Index for the December immediately preceding the new year and the denominator of which is the Consumer Price Index published for the December immediately preceding the previous year. In each case, if the Consumer Price Index is not published for any calendar month referred to above, then the Consumer Price Index published for the calendar month closest thereto shall apply.

At any time that the Lot 1 Parking Area is being maintained by the Owner of Lot 1, the Owner of Lot 2 shall be obligated to make an annual contribution (the "Lot 1 Parking Contribution") to the Lot 1 Owner equal to 77.4% of the maintenance, repair and replacement



costs, taxes and insurance associated with the Lot 1 Parking Area. The Lot 1 Parking Contribution shall be due and payable in monthly installments in amounts from time to time estimated by the Owner of Lot 1. Within 120 days after the end of each calendar year, the Lot 1 Owner shall deliver to the Lot 2 Owner an annual reconciliation of the annual costs actually incurred for such year versus the payments actually made by the Lot 2 Owner, and any discrepancy shall be rectified by payment of the difference from the Lot 2 Owner or the Lot 1 Owner, as applicable, to the other party within thirty (30) days after delivery of the reconciliation statement.

At any time that the Additional Parking Area is being maintained by the Owner of the Center, the Owner of Lot 2 shall be obligated to make an annual contribution (the "Additional Parking Contribution") to the Owner of the Center equal to 100% of the maintenance, repair and replacement costs, taxes and insurance associated with such facilities. The Additional Parking Contribution shall be due and payable in monthly installments in amounts from time to time estimated by the Owner of the Center. Within 120 days after the end of each calendar year, the Owner of the Center shall deliver to the Lot 2 Owner an annual reconciliation of the annual costs actually incurred for such year versus the payments actually made by the Lot 2 Owner, and any discrepancy shall be rectified by payment of the difference from the Lot 2 Owner or the Owner of the Center, as applicable, to the other party within thirty (30) days after delivery of the reconciliation statement.

#### ARTICLE IV PROVISIONS WITH RESPECT TO USE

##### Section 4.01 - Prohibited Uses.

A. Nuisances. No speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Lots if such devices emit loud noises on a regular or continual basis.

B. Other Prohibited Uses. Pemcor, as the Owner of Lot 2 and First Horizon as the Owner of Lot 1 each hereby covenant and agree with First Horizon, as the Owner of the Center, that the following operations and uses shall not be permitted on the Lots unless the prior written consent of the Owner of the Center is first obtained, which consent may be given or withheld in the sole discretion of the Owner of the Center:

1. taxidermist;
2. new or used motor vehicle, motorcycle, recreational vehicle or mobile home sales;



3. any use which is illegal or dangerous, which constitutes a public or private nuisance or which creates vibrations or offensive odors or any noise or sound which can be heard outside of any improvements on the Lots;
4. any exterior flashing lights, strobe lights, search lights, or video screens;
5. any warehouse operation, any manufacturing or industrial operation, any processing or rendering plant, or any lumber yard;
6. the storage of explosives or other hazardous materials, as defined under federal, state, and local law (except hazardous materials properly handled and stored materials lawfully and customarily associated with the safe operation of a retail store which are stored, used and disposed of in compliance with all applicable laws), or the presence of any above ground or underground storage tanks;
7. any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction or reconstruction);
8. any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters or compactors used in the ordinary course of the business on the Lots and concealed from view by fenced-in enclosures);
9. auction house operations;
10. any central laundry, dry cleaning plant, coin operated laundry, or laundromat;
11. any car wash or facility for the storage or sale of gasoline or diesel fuel;
12. any funeral parlor, crematorium or mortuary;
13. any massage parlor or any establishment selling or exhibiting paraphernalia for use with illicit drugs, or any so-called "head shop";
14. any flea market, "second hand," "surplus," used clothing, or "thrift" store, any tent sale, carnival, circus, amusement park, bingo parlor, or shooting gallery, or any off-track betting parlor or other gambling establishment; provided lottery sales departments incidental to the

operation of a permitted use shall be permitted to the extent operated or authorized by the appropriate governmental authority;

15. any drive-in or movie theater, auditorium, social club, meeting hall, church or other house of worship, or similar place of general public assembly;
16. any pool or billiard hall, bowling alley, ice or roller skating rink, miniature golf course, or other recreational facility;
17. dance or music hall, dancing ballroom or establishment, banquet hall, night club, or discotheque;
18. video or game center, amusement center, or arcade;
19. sporting events or other sports facility, or any health club, exercise club or studio, or health spa;
20. training or educational facility, including but not limited to beauty school, barber college, reading room, or any other operation catering primarily to students or trainees rather than to retail customers;
21. offices and professional uses, except for service oriented office uses which are usually found in retail shopping centers, such as travel agencies and financial institutions;
22. Drilling for and/or the removal of oil, gas, or other hydrocarbon substances;
23. Commercial excavation of building or construction materials;
24. Stockyard or slaughter of animals or any hog, cattle or other animal breeding or raising;
25. Jail or other penal rehabilitation facilities;
26. Establishments featuring topless, bottomless, or totally nude performers, waitresses, waiters, or other personnel, or which provide visual recorded entertainment featuring nude or partially nude persons performing or simulating sexual acts; adult book or movie store; businesses which show "X" rated movies or pornographic movies or sell pornographic or sexually explicit motion pictures, magazines, books or other materials;



27. The repair or servicing of cars, trucks or other automobiles or machines; and
28. Any light or heavy industrial use, including manufacturing, refining or processing goods, materials, foodstuffs, chemicals, minerals or products of same.

Notwithstanding the foregoing provisions under which the Owner of the Center's approval may be given or withheld in its sole discretion, if the Center ever ceases to be operated as either an outlet shopping center or as a retail shopping center, then, solely with respect to the restrictions in items 16, 17, 18, 19, 20, 21, and 27, the Owner of the Center's approval may not thereafter be unreasonably withheld.

C. Additional Prohibited Uses for Lot 2. In addition to the prohibited operations and uses described above, Pemcor, as the Owner of Lot 2, covenants and agrees with First Horizon, as the Owner of the Center, that (i) no portion of Lot 2 shall be used as a single premises in excess of 4,500 square feet, the principal purpose of which is the sale of dinnerware, crystal or giftware, principal purpose meaning at least 50% of such premises' gross sales on a dollar basis are from the sale of dinnerware, crystal or giftware, and (ii) without first obtaining the prior written consent of the Owner of the Center, which consent may be given or withheld in such Owner's sole and absolute discretion, no portion of Lot 2 shall be used as a "factory outlet store." For purposes hereof, the term "factory outlet store" shall mean (a) a nationally recognized store which engages in the wholesale or discounted sale and/or distribution of its own brand label of merchandise, or (b) a store that markets, advertises or identifies itself as a factory outlet store.

