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June Madrid

DECLARATION OF RESTRICTIONS

01.09.03

AND

GRANT OF EASEMENTS

HARMAN MINOR IMPACT SUBDIVISION

recorded at
Rec. No. 20208444

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**DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS**

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the 23 day of January, 2003, by HARMAN ARTIST, LLC, a Colorado limited liability company ("Declarant").

I. INTRODUCTION

The Declarant is the owner of certain real property legally described in Exhibit A and identified in this Declaration as the "Project." The Declarant desires to develop the Project into a mixed-use complex by improving and selling Lots, and to act as the "Declarant" under this Declaration. The Declarant may annex additional land to the Project which additional land will be subject to this Declaration and may be subject to a Common Area Maintenance Agreement to be recorded in the future. It is the intention of Declarant that the Project shall be developed pursuant to an integrated pre-established plan of development binding on all current and future owners of Lots in the Project and their successors and assigns.

1.1 Definitions: The following terms shall have the meanings specified in this Section 1.

(a) "Access Easements": Shall have the meaning set forth in Section 3.1, below, and shall also be known as "Access Easement areas."

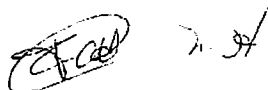
(b) "Building Area": All those areas on a Lot which is from time to time covered by a building, a driveup or drive-through facility, a service facility or other commercial structure.

(c) "Contracting Party": Shall have the meaning set forth in Section 2.3(a), below.

(d) "Declarant": Harman Artist, LLC, together with any company, partnership, or corporation succeeding to Declarant by the terms of this Declaration.

(e) "Development Agreement": Any separate Development Agreement between Declarant and an Owner or Lot purchaser.

(f) "Lienholder": Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Lot or other interest in the Project.

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(g) "Lot": The Declarant intends to subdivide the Project into individual Lots, to be initially denominated as Lots 1, 2 and 3. Declarant reserves the right to combine and/or resubdivide any Lot(s) owned by Declarant before such Lot is conveyed to by Declarant to the initial purchaser, and to annex additional lands described in Exhibit B to the Project and thereby subject those lands to the terms of this Declaration. Any such future combination, resubdivision or annexation shall be more particularly described in one or more Plat Map(s) to be recorded in the real estate records for the County of Archuleta, State of Colorado.

(h) "Lot Area": The total number of square feet of a Lot whether or not actually occupied or placed in service. Lot Area shall be measured from the exterior line of the Lot without deduction for easement areas, landscaped areas or areas used in common by more than one Owner or tenant. The Lot Area of each initial Lot in the Project is as follows:

<u>Lot Number</u>	<u>Lot Area</u>	<u>Percent of Total</u>
1	1.34 acres	33.58%
2	0.44 acres	11.03%
3	2.21 acres	55.39%
Total	3.99 acres	100.00%

(i) "Owner": The record holder of fee simple title to a Lot or other interest in the Project, its heirs, personal representatives, successors and assigns.

(j) "Parking Areas": The portions of the Access Easement areas (as defined above) of the Project improved from time to time for use for vehicular parking, as the same may be restricted and modified on a Lot by its Owner.

(k) "Person": Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(l) "Prime Lessee": An Owner of a Lot who sells said Lot to an unaffiliated third party and thereafter enters into a lease (including a ground lease or building lease) for said Lot with such third party or its lessee or sublessee. Prime Lessee includes the successors and assigns of said Prime Lessee but does not include the sublessees, licensees or concessionaires of said Prime Lessee.

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(m) "Project": The real property described in Exhibit A. The Project is located on the south side of Highway 160 in the Town of Pagosa Springs, County of Archuleta, State of Colorado, as legally described on Exhibit A and is generally depicted on Exhibit C.

(n) "Restrictions": The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(o) "Roadways": The portion of the Project improved from time to time for use for vehicular ingress and egress.

(p) "Service Facilities": Loading docks, trash compactors and enclosures, bottle storage areas, exterior coolers, electrical and refrigeration facilities and other similar service facilities.

(q) "Tenants": Any tenant, lessee, subtenant, sublessee, or occupant of a Lot or any portion thereof.

