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06/18/84

RESOLUTION NO. 84-7

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MILL CREEK, WASHINGTON, APPROVING
WITH CONDITIONS THE FINAL PLAT AND SITE
PLAN FOR MILL CREEK SQUARE DEVELOPMENT.

WHEREAS, the City Council of the City of Mill Creek, Washington, granted preliminary plat approval to the Mill Creek Square development by Resolution No. 5, adopted on December 13, 1983, and

WHEREAS, the Mill Creek Planning Commission held a public meeting on June 7, 1984, for which proper notice was given, at which time it considered the final plat for the Mill Creek Square development and determined that the final plat was in keeping with the preliminary plat, and

WHEREAS, the Mill Creek Planning Commission recommended approval of the final plat with conditions, and

WHEREAS, the City Council reviewed the final plat at a special meeting on June 11, 1984, and determined that the final plat was in keeping with the preliminary plat, and

WHEREAS, the City Council finds that the proposed plat, with the conditions set forth herein, makes appropriate provision for the public health, safety and general welfare

and that the public use and interests will be served by the platting of such subdivision, and

WHEREAS, the City Council concurs in the finding of the City official responsible for compliance with the State Environmental Policy Act that this approval, as conditioned, will not have any significant adverse impact upon the quality of the environment, now, therefore,

THE CITY COUNCIL OF THE CITY OF MILL CREEK, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The Mill Creek Square development plat is approved subject to the following conditions and stipulations:

- A. All conditions of the preliminary plat approval as itemized in Resolution No. 5, passed by the City Council on December 13, 1983, shall be met.
- B. The Common Area Maintenance and Use Agreement attached hereto as Exhibit A and incorporated herein as if fully set forth, shall be executed by the parties and filed with the final plat.
- C. Prior to recording the plat, a construction bond in the amount of \$160,000.00 guaranteeing the satisfactory completion of all improvements and conditions required by the City and/or shown in detail on the site plan approved by the City, shall be filed on a form approved by the City Attorney.

Section 2. The Mayor and the City Engineer are authorized to sign the final plat indicating the approval of the City of Mill Creek.

RESOLVED this 26th day of June,
1984.

CITY OF MILL CREEK

Sid Hanson
MAYOR, SID HANSON

ATTEST/AUTHENTICATED:

Michele Schutz
CITY CLERK, MICHELE SCHUTZ

FILED WITH THE CITY CLERK: 6/19/84
PASSED BY THE CITY COUNCIL: 6/20/84
RESOLUTION NO. 84-7

MILL CREEK DISTRIBUTION SCHEDULE

ORDINANCE NO. _____ (xx) First Reading
RESOLUTION OF INTENTION NO. ~~84-7~~
RESOLUTION NO. 84-7 () First Reading
SUBJECT MATTER APPROVING THE FINAL PLAT AND SITE

PLAN FOR MILL CREEK SQUARE DEVELOPMENT

CONFORM AS TO DATES & SIGNATURES:

- (X) Filed with the City Clerk 06/19/84
- (X) Passed by the City Council 6/26/84
- (X) Signed by the Mayor 6/26/84
- (X) Signature of City Clerk _____
- (X) Posting Date(s) _____ and _____
- (X) Effective Date _____

DISTRIBUTE CONFORMED COPIES AS FOLLOWS:

- () The Everett Herald or _____
- (X) Ordinance or Resolution Book
- () Zoning, comprehensive plan, comprehensive street plan book
- () 3 copies to Association of Washington Cities (35A.39.010)
- (X) Attorney
- () Building Inspector
- () City Clerk/Treasurer
- () City Council
- () City Engineer
- () City Manager
- () Fire District 7 and 11
- () Police Department
- () _____
- () _____
- () _____
- () _____
- () _____
- () _____
- () _____

CERTIFIED COPIES:

- () _____
- () _____
- () _____
- () _____

ALL EXHIBITS OR OTHER ATTACHMENTS ARE AFFIXED TO THE ABOVE DOCUMENT AND TO THE COPY TO BE PUBLISHED IF PUBLICATION IS REQUIRED.

CITY CLERK DATE

COMMON AREA MAINTENANCE
AND USE
AGREEMENT


THIS COMMON AREA MAINTENANCE AND USE AGREEMENT (hereinafter referred to as the "Agreement") is made, declared, established and entered into this 12th day of JUNE, 1984, by THE RAINIER FUND, INC., a Washington Corporation (hereinafter referred to as "Rainier").

WHEREAS, Rainier owns certain real property situated in Snohomish County, Washington, as more fully described in the legal description thereof attached hereto and made a part hereof as "Exhibit A"; and

WHEREAS, Rainier intends to subdivide the real property into six (6) lots, as more fully set forth in the copy of the Plat of the subject real property attached hereto and made a part hereof as "Exhibit B" (hereinafter referred to as the "Plat") and thereafter construct certain improvements (hereinafter referred to as the "Improvements") on the real property all as is more fully shown in the plan (hereinafter referred to as the "Site Plan") attached hereto and made a part hereof as "Exhibit C"; and

WHEREAS, subsequent to the recording of this Agreement and the platting of the real property described in Exhibit A, Rainier intends to sell the real property described in the legal description thereof attached hereto and made a part hereof as "Exhibit D" (which real property is hereinafter referred to as "Lot 2") to SUPERMARKET DEVELOPMENT CORPORATION, a corporation (hereinafter referred to as "SDC"); and

WHEREAS, subsequent to the recording of this Agreement and the platting of the real property described in Exhibit A, Rainier intends to sell the real property described in the legal description thereof