#### 4.02 - Use Requirements.

A. Michael's Craft Store. Pemcor hereby covenants and agrees with First Horizon, as the Owner of the Center, that within one year from the date hereof, it shall cause to be open for business on Lot 2 a "Michael's" craft store in at least 23,000 square feet of space on Lot 2 and shall cause such space to be operated as a "Michael's" craft store for at least 5 years thereafter. In the event that a "Michael's" craft store shall cease operation on Lot 2 within five (5) years after the date hereof, Pemcor shall use its best efforts to secure a replacement tenant for the building to operate a retail business which is not otherwise prohibited under this Agreement. The identity and use of the replacement tenant shall be subject to the prior written approval of the Owner of the Center, not to be unreasonably withheld, except that the approval of the Owner of the Center shall not be required if the replacement tenant will occupy all of the building on Lot 2 and is a national "big box" retailer with a national identity and marketing campaign and its use does not otherwise violate the provisions of this Agreement.



B. Screening. The Lot Owners each covenant and agree with First Horizon, as the Owner of the Center, that storage areas, incinerators (if lawfully permitted), loading docks, loading areas, storage tanks, trash containers, satellite dishes and maintenance facilities, shall either be housed in a closed building or otherwise reasonably screened from view from any private or public street running through, within, or adjacent to any portion of the Lots, unless First Horizon approves plans to the contrary.

C. Wires and Cables. The Lot Owners each covenant and agree with First Horizon, as the Owner of the Center, that subject to the terms of easement agreements existing as of the date of this Agreement, any and all lines and/or wires for communication or for transmission of sound or electricity installed on any portion of the Lots after the date of this Agreement shall be constructed or placed and maintained underground.

## ARTICLE V UTILITIES, MAINTENANCE AND REPAIR

### Section 5.01 - Utility Easement.

A. Pemcor, for itself and its successors in interest, hereby grants to First Horizon and each subsequent Owner of the Center, a non-exclusive easement to tie into (provided a separate meter is installed), install, operate, maintain, repair and replace all of the utilities other than storm water, including water, gas, electric, telephone and sanitary sewers (each a "Utility" and collectively "Utilities") which have been or may hereafter be installed under or across any portion of Lot 2, together with the right to construct, maintain and improve the facilities on Lot 2 for delivery of the Utilities to the extent required for the development and operation of the Center.

B. First Horizon, as the Owner of Lot 1, hereby grants, conveys and reserves unto itself, and to and each subsequent Owner of the Center, a non-exclusive easement to tie into (provided that a separate meter is installed), install, operate, maintain, repair and replace all of the Utilities which have been or may hereafter be installed under or across any portion of Lot 1, together with the right to construct, maintain and improve the facilities on Lot 1 for delivery of the Utilities to the extent required for the development and operation of the Center.

C. If the Owner of the Center desires to install, modify or connect to a Utility facility located, or to be located, on the Lots, the Owner of the Center, at its sole cost and expense (including, but not limited to, all costs and expenses for pipes, conduits, excavation, connection, repair and replacement of the damage to the Lots caused by such installation or modification), upon thirty (30) days prior written notice to the Owner of the Lot to be accessed, shall have reasonable access to each such Lot for the purpose of modifying, installing or connecting to the desired Utility facility, provided that the location of, and plans and specifications for, any new Utility facility and the plans and specifications for any modification



of, or connection to, an existing Utility facility shall be subject to the reasonable approval of the applicable Lot Owner.

Section 5.02 - Cost.

Each of the Lot Owners shall separately meter its usage of the Utilities for its Lot and shall pay all sums and deposits due directly to the appropriate utility company, including but not limited to the costs of installing the required meters, and the Owner of the Center shall not have any responsibility whatsoever to compensate any utility company for services provided to the Lots.

Section 5.03 - Compliance with Laws.

Each Owner shall comply with all governmental laws, rules and regulations pertaining in any way to the construction, maintenance and delivery of all Utilities.

Section 5.04 - Maintenance Covenants. Each of the Owners covenants and agrees with respect to its Lot or the Center, as applicable, that such Lot or the Center and the improvements thereon shall at all times be maintained in a neat, attractive and first-class condition. Each of the Lot Owners covenants and agrees with respect to its Lot, and the Owner of the Center covenants and agrees with respect to the Center, to perform all maintenance and upkeep with respect to its Lot or the Center, as applicable, including, but not limited to:

- A. Keeping and maintaining all paved surfaces, including all sidewalks, walkways, driveways, parking surfaces, and curbing related thereto, in good order and repair and in a safe condition, including patching, restriping, repairing and resurfacing such areas when appropriate;
- B. Removing papers, debris, filth, refuse, ice and snow, and sweeping such areas to the extent necessary to keep such areas in a first-class, clean, neat and orderly condition;
- C. Mowing and otherwise maintaining and tending all landscaped and planted areas, repairing irrigation systems, if any, and water lines, and promptly removing and replacing diseased or dead shrubs and other landscaping as necessary;



- D. Storing all trash and garbage in adequate containers, maintaining all areas near trash containers in a clean, neat and safe condition, and arranging for the regular removal of all trash and garbage;
- E. Immediately repairing any and all broken glass in or on any improvements on the Lots or the Center, including, but not limited to, show windows and doors;
- F. All buildings and parking lot lights on the Lots or the Center shall be illuminated from dusk until dawn;
- G. Placing, keeping in repair and replacing when reasonably necessary any appropriate directional signs, markers and lines;
- H. Keeping in repair and replacing when reasonably necessary such lighting facilities as may be installed on the Lots or the Center; and
- I. Maintaining in good and safe condition and state of repair the exterior of any building improvements located on the Lots or the Center.

#### Section 5.05 - Casualty.

In the event of damage to or destruction of any improvements upon either Lot, or any portion thereof, the Owner of the damaged Lot shall, within sixty (60) days after the casualty, elect to (i) rebuild or repair the improvements or (ii) raze the unusable portion of the improvements to the slab, remove all debris and either pave the applicable area to the specifications of the existing pavement or maintain appropriate ground cover thereon. If the Owner of the damaged Lot elects to rebuild or repair, all work shall be completed within two hundred seventy (270) days from the date of the casualty. If the Owner of the damaged Lot elects to raze the remaining portion of the building, the razing and paving or ground cover installation shall be completed within one hundred twenty (120) days after the date of the casualty.