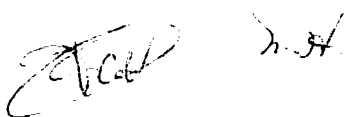
(r) "Utility Easement": The Utility Easement area shall consist of the Access Easement areas plus any landscaped areas within the Project.

II. BUILDING AND LOT DEVELOPMENT

2.1 Building Location: Except as to Lot 1, all buildings and other structures shall be placed or constructed upon the Lots only in the Building Areas within the building limit lines depicted on a Plat Map or Site Plan to be recorded at a later time; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All Lots on which buildings are not under construction within one hundred fifty (150) days after the date such Lot is conveyed by Declarant to the initial Owner shall, if required by Declarant or governmental regulation, be kept weed-free and clean at the Owner's sole expense until such time as buildings are constructed thereon.

2.2 Type and Design of Building:

(a) Each building in the Project, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious



with all other buildings in the Project. No building may be constructed nor the exterior of any existing building changed or modified in any way (including, without limitation, signs and color) without the prior written approval of Declarant. Before the construction of any building or any modification of any existing building which requires approval is commenced, each Owner must provide to Declarant a site improvement plan as required by the Town of Pagosa Springs, including (without limitation) building elevations and a material board, to enable Declarant to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with all other buildings in the Project. Declarant must approve or disapprove the proposal in accordance with this paragraph and, if Declarant disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal. Declarant has previously approved the site improvement plan for Lot 1.

(b) Where required by local ordinance or state law, every building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other Lot. The purpose of this subparagraph (b) is to allow buildings built on each Lot to be fire rated as separate and distinct units without deficiency charge.

(c) No building shall be built in such a manner as to adversely affect the structural integrity of any other building in the Project.

(d) All buildings and other improvements upon the Project shall be built in strict accordance with all federal, state and local laws, regulations and ordinances, including (without limitation) zoning, density, height limitation and other restrictions.

(e) Each Owner shall maintain or cause to be maintained the exterior of any building and landscaping located on such Owner's Lot(s) in a quality and condition at least comparable to that of first class mixed-use projects of comparable size and nature located in the same geographic area as the Project. All Service Facilities shall be attractively screened from view from the parking areas.

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2.3 Construction Requirements:

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or other improvements located in the Project shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay: (i) access to or from the Project, or any part thereof, or to or from any public right-of-way; (ii) customer vehicular parking for any building constructed in the Project; or (iii) the receiving of merchandise by any business in the Project including, without limitation, access to Service Facilities. Staging for the construction, replacement, alteration or expansion of any building, sign or other improvements located in the Project including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Project approved in writing by Declarant. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and other improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any liens to stand against the Lot for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from Declarant, the Owner or Prime Lessee of any Lot encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which Declarant, the Owner or Prime Lessee of said Lot shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless Declarant and the other Owners and occupants of the Project from any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the



performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

(c) Each Owner acknowledges and agrees that incidental encroachments upon the Access Easement areas or landscaping may occur as a result of temporary use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and other improvements located in the Project, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of any Lot or with the normal operation of any business in the Project.

2.4 Casualty and Condemnation: In the event all or any portion of any building in the Project is: (a) damaged or destroyed by fire or other casualty; or (b) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building, or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto within ninety (90) days from the occurrence of such damage. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Project or any portion thereof, shall be covered in the manner required by governmental regulation and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

2.5 Indemnification: Each Owner hereby agrees to indemnify, defend and hold harmless Declarant and the other Owners and occupants from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and attorney's fees incurred on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in the interior of any building constructed on the indemnifying Owner's Lot, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

III. EASEMENTS

3.1 Ingress, Egress and Parking: Declarant hereby establishes upon the Project, for the benefit of each Lot, a perpetual, nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over, across and between the Lots over all areas ("Access Easements") that are not (i) reserved herein for the exclusive use of an Owner and said Owner's guests, licensees, invitees or employees, (ii) improved or intended to be improved as Building Area or landscaping, or (iii) devoted to Service Facilities or driveup or drive-through customer service facilities, to which the Owner of such Lot shall have the right to exclusive access. The reciprocal rights of ingress and egress over the Access Easement set forth in this Section 3.1 shall apply to all Lots in the Project for the benefit of every other Lot.

