



Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
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 Scientists



March 18th, 2025

AnneMarie Skinner, City Planner
 City of Concord Community Development
 Planning Division
 41 Green Street
 Concord NH, 03301

**Re: Proposed Condominium Subdivision and Building Addition
 313 Loudon Road
 (Map-Lots: 46Z-63 GWP)**

Dear AnneMarie,

On behalf of the Owner and Applicant, West Street Keene, LLC, please find a complete major site plan application to permit the completion of construction and new condominium unit for the existing site at 313 Loudon Road.

Overview

The purpose of this application is to update the prior approval to allow construction of Unit 1 as a building addition consistent with the plan originally approved in 2011. In addition to completing the previously approved site plan, the applicant is also seeking to subdivide a new condominium unit for the building addition.

On March 16th 2011, the Concord Planning Board conditionally approved a Site Plan for a 11,650 sf building at 313 Loudon Road. The approved building was comprised of two units: Unit 1 – 1,800 sf and Unit 2 – 9,850 sf. Only unit 2 was built at the time and now operates as a Dollar Tree retail store. Unit 1 was not built.

In addition to completing the site plan, the applicant is seeking to put the addition into a new condominium unit.

Parking

There are no changes to the parking layout or parking count, via easements and condo agreements, there is shared parking onsite between the Texas Roadhouse lot and the abutting parking lot.

Wetlands

There are wetlands on site. There are no proposed disturbances to any wetlands. There are no proposed alterations withing the 50' buffer.



Traffic

Per Concord Subdivision Regulation 33.01 and ITE LUC 822- LUC 822-Strip Retail Plaza (<40k) AM Peak Hour: 4 trips, PM Peak Hour: 12 trips, SAT Peak Hour: 12 trips. Weekday Daily: 100 trips, the proposed building addition does not create a need to analyze the traffic addition

Landscaping

The site mostly conforms to the current zoning ordinance; however, two additional shade/ornamental trees are required to meet 28-7-10-(d). These trees have been sited in islands that currently do not have trees in them along the eastern property line within the parking area.

Utilities

The utilities to service this new unit are being provided entirely on site. The electricity and telecom shall be installed from the existing transformer onsite. The waterline shall be tapped from the existing water line onsite. There was a sewer stub/CO installed during the original construction that shall service the addition.

Application Package

- Condominium Subdivision Plan with construction plans for the building addition with updated 2024 Professional Engineer stamp and current abutters
- Minor Condominium Subdivision Application (with check list)
- Minor Site Plan Application (with check list)
- Drainage Study
- Updated Architectural for the proposed addition
- Site Photo Key that outlines current existing conditions (pad ready)
- Updated abutters list
- Letter of Authorization from the Owner
- Condominium Docs

Respectfully submitted,

TFMoran, Inc.

A handwritten signature in purple ink, appearing to be 'Jonathan Devine', with a long horizontal line extending to the right.

Jonathan Devine, E.I.T



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AnneMarie Skinner, City Planner
 Concord Community Development Planning Division
 41 Green Street
 Concord NH, 03301

March 18th, 2025

**Re: 313 Loudon Rd – Unit 1 Construction and Condominium Subdivision
 Waiver Request – Site Plan Regulations 16.02(12)(b)
 Qualitative Drainage Study**

Dear AnneMarie,

We respectfully request a partial waiver from Concord Site Plan Regulation 16.02(12)(b) to provide an alternative drainage study that does not include the ten (10) and twenty-five (25) year stormwater runoff estimates, specific to the provision to provide calculations. In lieu of the calculations we have provided a drainage study that qualitatively evaluates stormwater runoff from the site. We believe this is consistent with the spirit and intent of the regulations as this is an existing site of record with a previous site plan approval that accounted for the intended construction of Unit 1. The site plan was approved to include a 11,650 sf. building at the above referenced project site, with said building to include two units, Unit 1 - 1,800 sf., and Unit 2, 9,850 sf. To the best of our knowledge, Unit 2 as well as the associated parking, landscaping, and utility and drainage infrastructure was built per plan, with the exception being Unit 1 was not constructed but left in a pad ready configuration that was subsequently loamed and seeded. The construction of Unit 1 will bring the site into compliance with the original approval and given the drainage infrastructure was originally designed to accommodate this element, we would see no valid public purpose to numerically reevaluate the site drainage for its construction. In that the evaluation provided substantially secures the objectives of the standards of Site Plan Regulations, a waiver may be considered.

The overarching purpose of this site plan regulation is to provide safe, functional, and effective treatment of stormwater which has been and will continue to be provided by the existing infrastructure onsite. This purpose is achieved in the following ways:

1. *“The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property”*

The construction of Unit 1 in substantial conformance with the 2011 City of Concord approved site plan will not be detrimental to public safety, health of welfare or injurious to other property, as the existing drainage infrastructure was designed, permitted, and built to accommodate its construction.

2. *The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable generally to other property*



313 Loudon Road is unique because the site drainage infrastructure was approved and constructed in accordance with the 2011 City of Concord Planning Board site plan approval that accommodates the element of the site plan that was not previously constructed (Unit 1). In that Unit 1 was not built at the time of original construction, there is existing additional capacity of the treatment system to allow for the full build out that would have no adverse effect on the drainage. This is not a condition generally applicable to other properties.

- 3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular and unnecessary hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out;*

Quantitatively evaluating runoff from the site would create an unnecessary hardship to the owner as the site has already been substantially constructed in accordance with their original approvals, for which the stormwater runoff associated with construction of Unit 1 would have already been evaluated and accounted for. To revisit this element and provide supplemental calculations, at the expense of the owner, that are inconsistent with the original approval does provide a benefit to the City, the public or the owner.

- 4. Specific circumstances relative to the site plan or conditions of the land where a site plan is proposed indicate that the waiver will properly carry out, or not be contrary to, the spirit and intent of these regulations; and*

Adequate drainage infrastructure was previously approved by the Planning Board for the subject site (including Unit 1's construction), with the drainage infrastructure constructed per the approved plan, and operating as intended. Allowing existing drainage infrastructure to treat and convey stormwater and was originally approved is not contrary to the spirit and intent of the regulations.

- 5. The waiver will not in any manner vary the provisions of the Zoning Ordinance, Master Plan Reports, or Official Map.*

This waiver request does not contravene any other provisions of the Ordinance, Master Plan Reports, or Official Map.

Thank you for considering this request. Please advise if you need any additional information in support of this waiver.

Sincerely
TFMoran, Inc.

Jonathan Devine, E.I.T
Project Engineer



Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
 Landscape Architects
 Scientists



March 18th, 2025

AnneMarie Skinner, City Planner
 City of Concord Community Development
 Planning Division
 41 Green Street
 Concord NH, 03301

**Re: Drainage Study
 Unit 1 Construction and Condominium Subdivision
 313 Loudon Road
 (Map-Lots: 46Z-63 GWP)**

Dear AnneMarie,

TFMoran has conducted a drainage evaluation for the construction of Unit 1 at the above referenced property and has prepared the following narrative to summarize.

Narrative:

On March 16th, 2011, the Concord Planning Board conditionally approved a Site Plan for a 11,650 sf. building at 313 Loudon Road. The approved building was comprised of two units: Unit 1 – 1,800 sf. and Unit 2 – 9,850 sf., of which only Unit 2, which now operates as a Dollar Tree retail store, was constructed. Relative to the proposed site improvements, the owner is seeking to construct the beforementioned Unit 1 (1,800 sf.) within the area that was originally proposed.

The entirety of the proposed site was evaluated and permitted during that site plan review by the City. The drainage infrastructure was built per plan. There is an existing drainage treatment practice on the “Texas Roadhouse” parcel of the condominium land unit (46Z-62).

Stormwater from the uses on the parcels is collected in a drainpipe network composed of catchbasins, manholes, and storm drainpipes. Stormwater collected in the drainpipe network is directed through the existing pipe network to the existing subsurface detention/infiltration system. The subsurface system was constructed under the original permit and development plan: it was sized to accommodate the build-out condition of the subject parcel. The stormwater discharged from the subsurface system is directed to the abutting parcel (46Z-60) via a drainage easement then into the closed drainage system in Loudon Road. There are no proposed changes to the existing BMPs.

The roof will drain into the existing lot and follow the existing gutter line into CB1707.

In that the proposed building construction is within the area of prior approval, this

TFMoran, Inc.
 48 Constitution Drive, Bedford, NH 03110
 NH 03801
 T(603) 472-4488 www.tfmoran.com

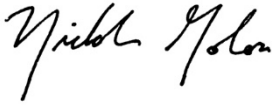


TFMoran, Inc. Seacoast Division
 170 Commerce Way–Suite 102, Portsmouth,
 T(603) 431-2222

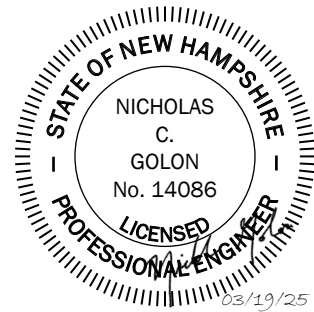
impervious area is appropriately accounted for in the design of the existing stormwater management system. As such, we would not anticipate an increase in the peak rate or volumes of stormwater runoff associated with the site in comparison to what was originally approved by the Planning Board, also noting that the construction of Unit 1 will not alter existing drainage flow paths.

We believe the above narrative is consistent with the expectations as outlined in Section 16.02(12)(b) of the site plan regulations, and the level of evaluation provided is appropriate given the limited nature of the proposed improvements. Should there be any questions or concerns in regard to this study or the project in general please do not hesitate to contact the undersigned at 472-4488 or ngolon@tfmoran.com.

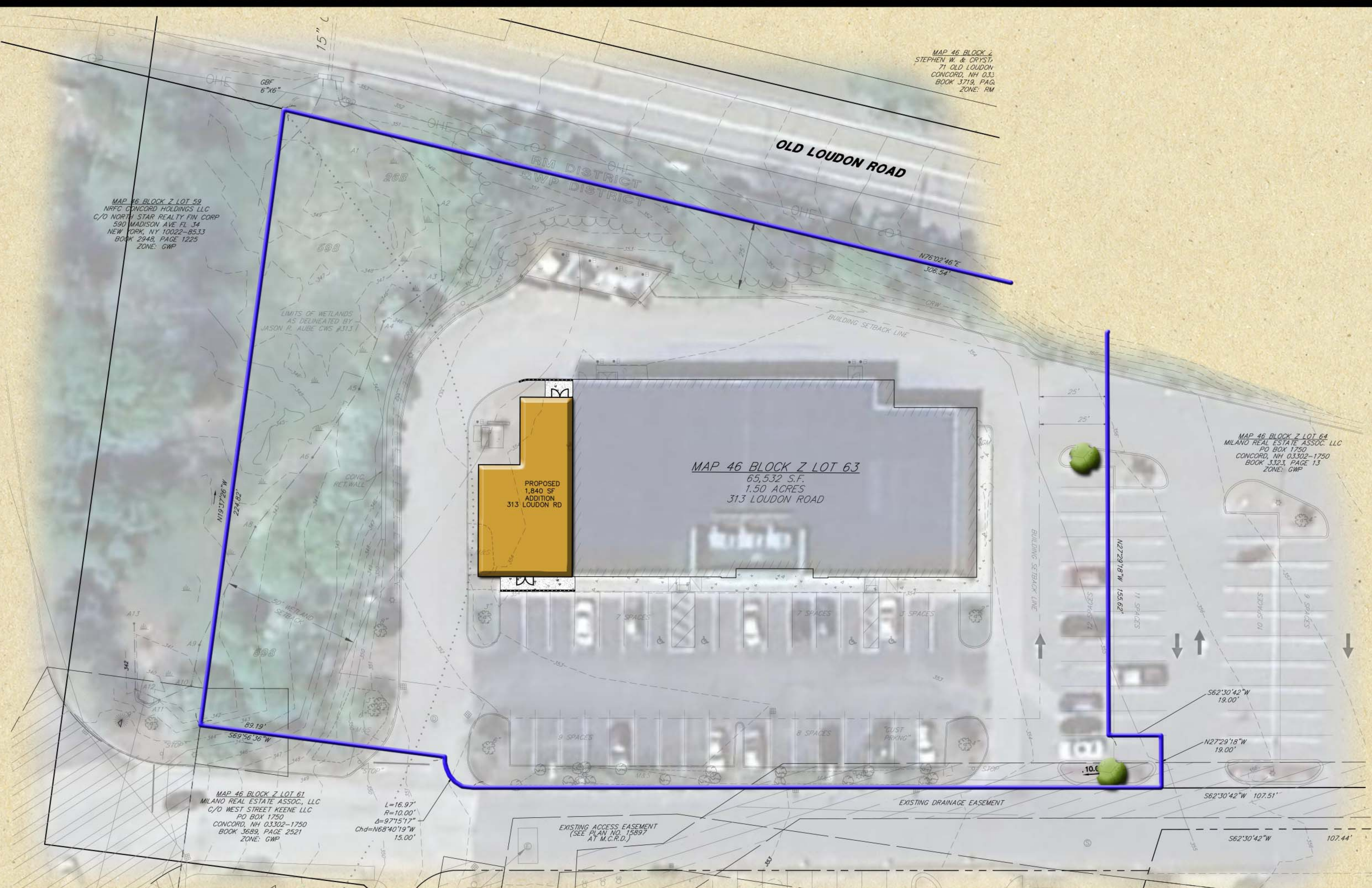
Sincerely,
TFMoran, Inc.



Nicholas Golon, P.E.
Civil Department Manager, Principal



Mar 17, 2025 - 8:02pm
F:\TFM Projects\95478 Milano-Loudon\95478-06 West St Keene - Site Plan\95478-06 C3D\PRODUCTION\95478-06 SITE.dwg



MAP 46 BLOCK 2 LOT 59
MFC CONCORD HOLDINGS LLC
C/O NORTH STAR REALTY FIN CORP
590 MADISON AVE FL 34
NEW YORK, NY 10022-8533
BOOK 294B, PAGE 1225
ZONE: GWP

MAP 46 BLOCK 2
STEPHEN W. & CRYST
71 OLD LOUDON
CONCORD, NH 033
BOOK 3719, PAGE
ZONE: RM

LIMITS OF WETLANDS
AS DELINEATED BY
JASON R. AUBE CWS #313

MAP 46 BLOCK 2 LOT 63
65,532 S.F.
1.50 ACRES
313 LOUDON ROAD

PROPOSED
1,840 SF
ADDITION
313 LOUDON RD

MAP 46 BLOCK 2 LOT 64
MILANO REAL ESTATE ASSOC. LLC
PO BOX 1750
CONCORD, NH 03302-1750
BOOK 3323, PAGE 13
ZONE: GWP

MAP 46 BLOCK 2 LOT 61
MILANO REAL ESTATE ASSOC. LLC
C/O WEST STREET KEENE LLC
PO BOX 1750
CONCORD, NH 03302-1750
BOOK 3689, PAGE 2521
ZONE: GWP

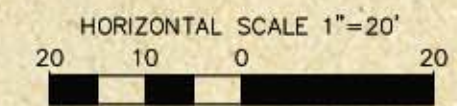
EXISTING ACCESS EASEMENT
(SEE PLAN NO. 15897
AT M.C.R.D.)

REFERENCE PLANS

1. APPROVED SITE PLAN ENTITLED "TAX MAP 111F, BLOCK 2, LOTS 6 & 12, SITE PLAN - RETAIL DEVELOPMENT, 313 & 317 LOUDON ROAD, CONCORD, NH PREPARED FOR MILANO REAL ESTATE ASSOC. LLC, SCALE 1"=40', DATED JULY 21, 2006, LAST REVISED 9/18/06" PREPARED BY THIS OFFICE.
2. MERRIMACK COUNTY REGISTRY OF DEEDS PLANS:
17576, 16903, 15994, 15909, 15897, 16809.

TAX MAP 46Z LOT 63
SITE, GRADING, UTIL. & STORMWATER MGMT. PLAN
RETAIL DEVELOPMENT
313 LOUDON ROAD, CONCORD, NH
 OWNED BY AND PREPARED FOR:
WEST STREET KEEN LLC
47 CONSTITUTION DRIVE, SUITE 101
BEDFORD, NH 03110-6003

MARCH 19, 2025



REV	DATE	DESCRIPTION	DR	CK

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 48 Constitution Drive, Bedford, N.H. 03110

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This plan is not effective unless signed by a duly authorized officer of TFMoran, Inc.



APPROVED
 UNDER THE PROVISIONS OF R.S.A. 674:35 & R.S.A. 674:36
CITY PLANNING BOARD
 CITY OF CONCORD, NEW HAMPSHIRE
 In accordance with vote of the board dated:

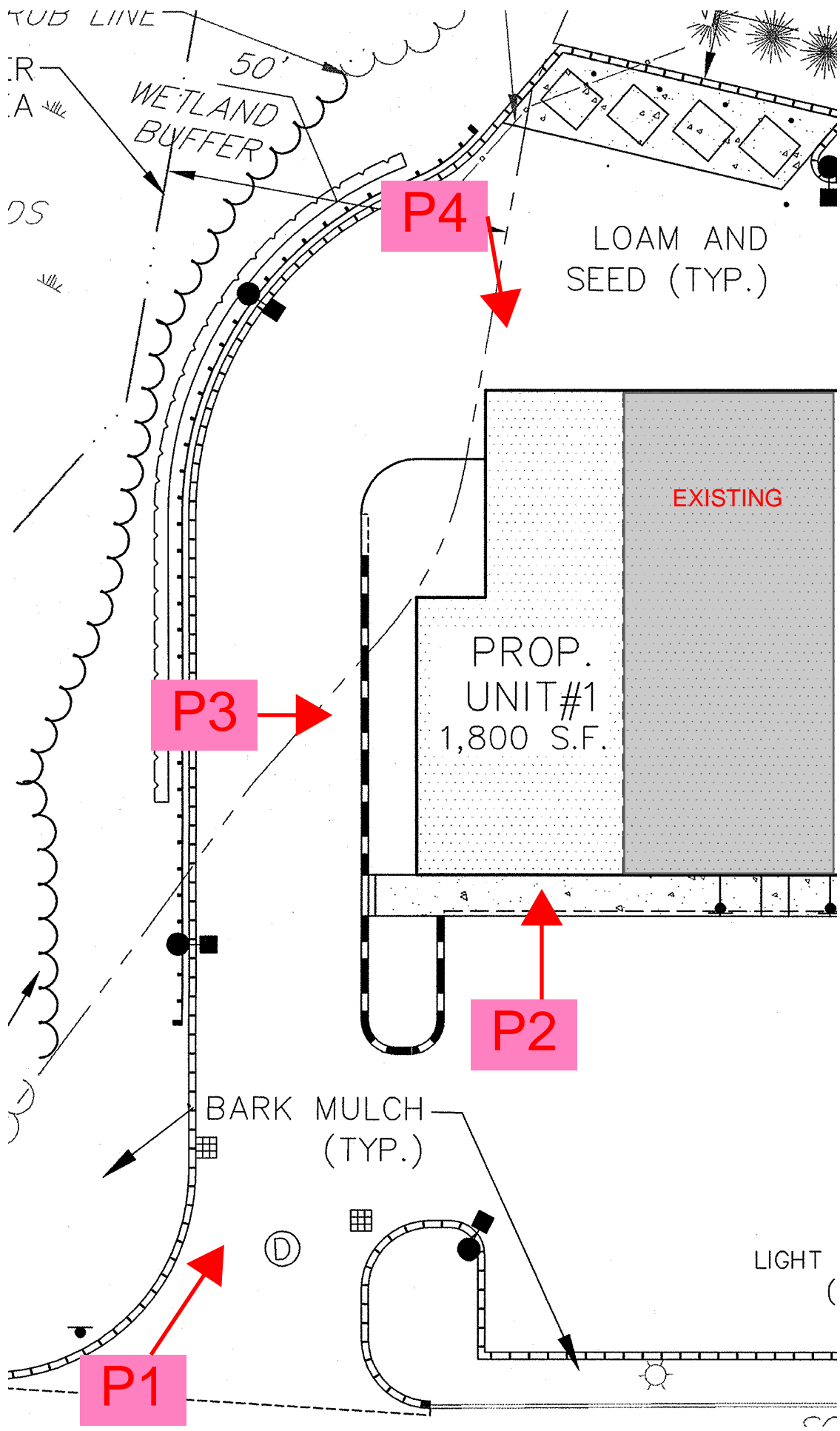
Approval of this plan is limited to the lots as shown.

Chdr _____ Clerk _____

TFM Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
 Landscape Architects
 Scientists

48 Constitution Drive
 Bedford, NH 03110
 Phone (603) 472-4488
 Fax (603) 472-9747
 www.tfmoran.com

F 95478.06 DR CK CADFILE 95478-06 SITE C-3



P1: EXISTING UNIT 2 AND FACE OF BUILDING FOR ADDITION



P2: FACING NORTH ALONG FACE OF BUILDING FOR ADDITON.



P3: AREA OF ADDITON FROM A WEST TO EAST POINT OF VIEW.



P4: FACING SOUTH ALONG FACE OF BUILDING FOR ADDITON.



Vol/Page: 2635/13
Doc#: 553831
Date: 03/22/2004
Time: 01:07:00 PM

Doc# 552239
Book: 2630
Pages: 1442 - 1462
Filed & Recorded
03/08/2004 01:47:14 PM
KATHI L. GUAY, CPD, REGISTER

MERRIMACK COUNTY REGISTRY OF DEEDS
RECORDING \$ 90.00
SURCHARGE \$ 2.00
POSTAGE \$ 1.06

6
R. D'Amore

91.06 91.06
2-
Rerecord

~~Book 2630 Page 1442~~

Book 2635 Page 13

RECIPROCAL EASEMENT AGREEMENT

(Utility Easement)

40.00

THIS RECIPROCAL EASEMENT AGREEMENT (this "REA") made as of the 8th day of March, 2004, by and between **LaPunta, LLC**, a New Hampshire limited liability company with an address of 478 Woodlands Road, Alton Bay, New Hampshire 03801 (hereinafter referred to as "LAPUNTA"), **RT New Hampshire Restaurant Holdings, LLC**, a Delaware limited liability company with an address of 150 West Church Street, Maryville, Tennessee 37801 (hereinafter referred to as "RTNH") and **Milano Real Estate Associates, LLC**, a New Hampshire limited liability company with an address of 9 Triangle Park Drive, P.O. Box 1750, Concord, New Hampshire 03302-1750 (hereinafter referred to as "MILANO") (MILANO, LAPUNTA and RTNH are each hereinafter sometimes individually referred to as the "Party" and sometimes hereinafter collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, LAPUNTA is the fee simple owner of a certain parcel of land located in the City of Concord, County of Merrimack, State of New Hampshire on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 5, said parcel located westerly of and adjacent to the RTNH Parcel and easterly of and adjacent to the Milano Parcel, said LaPunta Parcel more particularly described in deed of Robert D. Haverty and Roy B. Craft, Trustees of K.D. Realty Trust to LaPunta, LLC dated May 8, 2002 and recorded in the MCRD at Book 2372, Page 801 (said parcel hereinafter called the "LaPunta Parcel"); and

Milano - Milano/LaPunta/RTNH Utility Easement

STATE OF NEW HAMPSHIRE	
DEPARTMENT OF REVENUE ADMINISTRATION	REAL ESTATE TRANSFER TAX
THOUSAND _____ HUNDRED AND _____ DOLLARS	
03/22/2004	646889 \$ 40
VOID IF ALTERED	

WHEREAS, RTNH is the fee simple owner of a certain parcel of land located in the City of Concord, County of Merrimack, State of New Hampshire located on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 4, said parcel located easterly of and adjacent to the LaPunta Parcel and the Milano Parcel, said RTNH Parcel more particularly described in deed of LaPunta, LLC to RT New Hampshire Restaurant Holdings, LLC dated June 7, 2002 and recorded in the MCRD at Book 2373, Page 1785 (said parcel hereinafter called the "RTNH Parcel"); and

Book 2635 Page 14

WHEREAS, MILANO is the fee simple owner of a certain parcel of land located in the City of Concord, County of Merrimack, State of New Hampshire located on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 6, said parcel located westerly of and adjacent to the LaPunta Parcel and the RTNH Parcel, said Milano Parcel more particularly described in deed of Estate of Miriam S. Tilton to Milano Real Estate Associates, LLC dated December 29, 1998 and recorded in the MCRD at Book 2134, Page 1756 and deed of F.C.M., LLC and Robert D. Haverty and Roy B. Craft, Trustees of KD Realty Trust to Milano Real Estate Associates, LLC dated May 15, 2002 and recorded in the MCRD at Book 2372, Page 657 (said parcel hereinafter called the "Milano Parcel"); and

WHEREAS, the LaPunta Parcel, the RTNH Parcel and the Milano Parcel are hereinafter sometimes individually referred to as the "Respective Parcel" and are sometimes collectively referred to as the "Respective Parcels"; and

WHEREAS, LAPUNTA, RTNH and MILANO are each willing to grant to the other Parties non-exclusive, perpetual utility easements (individually, a "Utility Easement" and collectively, the "Utility Easements") to the Respective Parcels in, on, to, under, along and across the Easement Areas (as hereinafter defined) on the other Party's Parcel for installation, operation, flow, passage, use, maintenance, connection, repair, removal and reconstruction of utility lines serving the other Parties' Parcels for the purposes set forth herein (collectively, the "Utility Lines"); and

WHEREAS, the area on the Milano Parcel over which the Electric Easement is granted is the area of the Milano Parcel described on Exhibit A hereto, the area on the Milano Parcel over which the Water Easement and Gas Easement is granted is area of the Milano Parcel described on Exhibit B hereto, the area on the Milano Parcel over which the Telephone Easement is granted is the area of the Milano Parcel described on Exhibit C hereto, the area on the LaPunta

Parcel over which the Electric Easement is granted is the area of the LaPunta Parcel described on Exhibit D hereto, the area on the LaPunta Parcel over which the Water Easement and Gas Easement is granted is the area of the LaPunta Parcel described on Exhibit E hereto, the area on the LaPunta Parcel over which the Telephone Easement is granted is the area of the LaPunta Parcel described on Exhibit F hereto, the area on the RTNH Parcel over which the Electric Easement is granted is the area of the RTNH Parcel described on Exhibit G hereto, the area on the RTNH Parcel over which the Water Easement and Gas Easement is granted is the area of the RTNH Parcel described on Exhibit H hereto, and the area on the RTNH Parcel over which the Telephone Easement is granted is the area of the RTNH Parcel described on Exhibit I hereto; and

Book 2635 Page 15

WHEREAS, the Easements on the Respective Parcels are hereinafter referred to as the "Easement Areas"; and

WHEREAS, the Parties hereby enter into this REA for the benefit of their Respective Parcels, said Easements to run with title to the Respective Parcels, and shall be binding on the Parties and their respective heirs, executors, administrators, successors, grantees and assigns; and

WHEREAS, the Parties intend to set forth in this REA their rights, obligations, duties and responsibilities in connection with the Easements over their Respective Parcels, and to make other covenants and agreements with each other as hereinafter more specifically set forth.