### ARTICLE VI ARCHITECTURAL CONTROL AND CONSTRUCTION REQUIREMENTS

#### Section 6.01 - Architectural Control.

No building, fence, wall or other structure shall be commenced, erected, maintained, or permitted to remain upon any portion of the Lots, nor shall any exterior addition or material change or alteration thereof be made until the plans and specifications therefor, including,



where applicable, site plan, landscaping plan, architectural drawings, signage plans and exterior lighting plans, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Owner of the Center, which approval shall not be unreasonably withheld, applied, conditioned or delayed if the submitted plans and specifications are in accordance with the requirements of this Agreement, provide sufficient detail to enable a determination to be made, and provide for improvements that will be reasonably compatible in exterior design, height, color scheme, finish style of architecture, configuration, and materials with the existing improvements in the Center. The Owner of the Center shall respond within fifteen (15) days after receipt of all documents necessary to make a determination.

#### Section 6.02 - Signs.

No signs shall be commenced, erected, maintained, or permitted to remain upon any portion of the Lots, nor shall any addition or material change or alteration thereof be made until the plans and specifications therefor, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Owner of the Center, which approval shall not be unreasonably withheld, applied, conditioned or delayed if the submitted plans and specifications are in accordance with the requirements of this Agreement, provide sufficient detail to enable a determination to be made, and provide for improvements that will be reasonably compatible in exterior design, height, color scheme, finish style of architecture, configuration, and materials with the existing improvements in the Center. The Owner of the Center shall respond within fifteen (15) days after receipt of all documents necessary to make a determination. In no event shall the Owner of the Lots be entitled to use any portion of any pylon, monument or other signs now or hereafter erected on or for the benefit of the Center. The Owner of the Lots shall not be entitled to seek approval for, nor erect, any signs which limit the size, location or number of signs which are permitted on the Center, including without limitation, any expansion of the Center.

#### Section 6.03 - Governmental Approvals.

An approval by the Owner of the Center under this Article VII shall in no way imply that such improvements comply with all or any governmental laws, rules or regulations governing the construction of improvements or signs on the Lots.

#### Section 6.04 - Construction Requirements.

During the course of any construction on either of the Lots (or any portion thereof), the Owner of the Lot under construction (which shall for the purposes of this Section be deemed to be Pemcor if Pemcor is performing work on Lot 1, regardless of who is the then-current owner of Lot 1) (the "Contractor"), shall cause Fashion Way and the entrances and drive aisles of the Center to remain open and unobstructed at all times and shall cause the construction vehicle





and equipment traffic through Fashion Way and the entrances and drive aisles of the Center to be kept to a minimum and to take place at such times and in such a manner as will cause minimal disruption to customer traffic flow into and within the Center. The Owner of the Center shall have the right from time to time, exercisable by written notice to the Contractor, to limit construction vehicles and traffic to a designated area of the Center. All construction shall be conducted in a manner that keeps dust, dirt, debris, access interruptions and inconvenience to customers, tenants and the Owner of the Center to a minimum. If the Contractor fails to keep such areas clean and/or repair any damage caused by the construction, within ten (10) days after written notice from the Owner of the Center, the Owner of the Center may do so on behalf of the Contractor, and the Contractor shall be solely liable for the costs of cleaning, restoring and repairing any damage to any roadways, entrances, exits, service drives, sidewalks and common areas of the Center caused by its construction activities. Such amounts shall be due and payable within ten (10) business days after written demand by the Owner of the Center. Additionally, the Contractor shall defend, indemnify and hold harmless the Owner of the Center and the Owner of Lot 1 from any and all loss, costs (including court costs and attorneys fees) or damages for personal injury or property damage arising out of or in any manner related to the construction and any liability or claim of liability for mechanic's liens and materialmen liens.

## ARTICLE VII MISCELLANEOUS

### Section 7.01 - Notices.

A. Any notice, communication, request, agreement, reply or advice in this Agreement required or permitted to be given, made, sent or accepted by any party to any other party must be in writing, and must, unless otherwise in this Agreement expressly provided, be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party, or by private courier guaranteeing next day delivery, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described, given personally, or sent by private courier guaranteeing next day delivery, shall be effective only if and when received or refused by the party to be notified. For purposes of notice the addresses of the Parties shall, until changed as hereinafter provided, be as follows:

If to First Horizon: c/o Prime Retail, L.P.  
100 East Pratt Street, 19th Floor  
Baltimore, Maryland 21202  
Attn.: Senior Vice President of Operations  
Fax No. (410) 234-1761

With a copy to: c/o Prime Retail, L.P.  
100 East Pratt Street, 19th Floor  
Baltimore, Maryland 21202  
Attn.: General Counsel  
Fax No. (410) 234-1761

If to Pemcor: 500 - 1090 West Pender Street  
Vancouver, B.C. V6E2N7  
Attn.: Paul Mayer, President  
Fax No. (604) ~~687~~ - ~~2816~~

Either party shall have the right from time to time and at any time, upon at least fifteen (15) days' prior written notice thereof, to change its respective address and to specify any other address.

Section 7.02 - Binding Effect.

The terms of this Agreement shall constitute easements and covenants running with, and appurtenant to, the Lots and the Center, and all terms of this Agreement shall inure to the benefit of and be binding upon the undersigned parties and their respective successors and assigns.

Section 7.03 - Interpretation.

This Agreement shall be interpreted in accordance with the laws of the State of Washington as applicable to contracts wholly executed and performed within that state. The captions preceding the text of each Section hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neutral.

Section 7.04 - Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original; further, the signature of the parties in this Agreement may be executed and notarized on separate pages and when attached to this Agreement shall constitute one complete document.

Section 7.05 - Negation of Partnership.

None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in their respective businesses or otherwise, nor shall



any terms or provisions of this Agreement cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights to any Person who is not a party to this Agreement.

Section 7.06 - Not a Public Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Center or of the Lots or portion thereof to the general public, or for the general public or for any public use or purpose whatsoever; it being the intention and understanding of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed solely for the benefit of the parties hereto and owners of any portion thereof.