3.2 Utility Lines and Facilities:

(a) Declarant hereby establishes, in favor of each Lot, a perpetual, nonexclusive easement (the "Utility Easement") under, through, across and between the Access Easements and landscaping in the Project for the benefit of each Lot for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such Utility Easement except for ground mounted electrical transformers and such other facilities that are required to be above ground by the utility company providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Project). The installation, operation, maintenance, repair and replacement of such Utility Easement facilities shall not unreasonably interfere with the use of the improved Access Easements or landscaping or with the normal operation of any business in the Project. The Contracting Party shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Easement facilities, shall repair to the original condition and specifications any damage to the Utility Easement areas resulting from such use and shall provide as-built plans for all such facilities to Declarant and the Owners of all Lots upon which such utility lines and

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facilities are located within thirty (30) days after the date of the completion of construction of same.

(b) At any time and from time to time the Owner of a Lot shall have the right to relocate on its Lot any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation: (i) shall be performed only upon sixty (60) days' prior written notice of the Owner's intention to undertake the relocation to Declarant and the Owner of each Lot served by the utility line or facility; (ii) shall not unreasonably interfere with or diminish utility service to the Lots served by the utility line or facility; (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility; (iv) shall be performed without cost or expense to Declarant, or to the Owner or occupant of any other Lot served by the utility line or facility; and (v) shall provide for the original and relocated area to be restored to at least the original condition and specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to Declarant and the Owners of all Lots served by such utility lines and facilities within thirty (30) days after the date of completion of such relocations.

(c) The grant of easements established in this Article III shall burden each Lot and shall apply to the construction and/or relocation reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein, provided such easements are not otherwise inconsistent with the provisions of this Declaration.

3.3 Signs: Declarant hereby grants to the Owners of each Lot an easement under, through and across all of the Utility Easement areas in the Project for the installation, operation, maintenance, repair and replacement of any approved free-standing monument signs on such Owner's Lot and all utility lines and facilities appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the Contracting Party shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing monument sign and appurtenant facilities, and shall repair to the original condition and specifications any damage to the Utility Easement areas resulting from such use, and shall provide as-built plans for all such facilities to Declarant and the Owners of all Lots upon which such facilities are located within thirty (30) days after the date of completion of construction of same. Notwithstanding the other provisions of this Declaration, the cost of maintaining, repairing and replacing each

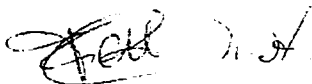
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monument sign shall be paid by the Owners of all Lots displaying any designation on such sign in the proportion that each Owner's designation(s) on such sign bears to the total signage area. The Owner of each Lot shall at all times satisfy the signage requirements of applicable zoning, building, use and other governmental laws, ordinances and regulations.

3.4 Building Encroachments: Declarant hereby grants to the Owners of each Lot an easement for any portion of any building or structure located on any such Lot which may inadvertently encroach into or over any Access Easement or Utility Easement; provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet. The easements granted in this Section 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

IV. OPERATION OF EASEMENT AREAS

4.1 Parking: There shall be no charge for parking in the Access Easement areas without the prior written consent of Declarant and all other Owners and Prime Lessees or unless otherwise required by law. Each Lot shall have a perpetual, nonexclusive parking servitude across all Parking Areas located in the Access Easement areas as such Parking Areas may exist from time to time. This parking servitude shall be free of charge and shall be for the purpose of temporary customer and employee vehicular parking while shopping or otherwise conducting business on the Project. The Owner of each Lot shall have the right to revise, modify, rearrange or increase the Parking Areas on such Owner's Lot provided that the servitude rights granted under this Article IV are not adversely affected. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner, Prime Lessee or occupant of the Project. A change in the size, location or layout of the Parking Areas by Declarant on Lots owned by Declarant shall not require the consent of the other Owners or tenants or an amendment to this Declaration. The Owner of each Lot shall at all times provide sufficient parking to satisfy the parking requirements of applicable zoning, building, construction, use and other governmental laws, ordinances and regulations without including parking spaces located on any other Lot. In connection with this parking servitude, each Lot shall have a perpetual, nonexclusive accessory servitude of passage, free of charge, over and



across the Roadways on each Lot as the Roadways may exist from time to time for the purposes of pedestrian and vehicular access to and from the Parking Areas.