NOW THEREFORE, in consideration of the foregoing promises and the mutual covenants contained herein, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and consideration of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. The above recitals are incorporated into this REA as part of and to facilitate the understanding of the provisions contained herein.
2. MILANO, LAPUNTA and RTNH, in consideration of the foregoing and the mutual covenants contained herein, grant each to the other, with **QUITCLAIM COVENANTS**, and reserve as appurtenant to and for the benefit of their Respective Parcels, the perpetual, non-exclusive right and easement in, on, to, under, along and across the Easement Areas as they are located on portions of their Respective Parcels for the installation, operation, flow, passage, use, maintenance, connection, repair, removal and reconstruction of (i) electric lines serving the other

Parties' Parcels in, on, to, under, along and across the Electric Easement Areas, (ii) water lines and gas lines serving the other Parties' Parcels in, on, to, under, along and across the Water and Gas Easement Areas and (iii) telephone lines serving the other Parties' Parcels in, on, to, under, along and across the Telephone Easement Areas, including slope, embankment and setback easements necessary to enjoy the Easements granted herein, as approved by the required governmental authorities and as shown on those certain plans entitled "Telephone, Sewer and Drain Easement Plan, Loudon Road & Old Loudon Road, Concord, New Hampshire, Prepared For Milano Real Estate Assoc., LLC – LaPunta, LLC – RTNH Restaurant Holdings, LLC, Sheet 1 of 2" dated February 5, 2004, prepared by TFMoran, Inc. and "Electric, Water and Access Easement Plan, Loudon Road & Old Loudon Road, Concord, New Hampshire, Prepared For Milano Real Estate Assoc., LLC - LaPunta, LLC – RTNH Restaurant Holdings, LLC, Sheet 2 of 2" dated February 5, 2004, prepared by TFMoran, Inc. The area on the Milano Parcel over which the Electric Easement is granted is the area of the Milano Parcel described on Exhibit A hereto, the area on the Milano Parcel over which the Water Easement and Gas Easement is granted is area of the Milano Parcel described on Exhibit B hereto, the area on the Milano Parcel over which the Telephone Easement is granted is the area of the Milano Parcel described on Exhibit C hereto, the area on the LaPunta Parcel over which the Electric Easement is granted is the area of the LaPunta Parcel described on Exhibit D hereto, the area on the LaPunta Parcel over which the Water Easement and Gas Easement is granted is the area of the LaPunta Parcel described on Exhibit E hereto, the area on the LaPunta Parcel over which the Telephone Easement is granted is the area of the LaPunta Parcel described on Exhibit F hereto, the area on the RTNH Parcel over which the Electric Easement is granted is the area of the RTNH Parcel described on Exhibit G hereto, the area on the RTNH Parcel over which the Water Easement and Gas Easement is granted is the area of the RTNH Parcel described on Exhibit H hereto, and the area on the RTNH Parcel over which the Telephone Easement is granted is the area of the RTNH Parcel described on Exhibit I hereto. MILANO, LAPUNTA and RTNH hereby waive, to the extent legally permitted, any setback requirements customarily appropriate from their respective property lines in order to permit the construction of the Utility Lines within the Utility Easement Areas.

3. The Parties each grant to the other, in order to permit the full enjoyment of the easement rights herein granted, temporary construction easements to construct the utilities noted herein, and easements over the Easement Areas of their Respective Parcels to repair and maintain the utilities within the Easement Areas, subject to the limitations set forth herein. The Parties agree to revise the descriptions of the Easement Areas to reflect the actual locations of the

Easement Areas upon completion of initial construction on the Respective Parcels. Each Party shall have the right, at its sole cost and expense, to relocate the Easement Area(s) and Utility Lines and utility improvements therein on its Respective Parcel to accommodate its final building layout, provided such relocation maintains the continuity of the Utility Easement Areas and Utility Lines between and among the Respective Parcels and does not materially alter the other Parties' rights herein. Following the construction of the initial improvements on the Respective Parcels, each Party shall also have the right, at its own cost and expense, to relocate the Easement Area(s) and Utility Lines and utility improvements within on its Respective Parcel at any time, provided such relocation maintains the continuity of the Easement Areas between and among the Respective Parcels and does not materially alter the other Party's rights herein. Upon the relocation of any Easement Area for any reason set forth herein, the Parties shall execute and record an amendment to this REA setting forth the description of the revised Easement Area and terminating the prior easement area no longer being used.

4. It shall be the responsibility of each Party, its heirs, executors, administrators, successors, grantees and assigns, to install, repair, maintain and replace in good order, repair and condition (herein "Maintain", "Maintaining" or "Maintenance") the Utility Lines serving such Party's Parcel within the Utility Easement Areas. With regard to Utility Line(s) serving more than one Party, the Parties utilizing such Utility Line(s) shall split evenly the costs to Maintain such Utility Line(s).

5. If any Party fails to fulfill its Maintenance obligations as set forth herein, the other Parties shall, after written notice and no corrective action within thirty (30) days following delivery of such written notice to such Party (unless such repairs will take more than thirty (30) days to complete but are commenced by the responsible Party within such thirty (30) day period), except for emergencies which can be corrected immediately, have the right to enter onto the Easement Area(s) for the purposes of Maintaining the Easement Area(s) and/or Utility Line(s) that are the obligation of said other Party or Parties. All costs associated with said Maintenance shall be the obligation of the Party with the responsibility to do so hereunder, and the acting Party shall be reimbursed for the cost thereof plus interest at the Prime Rate of the Chase Manhattan Bank plus two percent (2%) within thirty (30) days after receipt of a statement from the other Parties with supporting invoices.

6. The Parties agree that MILANO, LAPUNTA and RTNH shall enter into a construction contract with a contractor to construct the Utility Line(s) on the Respective Parcels.

The Parties further agree that such Utility Line(s) shall be installed by a contractor jointly selected by the Parties, and such contractor's invoices shall be separately invoiced to each Party and paid by each Party according to such Party's obligations as more particularly set forth in Section 4 herein. If the Parties cannot agree on the selection of the contractor, MILANO shall have the right to select the contractor with regard to any such work performed on the Milano Parcel, LAPUNTA shall have the right to select the contractor with regard to any such work performed on the LaPunta Parcel and RTNH shall have the right to select the contractor with regard to any such work performed on the RTNH Parcel. Should any Party fail to pay said contractor(s), the other Parties shall have the right, but not the obligation, to make full payment to the contractor(s) and to place a lien upon the non-paying Party's Respective Parcel for reimbursement of any such payments made to such contractor. In addition, failure to pay such amount shall entitle the paying Party to interest on such amount at the Prime Rate of the Chase Manhattan Bank plus two percent (2%) until paid. The Parties expressly agree that each Party shall have the right, but not the obligation, to utilize the Easements set forth herein for the purposes set forth herein. No Party shall be obligated to pay any portion of any construction or any other costs for Utility Easement Areas or Utility Lines unless such Party utilizes such Utility Easement Areas or Utility Lines as set forth herein.

7. After construction and/or Maintenance performed by any Party on Utility Lines and utility improvements serving that Party's Parcel, such Party shall, at such Party's expense, return the disturbed Easement Area to its original appearance and condition insofar as is reasonably possible, including paving, curbing, striping, landscaping, replanting of trees, shrubs, bushes and sod covering; provided, however, with regard to Utility Lines and utility improvements serving more than one Party, the Parties utilizing such Easements shall split evenly such costs. Any construction and/or Maintenance performed by any Party shall not materially interfere with the access, business and operations of the other Party's Respective Parcel(s).

8. This REA is subject to all matters of record on the Respective Parcels. However, any mortgage or other liens on a Party's Respective Parcel shall be subordinated to and subject to this REA such that the Easement shall survive any foreclosure, deed in lieu of foreclosure or similar action.

9. The rights and easements herein granted and reserved are not exclusive and shall extend to the Parties, their heirs, executors, administrators, successors, grantees and assigns in

perpetuity. Upon sale or transfer of any Respective Parcel burdened or benefited hereby, by a Party or a Party's heirs, executors, administrators, successors, grantees or assigns, the Easements herein shall run with the land and the grantee of that sale or transfer shall become liable for the future performance of all obligations hereunder with respect to such burdened or benefited parcel and the grantor of that sale or transfer shall automatically be relieved therefrom for matters arising on or after the date of said sale or transfer. The Easements herein granted shall only encumber the Easement Areas and no other portion of the Respective Parcels.

10. The Easements in this REA shall be construed as covenants that shall benefit and run with title to the Respective Parcels and shall not be personal to the Parties.

11. Any notice, report or demand required, permitted or desired to be given under this REA shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is sent to the addresses set forth for each Party herein and the addresses set forth below by personal or courier delivery or mailed by registered or certified mail return receipt requested, to the Parties at such address or as the respective Parties may from time to time designate by like notice, upon delivery if given by personal or courier delivery or, if mailed, on the third business day following the date of such mailing, provided the sending Party receives evidence of delivery. Each Party shall send copies of default notices to the other Party's lender upon receipt of written notice of such lender's name and address requesting that such notices be sent. Copies of all such notices, reports or demands shall be sent to:

If to LAPUNTA: Bernard W. Pelech, Esq.
 Wholey & Pelech
 55 Congress Street, Suite B
 P.O. Box 395
 Portsmouth, New Hampshire 03802-0395

and

Robert Haverty
478 Woodlands Road
Alton Bay, New Hampshire 03810

If to RTNH: RT New Hampshire Restaurant Holdings, LLC
150 West Church Street
Maryville, Tennessee 37801

If to MILANO: Richard A. D'Amante, President
D'Amante Consulting Group
357 Boston Road
Billerica, Massachusetts 01821

and

Raymond P. D'Amante, Esq.
The D'Amante Law Offices, P.A.
9 Triangle Park Drive
P.O. Box 1750
Concord, New Hampshire 03302-1750

12. Each of the Parties shall continuously maintain in full force and effect, at each Party's expense, a policy of comprehensive commercial general liability insurance with minimum limits of liability of One Million Dollars (\$1,000,000.00) covering such Party's operations and use of the Easement Area(s), including commercial automobile liability coverage. All insurance shall name the other Parties and the other Parties' mortgagees as additional insureds and shall be carried with responsible insurance companies rated by Best's Insurance Reports as not less than A-IX and authorized to do business in the State of New Hampshire. Each Party shall deliver to the other Parties a certificate of such policies and renewal certificates at least thirty (30) days prior to the expiration of the existing policy. Such policies shall contain a provision that the same cannot be reduced in coverage to less than the aforesaid limits nor cancelled without thirty (30) days prior notice to the other Parties and the other Parties' mortgagees. The limits of liability set forth herein shall be subject to increase at the reasonable discretion of the Parties.

MEANING AND INTENDING to describe and convey reciprocal easements as applicable through the Easement Areas upon portions of the Milano Parcel, the LaPunta Parcel and the RTNH Parcel as hereinabove noted.

This REA shall be construed in accordance with the laws of the State of New Hampshire.

Nothing in this REA shall be construed to make the Parties hereto partners or joint venturers or render any of such Parties liable for the debts or obligations of the other.

This REA may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the Parties to this REA or their heirs, executors, administrators, successors, grantees or assigns. In the event this REA is amended or modified in any manner, such amendment shall be recorded in the MCRD. This Easement shall not be otherwise amended, modified or terminated.

If any term or provision of this REA or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this REA or the application of such terms or provisions 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 REA shall be valid and enforceable to the fullest extent permitted by law.

The Respective Parcels are not the homestead properties of the Parties hereto.

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MCRD

Executed this 8th day of March, 2004 by, between and among:

**MILANO REAL ESTATE
ASSOCIATES, LLC**

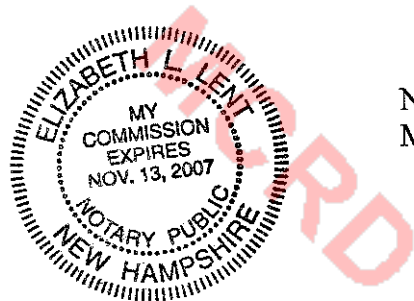
Elizabeth L Lent
(Witness)

By: [Signature]
Michael A. D'Amante
Its Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 8th day of March, 2004, before me, personally appeared Michael A. D'Amante, who acknowledged himself to be the Manager of **MILANO REAL ESTATE ASSOCIATES, LLC**, a New Hampshire limited liability company, and that he, as such Manager, being authorized to do so, executed the foregoing instrument for the purposes contained therein, by signing the name of the limited liability company himself as Manager.

In witness whereof I hereunto set my hand and official seal.



Elizabeth L Lent
Notary Public/Justice of the Peace
My Commission Expires:

LAPUNTA, LLC

Elizabeth L Lents
(Witness)

By: Robert Haverly
Name: Robert Haverly
Its Member
Duly Authorized

STATE OF New Hampshire
COUNTY OF Merrimack

On this the 24 day of June, 2003, before me, personally appeared Robert Haverly, who acknowledged himself to be a Member of LAPUNTA, LLC, a New Hampshire limited liability company, and that he, as such Member, being authorized to do so, executed the foregoing instrument for the purposes contained therein, by signing the name of the limited liability company himself as Member.

In witness whereof I hereunto set my hand and official seal.



Elizabeth L Lents
Notary Public/Justice of the Peace
My Commission Expires: 11/13/07

RT NEW HAMPSHIRE RESTAURANT HOLDINGS, LLC

Francis L. Bailey
(Witness)

By: Daniel T. Cronk
Name: Daniel T. Cronk
Its ~~Member~~ Vice President
Duly Authorized

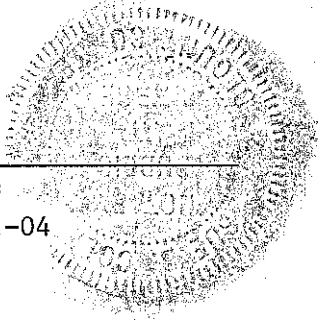


STATE OF TENNESSEE
COUNTY OF BLOUNT

On this the 17th day of June, 2003, before me, personally appeared Daniel T. Cronk, who acknowledged himself/herself to be ~~a Member~~ of **RT NEW HAMPSHIRE RESTAURANT HOLDINGS, LLC**, a Delaware limited liability company, and that he/she, as such ~~Member~~, being authorized to do so, executed the foregoing instrument for the purposes contained therein, by signing the name of the limited liability company himself/herself as ~~Member~~.
* Vice President

In witness whereof I hereunto set my hand and official seal.

Sue B. Colby
Notary Public/Justice of the Peace
My Commission Expires: 11-01-04



MCRD

EXHIBIT A

Milano Parcel - Electric Easement Description

Beginning at a point, said point being N 63°53' 36" E a distance 148.28' from the southwesterly corner of the Milano Parcel to the point of beginning:

Thence running N 54°28' 03" W for a distance of 43.59' to a point;

Thence running N 33°10' 24" W for a distance of 43.69' to a point;

Thence running N 18°02' 02" W for a distance of 160.75' to a point;

Thence running N 61°11' 16" E for a distance of 59.50' to a point;

Thence running N 70°59' 33" E for a distance of 135.33' to a point;

Thence running N 69°26' 18" E for a distance of 35.91' to a point;

Thence running S 09°51' 31" E along the property line for a distance of 20.35' to a point;

Thence running S 69°26' 18" W for a distance of 32.40' to a point;

Thence running S 70°59' 33" W for a distance of 133.89' to a point;

Thence running S 61°11' 16" W for a distance of 41.39' to a point;

Thence running S 20°01' 41" E for a distance of 172.31' to a point;

Thence running S 54°28' 03" E for a distance of 57.19' to a point;

Thence running S 63°53' 36" W along the property line a distance of 22.73' to the point of beginning.

Containing 9,512 Sq. Ft. or 0.22 Ac. +/-

EXHIBIT B

Milano Parcel - Water and Gas Easement Description

Beginning at a point, said point being N 76°02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27°29' 18" E a distance of 159.17' to the point of beginning:

Thence running S 62°30' 42" W for a distance of 107.44' to a point;

Thence running N 27°04' 44" W for a distance of 14.49' to a point;

Thence running N 62°55' 16" E for a distance of 107.34' to a point;

Thence running S 27°29' 18" E for a distance of 13.72' to the point of beginning.

Containing 1,515 Sq. Ft. or 0.03 Ac. +/-

MCRD

Milano Parcel - Telephone Easement Description

Beginning at a point, said point being N 76°02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27°29' 18" E a distance 159.17' to the point of beginning:

Thence running S 62°30' 42" W a distance of 11.17' to a point;

Thence running N 12°02' 10" W a distance of 41.94' to a point;

Thence running along the property line S 27°29' 18" E a distance of 40.42' to the point of beginning.

Containing 226 Sq. Ft. or 0.01 Ac. +/-

MCRD

LaPunta Parcel - Electric Easement Description

Beginning at a point, said point being N 76°02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27°29' 18" E a distance of 159.17' to a point, thence S 62°30' 42" W a distance of 107.44' to a point, thence S 09°51' 31" E a distance of 19.22' to the point of beginning:

Thence running N 69°26' 18" E for a distance of 105.89' to a point;

Thence running N 66°28' 53" E for a distance of 56.25' to a point;

Thence running S 09°31' 05" E along the property line for a distance of 20.61' to a point;

Thence running S 66°28' 53" W for a distance of 51.78' to a point;

Thence running S 69°26' 18" W for a distance of 110.19' to a point;

Thence running N 09°51' 31" W along the property line for a distance of 20.35' to the point of beginning.

Containing 3,241 Sq. Ft. or 0.07 Ac. +/-

MCRD

EXHIBIT E

LaPunta Parcel - Water and Gas Easement Description

Beginning at a point, said point being N 76° 02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27° 29' 18" E a distance of 159.17' to the point of beginning:

Thence running S 62° 30' 42" W for a distance of 107.44' to a point;

Thence running S 09° 51' 31" E for a distance of 5.77' to a point;

Thence running N 62° 55' 16" E for a distance of 129.99' to a point;

Thence running N 26° 06' 24" W for a distance of 6.43' to a point;

Thence running S 62° 30' 42" W a distance of 20.95' to the point of beginning.

Containing 694 Sq. Ft or 0.02 Ac. +/-

MCRD

LaPunta Parcel - Telephone Easement Description

Beginning at a point, said point being N 76° 02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27° 29' 18" E a distance of 159.17' to a point, thence N 62° 30' 42" E a distance of 9.58' to the point of beginning:

Thence running S 12° 02' 10" E for a distance of 33.04' to a point;

Thence running N 68° 38' 49" E for a distance of 10.13' to a point;

Thence running S 12° 02' 10" E for a distance of 20.27' to a point;

Thence running S 68° 38' 49" W for a distance of 126.00' to a point;

Thence running along the property line N 09° 51' 31" W for a distance of 20.41' to a point;

Thence running N 68° 38' 49" E for a distance of 94.82' to a point;

Thence running N 12° 02' 10" W for a distance of 30.79' to a point;

Thence running along the property line N 62° 30' 42" E for a distance of 20.74' to the point of beginning.

Containing 3,151 Sq. Ft. or 0.07 Ac. +/-

MCRD

EXHIBIT G

RTNH Parcel - Electric Easement Description

Beginning at a point, said point being N 76° 02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27° 29' 18" E a distance of 159.17' to a point, thence N 62° 30' 42" E a distance of 59.32' to a point, thence S 09° 31' 05" E a distance of 36.77' to the point of beginning:

Thence running N 66° 28' 53" E for a distance of 64.95' to a point;

Thence running S 14° 18' 42" E for a distance of 20.27' to a point;

Thence running S 66° 28' 53" W for a distance of 66.70' to a point;

Thence running N 09° 31' 05" W for a distance of 20.61' to the point of beginning.

Containing 1,349 Sq. Ft. or 0.03 Ac. +/-

MCRD

RTNH Parcel - Water and Gas Easement Description

Beginning at a point, said point being N 76° 02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to the point of beginning:

Thence running N 76° 02' 46" E for a distance of 51.67' to a point;

Thence running S 12° 02' 10" E for a distance of 105.84' to a point;

Thence running S 26° 06' 24" E for a distance of 45.07' to a point;

Thence running S 62° 30' 42" W for a distance of 20.95' to a point;

Thence running N 27° 29' 18" W for a distance of 159.17' to the point of beginning.

Containing 4,702 Sq. Ft. or 0.11 Ac. +/-

MCRD

EXHIBIT I

RTNH Parcel - Telephone Easement Description

Beginning at a point, said point being N 76°02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to the point of beginning:

Thence running N 76°02' 46" E for a distance of 51.67' to a point;

Thence running S 12°02' 10" E for a distance of 152.59' to a point;

Thence running S 62°30' 42" W for a distance of 9.58' to a point;

Thence running N 27°29' 18" W for a distance of 159.17' to the point of beginning.

Containing 4,702 Sq. Ft. or 0.11 Ac. +/-

MCRD

MERRIMACK COUNTY RECORDS

Kath: L. Gray, CPO, Register

Vol/Page: 2635/13
Doc#: 553831
Date: 03/22/2004
Time: 01:07:00 PM

Doc# 552239
Book: 2630
Pages: 1442 - 1462
Filed & Recorded
03/08/2004 01:47:14 PM
KATHI L. GUAY, CPD, REGISTER

MERRIMACK COUNTY REGISTRY OF DEEDS
RECORDING \$ 90.00
SURCHARGE \$ 2.00
POSTAGE \$ 1.06

6
R. D'Amore

91.06 91.06
2-
Rerecord

~~Book 2630 Page 1442~~

Book 2635 Page 13

RECIPROCAL EASEMENT AGREEMENT

(Utility Easement)

40.00

THIS RECIPROCAL EASEMENT AGREEMENT (this "REA") made as of the 8th day of March, 2004, by and between **LaPunta, LLC**, a New Hampshire limited liability company with an address of 478 Woodlands Road, Alton Bay, New Hampshire 03801 (hereinafter referred to as "LAPUNTA"), **RT New Hampshire Restaurant Holdings, LLC**, a Delaware limited liability company with an address of 150 West Church Street, Maryville, Tennessee 37801 (hereinafter referred to as "RTNH") and **Milano Real Estate Associates, LLC**, a New Hampshire limited liability company with an address of 9 Triangle Park Drive, P.O. Box 1750, Concord, New Hampshire 03302-1750 (hereinafter referred to as "MILANO") (MILANO, LAPUNTA and RTNH are each hereinafter sometimes individually referred to as the "Party" and sometimes hereinafter collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, LAPUNTA is the fee simple owner of a certain parcel of land located in the City of Concord, County of Merrimack, State of New Hampshire on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 5, said parcel located westerly of and adjacent to the RTNH Parcel and easterly of and adjacent to the Milano Parcel, said LaPunta Parcel more particularly described in deed of Robert D. Haverty and Roy B. Craft, Trustees of K.D. Realty Trust to LaPunta, LLC dated May 8, 2002 and recorded in the MCRD at Book 2372, Page 801 (said parcel hereinafter called the "LaPunta Parcel"); and

Milano - Milano/LaPunta/RTNH Utility Easement

STATE OF NEW HAMPSHIRE	
DEPARTMENT OF REVENUE ADMINISTRATION	REAL ESTATE TRANSFER TAX
40	
THOUSAND	HUNDRED AND DOLLARS
03/22/2004	646889 \$ 40
VOID IF ALTERED	

WHEREAS, RTNH is the fee simple owner of a certain parcel of land located in the City of Concord, County of Merrimack, State of New Hampshire located on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 4, said parcel located easterly of and adjacent to the LaPunta Parcel and the Milano Parcel, said RTNH Parcel more particularly described in deed of LaPunta, LLC to RT New Hampshire Restaurant Holdings, LLC dated June 7, 2002 and recorded in the MCRD at Book 2373, Page 1785 (said parcel hereinafter called the "RTNH Parcel"); and

Book 2635 Page 14

WHEREAS, MILANO is the fee simple owner of a certain parcel of land located in the City of Concord, County of Merrimack, State of New Hampshire located on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 6, said parcel located westerly of and adjacent to the LaPunta Parcel and the RTNH Parcel, said Milano Parcel more particularly described in deed of Estate of Miriam S. Tilton to Milano Real Estate Associates, LLC dated December 29, 1998 and recorded in the MCRD at Book 2134, Page 1756 and deed of F.C.M., LLC and Robert D. Haverty and Roy B. Craft, Trustees of KD Realty Trust to Milano Real Estate Associates, LLC dated May 15, 2002 and recorded in the MCRD at Book 2372, Page 657 (said parcel hereinafter called the "Milano Parcel"); and

WHEREAS, the LaPunta Parcel, the RTNH Parcel and the Milano Parcel are hereinafter sometimes individually referred to as the "Respective Parcel" and are sometimes collectively referred to as the "Respective Parcels"; and

WHEREAS, LAPUNTA, RTNH and MILANO are each willing to grant to the other Parties non-exclusive, perpetual utility easements (individually, a "Utility Easement" and collectively, the "Utility Easements") to the Respective Parcels in, on, to, under, along and across the Easement Areas (as hereinafter defined) on the other Party's Parcel for installation, operation, flow, passage, use, maintenance, connection, repair, removal and reconstruction of utility lines serving the other Parties' Parcels for the purposes set forth herein (collectively, the "Utility Lines"); and

WHEREAS, the area on the Milano Parcel over which the Electric Easement is granted is the area of the Milano Parcel described on Exhibit A hereto, the area on the Milano Parcel over which the Water Easement and Gas Easement is granted is area of the Milano Parcel described on Exhibit B hereto, the area on the Milano Parcel over which the Telephone Easement is granted is the area of the Milano Parcel described on Exhibit C hereto, the area on the LaPunta

Parcel over which the Electric Easement is granted is the area of the LaPunta Parcel described on Exhibit D hereto, the area on the LaPunta Parcel over which the Water Easement and Gas Easement is granted is the area of the LaPunta Parcel described on Exhibit E hereto, the area on the LaPunta Parcel over which the Telephone Easement is granted is the area of the LaPunta Parcel described on Exhibit F hereto, the area on the RTNH Parcel over which the Electric Easement is granted is the area of the RTNH Parcel described on Exhibit G hereto, the area on the RTNH Parcel over which the Water Easement and Gas Easement is granted is the area of the RTNH Parcel described on Exhibit H hereto, and the area on the RTNH Parcel over which the Telephone Easement is granted is the area of the RTNH Parcel described on Exhibit I hereto; and

Book 2635 Page 15

WHEREAS, the Easements on the Respective Parcels are hereinafter referred to as the "Easement Areas"; and

WHEREAS, the Parties hereby enter into this REA for the benefit of their Respective Parcels, said Easements to run with title to the Respective Parcels, and shall be binding on the Parties and their respective heirs, executors, administrators, successors, grantees and assigns; and

WHEREAS, the Parties intend to set forth in this REA their rights, obligations, duties and responsibilities in connection with the Easements over their Respective Parcels, and to make other covenants and agreements with each other as hereinafter more specifically set forth.

NOW THEREFORE, in consideration of the foregoing promises and the mutual covenants contained herein, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and consideration of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. The above recitals are incorporated into this REA as part of and to facilitate the understanding of the provisions contained herein.
2. MILANO, LAPUNTA and RTNH, in consideration of the foregoing and the mutual covenants contained herein, grant each to the other, with **QUITCLAIM COVENANTS**, and reserve as appurtenant to and for the benefit of their Respective Parcels, the perpetual, non-exclusive right and easement in, on, to, under, along and across the Easement Areas as they are located on portions of their Respective Parcels for the installation, operation, flow, passage, use, maintenance, connection, repair, removal and reconstruction of (i) electric lines serving the other

Parties' Parcels in, on, to, under, along and across the Electric Easement Areas, (ii) water lines and gas lines serving the other Parties' Parcels in, on, to, under, along and across the Water and Gas Easement Areas and (iii) telephone lines serving the other Parties' Parcels in, on, to, under, along and across the Telephone Easement Areas, including slope, embankment and setback easements necessary to enjoy the Easements granted herein, as approved by the required governmental authorities and as shown on those certain plans entitled "Telephone, Sewer and Drain Easement Plan, Loudon Road & Old Loudon Road, Concord, New Hampshire, Prepared For Milano Real Estate Assoc., LLC – LaPunta, LLC – RTNH Restaurant Holdings, LLC, Sheet 1 of 2" dated February 5, 2004, prepared by TFMoran, Inc. and "Electric, Water and Access Easement Plan, Loudon Road & Old Loudon Road, Concord, New Hampshire, Prepared For Milano Real Estate Assoc., LLC - LaPunta, LLC – RTNH Restaurant Holdings, LLC, Sheet 2 of 2" dated February 5, 2004, prepared by TFMoran, Inc. The area on the Milano Parcel over which the Electric Easement is granted is the area of the Milano Parcel described on Exhibit A hereto, the area on the Milano Parcel over which the Water Easement and Gas Easement is granted is area of the Milano Parcel described on Exhibit B hereto, the area on the Milano Parcel over which the Telephone Easement is granted is the area of the Milano Parcel described on Exhibit C hereto, the area on the LaPunta Parcel over which the Electric Easement is granted is the area of the LaPunta Parcel described on Exhibit D hereto, the area on the LaPunta Parcel over which the Water Easement and Gas Easement is granted is the area of the LaPunta Parcel described on Exhibit E hereto, the area on the LaPunta Parcel over which the Telephone Easement is granted is the area of the LaPunta Parcel described on Exhibit F hereto, the area on the RTNH Parcel over which the Electric Easement is granted is the area of the RTNH Parcel described on Exhibit G hereto, the area on the RTNH Parcel over which the Water Easement and Gas Easement is granted is the area of the RTNH Parcel described on Exhibit H hereto, and the area on the RTNH Parcel over which the Telephone Easement is granted is the area of the RTNH Parcel described on Exhibit I hereto. MILANO, LAPUNTA and RTNH hereby waive, to the extent legally permitted, any setback requirements customarily appropriate from their respective property lines in order to permit the construction of the Utility Lines within the Utility Easement Areas.