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attached hereto and made a part hereof as "Exhibit E" (which real property is hereinafter referred to as "Lot 3" to PIONEER FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION (hereinafter referred to as "Pioneer First Federal"); and

WHEREAS, Rainier desires to provide for the common maintenance and use of the real property, and establish certain restrictions with respect thereto;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions herein set forth and for other consideration the receipt and sufficiency of which is hereby acknowledged, Rainier hereby establishes, declares and agrees as follows:

1. DEFINITIONS.

(a) Shopping Center. As used herein the term "Shopping Center" shall mean the real property described in Exhibit A and the Site Plan together with all Improvements now or hereafter constructed thereon and thereto from time to time. As shown on the Site Plan, the Shopping Center contains approximately 262,555 square feet of total gross land area and is composed of (i) six (6) Lots denominated as Lot 1, having 18,618 square feet of gross land area; Lot 2 having 111,842 square feet of gross land area; Lot 3 having 22,274 square feet of gross land area; Lot 4 having 26,400 square feet of gross land area; Lot 5 having 26,505 square feet of gross land area; and Lot 6 having 56,916 square feet of gross land area; (ii) Building Areas within the Lots denominated for convenience purposes as "Shops A," "Market," "Savings & Loan," "Auto Service Store," "Gas Station/Store" and "Shops B"; and (iii) areas in common use (hereinafter referred to as the "Common Areas") outside of the Building Areas, which Common Areas include, or shall include from time to time roadways, walkways, parking areas, storm sewer facilities, utility areas, landscaping, ingress and egress points and other areas as defined below.


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(b) Building Areas. As used herein the term "Building Areas" shall mean the portions of the Shopping Center devoted from time to time to buildings as denominated above. The contemplated initial Building Areas are as follows: "Shops A" containing 17,800 square feet of building area on Lot 6; "Market" containing 30,550 square feet of building area on Lot 2 divided between "Market Retail Space" (22,500 square feet) and "Market Warehouse Space" (8,050 square feet); "Savings & Loan" containing 3,000 square feet of building area on Lot 3; "Auto Service Store" containing 6,677 square feet of building area on Lot 4; "Gas Station/Store" containing 2,585 square feet of building area on Lot 5; and "Shops B" containing 7,000 square feet of building area on Lot 1. The contemplated Building Areas are shown in the Site Plan; provided, however, that nothing in this Agreement, except the restrictions set forth in Section 3 below, shall be construed as a representation, warranty or obligation imposed on Rainier or any Owner, or any successor, assign, tenant or Lessee of Rainier or an Owner to construct actual Improvements within the Building Areas or use the same for the purposes described above or described in the Site Plan, it being the intention of this Agreement to set forth the building lines of the Building Areas and to set forth a statement of the presently contemplated uses of the Building Areas. Each Owner, including Rainier, shall have the right to construct Improvements on the Building Areas which conform to the restrictions set forth in Section 3 below and which conform to permissible uses allowed under the then applicable zoning and use codes promulgated by the governmental authority then having jurisdiction over the Shopping Center. Subject to the provisions of Section 3(d) below, Rainier reserves to itself and its successors and assigns the right to erect buildings in the Building Areas which buildings may be of such size and shape as Rainier or the then Owner of the Lot on which the building to be constructed is located may deem appropriate so long as, subject to the provisions of Section 3(e) below,

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the building lines of such buildings do not encroach beyond the Building Area lines for that particular building and that particular Lot as shown on the Site Plan; provided, that it is agreed that building canopies of any building constructed on a Building Area may encroach from the Building Areas not more than two (2) feet over the Common Areas so long as such canopies do not unreasonably interfere with the use of the Common Areas.

(c) Common Areas Defined. As used herein, the term "Common Areas" shall include all areas within the Shopping Center outside of the building lines of the buildings and Improvements constructed in Building Areas and shall include, but not be limited to parking areas, roadways, walkways, ingress and egress points, storm sewer systems, service areas and ways, utility areas, landscaping and all other areas devoted to the common use of the Owner or Owners of the Lots, as defined below, and tenants of the Shopping Center and their customers and invitees. The Common Areas shall be developed substantially as shown in the Site Plan and each of the Building Areas shown in the Site Plan shall be Common Area until construction of a building is commenced on such Building Area or Areas. If any or all of the buildings and Improvements constructed on Building Areas from time to time should, upon completion, occupy less area than the entire applicable Building Area for that particular building, then the excess property in that Building Area not developed with buildings and Improvements shall be part of the Common Area until the Owner of the Lot on which the building or Improvements is constructed commences construction of a building which occupies all or any part of the particular Building Area and after such subsequent construction any part of the Building Area which is not used for a building or Improvement shall be Common Area.

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(d) Owner Defined. As used herein, the term "Owner" shall mean the owner in fee of a Lot and, where the context so requires, shall include Rainier.

(e) Manager Defined. As used herein, the term "Manager" shall mean the person or entity having responsibility for the performance of the management obligations with respect to the Shopping Center pursuant to this Agreement which Manager shall be Rainier, so long as Rainier owns or ground leases a Lot on the Shopping Center or until Rainier is removed with or without cause by a vote of the Owners in the manner as set forth in Section 8 below and after either such event shall mean a substitute Manager approved by a vote of the Owners in the manner as set forth in Section 8 below. The Manager may employ a professional shopping center or commercial real property management company for the performance of its obligations under this Agreement, which management company may be owned by, or affiliated with, an Owner. The initial management company shall be TRF Management Corporation, which is a subsidiary of Rainier.