4.2 Employee Parking: Each Owner, Prime Lessee and tenant shall require its employees, while at work, to park exclusively on such Owner's, Prime Lessee's or tenant's Lot.

4.3 Protection of Easement Areas: Each Owner and Prime Lessee shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Access Easement areas from using the Access Easement areas for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Project except along the common boundary line of any Lot with any other Lot; provided that such steps shall not unreasonably interfere with access, circulation, or parking within the Project, by those parties entitled to utilize the easements set forth herein.

4.4 Sales: No portion of the Access Easement areas or landscaping in the Project, except sidewalks, shall be used for the sale, display or storage of merchandise.

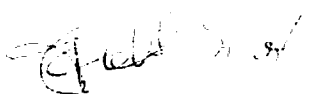
4.5 Maintenance Standards: Commencing on the date this Declaration is recorded in the records of the Clerk and Recorder of Archuleta County, Colorado, each Lot Owner, including (without limitation) the Declarant, shall (except as provided herein), maintain its Lot in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and re-striping, when necessary;

(b) Removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;

(d) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required;



(e) Maintaining all landscaped areas; maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;

(f) Maintaining, repairing and replacing, when necessary, all fences, walls, barricades and retaining walls;

(g) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located on such Lot. Unless such maintenance, repair or replacement is due to the action, conduct or demands of one or more particular Owner(s), in which case such cost shall be allocated to such Owner(s), the cost of such maintenance, repair and replacement shall be allocated between the Owners of all buildings and improvements serviced or to be serviced by said facilities on the basis of their respective Lot Areas;

(h) Keeping all monument signs on such Lot lighted from dusk to dawn or during such other times mutually agreed to in writing by the businesses designated thereon;

(i) Maintaining, repairing and replacing, when necessary, all monument signs on such Lot. Notwithstanding the other provisions of this Agreement, the cost of maintaining, repairing and replacing each monument sign shall be paid by the Owners of all Lots displaying any designation on such sign in the proportion that each Owner's designation(s) on such sign bears to the total signage area; and

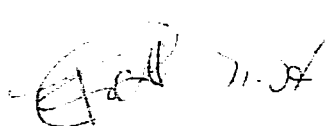
(j) Performing itself or contracting with a third party or parties to perform any of the services described herein: provided, however, that the Lot Owner shall remain responsible and liable for the performance of all of said services on its Lot in accordance with the terms of this Declaration and for the performance of any such third party or parties under any such contract or contracts.

4.6 Insurance Standards: In addition to the foregoing, each Lot Owner shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring the such Lot Owner and the Maintenance Director (defined in Section 4.8 below) against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about such

Owner's Lot. Such insurance shall be written with an insurer licensed to do business in the state in which the Project is located. Each Lot Owner shall attempt to have the Declarant, all other Owners and all persons who now or hereafter own or hold portions of the Project or building space within the Project or any leasehold estate or other interest therein as their respective interests may appear (provided such Owner is notified in writing of such interest) named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for personal injury or bodily injury or death of any one person, \$2,000,000 for personal injury or bodily injury or death of more than one person in one occurrence, and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit policy (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000 per occurrence. Each Lot Owner shall, upon request, furnish Maintenance Director and all other Owners with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or nonrenewed without the giving of at least thirty (30) calendar days prior written notice to the holders of such insurance and the holders of such certificates. The insurance which an Owner is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Declaration. So long as an Owner has a net worth, determined in accordance with generally accepted accounting principles, in excess of \$100,000,000.00, all or any part of such insurance carried by such Owner may be provided under a program of self-insurance.

4.7 Taxes: Each Owner shall pay direct to the taxing authority when due the real property taxes and other special taxes and assessments assessed against the Owner's Lot, subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments.