3. The Parties each grant to the other, in order to permit the full enjoyment of the easement rights herein granted, temporary construction easements to construct the utilities noted herein, and easements over the Easement Areas of their Respective Parcels to repair and maintain the utilities within the Easement Areas, subject to the limitations set forth herein. The Parties agree to revise the descriptions of the Easement Areas to reflect the actual locations of the

Easement Areas upon completion of initial construction on the Respective Parcels. Each Party shall have the right, at its sole cost and expense, to relocate the Easement Area(s) and Utility Lines and utility improvements therein on its Respective Parcel to accommodate its final building layout, provided such relocation maintains the continuity of the Utility Easement Areas and Utility Lines between and among the Respective Parcels and does not materially alter the other Parties' rights herein. Following the construction of the initial improvements on the Respective Parcels, each Party shall also have the right, at its own cost and expense, to relocate the Easement Area(s) and Utility Lines and utility improvements within on its Respective Parcel at any time, provided such relocation maintains the continuity of the Easement Areas between and among the Respective Parcels and does not materially alter the other Party's rights herein. Upon the relocation of any Easement Area for any reason set forth herein, the Parties shall execute and record an amendment to this REA setting forth the description of the revised Easement Area and terminating the prior easement area no longer being used.

4. It shall be the responsibility of each Party, its heirs, executors, administrators, successors, grantees and assigns, to install, repair, maintain and replace in good order, repair and condition (herein "Maintain", "Maintaining" or "Maintenance") the Utility Lines serving such Party's Parcel within the Utility Easement Areas. With regard to Utility Line(s) serving more than one Party, the Parties utilizing such Utility Line(s) shall split evenly the costs to Maintain such Utility Line(s).

5. If any Party fails to fulfill its Maintenance obligations as set forth herein, the other Parties shall, after written notice and no corrective action within thirty (30) days following delivery of such written notice to such Party (unless such repairs will take more than thirty (30) days to complete but are commenced by the responsible Party within such thirty (30) day period), except for emergencies which can be corrected immediately, have the right to enter onto the Easement Area(s) for the purposes of Maintaining the Easement Area(s) and/or Utility Line(s) that are the obligation of said other Party or Parties. All costs associated with said Maintenance shall be the obligation of the Party with the responsibility to do so hereunder, and the acting Party shall be reimbursed for the cost thereof plus interest at the Prime Rate of the Chase Manhattan Bank plus two percent (2%) within thirty (30) days after receipt of a statement from the other Parties with supporting invoices.

6. The Parties agree that MILANO, LAPUNTA and RTNH shall enter into a construction contract with a contractor to construct the Utility Line(s) on the Respective Parcels.

The Parties further agree that such Utility Line(s) shall be installed by a contractor jointly selected by the Parties, and such contractor's invoices shall be separately invoiced to each Party and paid by each Party according to such Party's obligations as more particularly set forth in Section 4 herein. If the Parties cannot agree on the selection of the contractor, MILANO shall have the right to select the contractor with regard to any such work performed on the Milano Parcel, LAPUNTA shall have the right to select the contractor with regard to any such work performed on the LaPunta Parcel and RTNH shall have the right to select the contractor with regard to any such work performed on the RTNH Parcel. Should any Party fail to pay said contractor(s), the other Parties shall have the right, but not the obligation, to make full payment to the contractor(s) and to place a lien upon the non-paying Party's Respective Parcel for reimbursement of any such payments made to such contractor. In addition, failure to pay such amount shall entitle the paying Party to interest on such amount at the Prime Rate of the Chase Manhattan Bank plus two percent (2%) until paid. The Parties expressly agree that each Party shall have the right, but not the obligation, to utilize the Easements set forth herein for the purposes set forth herein. No Party shall be obligated to pay any portion of any construction or any other costs for Utility Easement Areas or Utility Lines unless such Party utilizes such Utility Easement Areas or Utility Lines as set forth herein.

7. After construction and/or Maintenance performed by any Party on Utility Lines and utility improvements serving that Party's Parcel, such Party shall, at such Party's expense, return the disturbed Easement Area to its original appearance and condition insofar as is reasonably possible, including paving, curbing, striping, landscaping, replanting of trees, shrubs, bushes and sod covering; provided, however, with regard to Utility Lines and utility improvements serving more than one Party, the Parties utilizing such Easements shall split evenly such costs. Any construction and/or Maintenance performed by any Party shall not materially interfere with the access, business and operations of the other Party's Respective Parcel(s).

8. This REA is subject to all matters of record on the Respective Parcels. However, any mortgage or other liens on a Party's Respective Parcel shall be subordinated to and subject to this REA such that the Easement shall survive any foreclosure, deed in lieu of foreclosure or similar action.

9. The rights and easements herein granted and reserved are not exclusive and shall extend to the Parties, their heirs, executors, administrators, successors, grantees and assigns in

perpetuity. Upon sale or transfer of any Respective Parcel burdened or benefited hereby, by a Party or a Party's heirs, executors, administrators, successors, grantees or assigns, the Easements herein shall run with the land and the grantee of that sale or transfer shall become liable for the future performance of all obligations hereunder with respect to such burdened or benefited parcel and the grantor of that sale or transfer shall automatically be relieved therefrom for matters arising on or after the date of said sale or transfer. The Easements herein granted shall only encumber the Easement Areas and no other portion of the Respective Parcels.

10. The Easements in this REA shall be construed as covenants that shall benefit and run with title to the Respective Parcels and shall not be personal to the Parties.

11. Any notice, report or demand required, permitted or desired to be given under this REA shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is sent to the addresses set forth for each Party herein and the addresses set forth below by personal or courier delivery or mailed by registered or certified mail return receipt requested, to the Parties at such address or as the respective Parties may from time to time designate by like notice, upon delivery if given by personal or courier delivery or, if mailed, on the third business day following the date of such mailing, provided the sending Party receives evidence of delivery. Each Party shall send copies of default notices to the other Party's lender upon receipt of written notice of such lender's name and address requesting that such notices be sent. Copies of all such notices, reports or demands shall be sent to:

If to LAPUNTA: Bernard W. Pelech, Esq.
 Wholey & Pelech
 55 Congress Street, Suite B
 P.O. Box 395
 Portsmouth, New Hampshire 03802-0395

and

Robert Haverty
478 Woodlands Road
Alton Bay, New Hampshire 03810

If to RTNH: RT New Hampshire Restaurant Holdings, LLC
150 West Church Street
Maryville, Tennessee 37801

If to MILANO: Richard A. D'Amante, President
D'Amante Consulting Group
357 Boston Road
Billerica, Massachusetts 01821

and

Raymond P. D'Amante, Esq.
The D'Amante Law Offices, P.A.
9 Triangle Park Drive
P.O. Box 1750
Concord, New Hampshire 03302-1750

12. Each of the Parties shall continuously maintain in full force and effect, at each Party's expense, a policy of comprehensive commercial general liability insurance with minimum limits of liability of One Million Dollars (\$1,000,000.00) covering such Party's operations and use of the Easement Area(s), including commercial automobile liability coverage. All insurance shall name the other Parties and the other Parties' mortgagees as additional insureds and shall be carried with responsible insurance companies rated by Best's Insurance Reports as not less than A-IX and authorized to do business in the State of New Hampshire. Each Party shall deliver to the other Parties a certificate of such policies and renewal certificates at least thirty (30) days prior to the expiration of the existing policy. Such policies shall contain a provision that the same cannot be reduced in coverage to less than the aforesaid limits nor cancelled without thirty (30) days prior notice to the other Parties and the other Parties' mortgagees. The limits of liability set forth herein shall be subject to increase at the reasonable discretion of the Parties.

MEANING AND INTENDING to describe and convey reciprocal easements as applicable through the Easement Areas upon portions of the Milano Parcel, the LaPunta Parcel and the RTNH Parcel as hereinabove noted.

This REA shall be construed in accordance with the laws of the State of New Hampshire.

Nothing in this REA shall be construed to make the Parties hereto partners or joint venturers or render any of such Parties liable for the debts or obligations of the other.

This REA may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the Parties to this REA or their heirs, executors, administrators, successors, grantees or assigns. In the event this REA is amended or modified in any manner, such amendment shall be recorded in the MCRD. This Easement shall not be otherwise amended, modified or terminated.

If any term or provision of this REA or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this REA or the application of such terms or provisions 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 REA shall be valid and enforceable to the fullest extent permitted by law.

The Respective Parcels are not the homestead properties of the Parties hereto.

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Executed this 8th day of March, 2004 by, between and among:

**MILANO REAL ESTATE
ASSOCIATES, LLC**

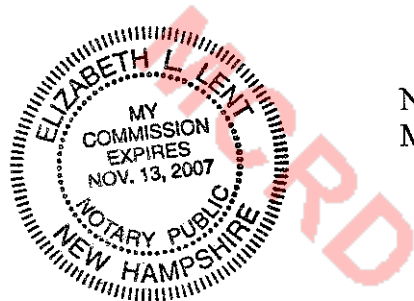
Elizabeth L Lent
(Witness)

By: [Signature]
Michael A. D'Amante
Its Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 8th day of March, 2004, before me, personally appeared Michael A. D'Amante, who acknowledged himself to be the Manager of **MILANO REAL ESTATE ASSOCIATES, LLC**, a New Hampshire limited liability company, and that he, as such Manager, being authorized to do so, executed the foregoing instrument for the purposes contained therein, by signing the name of the limited liability company himself as Manager.

In witness whereof I hereunto set my hand and official seal.



Elizabeth L Lent
Notary Public/Justice of the Peace
My Commission Expires:

LAPUNTA, LLC

Elizabeth L Lents
(Witness)

By: Robert Haverly
Name: Robert Haverly
Its Member
Duly Authorized

STATE OF New Hampshire
COUNTY OF Merrimack

On this the 24 day of June, 2003, before me, personally appeared Robert Haverly, who acknowledged himself to be a Member of LAPUNTA, LLC, a New Hampshire limited liability company, and that he, as such Member, being authorized to do so, executed the foregoing instrument for the purposes contained therein, by signing the name of the limited liability company himself as Member.

In witness whereof I hereunto set my hand and official seal.

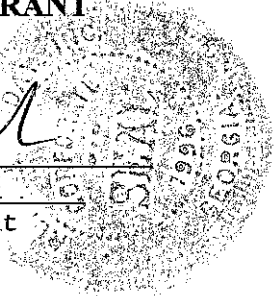


Elizabeth L Lents
Notary Public/Justice of the Peace
My Commission Expires: 11/13/07

RT NEW HAMPSHIRE RESTAURANT HOLDINGS, LLC

Francis L. Bailey
(Witness)

By: Daniel T. Cronk
Name: Daniel T. Cronk
Its ~~Member~~ Vice President
Duly Authorized



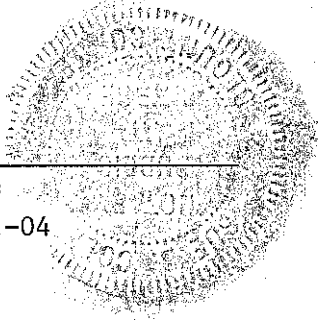
STATE OF TENNESSEE
COUNTY OF BLOUNT

On this the 17th day of June, 2003, before me, personally appeared Daniel T. Cronk, who acknowledged himself/herself to be ~~a Member~~ of **RT NEW HAMPSHIRE RESTAURANT HOLDINGS, LLC**, a Delaware limited liability company, and that he/she, as such ~~Member~~, being authorized to do so, executed the foregoing instrument for the purposes contained therein, by signing the name of the limited liability company himself/herself as ~~Member~~.

* Vice President

In witness whereof I hereunto set my hand and official seal.

Sue B. Colby
Notary Public/Justice of the Peace
My Commission Expires: 11-01-04



MCRD

EXHIBIT A

Milano Parcel - Electric Easement Description

Beginning at a point, said point being N 63°53' 36" E a distance 148.28' from the southwesterly corner of the Milano Parcel to the point of beginning:

Thence running N 54°28' 03" W for a distance of 43.59' to a point;

Thence running N 33°10' 24" W for a distance of 43.69' to a point;

Thence running N 18°02' 02" W for a distance of 160.75' to a point;

Thence running N 61°11' 16" E for a distance of 59.50' to a point;

Thence running N 70°59' 33" E for a distance of 135.33' to a point;

Thence running N 69°26' 18" E for a distance of 35.91' to a point;

Thence running S 09°51' 31" E along the property line for a distance of 20.35' to a point;

Thence running S 69°26' 18" W for a distance of 32.40' to a point;

Thence running S 70°59' 33" W for a distance of 133.89' to a point;

Thence running S 61°11' 16" W for a distance of 41.39' to a point;

Thence running S 20°01' 41" E for a distance of 172.31' to a point;

Thence running S 54°28' 03" E for a distance of 57.19' to a point;

Thence running S 63°53' 36" W along the property line a distance of 22.73' to the point of beginning.

Containing 9,512 Sq. Ft. or 0.22 Ac. +/-

EXHIBIT B

Milano Parcel - Water and Gas Easement Description

Beginning at a point, said point being N 76°02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27°29' 18" E a distance of 159.17' to the point of beginning:

Thence running S 62°30' 42" W for a distance of 107.44' to a point;

Thence running N 27°04' 44" W for a distance of 14.49' to a point;

Thence running N 62°55' 16" E for a distance of 107.34' to a point;

Thence running S 27°29' 18" E for a distance of 13.72' to the point of beginning.

Containing 1,515 Sq. Ft. or 0.03 Ac. +/-

MCRD

Milano Parcel - Telephone Easement Description

Beginning at a point, said point being N 76°02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27°29' 18" E a distance 159.17' to the point of beginning:

Thence running S 62°30' 42" W a distance of 11.17' to a point;

Thence running N 12°02' 10" W a distance of 41.94' to a point;

Thence running along the property line S 27°29' 18" E a distance of 40.42' to the point of beginning.

Containing 226 Sq. Ft. or 0.01 Ac. +/-

MCRD

LaPunta Parcel - Electric Easement Description

Beginning at a point, said point being N 76°02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27°29' 18" E a distance of 159.17' to a point, thence S 62°30' 42" W a distance of 107.44' to a point, thence S 09°51' 31" E a distance of 19.22' to the point of beginning:

Thence running N 69°26' 18" E for a distance of 105.89' to a point;

Thence running N 66°28' 53" E for a distance of 56.25' to a point;

Thence running S 09°31' 05" E along the property line for a distance of 20.61' to a point;

Thence running S 66°28' 53" W for a distance of 51.78' to a point;

Thence running S 69°26' 18" W for a distance of 110.19' to a point;

Thence running N 09°51' 31" W along the property line for a distance of 20.35' to the point of beginning.

Containing 3,241 Sq. Ft. or 0.07 Ac. +/-

MCRD

EXHIBIT E

LaPunta Parcel - Water and Gas Easement Description

Beginning at a point, said point being N 76° 02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27° 29' 18" E a distance of 159.17' to the point of beginning:

Thence running S 62° 30' 42" W for a distance of 107.44' to a point;

Thence running S 09° 51' 31" E for a distance of 5.77' to a point;

Thence running N 62° 55' 16" E for a distance of 129.99' to a point;

Thence running N 26° 06' 24" W for a distance of 6.43' to a point;

Thence running S 62° 30' 42" W a distance of 20.95' to the point of beginning.

Containing 694 Sq. Ft or 0.02 Ac. +/-

MCRD

LaPunta Parcel - Telephone Easement Description

Beginning at a point, said point being N 76° 02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27° 29' 18" E a distance of 159.17' to a point, thence N 62° 30' 42" E a distance of 9.58' to the point of beginning:

Thence running S 12° 02' 10" E for a distance of 33.04' to a point;

Thence running N 68° 38' 49" E for a distance of 10.13' to a point;

Thence running S 12° 02' 10" E for a distance of 20.27' to a point;

Thence running S 68° 38' 49" W for a distance of 126.00' to a point;

Thence running along the property line N 09° 51' 31" W for a distance of 20.41' to a point;

Thence running N 68° 38' 49" E for a distance of 94.82' to a point;

Thence running N 12° 02' 10" W for a distance of 30.79' to a point;

Thence running along the property line N 62° 30' 42" E for a distance of 20.74' to the point of beginning.

Containing 3,151 Sq. Ft. or 0.07 Ac. +/-

MCRD

EXHIBIT G

RTNH Parcel - Electric Easement Description

Beginning at a point, said point being N 76° 02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to a point, thence S 27° 29' 18" E a distance of 159.17' to a point, thence N 62° 30' 42" E a distance of 59.32' to a point, thence S 09° 31' 05" E a distance of 36.77' to the point of beginning:

Thence running N 66° 28' 53" E for a distance of 64.95' to a point;

Thence running S 14° 18' 42" E for a distance of 20.27' to a point;

Thence running S 66° 28' 53" W for a distance of 66.70' to a point;

Thence running N 09° 31' 05" W for a distance of 20.61' to the point of beginning.

Containing 1,349 Sq. Ft. or 0.03 Ac. +/-

MCRD

RTNH Parcel - Water and Gas Easement Description

Beginning at a point, said point being N 76° 02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to the point of beginning:

Thence running N 76° 02' 46" E for a distance of 51.67' to a point;

Thence running S 12° 02' 10" E for a distance of 105.84' to a point;

Thence running S 26° 06' 24" E for a distance of 45.07' to a point;

Thence running S 62° 30' 42" W for a distance of 20.95' to a point;

Thence running N 27° 29' 18" W for a distance of 159.17' to the point of beginning.

Containing 4,702 Sq. Ft. or 0.11 Ac. +/-

MCRD

EXHIBIT I

RTNH Parcel - Telephone Easement Description

Beginning at a point, said point being N 76°02' 46" E a distance of 436.65' from the northwesterly corner of the Milano Parcel to the point of beginning:

Thence running N 76°02' 46" E for a distance of 51.67' to a point;

Thence running S 12°02' 10" E for a distance of 152.59' to a point;

Thence running S 62°30' 42" W for a distance of 9.58' to a point;

Thence running N 27°29' 18" W for a distance of 159.17' to the point of beginning.

Containing 4,702 Sq. Ft. or 0.11 Ac. +/-

MCRD

MERRIMACK COUNTY RECORDS

Kath: L. Gray, CPO, Register

Record and return to:
D'Avante Couser Steiner Pellerin P.A.
P.O. Box 2650
Concord, NH 03302-2650

①
207⁹⁸
2

Doc# 564672
Book: 2666
Pages: 1003 - 1052
Filed & Recorded
06/10/2004 10:11:27 AM
KATHI L. BURY, CPG, REGISTER

MERRIMACK COUNTY REGISTRY OF DEEDS
RECORDING \$ 206.00
SURCHARGE \$ 2.00
POSTAGE \$ 1.98

Book 2666 Page 1003

DECLARATION
OF
MILANO LAND CONDOMINIUM

MCRD

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DECLARATION
OF
MILANO LAND CONDOMINIUM

ARTICLE I

PURPOSE

THIS DECLARATION is made this the _____ day of _____, 2004 by **Milano Real Estate Associates, L.L.C.**, a New Hampshire Limited Liability Company having a principal place of business c/o D'Amante Couser Steiner Pellerin, P.A., 9 Triangle Park Drive, Concord, County of Merrimack, State of New Hampshire 03302-1750 (hereinafter "**Milano**" or "**Declarant**"), for the purpose of submitting the lands herein described in **Appendix A**, annexed hereto, together with any buildings hereafter constructed on the Premises and all improvements heretofore or hereafter constructed thereon, and all easements, rights and appurtenances thereto described in said **Appendix A**, or herein or hereafter created and placed on record at the Merrimack County Registry of Deeds, to the Condominium form of ownership and use in the manner provided by New Hampshire Revised Statutes Annotated, Chapter 356-B (hereinafter referred to as the "Condominium Act" or the "Act").

WHEREAS, the Declarant owns a certain tract of land located on Loudon Road in the City of Concord, County of Merrimack, State of New Hampshire, consisting of 4.06 acres, more or less, more particularly described in **Appendix A** attached hereto (hereinafter referred to as the "Premises"); and

WHEREAS, the Declarant or its nominees have obtained approval from the City of Concord to construct on the Premises restaurants, retail, commercial, and office uses and may in the future apply for other office, retail, commercial, restaurant, banking or other permitted uses (the "Center"); and

WHEREAS, the Center may contain retail, office, commercial, Restaurant (as hereinafter defined), school, museum and other uses permitted from time to time, as more particularly described in Article XIII; and

WHEREAS, various entities may construct various buildings in said Center; and

WHEREAS, the Declarant intends to create a multi-unit commercial Land Condominium on the Premises consisting of said 4.06 acres, more or less, to be initially divided into three (3) Land Condominium Units and Common Area with Common Utility Lines (as hereinafter defined) (hereinafter referred to as the "Condominium" and/or the "Land Condominium"); and

WHEREAS, the Declarant reserves for the Declarant and the Unit Owners (as hereinafter defined) the right to expand and/or contract the Condominium, as defined in and within the requirements of the Condominium Act; and

WHEREAS, the Declarant initially establishes three (3) Condominium Units as shown on the Milano Land Condominium Plat (hereinafter the "Condominium Subdivision Plan"), to be recorded herewith, and as said Units are set forth in Appendices C-1 through C-3, as follows:

- Unit 1-1 - Restaurant Appendix C-1
- Unit 1-2 - Parking Appendix C-2
- Unit 1-3 - Retail/Restaurant/Office/Other Appendix C-3

(singularly a "Condominium Unit" or a "Unit" and collectively the "Condominium Units" or the "Units"); and

WHEREAS, the Declarant reserves for the Declarant and the Unit Owners the right to create additional Units and or Common Area within each Condominium Unit and/or the Common Area ; and

WHEREAS, the Declarant hereby establishes Condominium Common Areas, as shown on the various Condominium Subdivision and Site Plans, as more particularly set forth herein and defined in Appendix B (the "Common Area"); and

WHEREAS, the Declarant reserves for the Declarant and the Unit Owners (as hereinafter defined) the right to convert land within Units and the Convertible Land or Expandable Land to Common Area and within Common Area and the Convertible Land or Expandable Land to Units, by filing amendments to the Condominium, from time to time; and

WHEREAS, it is the intention of the Declarant that the Unit Owners will develop and operate their respective Units in conjunction with each other as integral parts of a Restaurant, office, bank, commercial, retail complex, school, museum and other uses permitted, from time to time, and, in order to effectuate the common use and operation thereof, certain Common Area, Common Utility Lines, covenants, agreements, and reciprocal easements, in, to, over, and across the respective Units are set forth in this Declaration.

NOW THEREFORE, the Declarant hereby declares that the Premises, including all of the improvements located and to be located thereon, and all easements, rights and appurtenances belonging thereto, are hereby submitted to the provisions of the Condominium Act and are held and shall be held, conveyed, encumbered, leased, used, occupied, and improved subject to the following restrictions, covenants, conditions, uses, limitations, obligations and easements which are intended to enhance and protect the value and desirability of the Condominium as a whole and to mutually benefit each of the Condominium Units and their respective Unit Owners.

ARTICLE IIDEFINITIONS

As used herein, the following terms shall mean:

2.1 **Board of Directors.** The Unit Owners shall elect the "Board of Directors" (hereinafter the "Board of Directors" or "Board"). The Board of Directors shall manage the affairs and business of the Condominium as more particularly set forth in the Bylaws of the Condominium.

2.2 **Building.** "Building" shall mean any permanently enclosed structure placed, constructed or located on a Unit, which for the purpose of this Declaration shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

2.3 **Building Area.** "Building Area" shall mean the actual initial square footage constructed on a Unit.

2.4 **Center or Complex.** "Center" or "Complex" shall refer to the overall property and the uses and improvements built within the Condominium.

2.5 **Common Area and Common Utility Lines.** "Common Area" means the portions of the Condominium designated as the Common Areas on the Condominium Subdivision Plan (as hereinafter defined and as more particularly defined in **Appendix B**) and Common Utility Lines as shown on the Condominium Utility Line Plans (as hereinafter defined). "Common Utilities" and/or "Common Utility Lines" are also "Common Areas" for repair, maintenance and replacement purposes. The "Condominium Utility Line Plans" are the following recorded plans and documents:

- (i) Reciprocal Easement Agreement (Drainage Easement) recorded at the Merrimack County Registry of Deeds (the "MCRD") at Book 2634, Page 1995;
- (ii) Easement Agreement (Sewer Easement) recorded at the MCRD at Book 2635, Page 1;
- (iii) Reciprocal Easement Agreement (Utility Easement) recorded at the MCRD at Book 2635, Page 13;
- (iv) Telephone, Sewer and Drain Easement Plan recorded at the MCRD as Plan 16809, Sheet 1 of 2; and
- (v) Electric, Water and Access Easement Plan, recorded at the MCRD as Plan

16809, Sheet 2 of 2.

2.6 **Common Expenses.** "Common Expenses" means all expenditures lawfully made or incurred by or on behalf of the Unit Owners' Association, including without limitation the Common Area Maintenance Costs (as hereinafter defined) pursuant to the provisions of Section 12.2 herein, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments, if any. "Future Common Expenses" shall mean Common Expenses for which assessments are not yet due and payable, all as specifically set forth in this Declaration.

2.7 **Common Profits.** "Common Profits" means all income collected or accrued by or on behalf of the Unit Owners' Association, other than income derived from assessments pursuant to New Hampshire RSA 356-B:45.

2.8 **Condominium.** "Condominium" means the real property and any interests therein lawfully submitted to the Condominium Act by the recording of the Condominium Instruments pursuant to the Act and initially including Units 1-1, 1-2 and 1-3 of the Condominium and the Common Area and Common Utility Lines, unless specifically stated otherwise, and subject to the creation of additional units within the area of a Unit or Units or the Convertible Land or within Expandable Land. All additional Units so created shall have an undivided interest in the Common Area and Common Utility Lines as Unit Owners, as designated in an amendment or amendments to this Declaration creating the new Units within a Unit.