2. TERM.

The term of this Agreement shall be for a period of not less than fifty-five (55) years commencing upon the day and year first above written or for such longer period of time as may be required in order for all or any of the buildings now or hereafter constructed on the Shopping Center to comply with applicable ordinances; provided, that the term of this Agreement may be extended by the vote of the then Owners of the Lots comprising the Shopping Center in the manner as set forth in Section 8 below.

3. RESTRICTIONS.

(a) Use of Buildings. The buildings which are now or hereafter constructed on, or as part of, the Shopping Center shall be constructed for commercial and/or retail purposes of the type normally found in conjunction with a retail shopping center and the tenants


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and/or Owner occupying the buildings in the Shopping Center shall be primarily retail and/or service tenants of the type normally associated with a retail shopping center.

(b) Building Signs. No advertising or other sign attached to a building in the Shopping Center shall project above the building line of said building nor shall intermittent flashing off-and-on signs be permitted anywhere in the Shopping Center. All signs shall comply fully with all applicable governmental statutes, ordinances, rules and regulations and shall be compatible with the architectural scheme of the Shopping Center.

(c) Shopping Center Sign and Sign Advertising Supermarket. So long as Lot 6 is developed and used for commercial and/or retail purposes of the type normally found in conjunction with a retail shopping center, then the Owner of Lot 6, including Rainier so long as Rainier owns or ground leases Lot 6, shall have the right to construct and maintain one or more signs (the "Shopping Center Sign") on the Common Areas to advertise the Shopping Center, the type of which sign shall be at the discretion of the said Owner of Lot 6 and which Shopping Center Sign shall be located at the place or places shown in the Site Plan. The Owner of Lot 2 shall have the right to construct and maintain one (1) sign (the "Supermarket Sign") on Lot 2 so long as (i) Lot 2 is developed and used as a supermarket and (ii) the appropriate governmental authorities and design review boards, if any, having jurisdiction or rights over or in Lot 2 shall approve such Supermarket Sign; provided, that in the event the Owner of Lot 2 is unable or does not desire to erect or maintain the Supermarket Sign, then the Owner of Lot 2, so long as Lot 2 is developed and used as a supermarket, shall have the right to advertise such supermarket on the Shopping Center Sign in a manner subject to the approval of the Owner of Lot 6, which approval shall not be unreasonably withheld or delayed. All signs shall


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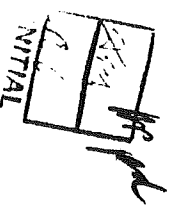
conform to all applicable governmental and design review board standards, statutes, ordinances, rules and regulations.

(d) Fences. No fences, curbs, buildings or similar obstacles shall be erected or placed on the Common Areas which would obstruct or interfere with the free flow of vehicular and pedestrian traffic across the Common Areas; provided, that such a fence may be used during a period of construction of a building or other Improvements on a Building Area to prevent access to the Building Area during the construction of said building or other Improvements.

(e) Design. The buildings constructed on the Building Areas shall be designed so that the exterior elevation of each will be architecturally and aesthetically compatible and so that the buildings' wall footings shall not encroach from the Building Area. No building shall exceed one (1) story (thirty-five feet) in height including mezzanines.

(f) Encroachment Easement. In the event a roofline or canopy of a building shall encroach from one Building Area onto another Building Area or beyond the Building Area lines shown on the Site Plan, despite efforts to avoid that occurrence, the Owner of the Lot, and tenant or tenants of the buildings involved, shall grant an encroachment easement to the Owner of the Lot on which the encroaching building is located and tenant or tenants of the encroaching building; provided, that such encroachment easement shall not exceed two (2) feet.

(g) Separation of Uses. Rainier recognizes the need of SDC or its assigns and customers for adequate parking facilities in close proximity to Lot 2, and the importance of protecting such parking facilities against undue interference or encroachment which is likely to result from long-term parking by patrons or employees of certain types of business establishments. Rainier further recognizes SDC's interest in not having tenants occupying space in close proximity to Lot 2 who create or cause excessive noise, litter or odor. To safeguard SDC's interest in a clean, quiet and odor free environment and adequate



parking for its customers, Rainier, on behalf of itself, its grantees, successors and assigns, covenants and agrees that, so long as a grocery supermarket is in operation on Lot 2, it shall not permit the use or operation of any portion of the Shopping Center, within three hundred feet (300') of any exterior building wall of any Lot 2 building for the primary purpose of a restaurant (fastfood or sit-down) or entertainment or recreational activities such as, but not limited to, bowling alleys, theaters, game rooms or other places of public or private amusement.

(h) Use of Lot 2. No portion of Lot 2 shall be used for a bank, savings and loan, automatic teller machine, teller station and/or drive-through banking facility for a period of thirty (30) years after the recording of this Agreement without the written permission of the fee Owner of Lot 3; provided, however, that nothing herein shall be construed to prohibit the use of devices for the automatic transfer of funds relating to a particular retail transaction.

4. COMMON AREAS.

(a) Mutual, Non-Exclusive Rights. Rainier, on behalf of itself and its grantees, successors and assigns, does hereby reserve, establish and grant to and for the benefit of itself, the manager and successor managers of the Shopping Center, and the Owners of Lots and tenants of space in the Shopping Center, their respective grantees, successors and assigns, and their respective customers, invitees, and employees, the following:

Mutual non-exclusive rights for vehicular and pedestrian ingress and egress and for passage and parking of motor vehicles into, out of, on, over and across, all Common Areas in the Shopping Center including all parking areas, driveways, ingress and egress points, service drives and areas from time to time established within the Shopping Center.