4.8 Maintenance Director: The initial Maintenance Director shall be the Declarant. The Maintenance Director shall have the right, upon giving ninety (90) days' prior written notice to the Owners of the Project, to resign as Maintenance Director, in which event the Owners shall appoint another person to be the Maintenance Director by majority vote of the Owners.

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4.9 Enforcement: In the event any Owner or Prime Lessee fails to perform any provision of this Agreement, which failure continues for a period of thirty (30) calendar days after receipt of written notice from the Maintenance Director or any other Owner or Prime Lessee specifying the particulars of such failure, such failure shall constitute a default and the Maintenance Director or the Owner or Prime Lessee who gave such notice may thereafter institute legal action against the defaulting Owner or Prime Lessee for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner or Prime Lessee shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) calendar day period and such Owner or Prime Lessee is diligently proceeding to rectify the particulars of such failure. The failure of the Maintenance Director or any Owner or Prime Lessee to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that they may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the Maintenance Director or any other Owner or Prime Lessee. In the event an Owner or Prime Lessee fails to maintain its Lot, provide insurance or pay its taxes, which failure continues for a period of thirty (30) calendar days after written notice thereof, such failure shall constitute a default and the Maintenance Director or any other Owner or Prime Lessee ("Curing Owner") may thereafter contract for such maintenance or insurance or pay such taxes (if such taxes are delinquent and the defaulting Owner or Prime Lessee has not commenced and is not duly prosecuting any contest of such taxes). The Curing Owner shall then bill the defaulting Owner or Prime Lessee for the expenses incurred. The defaulting Owner or Prime Lessee shall have fifteen (15) calendar days within which to pay the bill. If the defaulting Owner or Prime Lessee does not so pay, the Curing Owner shall have a lien on the Lot of the defaulting Owner or Prime Lessee for the amount of the bill, which amount shall bear interest at the Default Rate of eighteen percent (18%) per annum from the date of expiration of said fifteen (15) calendar day period until paid; provided, however, that if in the determination of a court of competent jurisdiction there is a bona fide dispute as to the existence of such default or of the amount due, and if all undisputed amounts are paid within thirty (30) days after notice of default, there shall be no right to place

a lien on such defaulting Owner's or Prime Lessee's Lot until such dispute is settled by final court decree or mutual agreement. The lien provided for herein shall only be effective when a notice, signed and verified, is filed for record as a claim of lien against the defaulting Owner's or Prime Lessee's Lot in the office of the clerk and recorder of the county in which the Project is located, which notice shall contain at least the following information:

- (a) An itemized statement of all amounts due and payable pursuant thereto;
- (b) A description sufficient for identification of that portion of the real property of the defaulting Owner or Prime Lessee which is the subject of the lien;
- (c) The name of the Owner or reputed Owner of the property which is the subject of the lien; and
- (d) The name and address of the Maintenance Director or Curing Owner filing the lien.

The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the Maintenance Director or the Curing Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

V. RESTRICTIONS ON USE

5.1 **Project Restrictions:** No Owner shall use or occupy its Lot, or permit its Lot or any portion thereof to be used or occupied, in a manner which violates the terms of this Declaration. Each Lot shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Lot which is illegal. In addition to the foregoing, throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of the Project shall be used, directly or indirectly, for purposes of a cocktail lounge or bar (except in connection with a restaurant), disco, dance hall, adult book store, adult theater, adult amusement facility, any facility selling or displaying pornographic materials or having such displays (provided however, that operations of a video store such as a Blockbuster Video, Hollywood Video or the like shall be permitted, provided that such video store shall be permitted to have only incidental sales or

rental of pornographic videos which are not advertised or visible from the exterior of the video store premises), any use involving the use, storage, disposal or handling on any Lot of hazardous substance materials or underground materials or underground storage tanks (except incidental to a retail or service use or filling station and further excepting those items customarily sold or handled from time to time in connection with the retail drug, grocery, convenience or department store).

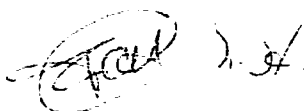
5.2 Financial Institution Restriction: Only Lot 1 may be operated as a financial services business, and no other Lot in the Project shall be operated as a financial services business with or without drive-up facilities. For purposes of this Declaration, a "financial service business" shall include a bank, savings and loan association, federal savings bank or credit union.