2.9 **Condominium Instruments.** "Condominium Instruments" is a collective term referring to this Declaration, the Bylaws for the Condominium, the Condominium Subdivision Plan for the Condominium showing Units 1-1, 1-2 and 1-3, the Building plans for any Buildings constructed within a Unit at any time, represented by Building elevation plans recorded after the completion of a Building within the Condominium, and recorded pursuant to the provisions of the Condominium Act, and any and all amendments thereto and new plans related thereto. Any exhibit, schedule or certification accompanying a Condominium Instrument and recorded simultaneously therewith shall also be deemed an integral part of that Condominium Instrument. Any amendment or certification of any Condominium Instrument shall, from the time of recording of such amendment or certification, also be deemed an integral part of the affected Condominium Instrument, so long as such amendment or certification was made in accordance with the provisions of the Condominium Act and the then-existing Condominium Instruments. Additional Condominium Subdivision Plans or Building elevation plans and Common Areas shown on amendments to this Declaration and future plans may be recorded for Buildings constructed or to be constructed in existing Units and other Units and Common Area to be created within the Premises or within land added to the Condominium.

2.10 **Constant Dollars.** "Constant Dollars" means the present value of the dollars to which such phrase refers. An adjustment to the amounts set forth in Section 13.4 shall occur on January 1 of the sixth calendar year following the date of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted

by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month during which this Declaration is dated; the "Current Index Number" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, Boston, MA, all items published by the Bureau of Labor Statistics of United States Department of Labor (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Unit Owners' Association shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

2.11 **Corporation.** "Publicly held corporation", "Subsidiary corporation", "Closely held corporation", "Hearing" and "Broker" have the same meaning as set forth in the respective definitions of such terms in New Hampshire RSA 356-A:1; and "agent" and "blanket encumbrance" have the same meanings as set forth in the respective definitions of such terms in New Hampshire RSA 356-A:1, except that within such definitions references to "developer" or "subdivider" shall mean "Declarant"; references to "lot" or "lots" shall mean "Unit" or "Units"; and references to "subdivision" shall mean "Condominium Project" or "Condominium".

2.12 **Days.** "Days" means calendar days unless modified by the word "business" in which case said term shall include all days except Saturdays, Sundays, and legal holidays of the State of New Hampshire as set forth in New Hampshire RSA 356-A:1 XVII.

2.13 **Declarant.** "Declarant" means all persons who execute this Declaration or on whose behalf this Declaration is executed. From the time of recording of any amendment to this Declaration expanding an expandable Condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successor of the persons referred to in this paragraph 2.13, who come to stand in the same relation to the Condominium as their predecessors did, shall also come within this definition. The Unit Owners shall have the power to amend this Declaration in accordance with Article XVI hereof.

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

2.15 **Officer.** "Officer" means any member of the Board of Directors or official of the Unit Owners' Association so designated.

2.16 **Operator.** "Operator" shall mean the Person designated from time to time by the Unit Owners' Association to maintain and operate the Common Area as set forth herein. The Person designated as Operator shall serve in such capacity until such Person resigns or is removed by the Unit Owners' Association.

2.17 **Party.** "Party" shall mean the "Owner" of each Unit and, after compliance with the notice requirements set forth below, their respective successors and assigns who become the Unit Owner(s) of any Unit. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to its Unit which accrue during the period of such ownership, and such liability shall continue with respect to any Unit transferred until the notice of transfer set forth below is given, at which time the transferring Party shall be released from the obligations of this Declaration arising subsequent to the effective date on the transfer notice. A Party transferring all or any portion of its interest in its Unit shall give notice to all other Parties and the Unit Owners' Association and the Operator of such transfer and shall include therein at least the following information:

- (i) the name and address of the new Party/Unit Owner; and
- (ii) the number of the Unit and/or portion thereof transferred.

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

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

The terms "Party," "Owner" and "Unit Owner" are synonyms.

2.18 **Permittee.** "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Center. Persons engaged in civic, public or political activities within the Center, including but not limited to the activities set forth below, shall not be considered Permittees:

- (i) exhibiting any placard, sign, or notice;
- (ii) distributing any circular, handbill, placard, or booklet;
- (iii) soliciting memberships or contributions for private, civic, public or charitable purposes;
- (iv) parading, picketing, or demonstrating; and
- (v) failing to follow regulations established by the Parties relating to the use of

the Center.

2.19 **Person.** "Person" means any natural person, corporation, partnership, association, trust, limited liability company or other entity capable of holding title to real property, or any combination thereof.

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

2.21 **Site Plan.** "Site Plan" shall mean the site plan approved by the Concord planning board, as the same may be amended from time to time pursuant to the provisions of this Declaration.

2.22 **Unit or Condominium Unit.** "Unit," "Units," "Condominium Unit" or "Condominium Units" shall mean those areas designated as Units in **Appendices C-1, C-2, and C-3** exclusive of the Common Area designated in **Appendix B**, within which the Unit Owners shall have the right to construct Buildings, improvements and amenities as herein set forth, and other Units to be created within Units or the Convertible Land or the Expandable Land, as the same may be modified from time to time pursuant to the provisions of this Declaration.

2.23 **Unit Owner.** The terms "Unit Owner," "Owner" and "Party" are synonymous.

2.24 **Unit Owners' Association.** "Unit Owners' Association" means the entity composed of all of the Unit Owners which shall have the responsibility to, among other things, administer the Condominium as more particularly set forth in the Bylaws for the Condominium.

2.25 **Utility Lines.** "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water. "Common Utility Lines" and/or "Common Utilities" shall mean those Utility Lines, as set forth on the Condominium Utility Line Plans, which are installed to provide the applicable service to the Units. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to one Unit only. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line.

ARTICLE III

NAME

The name of the Condominium is the **Milano Land Condominium** (the "Condominium").

ARTICLE IV

LOCATION

The Condominium is located on Loudon Road, in the City of Concord, County of Merrimack, State of New Hampshire, and is more particularly described as the Premises in **Appendix A** hereto.

ARTICLE V

DESCRIPTION OF LAND

A legal description of the land submitted to the Condominium is contained in **Appendix A** (hereinafter referred to as the "Premises"). The entire 4.06 Acres, more or less, is submitted to the Condominium. The Premises is initially divided into three (3) Units, Unit 1-1 described in **Appendix C-1**, Unit 1-2 in **Appendix C-2**, and Unit 1-3 in **Appendix C-3** and land designated as the Common Area in **Appendix B**, along with the appurtenant rights and burdens set forth in **Appendix D** attached hereto and incorporated herein by reference.

ARTICLE VI

DESCRIPTION OF UNIT AREAS

6.1 **Buildings**. Currently, no buildings are being constructed on any Unit. Building Elevation Plans will be recorded when and as they are approved.

6.2 **Units**. Each of the Units is hereby declared to be held in fee simple, and may be retained, occupied, conveyed, transferred, leased, mortgaged, encumbered, inherited, or devised in the same manner as any other parcel of real property, independent of the other Units; provided, however, that such Unit shall, at all times, be subject to the provisions of the Condominium Instruments.

6.3 **Unit Boundaries**. Each Unit is an area of land. The initial boundaries of each Unit are as shown on the plans entitled "Condominium Site Plan, Milano Site Development, Loudon Road and Old Loudon Road, Concord, New Hampshire, Prepared for Milano Real Estate Associates, LLC, Sheet 1 of 2" dated April 1, 2004 and prepared by TF Moran, Inc., and "Access Easement Plan, Milano Site Development, Loudon Road and Old Loudon Road, Concord, New Hampshire, Prepared for Milano Real Estate Associates, LLC, Sheet 2 of 2" dated April 1, 2004 and prepared by TF Moran, Inc. to be recorded herewith (hereinafter together referred to as the "Condominium Subdivision Plan"). The Unit descriptions are set forth in **Appendices C-1, C-2 and C-3**. Each Unit extends from the center of the earth to the outer reaches of space. The Declarant reserves the right to unilaterally alter the Unit boundaries in accordance with Section 10.1 herein.

ARTICLE VIIDESCRIPTION OF COMMON AREA

The Common Area shall include all areas designated as such on the Condominium Subdivision Plan and as described in **Appendix B**. The term Common Area shall also include the Common Utility Lines for all purposes of administration, repair, pro rata costs and similar matters.

7.1 **Ownership.** Undivided interests in the Common Area shall be owned by and vested in the Unit Owners as provided in Article VIII herein. The Unit Owners' Association may, by contract, determine who shall be responsible to construct, maintain and repair all approved improvements therein and may contract with any party or parties to facilitate said construction, maintenance and repair. The Common Area shall be managed and maintained by the Unit Owners' Association and/or the Operator pursuant to and in accordance with this Declaration and the Bylaws recorded herewith. No portion of the Common Area is now assigned as Limited Common Area ("LCA"). LCA may be created within the Common Area or within any Unit.

7.2 **Use.** The use of the Common Area is limited to the Unit Owners and their Occupants, tenants, licensees, agents, representatives, invitees, customers, successors and assigns for access to the Units, the provision of drainage for the Units and other uses, all as more particularly set forth herein; in addition, the use of the Access Easement portion of the Common Area (as more particularly described on the Condominium Subdivision Plan) is limited to the Unit Owners and their Occupants, tenants, licensees, agents, representatives, invitees, customers and holders of easement rights of record to the Access Easement for the uses set forth in such easements of record, successors and assigns.

7.3 **Unity of Purpose.** It is the intention in the creation of this Condominium that the Units and the Common Area facilities work and function as integral parts of a commercial complex. Consequently, Unit Owners and their Occupants, tenants, licensees, agents, representatives, invitees, customers, successors and assigns shall enjoy all reasonable rights of access for use, maintenance, repair and replacement to maintain that purpose. The Condominium shall remain private property.

ARTICLE VIIIALLOCATION OF INTEREST/MAINTENANCE

8.1 **Interest in and Maintenance of the Common Areas.** The percentage of votes for a Unit and for the Common Area and Common Utility Line expense responsibility of a Unit and for any other purpose under the Declaration or Bylaws shall be based on the land area of that Condominium Unit divided by the total Unit land area in the Condominium, excluding all Common Area (except the Common Utility Line Areas within a Unit) within the Condominium. Initially, Unit 1-1, Unit 1-2, and Unit 1-3 shall have an undivided interest in the Common Area of the Condominium based on the following percentages and shall be responsible for any and all Common

Expenses, including, without limitation, any and all costs associated with the insurance, repair, maintenance (including snow removal) and replacement of the Common Area and Common Utility Lines, as herein provided and as shown on the Condominium Utility Line Plans, the Condominium Subdivision Plan and/or as listed in **Appendix B**, in the following percentages:

<u>Unit</u>	<u>Ratio</u>	<u>Percentage</u>
Unit 1-1	$\frac{58,914}{144,248}$	41%
Unit 1-2	$\frac{19,802}{144,248}$	14%
Unit 1-3	$\frac{65,532}{144,248}$	45%

These percentages will not change due to the square footage of Buildings actually constructed within a Unit, provided, however, that a Unit Owner shall not be obligated to share in Common Expenses until such time as a building permit has been obtained for its respective Unit or, in the case of Unit 1-2, until such time as a building permit has been obtained for Unit 1-1. These percentages will change if and when additional Units are created within a Unit or a Unit is expanded, contracted or converted, or convertible land is converted to a Unit or Units, as more particularly set forth in paragraph 8.3(b), or Unit boundaries are changed in accordance with Section 6.3 and Section 10.1 herein.

8.2 **Maintenance of the Land within a Unit.** Each Unit shall be responsible to maintain, or cause to be maintained, the Land within its Unit.

8.3 **Voting and Common Expenses.** The Units shall be entitled to vote and shall pay for any and all costs associated with the Condominium, including insurance, as herein provided, as follows:

(a) Initially, votes and Common Expenses shall be allocated to each Unit in the percentages set forth in Section 8.1.

(b) The percentages in Section 8.1 and 8.3(a) above shall be adjusted as of January 1st following any year that a Unit is expanded or contracted or a new Unit is created within the Condominium, including the conversion of convertible land. There shall appertain to each Unit in the Condominium for payment of Common Expenses and for voting purposes in connection with meetings of the Unit Owners' Association, a number of votes which is equal to the percentages set forth in Section 8.1 and 8.3(a) above, as the same may be modified by this Section 8.3(b).

ARTICLE IX**STATEMENT OF PURPOSES AND RESTRICTIONS ON USE**

The Condominium and each of the Units are primarily intended for use as an office, retail, commercial, bank, restaurant, school and museum complex, and the following provisions, together with the provisions of the Bylaws and Rules (as hereinafter defined), are in furtherance of this purpose:

9.1 Commercial Ownership.

(a) Each Condominium Unit described in **Appendices C-1 through C-3** shall be occupied and used for the construction, management, rental and occupancy of structures as approved by the Concord Planning Board for the project known as the Milano Land Condominium.

(b) A Unit Owner shall be deemed the Owner of a Unit created within the Condominium, and said Unit Owner may make such use of the Condominium as may facilitate the completion of the construction, lease, sale or use of the Units, including, without limiting the generality of the foregoing, the right to enter the Common Area for construction purposes, the right to store materials, and the maintenance of one or more construction offices, located and relocated from time to time within that Unit, and the displaying of signs, all as hereinafter set forth.

(c) The Board of Directors is empowered to adopt and amend, from time to time, the Condominium Rules (the "Rules") concerning the use of the Condominium and various parts thereof. The Rules shall not abrogate any rights established in this Declaration.

9.2 Units Subject to Declaration, Bylaws and Rules and Regulations. This Declaration, the Bylaws, the Rules to be adopted by the Board of Directors, and decisions and resolutions of the Board of Directors or its representatives, as lawfully amended from time to time, may contain certain restrictions as to use of the Units or other parts of the Condominium. Each Owner shall comply therewith, and failure to comply with any such provision, decision, or resolution shall be grounds for an action by the Unit Owners' Association to recover sums due, damages or injunctive relief against a Unit, and the Unit Owners' Association shall be entitled to recover all reasonable costs and expenses of such actions from the Unit Owner failing to comply, including attorneys' fees; provided, however, that this Declaration, the Bylaws, the Rules and/or any other Condominium Instrument shall not be amended to alter the uses permitted hereunder without the consent of all Unit Owners.

All present or future Owners and Occupants of Units, or any other person who might use the facilities of the Condominium in any manner, are subject to the provisions of this Declaration, the Bylaws, the Rules and/or any other Condominium Instrument. The acceptance of any fee, leasehold or similar interest in any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws, the Rules and/or any other Condominium Instrument, as they may be lawfully amended

from time to time pursuant to the terms herein and therein, are accepted and ratified by such Owner or Occupant, and all of such provisions shall be deemed and taken to be enforceable servitudes and covenants running with the land and shall bind any person having at any time any interest in such Unit, as though such provisions were recited and stipulated in full in each and every instrument of conveyance or lease thereof.

9.3 **Premises Subject to Covenants, Easements and Restrictions of Record.** The Premises are subject to all covenants, conditions, easements and restrictions of record, including, but not limited to, those referenced in Section 9.6 below and all conditions of approval for the Condominium placed on the Premises by the Concord Planning Board.

9.4 **Phasing of Construction.** Each Unit Owner may phase the construction of Buildings within its Unit, subject to the provisions of Article XI herein.

9.5 **Convertible Land.** "Convertible Land" includes the area described as Convertible Land on the Condominium Subdivision Plan, plus Units 1-1, 1-2 and 1-3 within which Building layouts, Building square footage, improvements different from those on approved site plans may be created as set forth herein, provided that further Units may be created in each such Unit unilaterally by such Unit Owner. The Owner of a Unit being so changed shall have the authority to sign all applications for approvals and permits. The Condominium Association shall cooperate in signing all applications if required by the governmental authority involved.

9.6 **Sources of Title and Matters of Record.** The Premises were conveyed to Milano Real Estate Associates, LLC by deeds recorded in the MCRD at Book 2372, Page 657 and Book 2134, Page 1756 (collectively the "Source Deeds"). Therefore, Units 1-1, 1-2 and 1-3, and the Common Areas are subject to and benefit from, as applicable, the matters of record referenced in the Source Deeds.

ARTICLE X

EASEMENTS

10.1 **Ingress and Egress.**

(a) During the term of this Declaration, each Unit is subject to a non-exclusive easement benefitting the other Unit Owners for the passage of vehicles over and across the driveways and parking areas of the Unit, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Unit, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations as well as other provisions contained in this Declaration:

- (i) Each Party/Unit Owner shall have the right to close off its Unit for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of

prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Unit, as herein provided, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing with each other Party so that no unreasonable interference in the passage of pedestrians or vehicles shall occur; and

- (ii) Each Party shall have the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Unit.

(b) In addition to the general easement specified in (a) above, each Unit is subject to a non-exclusive perpetual easement benefitting the other Unit Owners for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across those portions of the Premises designated on the Site Plan or the Condominium Subdivision Plan as the Access Easement from Loudon Road into the Condominium (the "Access Drive"). The easement herein established shall be appurtenant to and for the benefit of each Unit. During the term of the Condominium, the Access Drive shall be maintained by the Unit Owner's Association and/or the Operator. The Declarant reserves the right at any time to unilaterally relocate the Access Drive so that the Access Drive no longer provides access to the Premises through a right in/right out to Loudon Road but instead provides access to the Premises through the adjoining property to the west of the Premises known as Map 111F, Block 2, Lot 8. In the event that Declarant relocates the Access Drive as set forth herein, Declarant also reserves the right to unilaterally alter the Unit boundaries, the size of each Unit, the size of the Common Area, the size and location of Utility Lines and the respective easements and plans pertaining thereto and the location of parking spaces for each Unit to accommodate the relocation of the Access Drive, provided that such alteration and/or relocation does not reduce the number of parking spaces allocated to each Unit and provided further that holders of easement rights of record to the Access Easement retain such rights as set forth in such easements of record over such relocated Access Drive.

In the event the Condominium is terminated pursuant to the terms hereof, the Access Drive shall be maintained in a safe, clean and good state of repair and condition by the Unit Owners' Association (or the equivalent entity formed after any termination).

10.2 Utilities.

(a) Each Unit, as well as the Common Area and Common Utility Lines, are subject to non-exclusive perpetual easements benefitting the other Units in the Condominium in, to, over, under, along and across each Unit, Common Area and Common Utility Lines, excluding buildings unless specifically provided herein, necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the other Units, including, but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. The initial location of any Utility Line shall be in accordance with the Condominium Utility Line Plans. Later installation of any Utility Line shall be subject to the prior written approval of the Unit Owner whose Unit is to be burdened thereby (the "Burdened Unit Owner") and the Unit Owner's Association for the Common Area, such approval not to be

unreasonably withheld or delayed. Any such installation shall be performed so that there is limited interference with the use of and with utility services to that Burdened Unit during construction. The easement area shall be no wider than necessary or required by the utility or city to reasonably satisfy the requirements of a private or public utility, as applicable. Following completion of the work and upon request of the Burdened Unit Owner, the Benefitted Unit Owner (the "Benefitted Unit Owner") shall provide to the Burdened Unit Owner and the Condominium Association a copy of an as-built survey showing the location of such Utility Line. All Utility Lines shall be underground except:

- (i) ground mounted electrical transformers;
- (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iii) as may be required by governmental agencies having jurisdiction;
- (iv) as may be required by the provider of such service;
- (v) fire hydrants; and
- (vi) the portions of Utility Lines required to be above ground to service above ground lights and signs.

At least twenty (20) days prior to exercising the right granted herein, except in cases of emergency, the Benefitted Unit Owner shall provide the Burdened Unit Owner and the Unit Owner's Association with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated commencement and completion dates for the work and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by paragraph 13.4(c) hereof. Except as otherwise agreed to by the Burdened Unit Owner, the Unit Owner's Association and the Benefitted Unit Owner, any Party installing Separate Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Units. The Benefitted Unit Owner shall restore the improvements and landscaping on the Burdened Unit and the Common Area of the Condominium, reasonable wear and tear expected. In addition, the Benefitted Unit Owner of any Separate Utility Line agrees to defend, protect, indemnify and hold harmless the Burdened Unit Owner and the Unit Owner's Association from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees' and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate the Separate Utility Line. If the Parties elect to install Common Utility Lines, all repair, maintenance, replacement and other work thereon shall be performed by the Unit Owner's Association or the Operator as part of Condominium Common Area maintenance.

(b) Any Burdened Unit Owner shall have the right to relocate a Utility Line upon thirty (30) days' prior written notice to the Benefitted Unit Owner and the Unit Owner's Association, provided that such relocation:

- (i) shall not be commenced during the months of November, December or January, except in the case of emergency;
- (ii) shall not interfere with or diminish the utility service to the Benefitted Unit Owner during the Benefitted Unit Owner's business hours; and if an electrical line/computer line is being relocated, the Burdened Unit Owner and the Benefitted Unit Owner shall coordinate such interruption to eliminate or minimize any detrimental effects;
- (iii) shall not reduce or unreasonably impair the usefulness or function of such Utility Line;
- (iv) shall be performed without cost or expense to the Benefitted Unit Owner or the Unit Owner's Association, as applicable;
- (v) shall be completed using materials and design standards which equal or exceed those originally used; and
- (vi) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey, shall be at the expense of the Burdened Unit Owner and shall be accomplished as soon as possible following completion of such relocation, with copies provided to the Unit Owners' Association and each Benefitted Unit Owner. The other Unit Owners shall execute such documentation promptly upon receipt of such documentation.

(c) Each Unit is subject to a non-exclusive, perpetual right and easement benefitting each adjacent Unit to discharge surface storm drainage and/or runoff from the Benefitted Unit over, upon and across the Burdened Unit, upon the following conditions and terms:

- (i) The grades and the storm water system for the Complex shall be initially constructed in strict conformance with the Site Plan; and
- (ii) No Party shall alter or permit to be altered the surface of the Unit or Common Area or the drainage system constructed on its Unit if such alteration would materially increase the flow of surface water onto an adjacent Unit either in the aggregate or by directing the flow of surface water to a Building.

10.3 **Off-Site Easements.** The Condominium has the benefit of certain utility easements located outside the Condominium on adjacent properties. The rights and obligations of the Condominium and the Unit Owners are also as set forth on these easements.

10.4 **Construction, Maintenance and Reconstruction.**

(a) In order to accommodate any Building improvements which may inadvertently be constructed beyond a Unit's boundary line, each Unit adjacent to another Unit shall have the

benefit of an easement, not to exceed a maximum lateral distance of six inches (6"), in, to, over, under, and across that portion of the burdened Unit adjacent to such common boundary line for the maintenance and replacement of such encroaching Building improvements.

(b) In the event a constructing Party (the "Constructing Party") determines that it is necessary to place underground piers, footings and/or foundations ("Subsurface Construction Elements") across the boundary line of its Unit, the Constructing Party shall advise the Party owning the adjacent Unit (the "Adjacent Party") of its construction requirement and shall provide plans and specifications relating thereto, including proposed construction techniques for the Subsurface Construction Elements. The Constructing Party's Unit shall have the benefit of an easement over the Adjacent Party's Unit, not to exceed a maximum lateral distance of five feet (5'), in, to, under, and across that portion of the Adjacent Party's Unit not theretofore occupied by any then existing structure, for the installation, maintenance and replacement of such Subsurface Construction Elements; provided, however, that the Constructing Party shall have no right to use such easement if the Adjacent Party is able to provide the Constructing Party a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Party's Unit.

Each Adjacent Party Unit Owner has the right to require the Constructing Party Unit Owner to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Party the opportunity to utilize the same in connection with the construction of its Building improvements to the end that each Party shall be able to place its Building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Parties, each shall assume and pay its reasonable share of the cost and expense of the design and construction thereof, unless the Parties have otherwise specifically agreed. In the event any Building utilizing a common Subsurface Construction Element is destroyed and not replaced or is removed, the common Subsurface Construction Element shall remain in place for the benefit of the other Building utilizing the same.

(c) The easements set forth in this Section 10.4 shall not diminish or waive any right of a Party to recover damages resulting from the Constructing Party's failure to construct its Building within its Unit in the case of (a) above, or within the easement area limits in the case of (b) above. The easements in each instance shall:

- (i) continue in effect for the term of this Condominium and thereafter for so long as the Building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged, or demolished); and
- (ii) include the reasonable right of access necessary to exercise and enjoy such grant upon the terms and with the limitations described in paragraph 11.1(e) below.

(d) With respect to Buildings constructed along the common boundary line between Units, unless a specific agreement is established for such use, nothing herein shall be deemed to create or establish:

- (i) a "common" or "party" wall to be shared with the adjacent Building, or
- (ii) the right for a Building to receive support from or apply pressure to the adjacent Building.

10.5 **Sign Easement.** The Condominium shall have for its use and for the use of designated Units, a reasonable access easement from Loudon Road over Unit 1-1 for the construction, reconstruction, replacement, operation, maintenance and repair of a sign structure, together with reasonable access over, under, upon, through and across Unit 1-1, from time to time, in the area of the underground electric line on Unit 1-1 to such sign structure to construct, replace, maintain, repair and operate a separate electric Utility Line pursuant to the terms and conditions set forth in Section 10.2 above in order to provide such sign structure with power to illuminate the same. The Unit Owners shall pay all costs and expenses with respect to the construction, maintenance and operation of such sign structure based on their percentage ownership in the Common Area. The foregoing easements, together with the rights included therewith, shall be for the benefit of the Condominium and shall be binding on and burden Unit 1-1. Additional sign panels may be placed on said sign structure as permitted herein. Nothing herein shall prohibit the erection of additional signs permitted from time to time by the Concord Zoning Ordinance.

10.6 **Restriction.** No Party shall grant any easement for the benefit of any property not within the Center without the consent of one hundred percent (100%) of the Unit Owners; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Unit to governmental or quasi-governmental authorities or to public utilities.

10.7 **General Provisions.**

(a) The exercise of the easement rights set forth herein by the Unit Owners shall be done in a manner so as to avoid unreasonable interference with the use or occupancy of any Unit.

(b) In connection with the exercise by any of the Unit Owners of the rights and easements conveyed herein, any area disturbed shall be expeditiously restored to the condition that existed prior to such disturbance insofar as is practical. Each Unit Owner also agrees that any such exercise shall be conducted in a manner so as to minimize disruption to the use and operation of other Units and the Center.

10.8 **Easement Running With the Land.** The easements granted herein shall run with the land and shall not be terminated or modified without a vote of one hundred percent (100%) of all Unit Owners affected thereby.

ARTICLE XI

CONSTRUCTION

11.1 **General Requirements.**

(a) All construction activities performed by or on behalf of each Unit Owner within the Center shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or

agency thereof. All construction shall utilize new materials, and shall be performed in a good, safe, and workmanlike manner.

- (b) Construction activities shall not:
- (i) cause any unreasonable increase in the cost of constructing improvements upon another Unit;
 - (ii) unreasonably interfere with construction work being performed on any other part of the Center;
 - (iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Center by any other Party or its Permittees; or
 - (iv) cause any Building located on another Unit to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

(c) Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them, or claims covered by the release set forth in paragraph 13.4(d).

(d) In connection with any construction, reconstruction, repair or maintenance on its Unit, each Party shall have the right to create a temporary staging and/or storage area (the "Staging Area") on its Unit; provided that such temporary Staging Area is located in that Party's Unit's parking field and does not materially interfere with the access, visibility and/or operations of any other Unit. If substantial work is to be performed, the Party performing the construction (the "Constructing Party") shall, at the request of the Unit Owner's Association, fence off the staging and storage area. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the Constructing Party's Unit. Upon completion of such work, the Constructing Party shall restore any affected Common Area to a condition equal to or better than that existing prior to commencement of such work.

(e) Each Unit Owner shall have, for its benefit and the benefit of its respective contractors, materialmen and laborers, a temporary license for access and passage over and across the Common Area and other Units as shall be reasonably necessary to construct and/or maintain improvements upon the Constructing Party's Unit; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by others. Any Party availing itself of the temporary license shall

promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

11.2 **Building Improvements.** While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Unit, the Parties hereby agree that once construction has been commenced, such Building shall be completed within a reasonable time.