Section 7.07 - Unavoidable Delays.

Whenever performance is required of any party hereto or any successor thereto, that party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if performance or completion of performance shall be delayed at any time by reason of act of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, governmental restrictions or inability to obtain governmental approvals or permits, damage to work in progress by reason of fire or other casualty, unavoidable casualty, unusual weather, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section 7.07 shall not operate to excuse any party from the prompt payment of any monies to be paid pursuant to this Agreement.

Section 7.08 - Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 7.09 - Amendments; Recording.

This Agreement may be amended from time to time by written amendment executed and acknowledged by each party hereto, or its or their successors or assigns. Notwithstanding the foregoing, (a) First Horizon and the Owner of Lot 1 may amend or modify this Agreement without the necessity of obtaining the consent of the Owner of Lot 2, if the provision being amended does not expressly benefit or burden Lot 2, and (b) First Horizon and the Owner of Lot 2 may amend or modify this Agreement without the necessity of obtaining the consent of



the Owner of Lot 1, if the provision being amended does not expressly benefit or burden Lot 1. This Agreement and all amendments hereto shall be recorded with the Auditor of Skagit County, Washington.

Section 7.10 - Agreement Shall Continue Notwithstanding Breach.

It is expressly agreed that no breach of this Agreement shall entitle either party to cancel, rescind or otherwise terminate this Agreement.

Section 7.11 - Conveyance of Center or Lots.

Each party shall be liable only for the performance of all covenants, obligations and undertakings herein set forth with respect to such party which accrue during the period such party is the owner of the Center or the Lots, as applicable.

Section 7.12 - Enforcement.

If any party brings an action to enforce its rights under this Agreement, whether or not litigation is involved or a lawsuit has been commenced, the successful party shall be reimbursed by the unsuccessful party for all costs of litigation, including, but not limited to, reasonable attorneys' fees and court costs. The parties shall be permitted to seek injunctions or other equitable relief to enforce their rights under this Agreement. Any moneys due from one party hereunder to another which are not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the date due to date of payment.

Section 7.13 - Right of Self-Help.

If either party shall fail to comply with the provisions of this Agreement then the other party may give the defaulting party fifteen (15) days written notice, and, if the defaulting party does not cure such default within such period, or, in the case of a default which by its nature cannot be cured within such fifteen (15) day period, does not commence to cure same within such period and thereafter diligently prosecute the curing thereof to completion, the party that gave such notice may proceed to take such action as is reasonably necessary to cure such default, all in the name of and for the account of the defaulting party. In the event of an emergency, the requirement of 15 days notice shall be replaced by reasonable efforts to notify the other party by telephone prior to taking action. The defaulting party shall, within thirty (30) days of written demand, reimburse the party undertaking the cure for the monies actually expended, with interest at fifteen percent (15%) per annum from the date of demand to date of payment. Any demand for payment shall reasonably document the monies actually expended arising from such default, including invoices, if available. No party shall, in performing any action pursuant to the preceding sentence, interfere with the other party's business or that of any Occupant unless such interference is unavoidable or is necessary to respond to an

emergency, and in which case it will be to the minimum extent possible; and with prompt notice to the other party of the doing of such work.

Section 7.14 - Effect on Existing Covenants and Other Easements.

This Agreement replaces the Existing Covenants which are hereby terminated by First Horizon in their entirety solely as they relate to the Lots, such that the Lots shall no longer be subject to, nor benefitted by, the Existing Covenants. In addition, Pemcor, as the Owner of Lot 2, and First Horizon, as the Owner of Lot 1, hereby release, remise, reconvey and abandon unto First Horizon, as the Owner of the Center, all easements for ingress, egress and utilities created under the instruments recorded November 23, 1988, under Auditor's File 8811230046, records of Skagit County, Washington and as such easements may be shown on Short Plat No. B-1-92, as approved June 2, 1992 and recorded June 11, 1992 in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington, to the extent such easements encumber all or any portion of the Center, such easements being entirely replaced and superseded by the easements granted hereby. The Mortgagee hereby joins in this Agreement for the purpose of subjecting its interest in the Lots to this Agreement and consenting to the termination of the Existing Covenants with respect to the Lots.

Section 7.15 - Term and Legality.

The terms, covenants, provisions and conditions of this Agreement shall run with the land and shall be binding for an initial term of fifty (50) years from and after the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years each, unless sooner terminated by the Owners of the Center and the Lots pursuant to an agreement executed by all such Owners.

Section 7.16 - Enforcement.

A. If any Owner brings an action to enforce its rights under this Agreement, whether or not litigation is involved or a lawsuit has been commenced, the successful Owner shall be reimbursed by the unsuccessful Owner for all costs of litigation, including, but not limited to, reasonable attorneys' fees and court costs. Each Owner shall be permitted to seek injunctions or other equitable relief to enforce their rights under this Agreement. Any moneys due from one Owner hereunder to another which are not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the date due to date of payment.

B. Any moneys due from one Owner (the "Defaulting Owner") to another Owner pursuant to this Agreement which are not paid within thirty (30) days of written demand therefor shall constitute a lien against the Defaulting Owner's property that is subject to this Agreement. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the



Clerk of the Court of Skagit County, Washington, by the Owner making the claim. The claim of lien shall include the following:

- (i) the name of the lien claimant;
- (ii) a statement concerning the basis for the claim of lien and identifying the lien claimant;
- (iii) an identification of the Owner of the property against which the lien is claimed;
- (iv) a description of the property against which the lien is claimed; and
- (v) a statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date, book and page of recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 7.01 above. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State of Washington.

## ARTICLE VIII RIGHTS OF MORTGAGEES

### Section 8.01 - Mortgagee's Rights.

Any mortgagee in possession (a) shall have all of the rights under this Agreement and applicable law which would otherwise be held by its mortgagor, subject to the operation and effect of anything to the contrary in its mortgage, and (b) the parties shall be entitled, in any matter arising under this Agreement and involving the exercise of such rights, to deal with such mortgagee in possession as if it were the party thereof.

### Section 8.02 - Mortgagee's Obligations.

Upon taking possession, any mortgagee in possession shall (subject to this Agreement and applicable law) bear all of the obligations of its mortgagor thereunder; provided, that nothing in this subsection shall be deemed in any way to relieve the mortgagor of any such obligation, or of any liability to such mortgagee in possession on account of any failure by such mortgagor to satisfy any of the same.