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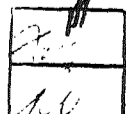
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The exercise of the above rights shall not unreasonably interfere with the occupancy of any Lot, building or portion thereof by any Owner or tenant in the Shopping Center; provided, that Rainier, the Manager, management company and Owners shall not be responsible for any interruption of use or damage or inconvenience arising by reason of such rights.

(b) Construction and Repair Easement. Rainier, on behalf of itself and its grantees, successors and assigns, does hereby reserve, establish and grant to and for the benefit of itself and the manager and successor or managers of the Shopping Center, the following:

(i) Mutual, non-exclusive rights for the construction, location, relocation, maintenance, repair, striping, restriping, marking, reconstruction and access to and from all Common Areas in the Shopping Center including all parking areas, driveways, ingress and egress points, service drives and areas, landscaping, rockeries, drainage systems, catch basins, oil separator systems and other common facilities from time to time established within the Shopping Center.

(ii) Mutual, non-exclusive rights under, through and across the Common Areas for and the construction, location, relocation, maintenance, repair, reconstruction and access to water drainage systems or structures, water mains, sewers, (including sanitary and storm sewer systems, catch basins, oil separator systems) water sprinkler system lines, telephones or electrical conduits or systems, gas mains and other public utilities and service easements. All such systems, structures, mains, sewers, conduits, lines and other public utilities instrumentalities shall be installed and maintained below


INITIAL



the ground level or surface of the Shopping Center if allowed or required by the local governmental agency or authority having jurisdiction thereof.

The exercise of the above rights shall not unreasonably interfere with the occupancy of any Lot, building or portion thereof by any Owner or tenant in the Shopping Center; provided, that Rainier, the Manager, management company and Owners shall not be responsible for any interruption of utility service or damage or inconvenience arising by reason of such maintenance work.

(c) Use. Subject to existing easements or restrictions of record and all governmental statutes, ordinances, rules and regulations now or hereafter in effect, and subject to the rights of Owners to reconstruct buildings within the building lines of the Building Areas, all as shown on the Site Plan, the Common Areas shall be used for their primary purposes as shown in the Site Plan including, but not limited to, roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, for driveway purposes, landscaping and for the comfort and convenience of customers, invitees, contractors and employees of all businesses and occupants of the buildings constructed on the Building Areas.

(d) Modification. Anything herein contained to the contrary notwithstanding, Rainier reserves the right for the Owners, upon a vote as set forth in Section 8 below, to change and modify from time to time the Common Areas including but not limited to pedestrian ways, walkways, roads, storm sewer systems, parking locations, utilities, landscaping and other improvements located therein.

(e) Limitations on Use of Common Areas.

(1) Customers. Customers and invitees of an Owner or any tenant of space in the Shopping Center shall not


INITIAL 

be permitted to park on the Common Areas except while shopping or transacting business in the Shopping Center.

(2) Employees. Employees of an Owner or of tenants of space in the Shopping Center shall not be permitted to park on the Common Areas, except in areas designated by the Manager from time to time as "employee parking areas."

(3) General. All of the uses permitted within the Common Areas shall be used with reason and judgment so as not to interfere with the primary purpose of the Common Areas as set forth above. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

(f) Operation and Maintenance of Common Areas.

(1) Maintenance Expenses. Following completion of the construction of improvements on or to the Common Areas, Rainier, and its successor as Manager shall operate and maintain, or cause to be operated and maintained through the management company as defined above, the Common Areas in the Shopping Center and shall keep the same, or cause the same to be kept, in good condition and repair, including without limiting the generality of the foregoing, the following:

(A) Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability.

(B) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines.

(C) Operating during such hours as the Shopping Center is open for business, and keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required.

(D) Maintaining and watering all landscaped and planted areas and making such replacements of shrubs, trees, grass, plants and other landscaping utilities as is necessary.

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(E) Keeping all Common Areas free and clear of excess dirt, debris, ice and snow, when needed.

(F) Keeping paved portion of all Common Areas free of holes and plainly striped, resurfacing all or any part of the paved areas when necessary, and restriping all or any part of the parking lot or lots when necessary but not less than once every two years.

(G) Keeping the Common Areas adequately lighted during any hour that the Shopping Center is open, replacing all damaged or defective bulbs in fixtures.

(H) Keeping all sign towers, pylons, monuments and other sign structures of signs advertising the Shopping Center in good repair, replacing any damaged or defective portion thereof, and keeping any tenant signs on such tower lighted during the hours that such tenant is opened for business.

(I) Maintaining all perimeter walls, rockeries and fences in a good condition and state of repair.

(J) Keeping and maintaining in good working order and repair the storm sewer system serving the Shopping Center, including, but not limited to the drainage system, catch basins and oil separator systems described in the letter to the City of Mill Creek a copy of which is attached hereto and made a part hereof as Exhibit "F," and maintaining said drainage system, catch basins and oil separator systems in the manner set forth in said letter.

(K) Keeping all portions of components of the Common Areas not specifically treated above in good order and repair and in a slightly condition, including painting, resurfacing and replacement of any such portion or component thereof which has become damaged or defective.

(L) Providing security service or any other service or maintenance program that may be warranted by the circumstances to keep the Common Areas of the Shopping Center comparable to common areas of other shopping centers of like size and nature in the general area of the Shopping Center.

(M) Establishing reasonable reserves to maintain and repair the Common Areas and carry out the Owner's responsibilities hereunder.