5.3 Further Restrictions: So long as Declarant is the owner of Lots representing at least fifty percent (50%) of the Lot Area of the Project, Declarant may record in the Archuleta County, Colorado real estate records an amendment to this Declaration for the purpose of adding further use restrictions or removing existing use restrictions on the use and occupancy of any Lots then owned by Declarant. provided such amendment does not defeat or materially impair any exclusive use previously granted to an Owner or Prime Lessee.

VI. GENERAL PROVISIONS

6.1 Covenants Run With the Land: Each Restriction in the Project shall be a burden on every Lot or other interest, shall be appurtenant to and for the benefit of the other Lots and other interests, and shall run with the land.

6.2 Successors and Assigns: This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Declarant, the Owners, and their heirs, personal representatives, successors and assigns, and upon any person acquiring a Lot, or any interest in the Project, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Lot or other interest in the Project, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Lot or any other interest in the



Project (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Lot or other interest after the date of sale and conveyance of title, provided, however, that a continuing violation of this Declaration shall subject both the former and successor Owners to liability for the period of their ownership, regardless of when the violation first occurred.

It is hereby acknowledged and agreed that upon the sale of the last Lot or other interest in the Project by the Declarant, the Owners shall elect one Owner to succeed to the rights, duties and obligations reserved by Declarant in this Declaration, and each Owner or occupant must obtain any and all consents or approvals required in this Declaration from said successor Declarant.

6.3 Duration: The term of this Declaration shall be for sixty-five (65) years from the date hereof, which term shall automatically renew unless terminated as otherwise provided herein.

6.4 Injunctive Relief: In the event of any violation or threatened violation by any person of any of the Restrictions contained in this Declaration, Declarant, the Owner and any or all of the Owners and Prime Lessees of the property included within the Project shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

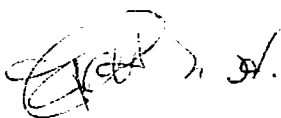
6.5 Modification and Termination; Annexation: Except as otherwise provided herein, this Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the unanimous consent of Owners of property in the Project and all holders of any recorded mortgage or deed of trust covering or affecting any Lot in the Project, which modification or termination shall be evidenced by a fully signed and notarized document duly recorded. Declarant specifically reserves the right to annex to the Project all or any part of the land described in Exhibit B and to subject such land to the terms hereof including, in that event, the right to recalculate the relative Lot Area of each Lot in the Project. Such annexation(s) shall be expressed by a duly recorded Supplement(s) to this Declaration and by filing for record a plat or map approved by all requisite governmental authorities dividing such

annexed real property into Lots. Each such additional Lot shall be separately designated by Lot number, which designation shall be dissimilar from any other Lot in the Project. All Owners of Lots in the Project, as expanded, shall have a non-exclusive right in common with all other Owners to use, subject to the terms of this Declaration, all Access Easement areas and Utility Easements within the entire Project, as expanded by annexation. Except as may be otherwise provided in the Supplement(s) to this Declaration, all of the provisions set forth in this Declaration shall be applicable to such additional Lots submitted to the Project.

6.6 Method of Approval: Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Lot shall have a vote, which vote shall be weighted in proportion to the Lot Area of such Lot. Unless otherwise provided herein, whenever Owner consent is required, a majority vote shall be required. The Owners (if consisting of more than one [1] person) of each Lot shall agree among themselves and designate in writing to the Owners and Prime Lessees of each of the other Lots a single person who is entitled to cast the vote for that Lot. If the Owners of any such Lot cannot agree who shall be entitled to cast the single vote of that Lot, or if the Owners fail to designate the single person who is entitled to cast the vote for that Lot within thirty (30) days after receipt of request for same from any other Owner or Prime Lessee, then that Lot shall not be entitled to vote. In the event a Lot is not entitled to vote, its consent or approval shall not be necessary. Except as otherwise set forth in Section 6.2, in the event an Owner sells its Lot and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Lot on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Lot so long as it is the Prime Lessee of said Lot, anything in this Declaration to the contrary notwithstanding.