11.3 **Liens.** In the event any mechanic's lien is filed against the Unit of one Party or the Common Area as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be discharged within thirty (30) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien and the payment of the judgment. Upon request of any Party, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Party whose failure to pay caused such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien, within thirty (30) days of such determination. The Party whose failure to pay caused the lien agrees to defend, protect, indemnify and hold harmless the other Parties from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien.

ARTICLE XII

MAINTENANCE AND REPAIR

12.1 Utility Lines.

(a) Each Party (the "Responsible Party") shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and in safe condition, all Utility Lines within its Unit that are not designated as Common Utility Lines. In the event of a failure of a Unit Owner to do so, any maintenance, replacement and/or repair of nondedicated Utility Lines located on a Responsible Party's Unit may be performed by another Unit Owner: after two (2) weeks' notice to the Responsible Party (except that in an emergency the work may be initiated with a reasonable attempt to notify); after normal business hours whenever possible; and in such a manner as to cause as little disturbance in the use of the other Unit Owner's Unit as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work agrees: to promptly pay all costs and expenses associated therewith; to diligently complete such work as quickly as possible; and to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement

of such work. Asphalt patches of pavement cuts are permitted if performed in a manner consistent with the conditions existing prior to the commencement of such work. The Responsible Party shall reimburse the Constructing Party within ten (10) days of receipt of a statement therefore.

(b) Common Utility Lines shall be maintained, repaired and/or replaced as part of the Common Area pursuant to Section 12.2 below.

12.2 Common Area and Common Utility Lines.

(a) Except as noted in paragraph 12.1 above and paragraph 12.2 and subject to the joint maintenance provision set forth in paragraph 12.2 (b) below, the Unit Owner's Association or the Operator shall maintain, or cause to be maintained, the Common Area and Common Utility Lines on a Unit, as specifically set forth herein, in a slightly, safe condition and good state of repair. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class developments of comparable size in the Concord, New Hampshire area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this Declaration. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Complex as a whole. The maintenance and repair obligation shall include, but not be limited to, the following:

- (i) Common Driveway Areas. Maintaining all paved surfaces in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing, it being agreed that asphalt patching will be permitted if performed in a manner consistent with first class shopping center standards. (For the purpose of this section, a pavement overlay of the drives and parking areas shall be considered a maintenance item). Maintaining and repairing all curbing.
- (ii) Debris and Refuse. Periodic removal from the Common Area of all papers, debris and refuse, and periodic removal from the Access Drive portion of the Common Area ice and snow (when there is two (2") inches of snow on the ground), including vacuuming and broom sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the use of the Common Area by Unit Owners, Occupants or Permittees.
- (iii) Non-Occupant Signs and Markers. Maintaining, cleaning and replacing any appropriate Common Area directional, stop or handicapped parking signs or markers; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks, within the Common

Area.

- (iv) Common Area Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, if any, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers. Exterior Building lighting, including any associated with a canopy or other architectural feature forming a part of such Building, and pole lights within a Unit shall not be considered a Common Area improvement, but instead the maintenance and replacement of such fixtures, and the cost of illumination, shall be the obligation of the Party upon whose Unit such fixtures are located.
- (v) Landscaping within Common Areas. Maintaining and replacing of all landscape plantings, trees and shrubs located within Common Areas in an attractive and thriving condition, trimmed and weed free. Maintaining and replacing landscaping, maintain the irrigation system to satisfy governmental water allocation or emergency requirements.
- (vi) Common Utility Lines. Maintaining, cleaning, replacing, and repairing any and all Common Utility Lines.

Notwithstanding anything to the contrary, and except for Common Utility Lines within a Unit and other improvements noted in paragraph 12.2(a) above, each Party shall have the obligation to operate, maintain, and repair, at its own cost and expense, in a clean, sightly and safe condition, its Unit, including, but not limited to the following: lighting, roads, parking areas, utilities, landscaping, sidewalks, pick-up debris, any exterior shipping/receiving dock area, any truck ramp or truck parking area, any recycling center or similarly designated area for the collection of items intended for recycling, and any refuse, compactor or dumpster area within its Unit.

(b) Commencing on the date of creation of the Condominium, the Operator shall operate and maintain the Common Area, the Common Utility Lines and other items set forth in and in accordance with the requirements of paragraph 12.2 (a) above. Within thirty (30) days following the commencement of such maintenance and operation, the Operator shall provide the Unit Owners' Association an estimated budget for the balance of the current calendar year containing the information required by (c) below, and each Party agrees to pay its share thereof in accordance with Article VIII and paragraph 12.2 (d). The Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the Concord, New Hampshire area. Each Party hereby grants to Operator, its agents and employees a license to enter upon its Unit to discharge the duties to operate, maintain and repair the Common Area. Operator shall expend only such funds as are reasonably necessary for the operation, maintenance and insurance of the Common Area, and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred. For the purpose of this Declaration, Common Area Maintenance Costs shall not include:

- (i) any late charges or fees paid by the Operator to third parties;

- (ii) any charge for electricity to a Party that separately pays the electrical costs for lighting the Common Area on its Unit;
- (iii) any costs to clean up or repair the Common Area resulting from promotional activities or from construction, maintenance or replacement of Buildings, which costs will be paid by the Unit Owner where such activities occurred;
- (iv) real property taxes and assessments on the Common Area to the extent they are separately assessed as part of each Unit; and
- (v) entertainment, transportation, meals and lodging of anyone.

In lieu of Operator's profit, administrative and overhead costs, Operator shall be permitted to charge an amount (the "Administration Fee") computed by multiplying the Common Area Maintenance Costs (exclusive of insurance premiums and utility charges) by ten percent (10%). If any of Operator's personnel perform services, functions or tasks, including Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(c) Operator shall, at least twenty (20) days prior to the beginning of each calendar year, submit to the Unit Owners' Association an estimated budget (the "Budget") for the Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area of the Center for the ensuing calendar year. The Budget shall be in a form and content reasonably acceptable to the Unit Owners' Association and shall identify separate cost estimates for at least the categories specified under paragraph 12.2 (a), plus:

- (i) the premium for Commercial General Liability Insurance covering the Common Area as required by paragraph 13.4(a) below;
- (ii) rental or purchase of equipment and supplies;
- (iii) depreciation or trade-in allowance applicable to items purchased for Common Area purposes; and
- (iv) Administration Fee.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to such year, and shall note the anticipated cost and timing of such phased work during succeeding calendar years.

Operator shall use its diligent, good faith efforts to operate and maintain the Common Area in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to persons or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. Operator may submit a supplemental billing to each Party, together with evidence supporting such payment, and each Party shall pay its share thereof within thirty (30) days; if the cost

limitation set forth above is not exceeded then such costs shall be included as part of the Common Area Maintenance Costs at the year end.

(d) Common Area Maintenance Costs and the Administration Fee shall be allocated as set forth in Section 8.1 herein.

Any Unit Owner may divide its Unit into two or more additional Units as set forth in Section 9.5 herein. In the event an existing Unit is divided into additional Units, the Party causing such division shall prorate the allocation attributable to the existing Unit between the newly created Units, based on Unit Land Area, file a recorded amendment to this Declaration confirming such allocation and deliver a copy of such Declaration to the Unit Owners' Association, the Operator and each other Party.

Each Party shall pay to the Operator in equal monthly payments, in advance, the share of the Common Area Maintenance Costs and Administration Fee attributable to its Unit based either upon the amount set forth in the approved Budget, or if a Budget is not approved, then the lesser of the amount set forth in the unapproved Budget or the monthly payment established for the prior year. The Operator shall reasonably estimate such costs for the partial year during which its maintenance obligations commence and each Party shall make its first payment in the month following Operator's undertaking of such maintenance and repair of the Common Area. Within ninety (90) days after the end of each calendar year, Operator shall provide each Party with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the Administration Fee and the actual Common Area Maintenance Costs paid by it for the operation and maintenance of the Common Area and the share of the aggregate thereof that is attributable to such Party's Unit. If the amount paid with respect to a Unit for such calendar year shall have exceeded the share allocable to such Unit, Operator shall refund the excess to the Party owning such Unit at the time such certified statement is delivered, or if the amount paid with respect to a Unit for such calendar year shall be less than the share allocable to such Unit, the Party owning such Unit at the time such certified statement is delivered shall pay the balance of the Unit's share to Operator within thirty (30) days after receipt of such certified statement.

Within eighteen (18) months after receipt of any such certified statement, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such certified statement. The Party shall notify Operator of its intent to audit at least fifteen (15) days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the Common Area Maintenance Costs and Administration Fee and/or the Common Area charges, or in the allocation thereof to a Unit, an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of five percent (5%) of the amount calculated by Operator as its share for the calendar year, in which case Operator shall pay the cost of such audit.

(e) If any Common Area improvements are damaged or destroyed, the Unit Owners' Association or the Operator shall promptly cause the repair, restoration or rebuilding of the improvements so damaged or destroyed so that the restored portions of the Common Area shall comply with the applicable requirements of this Declaration and the Bylaws.

(f) The Common Utility Lines (the "Common Utility Lines") noted in paragraph 12.2(a) are limited to the following lines, as located on the Premises and as shown on the Condominium Utility Line Plans:

- (i) Drainage. The drainage lines and structures, as shown on the Condominium Utility Line Plans.
- (ii) Sanitary Sewer. That portion of the sewer line and structures on the Premises as shown on the Condominium Utility Line Plans.
- (iii) Utilities. That portion of the utility lines on the Milano Property from the water main in Old Loudon Road to and including the first gate valve to Unit 1-2 and continuing along the main water line roughly parallel to Triangle Park Drive to and including a second gate valve along the line as shown on the Common Utility Line Plan. Premises as shown on the Condominium Utility Line Plans.

The Condominium and each Unit Owner are granted easements over, under and across the Units to access the Common Utility Lines for all lawful purposes.

(g) All other utility lines and conduits are the responsibility of the Unit which they serve.

(h) The Access Drive, including curbing, as described on the Condominium Subdivision Plan, is Common Area.

(i) All other parking and roadways, including curbing, is the responsibility of the Unit within which it is located.

(j) The free standing pylon sign is Common Area and the electrical service and conduit to the pylon sign is a Common Utility Line.

12.3 **Building Improvements within the Unit**. After completion of construction, each Party covenants and agrees to maintain and keep the exterior portion of the Buildings located on its Unit in first-class condition and state of repair, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this Declaration and the Bylaws. Each Party further agrees to store all trash and garbage in adequate containers, to locate or screen such containers so that such containers are not easily visible from the parking area or abutting streets, and to arrange for regular removal of such trash or garbage.

ARTICLE XIII

OPERATION OF THE COMPLEX

13.1 **Uses**.

(a) The Condominium shall be used only for restaurants, retail sales, banks, offices, other commercial purposes, schools, museums and other uses permitted from time to time.

“Business Office” shall mean an office which does not provide services directly to consumers. “Retail Office” shall mean an office which provides services directly to consumers, including, but not limited to, financial institutions, real estate, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics.

(b) No use shall be permitted in the Complex which is inconsistent with the uses noted in paragraph 13.1(a) above. Without limiting the generality of the foregoing, the following uses shall not be permitted:

- (i) Any use which emits an obnoxious odor, fumes, noise, or sound which can be heard or smelled outside of any Building in the Complex;
- (ii) Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- (iii) Any “second hand” store or “surplus” store;
- (iv) Any mobile home park, trailer court, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of properly screened garbage compactors and screened dumpsters in a location other than in the front of any Building). The front of a Building being defined for the purposes of this sentence as the location of the main entrance to the Building;
- (vi) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (vii) Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Center is located;
- (viii) Any automobile, truck, trailer or recreational vehicles sales, leasing, display or body shop repair operation;
- (ix) Any bowling alley or skating rink;
- (x) Any residential use, including, but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments, or lodging rooms;
- (xi) Any veterinary hospital, or animal raising or boarding facilities

(except that this prohibition shall not prohibit pet shops);

- (xii) Any mortuary or funeral home;
- (xiii) Any establishment selling or exhibiting pornographic materials (except for incidental sale of such material by first-class bookstores) or drug-related paraphernalia;
- (xiv) Any amusement or video arcade, pool or billiard hall (except for the foregoing as incidental to or part of a Restaurant), flea market, car wash, or dance hall.

(c) No Party shall use or permit the use of Hazardous Materials on, about, under or in its Unit, or the Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. No Party shall be deemed to have "permitted the use" of Hazardous Materials, pursuant to the provisions herein in the event that such Party prohibits the use of Hazardous Materials on, about, under or in its Unit pursuant to a lease to a third party, and such third party breaches such lease provisions. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including, but not limited to, costs of investigation, remedial response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

For the purpose of this paragraph (c), the term (i) "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

(d) No merchandise, equipment or services, including, but not limited to, vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided however, that the foregoing prohibition shall not be applicable to (i) the storage of shopping carts or the installation of an "ATM" banking facility on any Unit; (ii) temporary Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Unit Owners' Association which may be withheld in their sole and absolute discretion, or (iii) any recycling center required by law, the location of which shall be subject to the approval of the Unit Owners' Association.

(e) Each Party shall use its best efforts to cause the employees of the Occupants of its Unit to park their vehicles only on such Unit, where designated by the Unit Owner.

(f) Any restrictions and covenants of record shall also apply to the Condominium.

13.2 **Lighting.** After completion of the Common Area lighting system on its Unit, each Party hereby covenants and agrees to keep its Unit fully illuminated each day from dusk to at least

11:00 p.m., unless the Unit Owners' Association agrees upon a different time or unless otherwise required by applicable law. Each Party further agrees to keep any exterior Building security lights on from dusk until dawn. Each Unit shall have an irrevocable license over other Units for the purpose of permitting the lighting from one Unit to incidentally shine on the adjoining Unit.

13.3 Occupant Signs and Master Signage Plan.

(a) Subject to approval by the Concord Planning Board, a freestanding sign ("Sign") shall be permitted within the Center constructed in the specific areas designated on the Site Plan, or as set forth in this paragraph 13.3 (a), as both may be amended from time to time pursuant to the provisions herein; provided, however, if a Sign location is no longer available for use because of a condemnation or governmental restriction, a substitute Sign location may be approved by the Unit Owners' Association, subject to approval by the Planning Board, the reasonable consent of the Party owning the Unit to be burdened by the substitute Sign location. Any Pylon sign containing the names of all occupants in the Condominium shall be Common Area and shall be maintained, repaired, and replaced as Common Area, except for the individual Occupant signs thereon, which shall be paid for by that Occupant. All Occupants at the Condominium shall be entitled to a sign location on the Complex main Pylon sign. Any Occupant shall pay for its sign on the main Pylon sign.

The Unit Owners' Association shall have the right to approve the design and size of all Signs, including the identification panel inserts.

(b) As a part of a Master Signage Plan, directional signs may be located at appropriate places within the Center to direct the public to uses within the Center. Such signs shall be maintained, repaired and replaced as Common Area, except that individual Occupants shall pay for their names on the Signs, and in the event such Signs are located on a Unit, the Unit Owner of that Unit hereby grants a non-exclusive, perpetual easement to the other Unit Owners to locate such Signs on such Unit Owner's Unit.

13.4 Insurance.

(a) The Unit Owner's Association or the Operator, as applicable, shall maintain or cause to be maintained in full force and effect, as coverage on the Condominium, at least the minimum insurance coverages in Constant Dollars set forth below:

- (i) Condominium Commercial General Liability Insurance, including umbrella coverage, covering the Common Area, with a combined single limit of liability of Two Million Dollars (\$2,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence; each Party shall be a "named insured" under such policy. It is the agreement of the Parties that the insurance so maintained shall be primary insurance and not contributory with the insurance maintained by the Parties pursuant to paragraph 13.4 (b) below, or any other insurance maintained by the Parties.
- (ii) Workers' compensation and employer's liability insurance:

- a. Worker's compensation insurance as required by any applicable law or regulation.
 - b. Employer's liability insurance in the amount of \$1,000,000 each accident causing bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (iii) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined.
- (b) Each Party (as to its Unit only) shall maintain or cause to be maintained in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:
- (i) Commercial General Liability Insurance, including umbrella coverage, with a combined single limit of liability of Two Million Dollars (\$2,000,000) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Unit. Each Party agrees to look first to the insurance coverage obtained pursuant to (a) above, and to exhaust all limits thereof before making any claim, other than to preserve rights if coverage under (a) is inadequate, under the insurance carried by a Party hereunder.

Each Party will defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorney's fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Unit owned by each indemnifying Party; provided however, the foregoing obligation shall not apply to claims caused by the negligence or willful act or omission of such other Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

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

- (i) Workers' compensation and employer's liability insurance:
 - a. Worker's compensation insurance as required by any applicable law or regulation.

- b. Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the Contractor, which shall include the following minimum limits of liability and coverages:
- a. Required coverages:
 - (1) Premises and Operations,
 - (2) Products and Completed Operations,
 - (3) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents,
 - (4) Broad Form Property Damage (including Completed Operations),
 - (5) Explosion, Collapse and Underground Hazards, and
 - (6) Personal Injury Liability.
 - b. Minimum limits of liability:
 - (1) \$1,000,000 each occurrence (for bodily injury and property damage),
 - (2) \$1,000,000 for Personal Injury Liability,
 - (3) \$2,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work), and
 - (4) \$2,000,000 general aggregate applying separately to the Center.
- (iii) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. The Contractor shall require each of his subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.
- (iv) Umbrella/Excess Liability Insurance: The Contractor shall also carry

umbrella/excess liability insurance in the amount of \$3,000,000.

If the construction activity involves the use of another Party's Unit, then the Owner of such Unit shall be an additional insured on all above-referenced policies and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration, nor shall it be allowed to expire, without at least thirty (30) days' prior written notice to each insured or such notice as the insurer will give, such notice not to be less than ten (10) days. If such insurance is canceled or expires, the constructing Party shall immediately stop all work on or use of the other Party's Unit until either the required insurance is reinstated or replacement insurance obtained.

(d) Effective upon the commencement of construction of any Building on its Unit and so long as such Building exists, a Party shall carry, or cause to be carried, property insurance with "all-risk" coverage, in the amount of 100% of full replacement cost thereof (excluding footings, foundations or excavations).

Each Party (the "Releasing Party") by acquiring a Unit releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Center, which loss or damage is of the type covered by the insurance required to be maintained under paragraph 13.4(d), irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self insurance reserve. The Releasing Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given.

Each Party by acquiring a Unit agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit asserted by or through any Permittees of the indemnifying Party's Unit, for any loss or damage to the property of such Permittee located upon the indemnifying Party's Unit, which loss or damage would have been covered by the insurance required to be maintained under paragraph 13.4(d), irrespective of any negligence on the part of any other Party which may have contributed to or caused such loss.

All insurance required by Section 13.4 shall be written on an occurrence basis and procured from companies rated by Best's Insurance Reports not less than A-/X which are authorized to do business in New Hampshire. All insurance may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000 in Constant Dollars, (iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a

copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has \$100,000,000 in Constant Dollars of both net worth and net current assets, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with Section 13.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to subsection (iii) above. Each Party and the Operator agree to furnish to any Party requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, evidencing that the insurance required to be carried by such Party is in full force and effect.

The insurance required pursuant to Section 13.4 above shall include the following provisions:

- (i) that the policies shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration, nor shall it be allowed to expire, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional and named insured or such notice as the insurer will give, such notice not to be less than ten (10) days;
- (ii) shall provide for severability of interests;
- (iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; and
- (iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth in paragraph 13.4(a) for Operator and paragraph 13.4(b) for a Party.

13.5 Taxes and Assessments. Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Unit, the Building or Buildings located on its Unit, and other improvements located thereon, any Common Area assessment, and any personal property owned or leased by such Party in the Center, provided that if the taxes or assessments or any part thereof may be paid in installments, the Party may pay each such installment as and when the same becomes due and payable. Nothing contained in this Section 13.5 shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to its Unit in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon. Until such time as the Units shall be separately assessed, each Unit Owner shall pay to the Operator not later than twenty (20) days before the date such taxes and assessments are due, its proportionate share of all taxes and assessments attributable to the Center, based on the percentages set forth in Section 8.1 hereof. Notwithstanding the provisions of this Section 13.5, a Unit Owner shall pay its taxes so that the Unit is not sold pursuant to a tax sale.

ARTICLE XIVMISCELLANEOUS14.1 Default.

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

- (i) The failure to make any payment required to be made hereunder within ten (10) days of the due date; or
- (ii) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (i) above, within thirty (30) days after receipt of written notice from the Unit Owner's Association or another Party (the "Non-Defaulting Party") specifying the nature of the default claimed, provided, however, that such Party receiving notice shall not be in default hereunder so long as such Party starts to cure within thirty (30) days for matters that may take greater than thirty (30) days and diligently pursues such cure and cures within ninety (90) days after receipt of such notice.

(b) With respect to any default under paragraph 14.1(a)(ii) above, any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Unit of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand therefor, together with reasonable documentation supporting the expenditures made.

(c) Costs and expenses accruing and/or assessed pursuant to paragraph 14.1(a)(i) and/or paragraph 14.1(b) above shall constitute a lien against the Defaulting Party's Unit. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Merrimack County Registry of Deeds by the Party 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 as a curing Party;

- (iii) An identification of the Owner or reputed owner of the Unit or interest therein against which the lien is claimed;
- (iv) A description of the Unit against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
- (vi) A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date, book and page of recordation hereof. The statement shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by notice pursuant to Section 14.4 below. 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 laws of the State of New Hampshire.

(d) The Unit Owner's Association and/or each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(e) If the Defaulting Party establishes it is not liable or the matter is paid, the lien shall be discharged of record.

(f) The prevailing Party shall be entitled to recover costs of collection or defense, including reasonable attorneys' fees.

(g) The Unit Owner's Association may exercise the rights set forth in this Section 14.1.

14.2 **Interest.**

Any time a Party or Operator shall not pay any sum payable hereunder to another Party or the Unit Owner's Association within ten (10) days of the due date, such delinquent Party or Operator shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of:

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

(b) three percent (3%) per annum in excess of the prime rate from time to time publicly announced by Citizens Bank or its successor.

14.3 **Estoppel Certificate.** Each Unit Owner, the Unit Owners' Association and the Operator shall upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or Operator, issue within thirty (30) days of receipt of such request to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

(a) whether it knows of any default under this Declaration by the requesting Person, and if there are known defaults, specifying the nature thereof;

(b) whether this Declaration has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and

(c) whether this Declaration is in full force and effect.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon the estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Area Maintenance Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Unit Owners' Association was required but not sought or obtained.

14.4 **Notices.** All notices, demands and requests (collectively, the "notice") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid, or (iv) sent via facsimile so long as the original copy is also sent via overnight courier service on the same day.

Upon the purchase of a Unit, the Person purchasing the Unit shall deliver its address for notice to (i) the Unit Owners' Association, (ii) the Operator and (iii) the other Unit Owners, and such address shall be the address for notices for such Party. Upon at least ten (10) days prior written notice, each Person shall have the right to change its address to any other address within the United States of America.

14.5 **Approval Rights.**

(a) With respect to any matter as to which a Party has specifically been granted

an approval right under this Declaration, and unless specifically otherwise provided, nothing contained in this Declaration shall limit the right of a Party to exercise its reasonable business judgment or act in a reasonably subjective manner subject to the provisions of this Declaration. The Parties intend by this Declaration to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

(b) Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this Declaration shall be given by the Person to whom directed within thirty (30) days of receipt or as noted in Section 14.4. Each disapproval shall be in writing and, subject to (a) above, the reasons shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval.

(c) Unless otherwise provided herein, if the Unit Owners' Association's approval is requested, a sixty percent (60%) vote must be given to approve such request.

14.6 **Condemnation.** In the event any portion of the Center shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Unit Owner or Unit Owners' Association owning the land or the improvements taken, and the other Unit Owners hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, or Common Area, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition and (ii) if the taking includes easement rights which are intended to extend beyond the termination of this Declaration, the portion of the award allocable to each such easement right shall be paid to the respective grantee(s) thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent reconstruction burdens the land taken, no easement or license set forth in this Declaration shall expire or terminate based solely upon such taking.

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

14.8 **Construction and Interpretation.**

(a) This Declaration and the Exhibits attached hereto and the Condominium Subdivision Plan contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof, except for the provisions of the following documents, which shall be binding upon the Parties: (i) the Bylaws, and (ii) the Rules (collectively, the "Other Documents"). Any prior negotiations, correspondence, memoranda or agreements are superseded

in total by this Declaration, the Exhibits attached hereto and the Condominium Subdivision Plan and the Other Documents. This Declaration has been fully negotiated and/or accepted at arms length between the Declarant and the Unit Owners after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto. Neither the Declarant nor any Unit Owner shall be deemed the scrivener of this Declaration and, based on the foregoing, the provisions of this Declaration, the Exhibits attached hereto and the Condominium Subdivision Plan and the Other Documents shall be construed as a whole according to their common meaning and not strictly for or against any Party.

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

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

(d) Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect. It is the intention of the Declarant that the provisions of this Declaration are severable so that if any provision, condition, covenant, or restriction hereof shall be invalid or void under any applicable federal, state or local law or ordinance, the remainder shall be unaffected thereby. In the event that any provision, condition, covenant, or restriction hereof is, at the time of recording this Declaration, void, voidable or unenforceable as being contrary to any applicable law or ordinance, the Declarant, its successors and assigns and all Persons claiming by, through or under this Declaration, covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability, or unenforceability, shall be deemed to apply retrospectively to this Declaration thereby operating to validate the provisions of this instrument which otherwise might be invalid, and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein declared as fully as if they had been in effect at the time of this instrument.

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

(f) This Declaration shall be governed under the laws of the State of New Hampshire.

14.9 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Center or of any Unit or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

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

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

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

14.13 **Time.** Time is of the essence of this Declaration.

14.14 **No Waiver.** The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default under this Declaration shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action with respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other terms or provisions contained in this Declaration.

14.15 **Compliance.** This Declaration is set forth in compliance with the requirements of the Condominium Act.

ARTICLE XV**EXCULPATION****15.1 Certain Limitations on Remedies.**

(a) None of the Persons comprising a Party (whether members, partners, shareholders, officers, directors, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any judgment obtained against a Party.

(b) The Unit Owners' Association, the Operator and each Party agree to look solely to the interest in the Center of a defaulting Party for recovery of damages for any breach of this Declaration, provided, however, the foregoing shall not in any way impair, limit or prejudice the right of a Party:

- (i) Casualty Insurance and Condemnation Proceeds. To recover from another Party all damages and costs on account of, or in connection with, casualty insurance or condemnation proceeds which are not applied or used in accordance with the terms of this Declaration.
- (ii) Hazardous Substances. To recover from a Party all damages and costs arising out of or in connection with, or on account of, breach by a Party of its obligations under paragraph 13.1(c) herein.
- (iii) Liability Insurance. To recover from a Party all loss or damages, and costs arising out of or in connection with, or on account of, breach by a Party of its obligation to carry liability insurance as required herein.
- (iv) Taxes, Assessments and Liens. To recover from a Party all damages and costs arising out of or in connection with, or on account of, the failure by such Party to pay when due any tax, assessment or lien as required herein.
- (v) Fraud or Misrepresentation. To recover from a Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenants, or condition in this Declaration.
- (vi) Equitable Relief, Costs. To pursue against a Party equitable relief in connection with any term, covenant or condition of this Declaration, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance.