(N) Employing or appointing an independent contractor management company to carry out the maintenance of the Common Areas performance of the obligations of Manager.

(2) Liability Insurance. As a part of the operation of the Shopping Center, the Manager shall obtain and maintain general public liability insurance insuring the Owners, tenants


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in the Shopping Center, and the management company, as their respective interests may appear, against claims for personal injury, death or property damage occurring in, upon or about the Common Areas. Such insurance shall be written with an insurer licensed to do business in the State of Washington. The limits of liability of all such insurance shall be at least \$1,000,000 for injury to or death of any one person, \$5,000,000 for injury to or death of more than one person in any one occurrence, and \$250,000 with respect to damage to property.

(3) Personal Property Taxes. As a part of the operation of the Shopping Center, the Manager shall pay all personal property taxes and assessments assessed or levied against the Common Areas.

(4) Right of Entry. Each Owner hereby irrevocably grants to Rainier so long as Rainier owns or ground leases one or more Lots in the Shopping Center, whether as Manager or otherwise, its successors as Manager, and the management company and their respective agents, employees, contractors and licensees the right to enter upon the Lot owned by the respective Owners for the purpose of carrying out the maintenance and management obligations of Rainier, Manager and the management company.

(g) Expenses.

(1) The Manager shall expend only the monies necessary for the payment of the reasonable cost of operation and maintenance, insurance and personal property taxes and assessments (all of which shall be jointly referred to herein as "Charges") as described in Section 3(f) above and to operate the Common Areas on a nonprofit basis to the end that the Charges in connection therewith shall be kept to a minimum.

The Manager shall, from time to time, but not more often than once each calendar year, send to each and every Owner a written statement of the total actual Charges for the period of the preceding calendar year, including reasonable reserves, and its estimate of the Charges, including reasonable reserves, for the current year; provided, that the Manager shall estimate the Charges, including reasonable reserves for the period commencing with the recording of this Agreement and ending on December 31 of the then current calendar year. Each Owner shall pay its pro rata share of the estimated Charges to the Manager as set forth below which pro rata share shall be adjusted from time to time to reflect overpayments or underpayments of actual Charges for the previous calendar years as determined from the Manager's annual statement of actual Charges.

(2) Each Owner, or its authorized representative, shall have the right to examine the records of Charges at reasonable business hours and with reasonable frequency.

(3) Each Owner's proportionate share of such Charges shall be established by the ratio that the gross land area of the Lot owned by such Owner bears to the gross land area of all Lots in the Shopping Center.

(4) If all or any portion of such proportionate share owed by an Owner is not paid within ten (10) days of the Owner's receipt of the statement of charges, then the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter until paid at a rate of two percent (2%) over the prime commercial lending rate established by the Bank of America at the date of delinquency, but in no event at a rate of interest per annum in excess of the highest rate allowed in the State of Washington and the non-defaulting



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Owners shall have a lien on the Lot of the defaulting Owner for said unpaid amount and interest, which lien may be foreclosed by Manager in the name of the non-defaulting Owners in the manner allowed for the foreclosure of Mortgages.

(h) Payment. Each owner and tenant shall pay its pro rata share of the estimated common area maintenance Charges for the current year monthly in advance, or less frequently if determined by Manager. The failure to pay within ten (10) days of receipt of any demand shall cause a late charge of \$100.00 to be assessed against the defaulting Owner, which late charge is designed to cover all extra costs incurred by Manager in processing the delinquency.

(i) Agent of Owner. The Manager may, within the exercise of its discretion, appoint or employ an independent contractor management company to maintain, or cause to be maintained, the Common Areas as set forth above. Said management company shall be paid a fee to cover the supervision, accounting, management and other costs of maintaining and managing the Common Areas or causing the same to be maintained or managed. The fee paid to said management company shall be included within the general maintenance Charges paid by the respective Owners of space in the Shopping Center.

(j) Bids. In the event any Owner believes the Manager, or management company, is not fulfilling its obligation to keep the Charges at the lowest minimum reasonably possible, then such Owner may submit three (3) binding bids to the Manager from independent contractors who are willing to perform such service or services. The Manager shall review said bids and, in the event in the exercise of its good faith business judgment, the Manager shall determine that one of the bidders can provide such services at least equal in value and quality to the service or services provided by

the independent contractor then employed by Manager to provide such service or services, and at a lower cost the services provided by the independent contractor then employed by the Manager, then such bid shall be accepted by the Manager and the independent contractor giving such bid shall be accepted to provide the subject service. Any cancellation or termination fee payable to the independent contractor then employed to provide such service shall be included as part of the Charges next coming due.

5. EMINENT DOMAIN.

(a) Taking and Award. If the Common Areas, or any part thereof, are taken by any governmental or quasi-governmental agency in the exercise of its power of eminent domain, the award granted under such proceedings or any settlement or transfer in lieu thereof, for the taking of such property shall be wholly payable to the fee owner of the portion of the Common Areas so taken, and any award for taking of any of the rights hereunder granted to the party which is not the fee owner of the property so taken shall be wholly payable to the party to whom said portion of the award is granted. If all of the Common Areas are taken, then this Agreement shall terminate as of the date title thereto is transferred to the condemning authority. If less than all of the Common Areas are taken (including access points to adjoining streets), then this Agreement shall continue with respect to the remaining Common Areas unless the Shopping Center is closed as a commercial and/or retail shopping center by the vote of the Owners as set forth in Section 8 below, in which event the Manager may terminate this Declaration without liability upon not less than thirty (30) days' written notice to all Owners.