6.7 Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

6.8 Breach Shall Not Permit Termination: It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder





by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but his Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

6.9 Default: Unless otherwise provided herein, a person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from Declarant or any Owner or Prime Lessee specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

6.10 Notices:

(a) All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Project is located. All notices to Declarant shall be sent to the person and address set forth below:

Declarant: Harman Artist, LLC
c/o Fred C. Harman, III, Manager
P.O. Box 192
Pagosa Springs, Colorado 81147

The person and address to which notices are to be given may be changed at any time by any party upon written notice to Declarant and the other Owners. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt; (ii) the

date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above; or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

6.11 Waiver: The failure of Declarant or any Owner to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies they may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

6.12 Attorney's Fees: In the event Declarant or any Owner initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

6.13 Sale & Sale-leaseback Purchaser: Notwithstanding anything to the contrary contained in this Declaration, it is expressly agreed that in the event an Owner sells its Lot to an unaffiliated third party and thereafter enters into a lease (including a ground lease or building lease) for such Lot with such third party (hereinafter referred to collectively as the "Prime Lessor"), so long as said former Owner is in possession of the property as a Prime Lessee the parties hereto shall look solely to said Prime Lessee (and said Prime Lessee shall be liable therefor) for the performance of any obligations either the Prime Lessee or the Prime Lessor shall have under this Declaration and the Prime Lessor shall be secondarily liable for any obligation for or the performance of the covenants and restrictions set forth herein relating to either the Prime Lessee or its Lot.

6.14 Severability: If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and

(Signature)

each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

6.15 Not a Partnership: The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between or among Declarant, the Owner or the other Owners.

6.16 Third Party Beneficiary Rights: This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

6.17 Captions and Headings: The captions and headings in this Declaration are for reference only and shall not be deemed or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

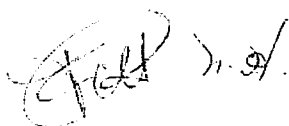
6.18 Entire Agreement: This Declaration contains the entire agreement by Declarant and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

6.19 Construction: In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

6.20 Joint and Several Obligations: In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

6.21 Recordation: This Declaration shall be recorded in the office of the recorder of Archuleta County, Colorado.

6.22 Subdividing: Nothing herein shall be construed as prohibiting the Declarant from (i) subdividing, resubdividing or combining the land described in Exhibit A (excepting any portion thereof which has been conveyed by Declarant) into a greater or smaller number of Lots, (ii) annexing all or any part of the land described in Exhibit B and subjecting such land to the terms of this Declaration, or (iii) changing the configuration and layout of undeveloped Lots and undeveloped Roadways and Parking Areas in the Project (excepting those on any Lots which have been conveyed by Declarant), without the consent, approval or joinder of any other





person or entity, except as may be required by law. However, the provisions of this Declaration shall remain applicable to the affected property.

HARMAN ARTIST, LLC, a Colorado limited liability company

By: *Fred C. Harman, III*
 Fred C. Harman, III, Manager

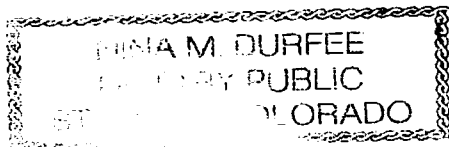
By: *Norma Harman, Manager*
 Norma Harman, Manager

STATE OF COLORADO)
) ss.
 COUNTY OF ARCHULETA)

~~2002~~ The foregoing instrument was acknowledged before me this 23 day of January, ~~2002~~, by Fred C. Harman, III, as Manager of Harman Artist, LLC. WITNESS my hand and official seal. My commission expires: 2-22-2004 and by Norma Harman, Manager of Harman Artist, LLC

(SEAL)

Norma M. Durfee
 Notary Public





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June Madrid

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EXHIBIT A

[Legal description of the Project]

Lots 1, 2 and 3, Harman Minor Impact Subdivision, as set forth in Plat No. 646-646A recorded September 18, 2002 as Reception No. 20208444, in the Office of the Clerk and Recorder of Archuleta County, Colorado.