### Section 8.03 - Mortgage Lien Valid.



No violation of this Agreement shall affect or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Center or Lots.

Section 8.04 - Notice to Mortgagee.

Each Owner shall notify each other Owner in writing of the name and address of each Mortgagee of such Owner's property subject to this Agreement. Each Owner providing a notice to another Owner pursuant to this Agreement shall be obligated to provide a concurrent notice to each Mortgagee of which the Owner giving such notice has been notified as provided above. Such Mortgagee shall have the right, but not the obligation, to cure the default specified in such notice prior to the expiration of the cure period set forth herein. A cure by a Mortgagee of a Owner's obligations pursuant hereto shall be deemed a cure by the Owner.

Section 8.05 - Payment of Annual Contributions.

Lot Owner is hereby notified that in the event that any existing or future Mortgagee of the Center notifies Lot Owner of a default under such Mortgagee's mortgage and directs Lot Owner to pay its Annual Contribution and all other sums due under this Agreement to such Mortgagee, Lot Owner shall honor such direction without inquiry and pay such amounts in accordance with such notice. First Horizon agrees that Lot Owner shall have the right to rely on any such notice from such Mortgagee without incurring any obligation or liability to First Horizon, its successors or assigns.

ARTICLE IX  
ESTOPPEL CERTIFICATES

Section 9.01 - Obligation to Provide Estoppel.

Each Owner hereby severally covenants that, upon written request from time to time of another Owner, it will issue to the other Owner or a prospective mortgagee or prospective purchaser, within fifteen (15) days of request, an Estoppel Certificate stating:

- A. whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement and if there are known defaults, specifying the nature thereof;
- B. whether to its knowledge this Agreement has been assigned, modified or amended in any way (or if it has, then stating the nature thereof); and
- C. that, to the best of the Owner's knowledge, this Agreement as of that date is in full force and effect.



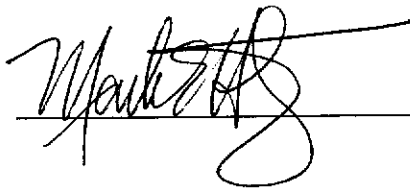
Section 9.02 - Waiver.


The statements contained in the Estoppel Certificate statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent that claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. However, such statement shall in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligence or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

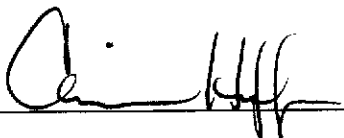
WITNESS:


FIRST HORIZON GROUP LIMITED  
PARTNERSHIP, a Delaware limited partnership  
By: First HGI, Inc., General Partner

  
\_\_\_\_\_

By:   
Name: R. KELVIN ANDRIE  
Title: EVP, General Counsel & Secretary

PEMCOR HOLDINGS [BURLINGTON], LLP, a  
Washington limited liability partnership

  
\_\_\_\_\_

By:   
Name: BRIAN PATERSON  
Title: PARTNER



STATE OF Maryland )  
CITY OF Baltimore )

PROBATE

PERSONALLY appeared before me the undersigned witness who on oath says that (s)he saw R. Kelvin Antill, the duly authorized officer of First HGI, Inc., the general partner of FIRST HORIZON GROUP LIMITED PARTNERSHIP, a Delaware limited partnership, sign, seal and as its acts and deed, deliver the within Agreement and that (s)he with the other witness subscribed above witnessed the execution thereof.

Witness

SWORN TO before me this 2nd  
day of May, 2002.

Gail R. Steptoe  
Notary Public for \_\_\_\_\_

GAIL R. STEPTOE  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires December 13, 2005

My Commission Expires: \_\_\_\_\_

STATE OF Washington )  
CITY OF Skagit )

PROBATE

PERSONALLY appeared before me the undersigned witness who on oath says that (s)he saw Brian Paterson, the duly authorized officer of PEMCOR HOLDINGS [BURLINGTON], LLP, a Washington limited liability partnership, sign, seal and as its act and deed, deliver the within Agreement and that (s)he with the other witness subscribed above witnessed the execution thereof.

Witness

SWORN TO before me this 3rd  
day of May, 2002.

Carrie Huffer  
Notary Public for State of Washington

My Commission Expires: 12/31/2003



UNRECORDED

CONSENT AND SUBORDINATION BY TRUSTEE AND BENEFICIARY

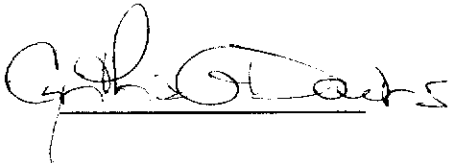
LaSALLE BANK NATIONAL ASSOCIATION (f/k/a LaSALLE NATIONAL BANK), AS TRUSTEE FOR NOMURA ASSET SECURITIES CORPORATION COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1996-MD V, as Beneficiary, under the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") recorded with the Skagit County Auditor in Auditor File Number 9603050059 on March 5, 1996, hereby consents to this Agreement and to the termination of the Existing Covenants as they relate to the Lots, and hereby subordinates the interest in the property encumbered by the Deed of Trust to this Agreement.

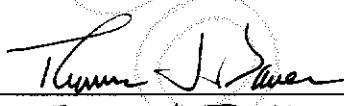
LaSALLE BANK NATIONAL ASSOCIATION (f/k/a LaSALLE NATIONAL BANK), AS TRUSTEE FOR NOMURA ASSET SECURITIES CORPORATION COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1996-MD V

WITNESS:

By: CapMark Services, L.P., a Texas limited partnership

By: Pearl Mortgage, Inc., a Delaware corporation, its sole general partner



By:   
Name: THOMAS J. BAUER  
Title: V.P.

STATE OF \_\_\_\_\_ )  
CITY OF \_\_\_\_\_ )

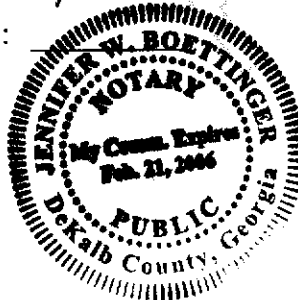
PROBATE

PERSONALLY appeared before me the undersigned witness who on oath says that (s)he saw \_\_\_\_\_, the duly authorized officer of Pearl Mortgage, Inc., the sole general partner of CapMark Services, L.P. as authorized agent of LaSALLE BANK NATIONAL ASSOCIATION (f/k/a LaSALLE NATIONAL BANK), AS TRUSTEE FOR NOMURA ASSET SECURITIES CORPORATION COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1996-MD V, sign, seal and as its acts and deed, deliver the within Agreement and that (s)he with the other witness subscribed above witnessed the execution thereof.