(b) Restoration. In the event this Agreement shall not terminate by reason of a taking by eminent domain then the Manager shall repair and restore the remaining portion of the Common Areas as near as practicable to the condition of same immediately prior to such



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condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any Owner; provided, that each Owner shall assign and deliver to the Manager its award given by reason of the condemnation; and, provided, further that the Manager shall have the right to redesign the Common Areas to accommodate the use of the remaining portion of the Shopping Center for the uses allowed under this Agreement, which redesign shall be subject to the approval of the Owners upon a vote as set forth in Section 8 below. The Manager shall have the right to use the awards given by reason of such condemnation to accomplish such redesign. The Manager shall hold such sums in trust for the payment of the costs of restoration and shall immediately deliver to the Owners their respective portions of their awards which are not used for such restoration work.

6. REAL ESTATE TAXES AND ASSESSMENTS.

Each Owner shall pay before delinquency all real estate taxes and assessments, whether special or general, assessed or levied from time to time against the Lot owned by that Owner, which assessments may include an assessment for the storm sewer system affecting the Shopping Center; provided, that in the event such storm sewer system is not constructed by or dedicated to a governmental or quasi-governmental agency, then each Owner shall pay its pro rata share of the cost and maintenance thereof, which share shall be determined in the same manner, and shall be paid at the same time, as the Owners' pro rata share of Charges as set forth above.

7. NO PROTEST.

By acceptance of a deed to a Lot, or leasehold estate in any Lot or Building Area, and by obtaining any rights of possession in any part of the Shopping Center, all Owners, tenants and other persons obtaining rights in the Shopping Center irrevocably agree to not protest the formation of a local improvement district (hereinafter referred to as

the "L.I.D.") for the construction of a traffic signal and other traffic control devices at the corner of 164th Street S.E., and 9th Avenue S.E., Snohomish County, Washington. Each Owner shall pay its pro rata share of cash or assessment payments required for such L.I.D., which pro rata share shall be determined in the manner set forth above for determination of the Owners pro rata share of Charges. All such payments shall be made upon demand by Manager.

8. VOTING.

(a) Votes. Each Owner, including Rainier so long as Rainier owns or ground leases a Lot in the Shopping Center, shall have one (1) vote for each gross square foot of land within the Lot or Lots owned by that Owner.

(b) Voting Requirements. Any action or approval requiring the vote of the Owners under this Agreement shall not be validly taken or given unless it receives the affirmative vote of not less than sixty-seven percent (67%) of the total number of votes held by all Owners voting on the matter.

(c) Voting Procedure. Any Owner shall have the right to require the Manager to call for a vote of the Owners on any matter. Upon such demand for a vote, the Manager shall provide written notice to each Owner which notice shall set forth the question or matter to be voted upon and shall set forth the date, which shall not be less than five (5) business days from the receipt of said notice, by which all Owners must vote for or against the question or matter to be voted upon. All votes shall be in writing and given to the manager as set forth in Section 9 below. A failure by an Owner to provide a vote within said five (5) business day period shall be deemed an election by that Owner to abstain on the question or matter presented.

9. NOTICES.

(a) Appointment of Agent. All Owners shall appoint an agent, who shall be a resident of, or maintain an office within, the State

of Washington, for the receipt of all notices required or desired to be given hereunder.

(b) Notice. Any notices desired or required to be given hereunder shall be given in writing and personally delivered or mailed by certified mail, return receipt requested to an Owner or its agent. Such notice shall be deemed given when personally delivered or forty-eight (48) hours after deposit in the United States mail, postage prepaid, certified mail return receipt requested and addressed to the Owner, or its agents, to receive the same.

(c) Notice to Manager. The names and addresses of each Owner, and its agent, shall be given by each Owner in writing to the Manager, and such names and addresses may be changed upon not less than five (5) days prior written notice to the Manager by the particular Owner.

10. RIGHTS AND OBLIGATIONS OF LENDER.

The charges and burdens of this Agreement are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust made in good faith and for value affecting the Shopping Center or any part thereof, or any Improvements now or hereafter placed thereof. However, a breach of any of the easements, covenants, or restrictions hereof shall not defeat, impair or render invalid the lien or charge of any mortgage or deed of trust. The superiority of this Agreement shall be limited to the extent that title to any property acquired through sale under foreclosure of any mortgage or deed of trust affected by powers of sale, judicial proceedings, or otherwise, shall be subject to all the charges and burdens affecting the Shopping Center by virtue of this Agreement.

11. GENERAL PROVISIONS.

(a) Runs with Land. Each mutual right and/or obligation declared, reserved, granted and established hereby, and each restriction and covenant contained herein, shall be appurtenant to and for the

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benefit of all portions of the Shopping Center and shall be a burden thereon for the benefit of all portions of the Shopping Center, and shall run with the land.

(b) Binding Effect. It is intended that this Agreement facilitate the use of the Shopping Center as an integrated shopping center by the Owners and their respective grantees, heirs, successors, assigns, lessees, sublessees, customers, invitees and concessionaires. This Agreement shall inure to the benefit of, and be binding upon, the Owners and the tenant or tenants of all or any part of the Shopping Center only during the period of time such person is the fee or leasehold owner of the Shopping Center or any part thereof, except as to obligations, liabilities or responsibilities that accrue during such period of fee or leasehold ownership.