ARTICLE XVI**AMENDMENT OF DECLARATION**

16.1 Except as otherwise specifically permitted herein as to a greater or lesser percentage or unilateral action by a Unit Owner to amend this Declaration, and except as otherwise required in the Condominium Act or herein as to a greater percentage, this Declaration may be amended by the vote of at least sixty percent (60%) of the Unit Owners' interest as determined herein, cast in person

or by proxy at a meeting duly held in accordance with the provisions of the Bylaws and each Unit Owner may consider, approve or disapprove any proposed amendment to this Declaration in its sole and absolute discretion; provided, however, that (i) no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Unit without the consent of such Party, and (ii) no such amendment shall be effective until evidence thereof has been duly recorded at said Registry of Deeds pursuant to Section 356-B:11 of the Condominium Act. Each Unit Owner shall have voting rights as set forth in Section 8.3 herein.

16.2 Notwithstanding any provision to the contrary set forth herein, an Owner of a Unit shall have the unilateral power to amend this Declaration to create additional Units within said Unit, to record an amendment to this Declaration to construct, add and alter Building(s) and improvements within the Permissible Building Area of a Unit, including but not limited to site, building and other plans, as needed to have each Building within a Unit become part of the Condominium, and to record changes to building and other plans, including as-built plans. The Owner of the Unit being so changed shall have the authority to sign all applications for approvals and permits and for the Amendment of the Declaration. The other Unit Owners and the Unit Owner's Association shall cooperate in signing all applications if required by the governmental authority involved.

ARTICLE XVII

REVOCAION OR PARTITION

The Common Area shall remain undivided and no Unit Owner or any other person shall bring any action for partition or division thereof, nor shall the Common Area be abandoned by act or omission, unless the Condominium is terminated pursuant to the provisions of the Condominium Act and the provisions of this Declaration.

ARTICLE XVIII

CONSENT OF FIRST MORTGAGEES

Notwithstanding any other provision of this Declaration, the Bylaws, or the Rules, unless at least seventy-five percent (75%) of the mortgagees holding mortgages recorded at the Merrimack County Registry of Deeds constituting first liens on the Units subject to such mortgages (based upon the percentage of interest in the Common Area) have given their prior written approval, which approval will not be unreasonably withheld, the Unit Owners' Association and Board of Directors shall not be entitled to:

18.1 By act or omission seek to abandon or terminate the Condominium regime;

18.2 By act or omission seek to abandon, partition or transfer the Common Area, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Condominium or expansion of the Condominium or creation of new Units as permitted herein or changes in accordance with Article XIX, shall not be deemed a transfer within the meaning of this section; or

18.3 Use hazard insurance proceeds for losses to the Center (whether to Units or the Common Area) in any manner other than as set forth herein or as provided by statute in case of substantial loss to the Units and/or Common Area.

Consent of a mortgagee to terminate the Condominium may be obtained at the time any mortgage is granted.

ARTICLE XIX

EXPANSION AND CONTRACTION OF THE CONDOMINIUM

CONVERTIBILITY OF UNITS

19.1 The Declarant or the Unit Owners have the right to expand the Condominium from time to time by adding land to the Condominium in accordance with NH RSA §356-B:25 to be subject to the Declaration and By Laws.

19.2 The Declarant or the Unit Owners have the right to contract from time to time the Condominium by removing land from the Condominium in accordance with NH RSA §356-B:26.

19.3 Any Unit can be unilaterally divided into two (2) or more Units by that Unit Owner or can have portions thereof severed and added to another Unit(s) or Common Area by the Owners of the Units involved.

19.4 After expansion, contraction or conversion, the percentage of votes for a Unit and the Common Area and Common Utility Line responsibility of a Unit and for any other purpose under the Declaration or the By-Laws shall be based on the land area of that Condominium Unit divided by the total Unit land area in the Condominium, excluding all Common Area within the Condominium.

19.5 With the consent of all Unit Owners, land within a Unit may be removed from that Unit and added to the Common Area of the Condominium, including, but not limited to, parking areas and utility lines serving more than one Unit.

19.6 The Declarant reserves transferable easements over all Common Area and Units 1-1, 1-2 and 1-3 to facilitate conversion and expansion of the Condominium in accordance with NH RSA §356-B:27.

19.7 The Declarant reserves a transferable easement over Unit 1-1, Unit 1-2 and Unit 1-3 to extend utilities to other Units to be created in convertible or expandable land.

ARTICLE XX

TERMINATION OF CONDOMINIUM

Upon unanimous vote of all Unit Owners to terminate this Condominium, and with the consent of mortgagees in accordance with Article XVIII hereof, this Condominium shall terminate and shall be of no further force and effect and each Unit shall be withdrawn from the Condominium and held by the respective Unit Owner free of said Condominium, and this Declaration shall be of no further force and effect; provided, however that the termination of this Declaration of Condominium shall not result in the termination of any of the easements granted herein and the maintenance obligations with regard to the Common Area shall be set forth in an Operation and Easement Agreement accepted and executed upon unanimous vote of all Unit Owners. The termination of this Declaration and the Condominium shall not act to discharge any mortgage(s) on

the Unit(s) unless and until said mortgage(s) are specifically discharged by a separate discharge of mortgage, full or partial, recorded at the Merrimack County Registry of Deeds. Said mortgage(s) shall continue to be a lien on any Condominium Unit(s) when such Unit is converted to a lot. The Unit Owners shall subdivide the condominium into separate lots, based on the Unit lines, also taking into consideration the Common Area as needed to create the lots.

ARTICLE XXI

LIABILITY OF THE DECLARANT

The Declarant shall not, upon leave of a Unit to a tenant or the conveyance of any Unit, be liable to the tenant(s) or purchaser(s) of said Unit(s) for any matter whatsoever including, but not limited to, the status of all plans and approvals or the suitability or quality of the site, the engineering data, the site plans and/or the architectural plans for any purpose whatsoever. The Declarant makes no warranties, express or implied, and no manufacturer's warranties, except for title warranties accompanying any conveyance as set forth in the deed(s) evidencing such conveyance of record. The Unit Owners hereby release and waive any statutory warranties of Declarant applicable to the Condominium, except any title warranties accompanying any conveyance as set forth in the deed(s) evidencing such conveyance of record. The tenant(s) and/or purchaser(s) of all Units assume all risk for the accuracy of all plans and/or any other instruments or documents in connection with the Condominium, the status of all approvals and, upon acceptance of conveyance, release the Declarant from and agree to indemnify the Declarant against any and all liabilities, losses or claims as a result thereof.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officer this 16th day of April, 2004.

DECLARANT:

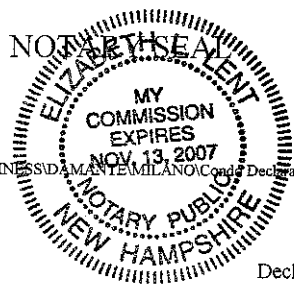
MILANO REAL ESTATE ASSOCIATES, L.L.C.

Elizabeth Lent
Witness

By: [Signature]
Michael A. D'Amante
Its Member

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me this 16th day of April, 2004, by Michael A. D'Amante for the purposes contained herein.



Elizabeth Lent
Notary Public/Justice of the Peace
My commission expires: _____

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APPENDIX ATHE PREMISES DEDICATED TO CONDOMINIUM USE

The Condominium/Premises consists of a site of 4.06 acres, more or less, owned by Milano Real Estate Associates, L.L.C. on Loudon Road, in the City of Concord, County of Merrimack, State of New Hampshire as set forth on a Plan entitled "Condominium Site Plan, Milano Site Development, Loudon Road and Old Loudon Road, Concord, New Hampshire, Prepared for Milano Real Estate Assoc., LLC," N.H., dated February 9, 2004, said Plan to be recorded at the Merrimack County Registry of Deeds on even or near even date herewith. A metes and bounds description of the Premises is as follows:

Beginning at a stone bound found at the southwest corner of the Premises on the northerly sideline of Loudon Road; thence

N 19° 37' 26" W a distance of 498.75' to a stone bound found at the northwest corner of the Premises; thence

N 76° 02' 46" E a distance of 436.65' to a point at the northeast corner of the Premises; thence

S 27° 29' 18" E a distance of 159.17'; thence

S 62° 30' 42" W a distance of 107.44'; thence

S 09° 51' 31" E a distance of 152.10'; thence

S 26° 06' 24" E a distance of 60.92'; thence

N 63° 53' 36" E a distance of 52.04'; thence

S 26° 06' 24" E a distance of 50.00' to a point at the southeast corner of the Premises; thence

S 63° 53' 36" W a distance of 393.46' along the northerly sideline of Loudon Road to the point of beginning.

Containing 4.06 acres or 176,859 square feet, more or less, and be all measurements and dimensions, more or less.

Subject to all liens, easements, covenants and restrictions of record.

APPENDIX B
DESCRIPTION OF COMMON AREA

Beginning at a stone bound found at the southwest corner of the Premises; thence

N 63° 53' 36" E a distance of 103.69'; thence

N 36° 23' 02" W a distance of 45.11'; thence

N 26° 06' 24" W a distance of 106.52'; thence

Along the arc of a curve with a radius of 156.00' a distance of 59.59'; thence

Along the arc of a curve with a radius of 20.00' a distance of 23.35'; thence

N 62° 40' 44" E a distance of 250.27'; thence

N 09° 51' 31" W a distance of 15.65'; thence

N 62° 30' 42" E a distance of 107.44'; thence

N 27° 29' 18" W a distance of 15.00'; thence

S 62° 30' 42" W a distance of 107.50'; thence

S 62° 42' 02" W a distance of 249.46'; thence

Along the arc of a curve having a radius of 10.00' a distance of 16.97'; thence

S 69° 56' 36" W a distance of 89.19'; thence

S 19° 37' 26" E a distance of 273.93' to the point of beginning.

Containing 0.7486 acre or 32,610 square feet, more or less, and be all measurements and dimensions, more or less.

Subject to all liens, easements, covenants and restrictions of record.

APPENDIX C-1

IDENTIFICATION OF UNIT 1-1

UNIT DESIGNATION

<u>UNIT NUMBER</u>	<u>APPROXIMATE AREA</u>
1-1	1.3525 acres (58,914 square feet)

UNIT 1-1 DESCRIPTION

Beginning at a point on the northerly sideline of Loudon Road, said point of beginning being N 63° 53' 36" E a distance of 103.69' from a stone bound found at the southwest corner of the Premises; thence

N 36° 23' 02" W a distance of 45.11'; thence

N 26° 06' 24" W a distance of 106.52'; thence

Along the arc of a curve with a radius of 156.00' a distance of 59.59'; thence

Along the arc of a curve with a radius of 20.00' a distance of 23.35'; thence

N 62° 40' 44" E a distance of 250.27'; thence

S 09° 51' 31" E a distance of 136.45'; thence

S 26° 06' 24" E a distance of 60.92'; thence

N 63° 53' 36" E a distance of 52.04'; thence

S 26° 06' 24" E a distance of 50.00'; thence

S 63° 53' 36" W a distance of 289.78' to the point of beginning.

Containing 1.3525 acres or 58,914 square feet, more or less, and be all measurements and dimensions, more or less.

Subject to all liens, easements, covenants and restrictions of record.

INITIAL IMPROVEMENTS TO BE CONSTRUCTED WITHIN UNIT 1-1

A Building, parking areas, lighting, landscaping, and other improvements are to be constructed on Unit 1-1.

Buildings and other improvements may also be constructed from time to time within Unit 1-1.

Upon completion of construction, the Unit Owner shall record an amendment to the Condominium Subdivision Plan showing the improvements and a building plan showing the elevations of the Building(s) added to the Condominium.

APPENDIX C-2

IDENTIFICATION OF UNIT 1-2

UNIT DESIGNATION

UNIT NUMBER APPROXIMATE AREA

1-2 0.4546 acre (19,802 square feet)

UNIT 1-2 DESCRIPTION

Beginning at a point at the northeast corner of the Premises, said point of beginning being N 76° 02' 46" E a distance of 436.65' from a stone bound found at the northwest corner of the Premises; thence

S 27° 29' 18" E a distance of 144.17'; thence

S 62° 30' 42" W a distance of 107.50'; thence

N 27° 29' 18" W a distance of 19.00'; thence

S 62° 30' 42" W a distance of 19.00'; thence

N 27° 29' 18" W a distance of 155.62'; thence

N 76° 02' 46" E a distance of 130.11' to the point of beginning.

Containing 0.4546 acres or 19,802 square feet, more or less, and be all measurements and dimensions, more or less.

Subject to all liens, easements, covenants and restrictions of record.

INITIAL IMPROVEMENTS TO BE CONSTRUCTED WITHIN UNIT 1-2

Parking areas, lighting and landscaping are to be constructed within Unit 1-2.

Buildings and other improvements may also be constructed from time to time within Unit 1-2.

Upon completion of construction, the Unit Owner shall record an amendment to the Condominium Subdivision Plan showing the improvements and a building plan showing the elevations of the Building(s) added to the Condominium.

APPENDIX C-3

IDENTIFICATION OF UNIT 1-3

UNIT DESIGNATION

UNIT NUMBER APPROXIMATE AREA

1-3 1.5044 acres (65,532 square feet)

UNIT 1-3 DESCRIPTION

Beginning at a stone bound found at the northwest corner of the Premises along the southerly boundary of Old Loudon Road; thence

N 76° 02' 46" E a distance of 306.54'; thence

S 27° 29' 18" E a distance of 155.62'; thence

N 62° 30' 42" E a distance of 19.00'; thence

S 27° 29' 18" E a distance of 19.00'; thence

S 62° 42' 02" W a distance of 249.46'; thence

Along the arc of a curve with a radius of 10.00' a distance of 16.97'; thence

S 69° 56' 36" W a distance of 89.19'; thence

N 19° 37' 26" W a distance of 224.82' to the point of beginning.

Containing 1.5044 acres or 65,532 square feet, more or less, and be all measurements and dimensions, more or less

Subject to all liens, easements, covenants and restrictions of record.

INITIAL IMPROVEMENTS TO BE CONSTRUCTED WITHIN UNIT1-3

A Building, parking areas, lighting, landscaping and other improvements are to be constructed within Unit 1-3.

Buildings and other improvements may also be constructed from time to time within Unit 1-3.

Upon completion of construction, the Unit Owner shall record an amendment to the Condominium Subdivision Plan showing the improvements and a building plan showing the elevations of the Building(s) added to the Condominium.

APPENDIX D**APPURTENANT RIGHTS AND BURDENS**

In addition to any other rights and burdens of record, the Premises or portions thereof are dedicated to the Condominium together with the benefit and subject to the obligations of the non-exclusive rights and easements set forth in the Declaration, subject to the rights and reservations of the Declarant and others set forth in the Declaration and subject to the following:

As to the entire Condominium:

The Condominium is subject to the following:

1. The rights, easements, terms and conditions set forth in Reciprocal Easement Agreement between Motiva Enterprises, LLC and Lazio Investments, LLC dated May 10, 2002 recorded with the Merrimack County Registry of Deeds in Book 2370, Page 617.
2. The title to and rights of the public and others entitled thereto in and to those portions of the Premises lying within the bounds of Old Loudon Road or Loudon Road and any other adjacent streets and ways.
3. The rights of upper and lower riparian owners in and to the uninterrupted flow of the waters of the brook that flows through the subject property; and title to any portion of the subject property that lies below the mean high water mark of said brook.
4. Such state of facts as are disclosed by plan entitled "Subdivision of Land of Joan B. Ekstrom and Aubrey M. Brown 96 Old Loudon Road, Concord, New Hampshire" dated June 1976, recorded with the Merrimack County Registry of Deeds as Plan No. 4434.
5. The rights, easements, terms and conditions set forth in a Slope, Embankment and Culvert Easement granted by Joan B. Ekstrom to the State of New Hampshire in an instrument dated April 1, 1989, recorded with the Merrimack County Registry of Deeds in Book 1798, Page 557.
6. The rights, easements, terms and conditions set forth in Reciprocal Easement Agreement between Motiva Enterprises, LLC and Milano Real Estate Associates, LLC dated May 10, 2002 recorded with the Merrimack County Registry of Deeds in Book 2370, Page 601.
7. The rights, easements, terms and conditions set forth in Reciprocal Easement Agreement between Motiva Enterprises, LLC, FCM, LLC and Robert D. Haverty and Roy B. Kraft, Jr., as Trustees of KD Realty Trust dated May 10, 2002 recorded with the Merrimack County Registry of Deeds in Book 2370, Page 638 and the rights, easements, terms and conditions set forth in Reciprocal Easement Agreement between Motiva Enterprises, LLC and Milano Real Estate Associates, LLC dated May 10, 2002, recorded with the Merrimack County Registry of Deeds in Book 2370, Page 601.
8. The rights, easements, terms and conditions set forth in Reciprocal Easement Agreement between FCM, LLC, Robert D. Haverty and Roy B. Kraft, Jr., as Trustees of KD Realty Trust and Milano Real Estate Associates, LLC dated May 10, 2002 recorded with the Merrimack County Registry of Deeds in Book 2372, Page 665.

9. The rights, easements, terms and conditions set forth in the Condominium Utility Line Plans.

MERRIMACK COUNTY RECORDS

Kate L. Gray CPO, Register

MCRD

DAmante, Couser, Steiner, Peulerin, P.A.
9 Triangle Park Dr.
Concord, NH 03301

Vol/Page: 2829/1846
Doc# 622039
Date: 10/07/2005
Time: 3:34PM

**AMENDED AND RESTATED
EASEMENT AGREEMENT**

Book 2829 Page 1846

10/7/05

This Amended and Restated Easement Agreement (this "Easement Agreement") made as of the 6th day of OCTOBER, 2005, by and between **BERKSHIRE-CONCORD, LLC**, a Massachusetts limited liability company having a principal place of business at 41 Taylor Street, 4th Floor, Springfield, Massachusetts 01103 (hereinafter referred to as "Berkshire") and **MILANO REAL ESTATE ASSOCIATES, LLC**, a New Hampshire limited liability company having a principal place of business at 9 Triangle Park Drive, P.O. Box 1750, Concord, New Hampshire 03302-1750 (hereinafter referred to as "Milano").

RECITALS

WHEREAS, Berkshire and Milano entered into that certain Easement Agreement dated as of July 15, 2005 and recorded in the Merrimack County Registry of Deeds (the "MCRD") at Book 2801, Page 801 (the "Easement");

WHEREAS, Berkshire and Milano desire to amend and restate the Easement upon the terms set forth in this Easement Agreement, such that if there are any inconsistencies between the Easement and this Easement Agreement, this Easement Agreement shall control; and

WHEREAS, Berkshire is the fee simple owner of certain property located at 295-299 Loudon Road in Concord, Merrimack County, New Hampshire, as shown on a certain plan entitled "295-299 Loudon Road Retail Center" prepared by L.C. Engineering Company LLC dated February 9, 2005, a copy of which is attached hereto as Exhibit A (hereinafter the "Plan"). Said property is further described in a certain Warranty Deed recorded at the MCRD at Book 2716, Page 189, a Quitclaim Deed recorded at the MCRD at Book 2495, Page 769, a Corrective Warranty Deed recorded at the MCRD at Book 2722, Page 1143, a Warranty Deed recorded at the MCRD at Book 2724, Page 1152; and a Warranty Deed recorded at the MCRD at Book 2724, Page 1154; effected by that certain Certificate of Merger recorded at the MCRD at Book 2725, Page 1783 (hereinafter collectively referred to as the "Berkshire Property"); and

WHEREAS, Berkshire intends to develop and construct retail improvements upon the Berkshire Property as depicted on said Plan; and

WHEREAS, Milano is the fee simple owner of three (3) certain land condominium units located in Concord, Merrimack County, New Hampshire located on the North side of Loudon Road, which land condominium units are described as Unit 1-1, Unit 1-2 and Unit 1-3 in that certain Declaration of Milano Land Condominium recorded at the MCRD at Book 2666, Page 1003 and in that certain plan entitled "Condominium Site Plan, Milano Site Development, Loudon Road & Old Loudon Road, Concord, New Hampshire", prepared for Milano dated April 1, 2004 and recorded at the MCRD as Plan 16903 on June 10, 2004 (hereinafter collectively referred to as the "Milano Property"); and

WHEREAS, Milano has constructed a right in/right out access to Loudon Road, and Milano currently gains access to Loudon Road through this right in/right out access; and

WHEREAS, Milano has granted access easement rights to access Loudon Road through the right in/right out to the following parties: (i) Motiva Enterprises, LLC, a Delaware limited

liability company with a principal place of business at 12700 Northborough, Suite 100, Attn: Real Estate Administration, City of Houston, County of Fort Bend, Harris or Montgomery, State of Texas 77067 (hereinafter referred to as "Motiva") pursuant to that certain Reciprocal Easement Agreement by and between Motiva and Milano dated as of May 10, 2002 and recorded at the MCRD at Book 2370, Page 602, its successors and assigns and (ii) F.C.M., LLC, a New Hampshire limited liability company with an address of 22 Heritage Drive, City of Woburn, County of Middlesex, Commonwealth of Massachusetts 01801 (hereinafter referred to as "FCM") and Robert D. Haverty and Roy B. Kraft, Jr., as trustees of K.D. Realty Trust, a Massachusetts Revocable Trust established u/d/t dated October 1, 1993 and recorded at the MCRD at Book 1933, Page 1056 with an address of 22 Oak Knoll Drive, City of Woburn, County of Middlesex, Commonwealth of Massachusetts 01801 (hereinafter referred to as "KD") pursuant to that certain Reciprocal Easement Agreement by and between FCM, KD and Milano dated as of May 10, 2002 and recorded at the MCRD at Book 2372, Page 665, their successors and assigns; and

WHEREAS, the Berkshire development plans and Concord Planning Board approvals to such plans are conditioned upon Berkshire providing alternate access to Milano to Loudon Road and Milano thereafter closing its right in/right out access to Loudon Road, and therefore any access easement rights granted to Milano for access to Loudon Road through the Berkshire Property must also be granted to Motiva, FCM and KD; and

WHEREAS, Motiva or its successors and assigns is the fee simple owner of a certain parcel of land located in Concord, Merrimack County, New Hampshire, on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 9S, and more particularly described in deed of Terry M. Pratt to Motiva dated June 19, 2000 and recorded at the MCRD at Book 2210, Page 941 (hereinafter referred to as the "Motiva Property"); and

WHEREAS, FCM or its successors and assigns is the fee simple owner of a certain parcel of land located in Concord, Merrimack County, New Hampshire on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 4S, said parcel more particularly described in deed of Robert D. Haverty, Trustee of MLF Realty Trust to F.C.M., L.L.C. dated May 31, 1995 and recorded at the MCRD at Book 1989, Page 532 (hereinafter referred to as the "FCM Property"); and

WHEREAS, KD or its successors and assigns is the fee simple owner of a certain parcel of land located in Concord, Merrimack County, New Hampshire located on the North side of Loudon Road, which parcel is described as Tax Map 111-F, Block 2, Lot 5S, said parcel more particularly described in deed of Marie Anderson to Robert Haverty and Roy B. Kraft of K.D. Realty Trust dated October 1, 1993 and recorded at the MCRD at Book 1933, Page 1063 (hereinafter referred to as the "KD Property"); and

WHEREAS, Berkshire, in connection with the construction of improvements on the Berkshire Property, shall construct an access road from Loudon Road at a signal to be constructed on Loudon Road northerly into the Berkshire Property, at Berkshire's sole cost and expense; and

WHEREAS, Berkshire is willing to grant to Milano, Motiva, FCM and KD non-exclusive, perpetual access easements (the "Access Easements") over the Berkshire Property to serve their respective properties for two-way traffic from each respective property for access to, from and between the respective parcels and Loudon Road at any curb cut(s) to Loudon Road to be constructed on the Berkshire Property, with accompanying slope and embankment easements, and Berkshire has obtained the required approvals for such improvements; and

WHEREAS, as part of the construction of the new access to Milano, Berkshire is willing to grant to Milano a non-exclusive, perpetual drainage easement to discharge surface storm drainage and/or runoff from the Milano Property to the drainage line on the Berkshire Property; and

WHEREAS, Berkshire, as part of the construction of the new access to Milano, is willing to grant to Milano a non-exclusive, perpetual slope, retaining wall and embankment easement to fill across the Berkshire/Milano property line into the Berkshire Property to fill along the southeast property line of the Berkshire Property and to construct a retaining wall with related appurtenances into the Berkshire Property along the said property line with related headwalls, manholes and drainage lines; and

WHEREAS, Berkshire is willing to grant to Milano a non-exclusive, perpetual sign easement for directional signs to be placed on the Berkshire Property to direct traffic to the uses located on the Milano Property, the Motiva Property, the FCM Property and the KD Property; and

WHEREAS, Milano is willing to grant to Berkshire a non-exclusive, perpetual sign easement for a directional sign to be placed on the Milano Property to direct traffic to the uses located on the Berkshire Property; and

WHEREAS, the Easements set forth herein are described and shown on that certain plan entitled "Easement Plan, Loudon Road, Concord, New Hampshire, Owned By Milano Real Estate Assoc., LLC and Berkshire-Concord, LLC" dated July 14, 2005 and prepared by TFMoran (the "Easement Plan"), such Easement Plan recorded herewith; and

WHEREAS, Berkshire acknowledges and agrees that Milano is incurring significant costs, including without limitation on-site costs associated with closing its right in/right out access to Loudon Road, altering its parking field and connecting to the Access Drive at the Berkshire/Milano property line, to accommodate Berkshire's construction of its retail improvements, and that Milano shall not be responsible for any costs associated with Berkshire's construction, including without limitation any expenses related to acquiring any permits required for the construction set forth herein and any construction costs, impact fees or other fees or expenses for the signal or other improvements to be constructed on Loudon Road or on the Berkshire Property in connection with Berkshire's construction; and

WHEREAS, the parties hereby enter into this Easement Agreement for the benefit of their respective properties, said Easements to run with title to each party's respective property,

and shall be binding on and for the benefit of each of the parties and their respective heirs, executors, administrators, successors, grantees and assigns; and

WHEREAS, as a condition to the permitting for the retail improvements to be reconstructed upon the Berkshire Property, Berkshire and Milano desire to grant each other certain easement rights relative to their respective properties and Berkshire desires to grant to Motiva, FCM and KD certain access easement rights as set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and consideration of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Recitals.

The above recitals are incorporated into this Easement Agreement as part of and to facilitate the understanding of the provisions contained herein.

2. Access Drive.

Berkshire intends to construct a driveway on the Berkshire Property commencing at the south easterly boundary of the Berkshire Property from Loudon Road (Route 9) and running north easterly to the property line connecting to the Milano Property as depicted on the Easement Plan referenced as "Milano Access Drive Easement" (hereinafter referred to as the "Access Drive").

3. Grant of Access Easement.

Berkshire hereby grants to Milano, Motiva, FCM and KD, with quitclaim covenants, and as appurtenant to and for the benefit of each party's respective property, the perpetual, non-exclusive right and easement for two-way vehicular and pedestrian ingress, egress, access, passage, delivery and related purposes, on, over, through and across the Access Drive as it is located on the Berkshire Property and more particularly described in Exhibit B attached hereto, including drainage, pipe, slope, embankment and setback easements necessary to enjoy the Access Drive for all uses operating at any time on the Milano, Motiva, FCM and KD properties, and Berkshire has obtained the required approvals for such improvements. Berkshire hereby grants to Milano, and Milano hereby grants to Berkshire, with quitclaim covenants, and as appurtenant to and for the benefit of each party's respective property, the perpetual, non-exclusive right and easement for two-way pedestrian ingress, egress, access, passage, delivery and related purposes on, over, through and across any sidewalk along the existing Access Drive.