Guth = G T Davis  
Witness

SWORN TO before me this 2nd  
day of May 2002  
Jennifer W. Boettlinger  
Notary Public for Georgia

My Commission Expires:



## EXHIBIT A

### Legal Description of Center

Lots 1, 2, and 3, CITY OF BURLINGTON SHORT PLAT NO. 1-92 as approved July 18, 1989, and recorded July 27, 1992, in Volume 10 of Short Plats, page 105, under Auditor's File No. 9207270058, records of Skagit County, Washington; being a portion of the Northeast Quarter of the Northeast Quarter of Section 7, Township 34 North, Range 4 East of the Willamette Meridian.

#### PARCEL B:

Parcel B, CITY OF BURLINGTON SHORT PLAT NO. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast Quarter of the Northeast Quarter of Section 7, Township 34 North, Range 4 East of the Willamette Meridian.

#### PARCEL C:

Parcel A, CITY OF BURLINGTON SHORT PLAT NO. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast Quarter of the Northeast Quarter of Section 7, Township 34 North, Range 4 East of the Willamette Meridian.

#### PARCEL D:

An easement for drainage, as acquired by document recorded under Auditor's File No. 8811230046, records of Skagit County, Washington, over and across the following described property:

The West 20 feet of Lot 3, CITY OF BURLINGTON SHORT PLAT NO. 37-76 as approved August 2, 1978, and recorded August 3, 1978, in Volume 1 of Short Plats, page 156, under Auditor's File No. 840316, records of Skagit County, Washington; being a portion of the Southeast Quarter of the Southeast Quarter of Section 6, Township 34 North, Range 4 East of the Willamette Meridian.

#### PARCEL E:

An easement acquired by instruments recorded November 23, 1988, under Auditor's File No. 8811230048, records of Skagit County, Washington, for ingress, egress, and utilities, over, under, and across a 36.00-foot strip of land lying 18.00 feet each side of the following described centerline:

Commencing at the Northeast corner of Section 7, Township 34 North, Range 4 East of the Willamette Meridian;  
thence South  $01^{\circ}14'38''$  East, along the East line of said Section 7 a distance of 13.73 feet;  
thence South  $86^{\circ}59'04''$  West, 40.01 feet to the true point of beginning;  
thence continuing South  $86^{\circ}59'04''$  West, 56.99 feet to the beginning of a curve to the left having a radius of 170.00 feet;  
thence Southwesterly along said curve through a central angle of  $66^{\circ}12'00''$ , an arc distance of 197.41 feet;  
thence South  $20^{\circ}27'04''$  West, 124.00 feet to the beginning of a curve to the right, having a radius of 273.00 feet;  
thence Southwesterly along said curve through a central angle of  $71^{\circ}07'06''$ , an arc distance of 338.86 feet;  
thence North  $88^{\circ}25'50''$  West, 150.00 feet to the terminus point of said centerline. (Said easement being appurtenant to Parcels B and C).



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Skagit County Auditor

**PARCEL F:**

An easement for ingress, egress, and utilities over, under, and across that area delineated as "Access and Utility Easement" on the Easterly portion of Parcel B of City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89 under Auditor's File No. 9206110001, records of Skagit County, Washington. (Said easement is appurtenant to Parcel C).

ALL situated in Skagit County, Washington.

SAVINGS AND EXCEPTING THEREFROM Lot 1 and Lot 2 as described in Exhibit B and Exhibit C hereto.



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Skagit County Auditor  
5/3/2002 Page 29 of 39 3:56PM

**EXHIBIT B**

**Legal Description of Lot 2**

Lot 2 of Burlington Short Plat No. 1-82, approved July 18, 1989, recorded July 27, 1992 in volume 10 of short plats, page 105, under auditor's file no. 9207270058, records of Skagit County, Washington. Together with the south 13 feet of Lot 1 of said short plat.

**EXHIBIT C**

**Legal Description of Lot 1**

Lot 1 of Burlington Short Plat No. 1-82, approved July 18, 1989, recorded July 27, 1992 in volume 10 of short plats, page 105, under auditor's file no. 9207270058, records of Skagit County, Washington. Except the south 13 feet thereof.



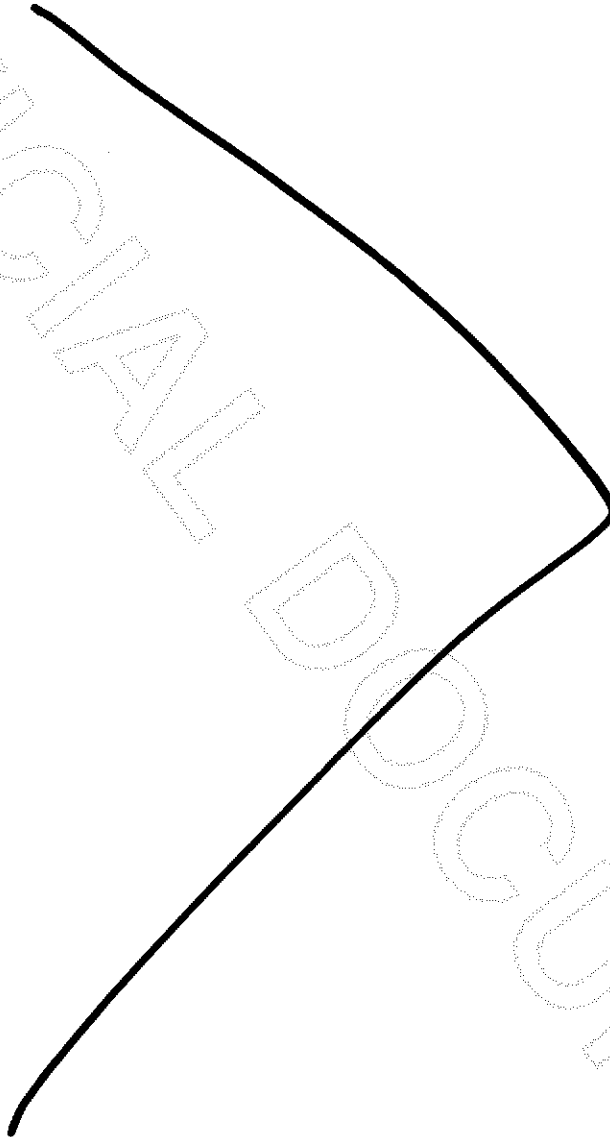
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Skagit County Auditor