(c) Assignment by Rainier. If Rainier sells any portion or all of its interest in the Shopping Center and obtains from the purchaser thereof an express agreement by which the purchaser assumes and agrees to be bound by the covenants and agreements herein contained, Rainier shall thereupon be released and discharged from any and all further obligations under this Agreement as the Owner of the property sold by Rainier; provided, that the rights and obligations of Rainier (exclusive of its rights as an Owner) shall not be transferred by Rainier except upon the sale or assignment of all its interest in the Shopping Center or the transfer of such interest to a partnership, joint venture or corporation of which Rainier is a partner, joint venturer or shareholder.

(d) Remedies. In the event of any violation or breach or threatened violation or breach of this Agreement by any Owner, lessee, tenant, occupant of any portion of the Shopping Center or any other party of any of the terms, covenants and conditions herein contained, in addition to the other remedies herein provided, any or all of the Owners of Lots in the Shopping Center shall have the right to sue to enjoin



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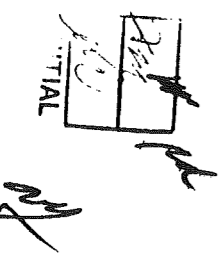
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such violation or threatened violation. The Manager shall enforce such rights; provided, that any Owner shall have the authority to enforce its rights hereunder in the event the Manager shall fail or refuse to do so. Any costs or expenses (including attorneys' fees) incurred by Manager (or any Owner in the enforcement of this Agreement) shall be paid by the Owners benefited by the Manager's (Owner's) enforcement action.

(e) Amendment. This Agreement may not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the vote of the Owners of the Shopping Center upon a vote in the manner as set forth in Section 8 above and then only by written instrument duly executed and acknowledged by such Owners, and the City of Mill Creek as set forth below, and duly recorded in the office of the Recorder of Snohomish County, Washington; provided, that anything herein to the contrary notwithstanding, no amendment to or modification of the rights to the mutual, non-exclusive right to use the Common Areas or amendment to or modification of the duty to maintain the Common Areas as set forth in this Agreement shall be valid until approved by the City of Mill Creek. Upon an affirmative vote to modify this Agreement, no Owner shall unreasonably withhold or delay the execution, acknowledgment, and delivery to the Manager of an amendment to this Agreement setting forth the modification approved by the affirmative vote of the Owners.

(f) No Dedication to General Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to or for the general public or for any public purpose whatsoever, it being the intention of the Owner that this Agreement shall be strictly limited to and for the purposes herein expressed.

(g) Breach. It is expressly agreed that no breach of this Agreement shall entitle the Owners to cancel, rescind or otherwise to terminate this Agreement, but this shall not affect or limit in any manner any other rights or remedies which such party may have hereunder by reason of any breach of this Agreement. Any breach of this Agreement

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shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, and this Agreement shall be binding upon and effective against the Owner of any portion of the Shopping Center whose title thereto is acquired by foreclosure, trustee sale or otherwise.

(h) Partial Invalidity. If any portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court to be so, the remaining portions hereof shall remain in full force and effect.

(i) Lien. The lien provided for in Section 4 above is effective when written notice thereof is filed for record by the Owners or Manager entitled thereto as a claim of lien against the defaulting Owner in the manner and in the place as required for the recording of mortgages in the state and county in which the Shopping Center is located. Said notice shall contain at least:

- (1) The name and address of claimant;
- (2) A statement of the unpaid amount of Charges, costs and expenses;
- (3) A description sufficient for identification of that portion of the Shopping Center of the defaulting Owner which is the subject of the lien; and
- (4) The name of the Owner, tenant, or reputed owner or tenant of the property which is the subject of the alleged lien.

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

(j) Conveyances. All conveyances of all or any portion of the Shopping Center subsequent to the date hereof shall recite that they are subject and subordinate to the terms and provisions hereof.

(k) No Merger. The ownership of the entire Shopping Center by the same party shall not cause a merger or effect the termination of this Agreement.

(l) Captions. The captions and section headings are inserted for convenience purposes only and shall not be used to expand or diminish the provisions hereof.

IN WITNESS WHEREOF, Rainier has duly executed this Agreement as of the day and year first hereinabove set forth.

RAINIER

THE RAINIER FUND, INC.,
a Washington Corporation

By: [Signature]
Its: President

By: [Signature]
Its: TREASURER

Consented and Agreed to this
15th day of June, 1984.

SUPERMARKET DEVELOPMENT
CORPORATION, a corporation

By: [Signature]
Its: Ex. Vice President

By: _____
Its: _____

[Handwritten initials and stamp]
INITIAL

Consented and Agreed to this
11 day of June, 1984.

PIONEER FIRST FEDERAL SAVINGS
AND LOAN ASSOCIATION

By: [Signature]
Its Vice President

By: [Signature]
Its Corporate Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

*Phillip A
Cookette,
Treasurer, respectively*

On this 14th day of June, 1984, before me,
the undersigned, a Notary Public in and for the State of Washington,
duly commissioned and sworn, personally appeared Robert M. Parks &
and, [Signature], to me known to be the President and
[Signature], respectively, of THE RAINIER FUND, INC., the corpora-
tion that executed the foregoing instrument, and acknowledged the said
instrument to be the free and voluntary act and deed of said corpora-
tion, for the uses and purposes therein mentioned, and on oath stated
that they were authorized to execute the said instrument and that the
seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and
year first above written.