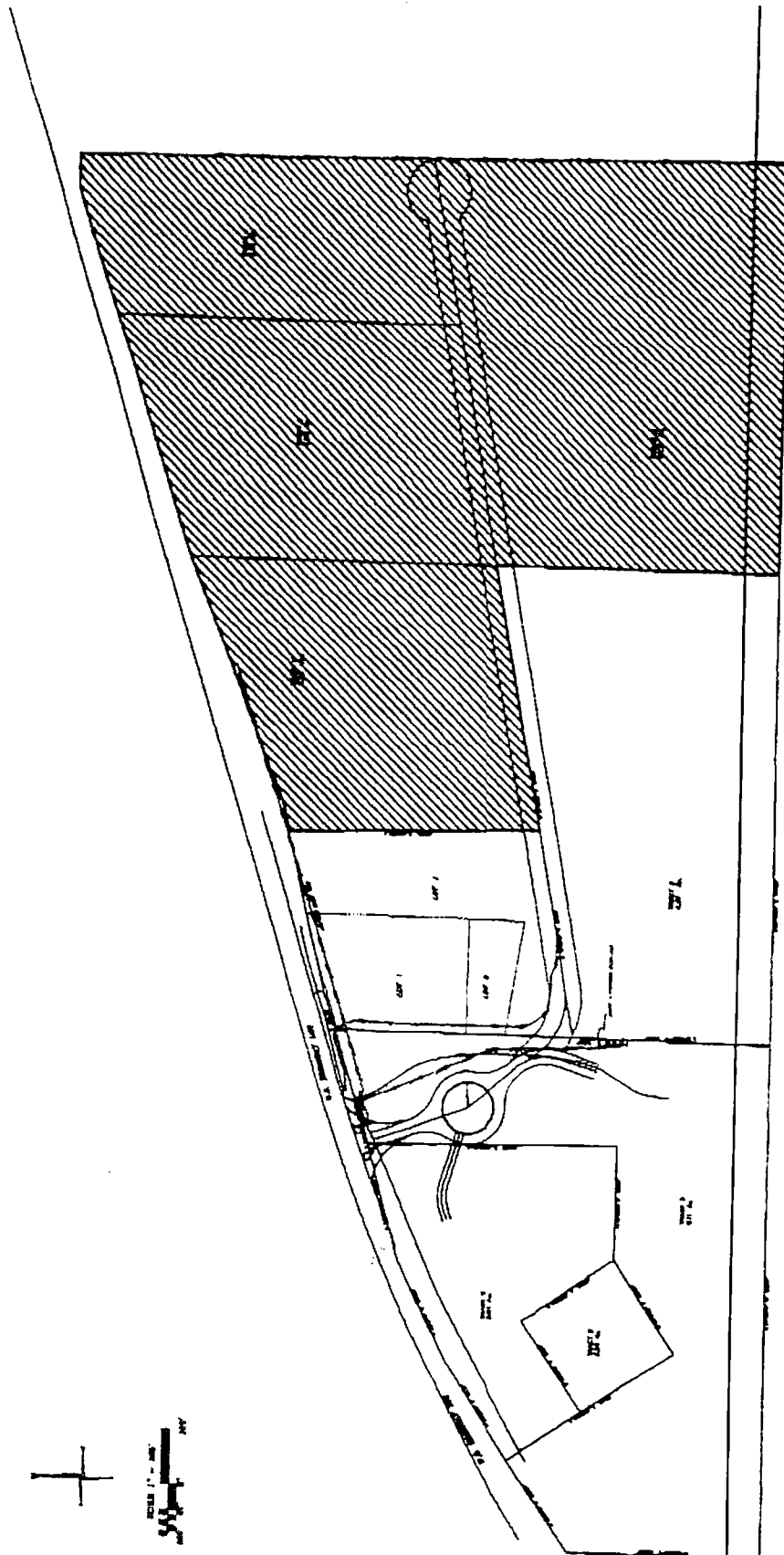
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THIS IS THE REST OF
THE DEVELOPABLE LAND

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D \$0.00 Archuleta County, CO