4. Grant of Drainage Easement.

Berkshire hereby grants to Milano, with quitclaim covenants, and as appurtenant to and for the benefit of the Milano Property, the perpetual, non-exclusive right and easement to discharge surface storm drainage and/or runoff from the Milano Property and other properties

using the drainage system on the Milano Property into the drainage easement areas as more particularly described in Exhibit C attached hereto (the "Drainage Easement") and into the drainage system located on the Berkshire Property (the "Drainage System") as shown on the Easement Plan (collectively, the "Drainage Easement"). The Drainage Easement shall include, without limitation, (i) the right and easement for Milano and other properties using the drainage system on the Milano Property to drain surface storm drainage and/or runoff from SBCB 17 to Berkshire DMH 6 (and from and to any other catch basins and/or drain manholes required by the Milano Property and the other properties using the Drainage System to drain surface storm drainage and/or runoff) and along the Drainage System to the outlet from the Berkshire Property under Loudon Road and (ii) the right and easement to place a water treatment facility along such Drainage Easement as required by governmental authorities and/or as reasonably required by Milano. Berkshire and Milano hereby waive, to the extent legally permitted, any setback requirements customarily appropriate from their respective property lines in order to permit the construction of the Drainage System and related pipes within the Drainage Easement Area.

5. Grant of Slope, Retaining Wall and Embankment Easement.

Berkshire hereby grants to Milano, with quitclaim covenants, and as appurtenant to and for the benefit of the Milano Property, the perpetual, non-exclusive right and easement to fill and create a slope, retaining wall (with related appurtenances, headwalls, manholes and drainage lines) and embankment across the Berkshire/Milano property line into the Berkshire Property to fill along the southeast property line of the Berkshire Property and construct such retaining wall as shown on the Easement Plan and as more particularly described in Exhibit D attached hereto (the "Slope, Retaining Wall and Embankment Easement Area").

6. Grant of Sign Easement.

Berkshire hereby grants to Milano, with quitclaim covenants, and as appurtenant to and for the benefit of the Milano Property, the perpetual, non-exclusive right and easement to construct, maintain and run electric service to the directional signs (together, the "Milano Sign") in the areas as shown on the Easement Plan and more particularly described in Exhibit E attached hereto (together, the "Milano Sign Easement Area") to direct traffic to the uses located at any time on the Milano Property, the Motiva Property, the FCM Property and the KD Property. Milano shall be responsible, at Milano's sole cost and expense, to obtain all required governmental approvals for such Milano Sign and to construct and maintain such Milano Sign, including without limitation the cost of lighting the Milano Sign. As between Milano and such third parties, construction and maintenance obligations with regard to the Milano Sign will be shared by Milano and such third parties. Berkshire acknowledges and agrees that Milano, Motiva, FCM and KD shall all have the right to utilize space on the Milano Sign. Milano hereby grants to Berkshire, with quitclaim covenants, and as appurtenant to and for the benefit of the Berkshire Property, the perpetual, non-exclusive right and easement to construct, maintain and run electric service to a directional sign (the "Berkshire Sign") in the area as shown on the Easement Plan and more particularly described in Exhibit F attached hereto (the "Berkshire Sign Easement Area") to direct traffic to the uses located at any time on the Berkshire Property. Berkshire shall be responsible, at Berkshire's sole cost and expense, to obtain all required

governmental approvals for such Berkshire Sign and to construct and maintain such Berkshire Sign, including without limitation the cost of lighting the Berkshire Sign.

7. Construction of Access Drive.

All construction, installation, maintenance, repairs and any other work in connection with any work to the Access Drive shall be performed by Berkshire, its agents, employees, successors and assigns, except as otherwise set forth herein, and shall (a) be in compliance with any and all governmental authorities and requirements applicable thereto; (b) be performed with due diligence; and (c) be performed in a good and workmanlike manner. Milano shall have no right to perform any construction, maintenance, repairs or other work to the Access Drive on the Berkshire Property without Berkshire's prior written approval, which approval shall not be unreasonably withheld, detailing the intended work, except as otherwise set forth herein. Berkshire and Milano agree to coordinate their construction efforts with regard to constructing and connecting the drives on each Party's property.

8. Maintenance and Repair of the Access Drive.

Berkshire shall maintain, repair and replace the Access Drive on the Berkshire Property in keeping with a safe, sightly, good and functional condition for the passage of two-way vehicular and pedestrian traffic as set forth herein, at Berkshire's sole cost and expense. It is acknowledged and agreed that Milano shall have no duty to maintain or cause to maintain the Access Drive on the Berkshire Property or contribute to the cost therefore. Milano shall maintain, repair and replace the drives on the Milano Property in keeping with a safe, sightly, good and functional condition for the passage of two-way vehicular and pedestrian traffic, at Milano's sole cost and expense.

9. Construction and Maintenance of the Remaining Easements.

Berkshire and Milano shall each be responsible for the construction, installation, maintenance, repairs and any other work in connection with the Drainage System and related pipes located on such party's property, except that Milano shall be responsible for the construction, installation, maintenance, repairs and any other work in connection with its water treatment facility in the Drainage Easement Area. Berkshire shall be responsible for the construction, installation, maintenance, repairs and any other work in connection with the fill in the Slope, Retaining Wall and Embankment Easement, except that Milano shall pay for the cost to place any extra fill to bring the area from the grading in the Berkshire plan to the grading in the Milano plan. Milano shall be responsible for the construction, installation, maintenance, repairs and any other work in connection with the retaining wall and any appurtenances, headwalls, manholes and drainage lines associated therewith. Milano shall be responsible for the construction, installation, maintenance, repairs and any other work in connection with the Milano Sign Easement. Berkshire shall be responsible for the construction, installation, maintenance, repairs and any other work in connection with the Berkshire Sign Easement. All such construction, installation, maintenance, repairs and any other work shall (a) be in compliance with any and all governmental authorities and requirements applicable thereto; (b) be performed with due diligence; and (c) be performed in a good and workmanlike manner. Berkshire and

Milano agree to coordinate their construction efforts with regard to any construction required in the easement areas set forth herein.

10. Grant of Easement for Construction, Maintenance and Repair of Access Drive.

Milano hereby grants to Berkshire, with quitclaim covenants, and as appurtenant to and for the benefit of the Berkshire Property, a perpetual non-exclusive easement extending ten (10) feet over the Milano Property line on the Access Drive for the purpose of construction, maintenance and repair of the Access Drive as more particularly described above in Sections 7 and 8. Berkshire hereby grants to Milano, with quitclaim covenants, and as appurtenant to and for the benefit of the Milano Property, a perpetual non-exclusive easement extending ten (10) feet over the Berkshire Property line on the Access Drive for the purpose of construction, maintenance and repair of the Access Drive as more particularly described above in Sections 7 and 8.

11. Grant of Easement for Construction, Maintenance and Repair of the Drainage Easement, the Slope, Retaining Wall and Embankment Easement and the Sign Easement.

Berkshire hereby grants to Milano, with quitclaim covenants, and as appurtenant to and for the benefit of the Milano Property, a perpetual non-exclusive easement over and across the Berkshire Property for the purpose of ingress, egress, passage and delivery, by vehicles and pedestrians for the construction, maintenance and repair of the improvements in the Drainage Easement, the Slope, Retaining Wall and Embankment Easement (with appurtenances, headwalls, manholes and drainage lines) and the Milano Sign Easement as more particularly described above in Section 9.

12. Property Lines and Setbacks.

Berkshire and Milano acknowledge that portions of road improvements set forth on their respective properties may be constructed up to and over each of their property lines. Berkshire and Milano hereby waive, to the extent legally permitted, any setback requirements customarily appropriate from their property lines in order to permit the construction of the Access Drive up to, over and across the respective property lines in accordance with the roadway design. Berkshire also hereby waives, to the extent legally permitted, any setback requirements customarily appropriate from its property line in order to permit the construction of the parking lot on the Milano Property up to, but not over, the Berkshire Property line, now or at any time and from time to time in the future. Berkshire hereby authorizes Milano to construct the retaining wall and related appurtenances up to and over the Berkshire Property line and into the Berkshire Property in the Slope, Retaining Wall and Embankment Easement, including all appurtenances, headwalls, manholes and drainage lines.

13. Appurtenant Rights and Easements.

Berkshire hereby grants to Milano, in order to permit the full enjoyment of the easement rights herein granted, easements in the Access Drive, the Drainage Easement Area (including

drainage structures), the Slope, Retaining Wall and Embankment Easement Area (including drainage structures) and the Sign Easement Area to cut, fill and create slopes, embankments, retaining wall and retention on the Berkshire Property to extend drainage systems to permit the full use and enjoyment of the Easements, temporary construction easements in the Access Drive, the Drainage Easement Area, the Slope, Retaining Wall and Embankment Easement Area and the Sign Easement Area to construct the drainage, slope, embankment, retaining wall and related appurtenances, headwalls, manholes and drainage lines and sign improvements noted herein, and easements over the Access Drive, the Drainage Easement Area, the Slope, Retaining Wall and Embankment Easement Area and the Sign Easement Area to repair and maintain the improvements within such easement areas.

14. Right to Cure.

If any party fails to fulfill its construction, maintenance and/or repair obligations as set forth herein, the other party shall, after written notice and no corrective action within fifteen (15) days following delivery of such written notice to such party, except for emergencies which can be corrected immediately, have the right to enter onto the other party's Easement Area for the purposes of maintaining that area of the Access Drive, the Drainage Easement Area, the Slope, Retaining Wall and Embankment Easement Area, the Milano Sign Easement Area and/or the Berkshire Sign Easement Area that are the obligation of said other party. All costs associated with said maintenance shall be the obligation of the party with the responsibility to do so hereunder, and the acting party shall be reimbursed for the cost thereof plus interest at the Prime Rate of the Chase Manhattan Bank plus two percent (2%) within thirty (30) days after receipt of a statement from the other party with supporting invoices.

15. Indemnification.

Milano and Berkshire hereby agree to indemnify, defend and hold each other harmless from and against all liabilities, damages, claims, costs and expenses whatsoever, including, but not limited to reasonable attorney's fees, paralegal fees and court costs, arising out of or in connection with Milano's and Berkshire's exercise of the easement rights and privileges set forth herein.

16. Covenant Running With the Land.

The easements granted herein shall at all times be construed to run with the land burdened thereby, shall be binding upon the parties hereto and their successors and assigns, and are for the benefit of and appurtenant to, the lands upon which said easements have been granted. Upon sale or transfer of any property burdened or benefited hereby, by any party or a party's heirs, executors, administrators, successors, grantees or assigns, the grantee of that sale or transfer shall become liable for the future performance of all obligations hereunder with respect to such burdened or benefited parcel and the grantor of that sale or transfer shall automatically be relieved therefrom for matters arising on or after the date of said sale or transfer. Berkshire and Milano acknowledge and agree that nothing in this Easement Agreement shall be construed to place any restrictions on the uses Berkshire and Milano may place on their respective properties from time to time.

17. Costs and Expenses.

Berkshire acknowledges and agrees that Milano is incurring significant costs, including without limitation on-site costs associated with closing its right in/right out access to Loudon Road, altering its parking field and connecting to the Access Drive at the Berkshire/Milano property line, to accommodate Berkshire's construction of its retail improvements, and that Milano shall not be responsible for any costs associated with Berkshire's construction, including without limitation any expenses related to acquiring any permits required for the construction set forth herein and any construction costs, impact fees or other fees or expenses for the signal or other improvements to be constructed on Loudon Road or on the Berkshire Property in connection with Berkshire's construction or the easements contained herein. Berkshire also acknowledges and agrees that Milano shall not be obligated to close its right in/right out access to Loudon Road unless and until the Access Drive is completed by Berkshire as set forth herein.

18. Notice.

Any notice, report or demand required, permitted or desired to be given under this Easement Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is sent to the addresses set forth for each party herein by personal or courier delivery or mailed by registered or certified mail return receipt requested or by overnight delivery, to the parties at such address or as the respective parties may from time to time designate by like notice, upon delivery if given by personal or courier delivery or, if mailed, on the third business day following the date of such mailing. Each party shall send copies of default notices to the other party's lender upon receipt of written notice of such lender's name and address requesting that such notices be sent.

19. Effective Date of Agreement.

This Agreement, once executed by the parties, will be considered effective and in full force and may be executed in multiple counterparts, each of which shall be deemed an original and all such counterparts shall constitute one in the same instrument.

20. Modification.

This Agreement may not be terminated, modified, or amended, except by written agreement executed by the parties hereto. The parties hereto agree to modify this Agreement to add metes and bounds descriptions of the Easements and to reflect the as-built condition and layout of all improvements noted in the Easements.

21. Successors and Assigns.

Wherever the term "Berkshire", the term "Milano", the term "Motiva", the term "FCM" and the term "KD" are used in this Easement Agreement, it is meant to refer in each instance to the named party or their respective successors and assigns, employees, agents, invitees, tenants, customers and occupants as the case may be.

22. Application of Law.

This Easement Agreement shall be governed by the laws of the State of New Hampshire.

23. Merger.

This Easement Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and no oral representations or statements shall be considered a part hereof.

24. Miscellaneous.

Nothing in this Easement Agreement shall be construed to make the parties hereto partners or joint venturers or render any of such parties liable for the debts or obligations of the others. If any term or provision of this Easement Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Easement Agreement or the application of such terms or provisions 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 Easement Agreement shall be valid and enforceable to the fullest extent permitted by law.

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MCRD

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this instrument to be duly executed as a sealed instrument as of the date first above written.

BERKSHIRE-CONCORD, LLC
By: Berkshire Development, LLC, Its Manager

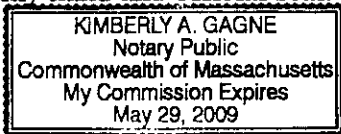
BY: [Signature]
Name: Robert P. Cunningham
Title: Chief Operating Officer
Duly Authorized

MILANO REAL ESTATE ASSOCIATES, LLC

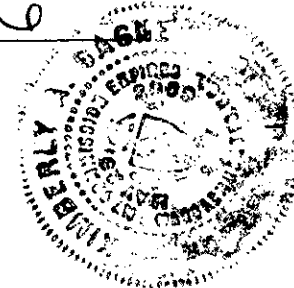
BY: [Signature]
Name: Michael D'Amante
Title: Manager
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY, ss.

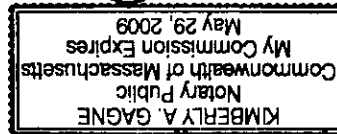
On this 4th day of October, 2005, before me, personally appeared ROBERT P. CUNNINGHAM, who acknowledged him/herself to be the CHIEF OPERATING OFFICER of Berkshire Development, LLC, the Manager of BERKSHIRE-CONCORD, LLC, a Massachusetts limited liability company, and that he/she, as such CHIEF OPERATING OFFICER, being authorized to do so, executed the foregoing instrument for the purposes contained therein, by signing the name of the limited liability company him/herself as CHIEF OPERATING OFFICER. In witness whereof I hereunto set my hand and official seal.



[Signature]
Notary Public/Justice of the Peace
My Commission Expires:

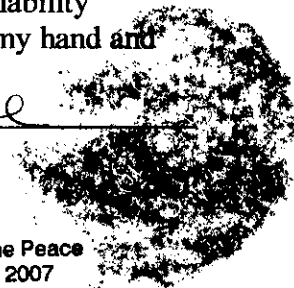


STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY, ss.



On this 7th day of October, 2005, before me, personally appeared Michael D'Amante, who acknowledged him/herself to be the Manager of MILANO REAL ESTATE ASSOCIATES, LLC, a New Hampshire limited liability company, and that he/she, as such manager, being authorized to do so, executed the foregoing instrument for the purposes contained therein, by signing the name of the limited liability company him/herself as manager. In witness whereof I hereunto set my hand and official seal.

[Signature]
Notary Public/Justice of the Peace
My Commission Expires:



LORINDA BETH MONROE, Justice of the Peace
My Commission Expires February 6, 2007

Exhibit A

Omitted

295 - 299 Loudon Road, Concord, NH

MCRD

Exhibit B

Access Easement

Beginning at a point, said point being S 63° 53' 36" W a distance of 62.65' from the southwesterly corner of the Milano Property to the point of beginning:

Thence running S 63° 53' 36" W a distance of 75.29' to a point;

Thence running along the arc of a curve having a radius of 45.00' and an arc length of 30.94' to a point;

Thence running along the arc of a curve having a radius of 179.00' and an arc length of 104.93' to a point;

Thence running N 11° 45' 15" E a distance of 34.85' to a point;

Thence running along the arc of a curve having a radius of 71.00' and an arc length of 49.48' to a point;

Thence running N 28° 10' 25" W a distance of 40.00' to a point;

Thence running N 01° 48' 34" E a distance of 61.19' to a point;

Thence running along the arc of a curve having a radius of 50.00' and an arc length of 34.08' to a point;

Thence running along the arc of a curve having a radius of 30.00' and an arc length of 13.81' to a point;

Thence running N 70° 40' 40" E a distance of 21.29' to a point;

Thence running S 19° 37' 26" E a distance of 37.29' to a point;

Thence running along the arc of a curve having a radius of 49.50' and an arc length of 50.81' to a point;

Thence running along the arc of a curve having a radius of 120.50' and an arc length of 66.00' to a point;

Thence running S 07° 41' 14" W a distance of 34.99' to a point;

Thence running along the arc of a curve having a radius of 149.92' and an arc length of 64.29' to a point;

Thence running along the arc of a curve having a radius of 40.00' and an arc length of 35.78' to the point of beginning.

Containing 16,420 square feet +/-

MCRD

Exhibit C

Drainage Easement

Beginning at a point, said point being N 19° 37' 26" W a distance of 43.02' from the southwesterly corner of the Milano Property to the point of beginning:

Thence running S 77° 26' 13" W a distance of 46.09' to a point;

Thence running S 50° 27' 03" W a distance of 181.08' to a point;

Thence running S 23° 28' 34" E a distance of 11.45' to a point;

Thence running S 63° 53' 36" W a distance of 20.02' to a point;

Thence running N 23° 28' 34" W a distance of 27.42' to a point;

Thence running N 50° 27' 03" E a distance of 200.93' to a point;

Thence running N 77° 26' 13" E a distance of 48.41' to a point;

Thence running S 19° 37' 26" E a distance of 20.15' to the point of beginning.

Containing 5,154 square feet +/-

MCRD

Exhibit D

Slope, Retaining Wall and Embankment Easement

Beginning at a point, said point being the southwesterly corner of the Milano Property:

Thence running S 63° 53' 36" W a distance of 62.65' to a point;

Thence running along the arc of a curve having a radius of 40.00' and an arc length of 35.78' to a point;

Thence running along the arc of a curve having a radius of 149.92' and an arc length of 64.29' to a point;

Thence running N 07° 41' 14" E a distance of 34.99' to a point;

Thence running along the arc of a curve having a radius of 120.50' and an arc length of 66.00' to a point;

Thence running along the arc of a curve having a radius of 49.50' and an arc length of 50.81' to a point;

Thence running S 19° 37' 26" E a distance of 222.54' to the point of beginning.

Containing 10,401 square feet +/-

MCRD

Exhibit E

Milano Sign EasementsMilano Sign Easement

Beginning at a point, said point being S 63° 53' 36" W a distance of 22.58' from the southwesterly corner of the Milano Property to the point of beginning:

Thence running S 63° 53' 36" W a distance of 14.78' to a point;

Thence running N 61° 26' 15" W a distance of 17.67' to a point;

Thence running N 26° 06' 24" W a distance of 10.89' to a point;

Thence running N 63° 53' 36" E a distance of 25.00' to a point;

Thence running S 26° 06' 24" E a distance of 25.31' to the point of beginning.

Containing 559 square feet +/-

Milano Sign and Grading Easement

Beginning at a point, said point being N 19° 37' 26" W a distance of 259.83' from the southwesterly corner of the Milano Property to the point of beginning:

Thence running S 70° 40' 40" W a distance of 21.29' to a point;

Thence running along the arc of a curve having a radius of 30.00' and an arc length of 13.81' to a point;

Thence running along the arc of a curve having a radius of 50.00' and an arc length of 34.08' to a point;

Thence running N 70° 22' 34" E a distance of 57.74' to a point;

Thence running S 19° 37' 26" E a distance of 27.43' to the point of beginning.

Containing 1,276 square feet +/-

Milano shall also have the right and easement to grade in the Milano Sign and Grading Easement.

Exhibit F

Berkshire Sign Easement

Beginning at a point, said point being N 19° 37' 26" W a distance of 259.83' from the southwesterly corner of the Milano Property to the point of beginning:

Thence running N 19° 37' 26" W a distance of 27.43' to a point;

Thence running N 62° 47' 47" E a distance of 30.00' to a point;

Thence running S 27° 12' 13" E a distance of 31.84' to a point;

Thence running S 70° 40' 40" W a distance of 33.94' to the point of beginning.

Containing 943 square feet +/-

MCRD

MERRIMACK COUNTY RECORDS

Kathi L. Gray, CPO, Register

①

Doc#: 792662
Book: 3267 Pages: 0820 - 0821
08/09/2011 2:10PM

MCRD Book 3267 Page 820

ENV-

Unitil Energy Systems, Inc.
One McGuire Street
Concord, NH 03301



STATE OF NEW HAMPSHIRE			
DEPARTMENT OF REVENUE ADMINISTRATION			REAL ESTATE TRANSFER TAX
THOUSAND		HUNDRED AND	40 DOLLARS
MO.	DAY	YR.	AMOUNT
08	09	2011	878141 \$ 40
VOID IF ALTERED			

EASEMENT DEED

40.00

14.00
2.00
25-

KNOW ALL MEN BY THESE PRESENTS, that Milano Real Estate Associates, LLC, a New Hampshire Limited Liability Company, with a principal place of business at 9 Triangle Park Drive, PO Box 1750, City of Concord, County of Merrimack, State of New Hampshire, 03302-1750 (herein called "Grantor", which word and the pronouns referring thereto shall mean the singular or plural of any gender, as the context may require) for consideration paid grants to **Unitil Energy Systems, Inc.**, a New Hampshire corporation with its principal place of business at 6 Liberty Lane West, Hampton, New Hampshire 03842-1720, and **Northern New England Telephone Operations LLC** (d/b/a FairPoint Communications - NNE) a limited liability company organized under the laws of Delaware having a place of business at 100 Gay Street, Manchester, New Hampshire 03103 and their respective successors and assigns and permittees forever, as tenants in common, with quitclaim covenants, the non-exclusive perpetual right and easement to build, replace, patrol, maintain, and operate subsurface lines, wires, facilities and other appurtenances for the transmission of intelligence by electricity and for the transmission and distribution of electricity (herein referred to inclusively as "said pole line") over and across Grantor's land situated off Loudon Road, in Concord, New Hampshire on a strip 20 feet in width (provided, however, and notwithstanding anything to the contrary set forth herein, that the easterly boundary of said easement area shall end five feet (5') from the edge of any building or permissible building area on the premises), the center line thereof to be fixed upon the pole line as follows:

to cover Pad Mount #4, Underground Service Line to Man Hole #1 on Loudon Rd, Concord, NH

Meaning and intending to describe and convey an easement over Milano Land Condominium Units No. 1-2 and 1-3 on a portion of those premises conveyed to Grantor by Deed Dated December 29, 1998, and recorded in the Merrimack County Registry of Deeds at Book 2134, Page 1756.

There is also hereby conveyed the right to enter all abutting lands of Grantor owned by Grantor, excluding buildings and building areas, in the exercise of the rights herein granted and to exercise all rights reserved to Grantor in adjacent land relating to such easement rights herein granted; and the right to trim and remove from Grantor's land such trees and other growth as in the judgment of Grantees may interfere with or endanger said pole lines or the operation or maintenance thereof by



LT1-2-792662-1



LT2-3267-820-2

such means as the Grantee may elect, all wood and timber to remain the property of the Grantor. Facilities built by any utilities pursuant to the easement hereby granted shall be and remain the property of the utilities.

The Grantor covenants and agrees that if any poles or wires or associated equipment installed in pursuance of this conveyance are required to be removed in connection with activity driven by the Grantor, the Grantor will reimburse the Grantee(s) for all of its costs incurred in connection therewith. The Grantees shall have the right to install and maintain its distribution facilities upon the Grantor's premises without charge for the purpose of furnishing service to the Grantor.

The Grantor for itself, its heirs, executors, administrators and assigns, hereby covenant(s) that it will not erect or permit any building or other structure, or alter the terrain, upon said easement strip that in the judgment of Grantee may interfere with or endanger said pole lines or the operation thereof; or would reduce the clearances to less than the National Electrical Safety Code or any other code in effect.

WITNESS the hand and seal of the Grantor this 27th day of July, 2011.

GRANTOR:

Milano Real Estate Associates, LLC

WITNESS: Coleen L. Hill

By: [Signature]
Name: Peter Vailes
Title: Manager

State of New Hampshire ss.
Merrimack County

July 27, 2011.

Personally appeared the subscriber(s) to the within instrument and acknowledged the same to be his free and voluntary act and deed, as Manager of Milano Real Estate Associates, LLC.



[Signature]
Notary Public/Justice of the Peace

2

Doc#: 815031
Book: 3323 Pages: 0013 - 0020
06/29/2012 11:44AM

RETURN TO:
ANDREW H. SULLIVAN, ESQ.
PO BOX 10354
24 EASTMAN AVENUE
BEDFORD, NH 03110-0354

MCRD Book 3323 Page 13

39.18
2.00
25.00

NH DRA DP-4-L
**C/H
L-CHIP**
F-08684

STATE OF NEW HAMPSHIRE			
DEPARTMENT OF REVENUE ADMINISTRATION		REAL ESTATE TRANSFER TAX	
..... THOUSAND		HUNDRED AND	40 DOLLARS
MO. DAY YR.	882844		AMOUNT
06/29/2012			\$ 40
VOID IF ALTERED			

40.00

PARKING EASEMENT AGREEMENT

This Parking Easement Agreement (this "Parking Easement") is made as of the 29 day of June, 2012, by and between Milano Real Estate Associates, LLC, its successors and assigns, a New Hampshire limited liability company with an address of 9 Triangle Park Drive, P.O. Box 1750, Concord, New Hampshire 03302-1750 ("Milano") and L&A Realty, LLC, its successors and assigns, a New Hampshire limited liability company with an address of 46 Strawberry Hill Road, Bedford, NH 03110 ("L&A Realty"). Milano and L&A Realty are each hereinafter sometimes individually referred to as a "Party" and sometimes hereinafter together referred to as the "Parties".

WITNESSETH:

WHEREAS, Milano is the owner in fee simple of three (3) land condominium units, being three (3) parcels of real property, located as follows: (i) one parcel of real property located at 317 Loudon Road, Concord, New Hampshire, Map 111F, Block 2, Lot 6 and known as Unit 1-1 of the Milano Condominium (as hereinafter defined) ("Unit 1"), (ii) one parcel of real property located at 313 Loudon Road, Concord, New Hampshire, Map 111F, Block 2, Lot 11 and known as Unit 1-2 of the Milano Condominium ("Unit 2") and (iii) one parcel of real property located at 313 Loudon Road, Concord, New Hampshire, Map 111F, Block 2, Lot 12 and known as Unit 1-3 of the Milano Condominium (the "Premises"), all as shown on Plan No. 16903 recorded in the Merrimack County Registry of Deeds (the "MCRD"); and

LT1-2-815031-1

LT2-3323-13-8

WHEREAS, on near or even date hereto, Milano shall transfer title to the Premises to L&A Realty, such that L&A Realty shall be the owner in fee simple of the Premises; and

WHEREAS, Unit 1, Unit 2 and the Premises are the three (3) land condominium units located in that certain land condominium as set forth in that certain Declaration of Milano Land Condominium recorded in the MCRD at Book 2666, Page 1003 and as shown on Plan No. 16903 in the MCRD (the "Milano Condominium"); and

WHEREAS, Milano grants to L&A Realty an exclusive, perpetual parking easement to utilize eleven (11) parking spaces located on Unit 2 for the benefit of the Premises, such eleven (11) parking spaces being the westernmost parking spaces located on Unit 2; and

WHEREAS, Milano grants to L&A Realty a non-exclusive, perpetual parking easement to utilize the parking spaces located on Unit 2 that are not designated herein as the eleven (11) exclusive parking spaces for the benefit of the Premises; and

WHEREAS, Milano and L&A Realty agree that Milano shall retain the non-exclusive, perpetual right to utilize the parking spaces located on Unit 2 that are not designated herein as the eleven (11) exclusive parking spaces for the benefit of Unit 1; and

WHEREAS, the Parties intend to set forth in this Parking Easement their rights, obligations, duties and responsibilities in connection with the Parking Easement and to make other covenants and agreements with each other as hereinafter more specifically set forth.