**EXHIBIT D**

**Site Plan Depicting Additional Parking Area**

See Attached



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Skagit County Auditor

5/3/2002 Page 32 of 39 3:56PM



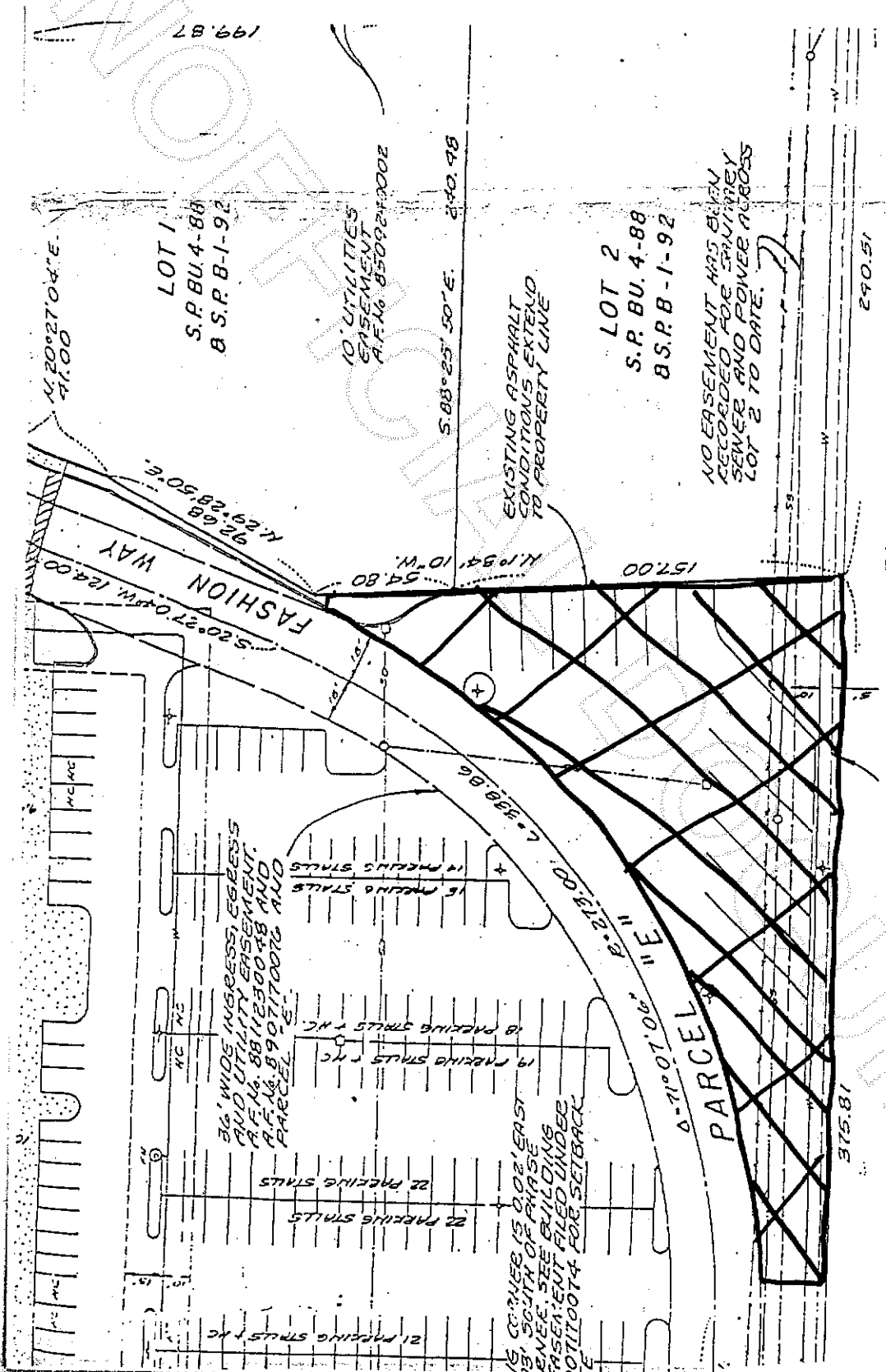


Exhibit D - Additional Parking



Area =



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Skagit County Auditor

EXHIBIT E

Site Plan Depicting Lot 1 Parking Area

See Attached

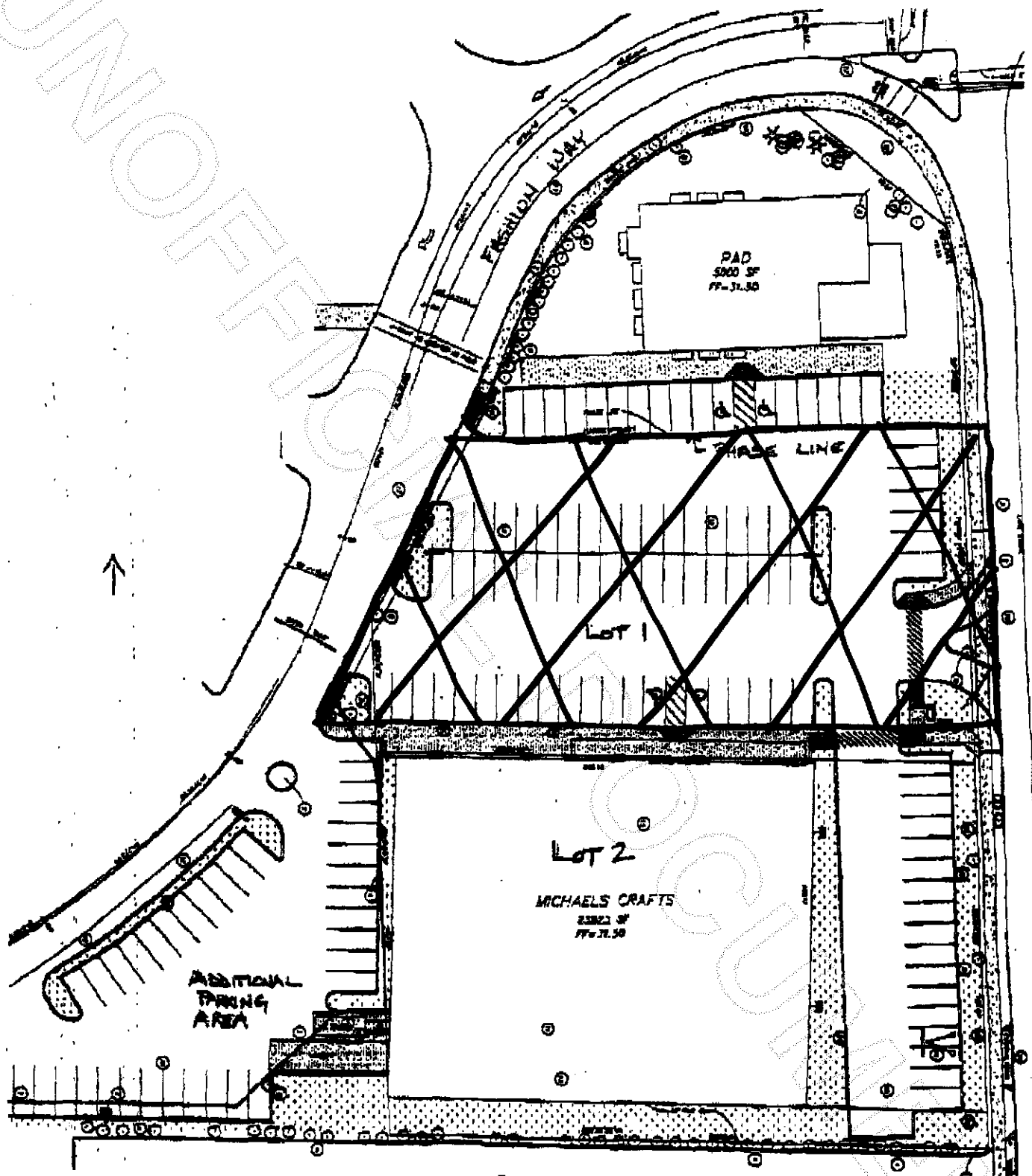



Exhibit E = Lot 1 Parking  
Area = 



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Skagit County Auditor

**EXHIBIT F**

**Site Plan Depicting Loading Dock Easement Area**

See Attached



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Skagit County Auditor

5/3/2002 Page 36 of 39 3:56PM

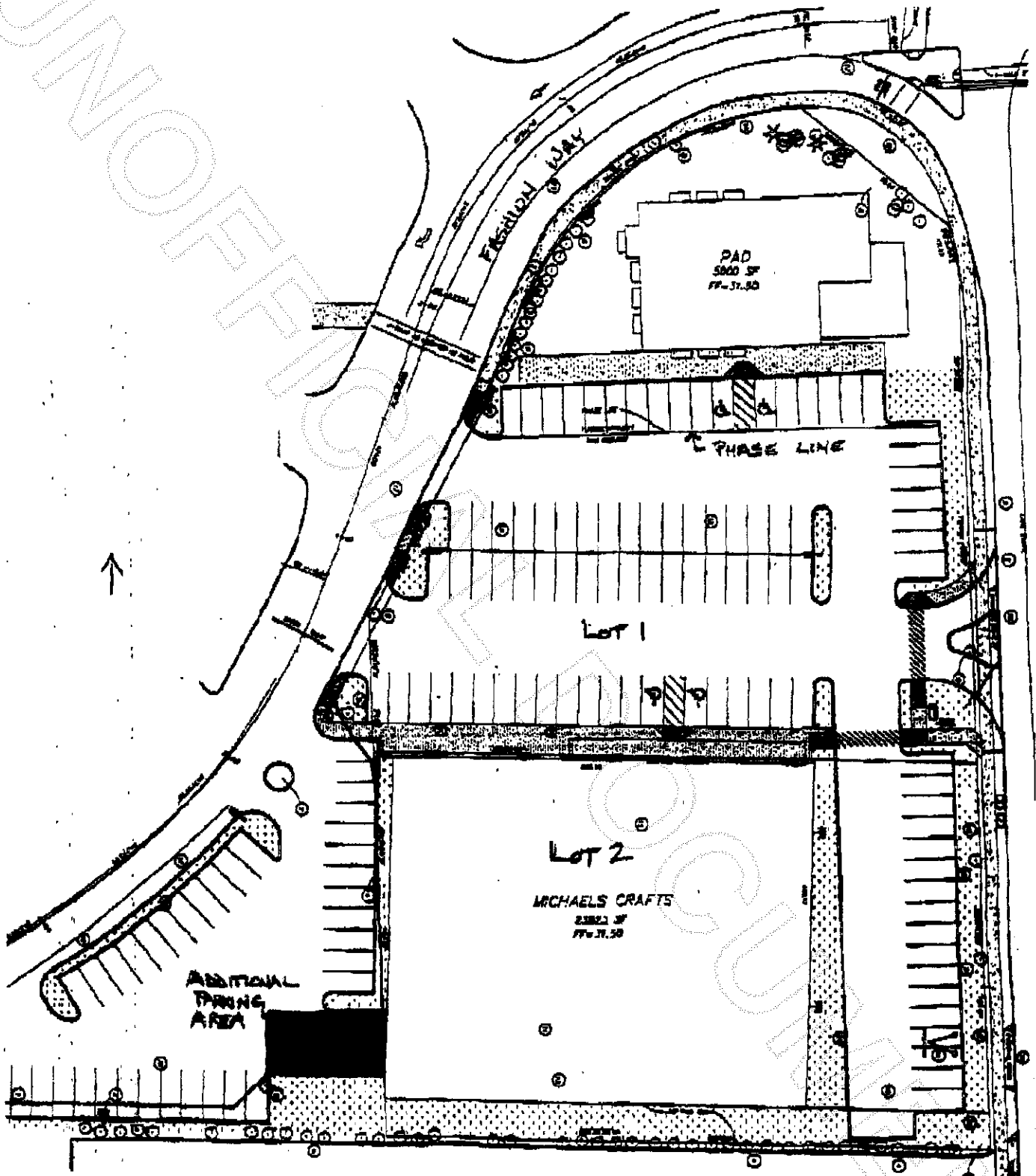


Exhibit F - Loading Dock Facility  
Area = ■



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Skagit County Auditor

**EXHIBIT G**

**Site Plan Depicting Access Easement Area**

**See Attached**



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**Skagit County Auditor**

**5/3/2002 Page 38 of 39**

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