NOW THEREFORE, in consideration of the foregoing promises and the mutual covenants contained herein, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and consideration of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto hereby agree as follows:

1. The above recitals are incorporated into this Parking Easement as part of and to facilitate the understanding of the provisions contained herein.

2. Milano, in consideration of the foregoing and the mutual covenants contained herein, grants to L&A Realty, LLC, and to its successors and assigns, with QUITCLAIM COVENANTS, the following: (i) an exclusive, perpetual parking easement to utilize eleven (11) parking spaces located on Unit 2 for the benefit of the Premises, such eleven (11) parking spaces being the westernmost parking spaces located on Unit 2 and (ii) a perpetual, non-exclusive right and easement to utilize the parking spaces located on Unit 2 that are not designated herein as the eleven (11) exclusive parking spaces for the benefit of the Premises. Milano and L&A Realty acknowledge and agree that Milano Real Estate Associates, LLC, and its successors and assigns, shall retain the non-exclusive, perpetual right to utilize the parking spaces located on Unit 2 that are not designated herein as the eleven (11) exclusive parking spaces for the benefit of Unit 1.

3. L&A Realty shall be responsible for two-thirds (2/3) of the real estate taxes assessed against Unit 2 and Milano shall be responsible for one-third (1/3) of the real estate taxes assessed against Unit 2 as long as this Parking Easement shall remain in effect. L&A Realty shall pay to Milano its two-thirds (2/3) share of such real estate taxes pursuant to the procedure more particularly set forth herein.

4. L&A Realty shall be responsible for two-thirds (2/3) and Milano shall be responsible for one-third (1/3) of the cost of any maintenance, repair, replacement and/or any other work required to maintain Unit 2 in good order and repair and in a condition suitable as a parking area for a first-class shopping center as long as this Parking Easement shall remain in effect. Any maintenance, repair, replacement and/or any other such work performed by any Party shall utilize materials reasonably acceptable to the Parties and of comparable quality, design and workmanship as are utilized in the Milano Condominium. Either Party may perform or cause to be performed such maintenance, repair, replacement and/or any other such work upon thirty (30) days' written notice to the other Party of such Party's intention to perform such maintenance, repair, replacement and/or any other such work, which notice shall include the scope of work to be performed and the cost thereof. If the notified Party objects in writing to such work and/or the cost thereof within ten (10) days of receipt of such notice, the Parties shall

proceed in good faith to come to agreement of the scope of such work and/or the cost thereof. If the notified Party does not object in writing during such ten (10) day period, the notified Party shall be responsible to reimburse the performing Party for its share of such costs pursuant to the procedure more particularly set forth herein.

5. L&A Realty shall be responsible for the plowing and removal of snow and ice and the application of salt and other treatments to Unit 2 in a condition suitable to a parking area for a first-class shopping center as long as this Parking Easement shall remain in effect. L&A Realty shall be responsible for two-thirds (2/3) and Milano shall be responsible for one-third (1/3) of the cost of such plowing and removal of snow and ice and the application of salt and other treatments to Unit 2. Milano shall pay to L&A Realty its share of such costs pursuant to the procedure more particularly set forth herein. The Parties acknowledge and agree that Milano and L&A Realty shall each retain the non-exclusive right to store a reasonable amount of snow from Unit 1 and the Premises, respectively, on that area of Unit 2 which is not the eleven (11) parking spaces designated exclusively to L&A Realty herein, as long as this Parking Easement shall remain in effect.

6. Each Party shall pay its share of the costs and expenses set forth herein to the other Party within fifteen (15) days after written receipt of an invoice therefor with reasonable supporting documentation. Any such invoices not paid when due shall bear interest at an annual rate of twelve percent (12%). In the event of any dispute between the Parties that does not result in an agreement between the Parties within thirty (30) days after receipt by either Party of a written objection of any matter, then the Parties hereby agree that any such dispute shall be submitted to binding arbitration before a single arbitrator in the City of Concord, New Hampshire pursuant to the rules in effect at the time of such dispute by the American Arbitration Association (or similar body). The Parties hereby agree to be bound by the decision of such arbitrator and a judgment may be obtained thereon in any court having jurisdiction. The cost and expense of the arbitrator shall be split evenly between the Parties, and each such Party shall separately pay its own fees and expenses regarding such arbitration, including without limitation attorneys' fees and expenses. In the event that the Parties cannot agree on an arbitrator for any arbitration pursuant to this Parking Easement, the Parties shall each submit the name of one (1) arbitrator (and each Party shall be responsible for the cost and expense of

such arbitrator chosen by such Party), and those arbitrators shall in turn agree on and submit the name of one (1) arbitrator, who shall be the arbitrator for the dispute in question (with the costs and expenses of such arbitration as set forth above). Both Parties shall be bound by the choice of the arbitrator selected by this process. **THE PARTIES HEREBY WAIVE ANY AND ALL RIGHT TO A TRIAL BY COURT OR JURY AND ANY RIGHT TO APPEAL WITH REGARD TO SUCH DISPUTES.**

7. If either Party fails to fulfill its maintenance, repair, replacement and/or any other such work obligations as set forth herein, including without limitation such obligations regarding snow removal, the other Party shall, after written notice and no corrective action within thirty (30) days following delivery of such written notice to such Party (unless such repairs will take more than thirty (30) days to complete but are commenced by the responsible Party within such thirty (30) day period), except for emergencies which can be corrected immediately, have the right to perform such work obligations that are the obligation of such other Party. The acting Party shall be reimbursed for the other Party's share of the cost of such work obligations plus a fee equal to ten percent (10%) of the other Party's share of the cost of such work obligations.

8. This Parking Easement is subject to all matters of record on Unit 2. The rights and easement herein granted and reserved are not exclusive and shall extend to the Parties, their heirs, executors, administrators, successors, grantees and assigns in perpetuity. Upon sale or transfer of any parcel of real property burdened or benefited hereby, by a Party or a Party's heirs, executors, administrators, successors, grantees or assigns, the grantee of that sale or transfer shall receive all of the benefits and become liable for the future performance of all obligations hereunder with respect to such burdened or benefited parcel and the grantor of that sale or transfer shall automatically be relieved therefrom for matters arising on or after the date of said sale or transfer. The Parking Easement herein granted shall only encumber Unit 2 and no other portion of the Milano Condominium.

9. Upon the sale or transfer of any parcel of real property burdened and/or benefitted by this Parking Easement, and whenever from time to time requested by a Party, upon fifteen (15) days prior written notice to the other Party, each Party agrees to execute, acknowledge and deliver to the other Party a statement, in writing, certifying

that such Party has paid all amounts due hereunder and has performed all of its obligations hereunder, and that such Party has no defenses, offsets or counterclaims against its obligations to pay any amounts due hereunder and/or to perform its obligations hereunder, and that there are no uncured defaults of such Party hereunder (or, if there are any defenses, offsets, counterclaims and/or defaults, setting them forth in reasonable detail), the dates to which such amounts due hereunder have been paid and any other information customarily requested by the other Party or its mortgagee. Any such statement may be relied upon by any prospective purchaser, prospective lessee or prospective mortgagee of any parcel of real property burdened and/or benefitted by this Parking Easement or any prospective assignee of any mortgage of any parcel of real property burdened and/or benefitted by this Parking Easement.

10. This Parking Easement and the rights set forth herein shall be construed as covenants that shall benefit and run with title to the benefitted parcels and shall not be personal to the Parties.

11. Any notice, report or demand required, permitted or desired to be given under this Parking Easement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is sent to the addresses set forth for each Party herein by personal or courier delivery or mailed by registered or certified mail return receipt requested, to the Parties at such address or as the respective Parties may from time to time designate by like notice, upon delivery if given by personal or courier delivery or, if mailed, on the third business day following the date of such mailing, provided the sending Party receives evidence of delivery. Each Party shall send copies of default notices to the other Party's lender upon receipt of written notice of such lender's name and address requesting that such notices be sent. All such notices, reports or demands shall be sent to the addresses set forth for each Party herein.

12. Each of the Parties shall continuously maintain in full force and effect, at each Party's expense, a policy of commercial general liability insurance covering such Party's operations and use of Unit 2 with a minimum limit of liability of One Million Dollars (\$1,000,000) for any casualty resulting in bodily injury, death, or property damage for each occurrence and a minimum limit of liability of Two Million Dollars (\$2,000,000) general aggregate, including commercial automobile liability coverage. All

insurance shall name the Milano Condominium as additional insureds and shall be carried with responsible insurance companies authorized to do business in the State of New Hampshire. Each Party shall deliver to the other Party a certificate of such policies and renewal certificates at least thirty (30) days prior to the expiration of the existing policy. Such policies shall contain a provision that the same cannot be reduced in coverage to less than the aforesaid limits nor cancelled without thirty (30) days prior notice to the other Party and the other Party's mortgagee(s). The limits of liability set forth herein shall be adjusted from time to time to reflect the amounts of insurance coverage customary from time to time for a first-class shopping center in Concord, New Hampshire. Each Party's insurance shall contain a right of subrogation as against the other Party's insurance.

13. This Parking Easement shall be construed in accordance with the laws of the State of New Hampshire. Nothing in this Parking Easement shall be construed to make the Parties hereto partners or joint venturers or render either of the Parties liable for the debts or obligations of the other. This Parking Easement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the Parties to this Parking Easement or their heirs, executors, administrators, successors, grantees or assigns. In the event this Parking Easement is amended or modified in any manner, such amendment shall be recorded in the MCRD. This Parking Easement shall not be otherwise amended, modified or terminated. If any term or provision of this Parking Easement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Parking Easement or the application of such terms or provisions 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 Parking Easement shall be valid and enforceable to the fullest extent permitted by law.

Unit 1, Unit 2 and the Premises are not the homestead properties of the Parties hereto.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Executed and sealed by the Parties as of the date first set forth above.

Milano Real Estate Associates, LLC

Andrew H. Sullivan
Witness

By: [Signature]
Michael A. D'Amante, Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

On this 29 day of June, 2012, then personally appeared the above-named Michael A. D'Amante, in his capacity as Manager of **Milano Real Estate Associates, LLC**, known to me, or satisfactorily proven, to be the person whose name subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained, on behalf of **Milano Real Estate Associates, LLC**. Before me,



Andrew H. Sullivan
Justice of the Peace / Notary Public
My Commission Expires: _____

L&A Realty, LLC

Andrew H. Sullivan
Witness

By: [Signature]
Name: Arnold Goldstein
Its: Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

On this 29 day of June, 2012, then personally appeared the above-named Arnold Goldstein, in his capacity as Manager of **L&A Realty, LLC**, known to me, or satisfactorily proven, to be the person whose name subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained, on behalf of **L&A Realty, LLC**. Before me,



Andrew H. Sullivan
Justice of the Peace / Notary Public
My Commission Expires: _____

MERRIMACK COUNTY RECORDS
Kathi L. Gray, CPO, Register

3

39.18
200

Doc#: 815032
Book: 3323 Pages: 0021 - 0028
06/29/2012 11:44AM

MCRD Book 3323 Page 21

MILANO LAND CONDOMINIUM OWNERS ASSOCIATION

RULES AND REGULATIONS

MCRD



RETURN TO:
ANDREW H. SULLIVAN, ESQ.
PO BOX 10354
24 EASTMAN AVENUE
BEDFORD, NH 03110-0354

**MILANO LAND CONDOMINIUM
OWNERS ASSOCIATION**

RULES AND REGULATIONS

The foregoing are adopted as the Rules and Regulations of the Milano Land Condominium Owners Association, a condominium association, not for profit, organized under the laws of the State of New Hampshire, with an address of 9 Triangle Park Drive, P.O. Box 1750, Concord, New Hampshire 03302-1750, by the Owners of the Units thereof, as of June 29, 2012.

The undersigned Owners of the Milano Land Condominium acknowledge and agree to the following Rules and Regulations:

1. **General Provisions.** The provisions of these Rules and Regulations are applicable to the Milano Land Condominium (the "Condominium") established pursuant to the Declaration of Milano Land Condominium recorded in the Merrimack County Registry of Deeds (the "MCRD") at Book 2666, Page 1003 (the "Declaration") and the Milano Land Condominium Owners Association Bylaws recorded in the MCRD at Book 2666, page 1053 (the "Bylaws"), and to the use, occupancy, sale, lease or other transfer thereof. All present and future Unit Owners, tenants, future tenants, their guests, licensees, servants, agents, employees and any other Person who shall use the facilities of the Condominium, shall be subject to these Rules and Regulations of the Condominium. The acceptance of a deed of conveyance, the entering into a lease, or the act of occupancy of a Unit or any other portion of the Condominium, shall constitute an acknowledgment that such Unit Owner, tenant, or occupant has accepted and ratified these Rules and Regulations, the provisions of the Declaration and the provisions of the Bylaws. Capitalized terms not otherwise defined herein or in the Declaration or Bylaws shall have the meanings specified in Section 3 of the Condominium Act.

2. **Signage.** The existing pylon sign (the "Pylon Sign") serving the Condominium has been erected and currently holds two (2) panels. Unit 1-1 has the sole and exclusive right to the top panel on the Pylon Sign, and has the right in its sole discretion to split such panel to serve one or more signs. Unit 1-3 has the sole and exclusive right to the second panel on the Pylon Sign, and has the right in its sole discretion to split such panel to serve one or more signs. Unit 1-1 and Unit 1-2 together have the sole and exclusive right to add a third panel to the Pylon Sign to serve any additional user(s) and/or tenant(s) of the Condominium. Each Unit shall be responsible for all costs and expenses of the permitting, erection, repair and maintenance of its panel signs located on the Pylon Sign. The Owner of Unit 1-1 shall pay the cost of the electric service for the Pylon Sign, and the other Unit Owners shall reimburse to the Owner of Unit 1-1 each such Unit Owner's Proportionate Share (as hereinafter defined) for such costs. Each Unit Owner shall be responsible for its Proportionate Share of all costs and expenses of the maintenance, repair and any other work related to the Pylon Sign. The Proportionate Share of each Unit Owner shall be as set forth in Section 8.1 of the Declaration. The Owner of Unit 1-1 shall have the right to execute any applications and take any other actions necessary or desirable to add additional panel(s) to the Pylon Sign.

3. **Drainage System.** The Condominium and each Unit of the Condominium, as well as several adjoining properties to the Condominium, have the non-exclusive right to use a drainage system (the "Drainage System") located under the Condominium and an adjoining parcel. The Unit Owners of the Condominium are responsible for the Condominium's share of the repair, maintenance and any other work required with regard to the Drainage System.

4. **Utilities.** Each Unit of the Condominium is subject to the terms and provisions set forth in the Declaration and Bylaws with regard to the use, access, maintenance, repair and other matters relating to utilities. Each Unit Owner shall be responsible for the permitting, maintenance, repair and any other work related to any and all utility lines, pipes, conduits and related items serving such Unit Owner's Unit and all the costs and expenses thereof, including without limitation utility lines on other Units that exclusively serve that Unit Owner's Unit. The costs and expenses for the permitting, maintenance, repair and any other work related to any and all utility lines, pipes, conduits and related items that serve multiple Units shall be paid for pro-rata by the Units served by such utility items.

5. **Access Drive.** The Access Drive, which provides access to the parcels adjoining the Condominium, and which is set forth on that certain Site Plan labeled "Condominium Site Plan, Milano Site Development, Loudon Road & Old Loudon Road, Concord, New Hampshire, prepared for Milano Real Estate Assoc., LLC" dated April 1, 2004, as revised on 5/11/04 (the "Condominium Site Plan"), has been relocated as set forth on that certain Site Plan labeled "Milano Phase 2 Retail Development, 313 & 317 Loudon Road, Concord, NH owned by Milano Real Estate Assoc., LLC, prepared for Hillside Design Group, LLC" dated January 20, 2011, as revised on 2/4/11, 3/7/11, 3/14/11 and 4/13/11 (the "Revised Plans"), such that access to the Condominium is currently to the full lighted intersection on Loudon Road. The Unit Owners further acknowledge and agree that Section 10.1(b) of the Declaration grants the following rights to the Declarant of the Declaration: "The Declarant reserves the right at any time to unilaterally relocate the Access Drive so that the Access Drive no longer provides access to the Premises through a right in/right out to Loudon Road but instead provides access to the Premises through the adjoining property to the west of the Premises known as Map 111F, Block 2, Lot 8. In the event that Declarant relocates the Access Drive as set forth herein, Declarant also reserves the right to unilaterally alter the Unit boundaries, the size of each Unit, the size of the Common Area, the size and location of Utility Lines and the respective easements and plans pertaining thereto and the location of parking spaces for each Unit to accommodate the relocation of the Access Drive, provided that such alteration and/or relocation does not reduce the number of parking spaces allocated to each Unit and provided further that holders of easement rights of record to the Access Easement retain such rights as set forth in such easements of record over such relocated Access Drive." The Unit Owners further acknowledge and agree that the Unit Owner of Unit 1-1, Milano Real Estate Associates, LLC, its successors and assigns (collectively, "Milano Real Estate Associates"), unilaterally and solely holds any and all such rights of Declarant set forth in the Declaration, such that Milano Real Estate Associates may without limitation and at any time unilaterally execute such rights and record any plans, condominium plans, documents, or other revisions of same to verify such re-location of said Access Drive of record as set forth on the Revised Plans, verify the revised boundary of Unit 1-1 of record as set forth on the Revised Plans, verify the revised boundary of the Common Area of record as set

forth on the Revised Plans, and verify any other revisions resulting from or related to such re-location of the Access Drive. The Unit Owners further acknowledge and agree that Milano Real Estate Associates constructed the additional parking, retaining wall and related improvements as set forth on the Revised Plans relating to the re-location of the Access Drive (collectively, the "Unit 1-1 Improvements"), and that such Unit 1-1 Improvements are located on Unit 1-1 and are the sole and exclusive property of Unit 1-1 and the Unit Owner thereof, its successors and assigns.

6. **Common Road/Access Drive.** The Unit Owners hold the non-exclusive right to utilize the re-located Access Drive as set forth on the Revised Plans. Each Unit Owner shall be responsible for its Proportionate Share for the costs of the snowplowing, repair, maintenance, and other costs of such Access Drive.

7. **Unit Owners and Units.** Each Unit Owner shall have the right to utilize its Unit for its own purposes, subject to the terms and provisions of the Declaration, the Bylaws, these Rules and Regulations, and any other rights and restrictions of record. Each Unit Owner shall have the responsibility, at such Unit Owner's sole cost and expense, to repair, maintain, replace and otherwise care for its Unit and any utilities and/or other items serving its Unit, as more particularly set forth in the Declaration, the Bylaws, and these Rules and Regulations, and shall do so in a manner suitable for a first-class shopping center. The responsibilities of each Unit Owner with regard to its Unit shall include, without limitation, all aspects of any building or other structures located on such Unit, landscaping, parking, dumpster pad and use, rubbish and trash clean-up all other aspects of its Unit. The Unit Owners acknowledge and agree that certain parking and other items with regard to Unit 1-2 are set forth in a Parking Easement recorded herewith.

8. **Recording.** Any Unit Owner may record these Rules and Regulations at any time.

9. **Binding Effect.** The terms of these Rules and Regulations shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the Unit Owners and their respective successors and assigns who become Unit Owners of any Unit of the Condominium at any time. The Unit Owners acknowledge and agree that these Rules and Regulations are promulgated and adopted in full compliance with any and all governing terms and provisions of the Condominium, including without limitation the Condominium Act, Declaration and Bylaws, and the Unit Owners hereby waive any claim of non-compliance with any such terms and provisions in the promulgation and adoption of these Rules and Regulations.

10. **No Waiver.** The failure of any Unit Owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Unit Owner may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Unit Owner of any default under these Rules and Regulations shall be effective or binding on such Unit Owner unless made in writing by such Unit Owner and no such waiver shall be implied from any omission by a Unit Owner to take action with respect to such default. No express written waiver of any default shall affect any other default or cover

any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of these Rules and Regulations shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other terms or provisions contained in these Rules and Regulations.

11. **Severability.** It is the intention of these Rules and Regulations that the provisions of these Rules and Regulations are severable so that if any provision, condition, covenant, or restriction hereof shall be invalid or void under any applicable federal, state or local law or ordinance or any other reason, the remainder shall be unaffected thereby. In the event that any provision, condition, covenant, or restriction hereof is, at the time of executing these Rules and Regulations or at any other time, void, voidable or unenforceable as being contrary to any applicable law or ordinance or any other reason, then these Rules and Regulations, its successors and assigns and all Persons claiming by, through or under these Rules and Regulations, covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability, or unenforceability, shall be deemed to apply retrospectively to these Rules and Regulations thereby operating to validate the provisions of this instrument which otherwise might be invalid, and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein declared as fully as if they had been in effect at the time of this instrument.

12. **Exclusives and Restrictions.** As of the date hereof, Dollar Tree Stores, Inc. holds a leasehold interest on Unit 1-3 (the "Dollar Tree Lease"). So long as the Dollar Tree Lease is in effect, Unit 1-1 shall not be used for the following uses: (i) the operation of a single price point variety retail store, (ii) variety retail operations with the word "Dollar" in their trade name, (iii) a close-out store or (iv) a retail store whose "principal business" (hereinafter defined) is (a) selling a combination of gifts, cards, gift wrap and other party supplies or (b) selling a combination of artificial flowers and picture frames, the term "principal business" to be defined as selling such merchandise in twenty-five percent (25%) or more of the sales floor area (including one-half [1/2] of the adjacent aisle space). The restrictions set forth herein on the uses of Unit 1-1 shall automatically terminate upon the expiration or termination of the Dollar Tree Lease without any further action and/or document required from any party. In the event of the expiration or termination of the Dollar Tree Lease, at any time thereafter the Owner of Unit 1-3 agrees, within twenty (20) days after receipt of a written request therefor, to execute and deliver to any other Unit Owner a recordable statement in writing certifying to the expiration or termination of the Dollar Tree Lease.

As of the date hereof, Newick's Concord Lobster House, Inc. holds a leasehold interest on Unit 1-1 (the "Newick's Lease"). So long as the Newick's Lease is in effect, Unit 1-3 shall not be used for the following use: the operation of a restaurant if more than thirty percent (30%) of such restaurant's operations contain seafood other than sushi. The restriction set forth herein on the use of Unit 1-3 shall automatically terminate upon the expiration or termination of the Newick's Lease without any further action and/or document required from any party. In the event of the expiration or termination of the Newick's Lease, at any time thereafter the Owner of Unit 1-1 agrees, within twenty (20) days after receipt of a written request therefor, to execute and deliver to any other Unit Owner a recordable statement in writing certifying to the expiration or termination of the Newick's Lease.

13. **Construction and Interpretation.** The Unit Owners acknowledge and agree to the following:

(a) These Rules and Regulations have been fully negotiated and/or accepted at arm's length between the Unit Owners after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto. Neither the Declarant nor any Unit Owner shall be deemed the scrivener of these Rules and Regulations and, based on the foregoing, the provisions of these Rules and Regulations shall be construed as a whole according to their common meaning and not strictly for or against any Unit Owner and/or party.

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

(c) The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of these Rules and Regulations.

(d) These Rules and Regulations may be executed in several counterparts, each of which shall be deemed an original. The signatures to these Rules and Regulations may be executed and notarized on separate pages, and when attached to these Rules and Regulations shall constitute one complete document.

(e) These Rules and Regulations shall be governed under the laws of the State of New Hampshire.

(f) In the event of any conflict between these Rules and Regulations and either the Declaration and/or the Bylaws, the provisions of these Rules and Regulations shall apply.

(g) A facsimile and/or scanned signature hereon shall constitute a legally binding execution of these Rules and Regulations, and such document executed by facsimile and/or scanned signature shall be followed by executed, original document(s) delivered to the other Unit Owners.

(h) These Rules and Regulations may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the Unit Owners of the Condominium or their heirs, executors, administrators, successors, grantees or assigns. In the event these Rules and Regulations are amended or modified in any manner, such amendment shall be recorded in the MCRD. These Rules and Regulations shall not be otherwise amended, modified or terminated.

14. **Arbitration.** In the event of any dispute between the Unit Owners pursuant to the provisions of these Rules and Regulations that does not result in an agreement between such Unit

Owners within thirty (30) days after receipt by any Unit Owner of a written objection to any matter, then such Unit Owners hereby agree that any such dispute shall be submitted to binding arbitration before a single arbitrator in the City of Concord, New Hampshire pursuant to the rules in effect at the time of such dispute by the American Arbitration Association (or similar body). Such Unit Owners hereby agree to be bound by the decision of such arbitrator and a judgment may be obtained thereon in any court having jurisdiction. The cost and expense of the arbitrator shall be split evenly between such Unit Owners, and each such Unit Owner shall separately pay its own fees and expenses regarding such arbitration, including without limitation attorneys' fees and expenses. In the event that such Unit Owners cannot agree on an arbitrator for any arbitration pursuant to these Rules and Regulations, then such Unit Owners shall each submit the name of one (1) arbitrator (and each such Unit Owner shall be responsible for the cost and expense of such arbitrator chosen by such Unit Owner), and those arbitrators shall in turn agree on and submit the name of one (1) arbitrator, who shall be the arbitrator for the dispute in question (with the costs and expenses of such arbitration as set forth above). All such Unit Owners shall be bound by the choice of the arbitrator selected by this process. **THE UNIT OWNERS HEREBY WAIVE ANY AND ALL RIGHT TO A TRIAL BY COURT OR JURY AND ANY RIGHT TO APPEAL WITH REGARD TO SUCH DISPUTES.**

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MCRD

IN WITNESS WHEREOF, the Unit Owners acknowledge that they have read and understand this document, and that they have executed these Rules and Regulations as of the date first above written.

Unit Owner - Unit 1-1 and Unit 1-2:

Milano Real Estate Associates, LLC

[Signature]
Witness

By: [Signature]
Michael A. D'Amante, Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

On this 29 day of June, 2012, then personally appeared the above-named Michael A. D'Amante, in his capacity as Manager of **Milano Real Estate Associates, LLC**, known to me, or satisfactorily proven, to be the person whose name subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained, on behalf of **Milano Real Estate Associates, LLC**. Before me,

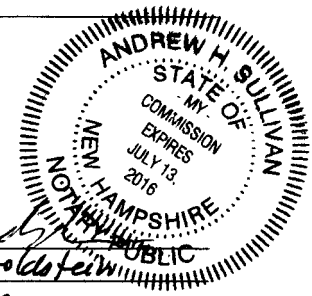
[Signature]
Justice of the Peace / Notary Public
My Commission Expires: _____

Unit Owner - Unit 1-3:

L&A Realty, LLC

[Signature]
Witness

By: [Signature]
Name: Arnold Goldstein
Its: Manager
Duly Authorized



STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

On this 29 day of June, 2012, then personally appeared the above-named Arnold Goldstein, in his capacity as Manager of **L&A Realty, LLC**, known to me, or satisfactorily proven, to be the person whose name subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained, on behalf of **L&A Realty, LLC**. Before me,



[Signature]
Justice of the Peace / Notary Public
My Commission Expires: _____

MERRIMACK COUNTY RECORDS
[Signature] CPO, Register