B. Richardson
Notary Public in and for the State of
Washington, residing at Kirkland

STATE OF Washington)
) ss.
COUNTY OF King)

On this 15th day of June, 1984, before me,
the undersigned, a Notary Public in and for the State of Washington,
duly commissioned and sworn, personally appeared [Signature]
and, [Signature], to me known to be the Exec Vice President
[Signature], respectively, of SUPERMARKET DEVELOPMENT
CORPORATION, a corporation, the corporation that executed the fore-
going instrument, and acknowledged the said instrument to be the free
and voluntary act and deed of said corporation, for the uses and
purposes therein mentioned, and on oath stated that they were autho-
rized to execute the said instrument and that the seal affixed is the
corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

B. Richardson
Notary Public in and for the State of
Washington residing at Kirkland

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this 12th day of June, 1984, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Donald H. Maidlow and, Ruth Vaara, to me known to be the Vice President and Corp. Secretary, respectively, of **PIONEER FIRST FEDERAL SAVINGS & LOAN ASSOCIATION**, the national banking association that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said association, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Nelle Cottrell
Notary Public in and for the State of
Washington, residing at Seattle

EXHIBITS

- A = Legal Description of the Entire Shopping Center
- B = Plat
- C = Site Plan
- D = Legal Description for Lot 2
- E = Legal Description for Lot 3
- F = Letter to City of Mill Creek

W. J. K.
W. J. K.
W. J. K.

<i>W. J. K.</i>	<i>W. J. K.</i>
<i>W. J. K.</i>	<i>W. J. K.</i>

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EXHIBIT "A"

Lot 1 through and including Lot 6 of Plat of Mill Creek Square, a Replat of Lots 28 and 29, Mill Creek Plaza, as set forth in the Plat of Mill Creek recorded in Volume 40, Page 59 of the records of Snohomish County, Washington.

EXHIBIT "A"

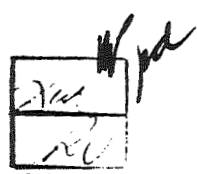
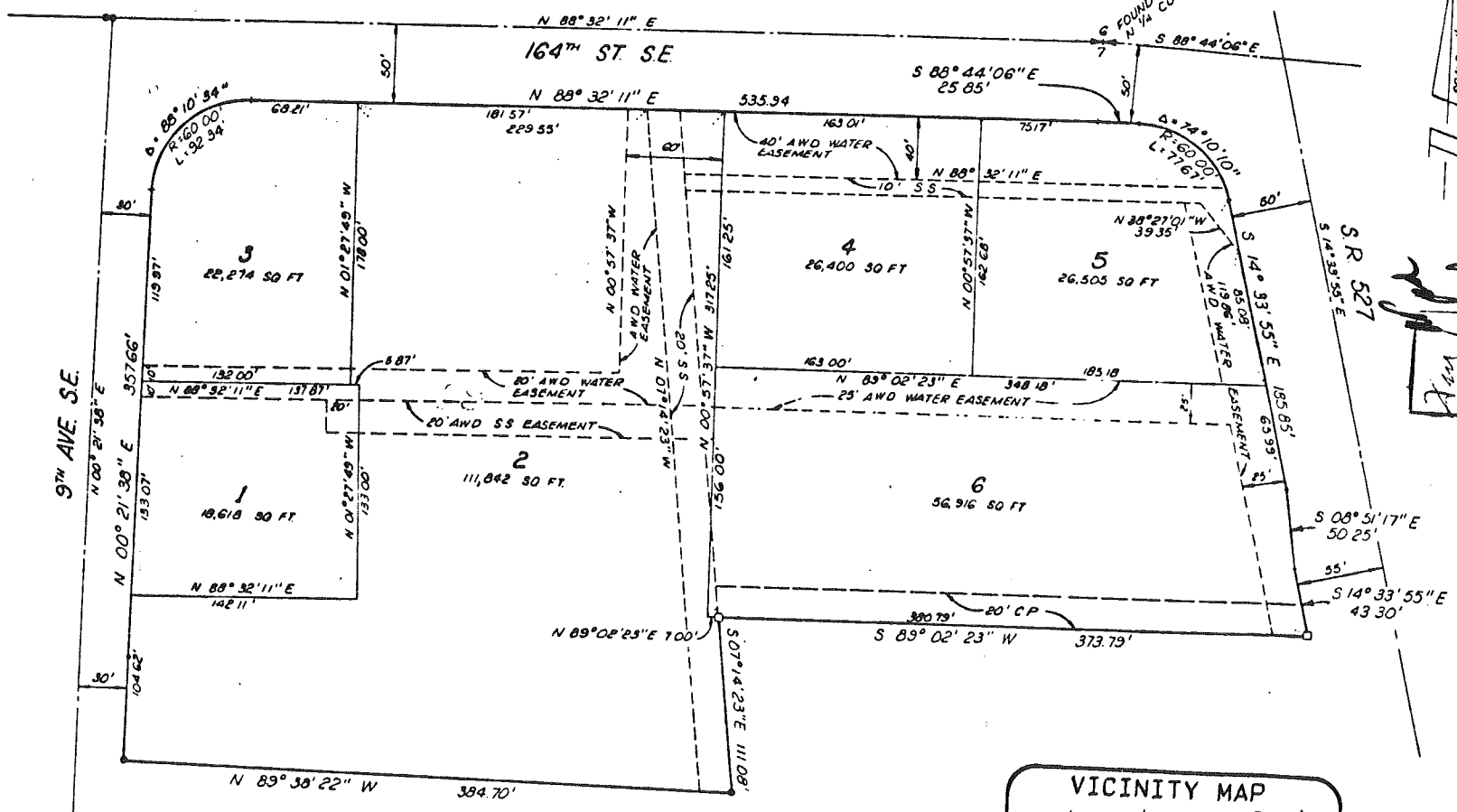

INITIAL

Exhibit B

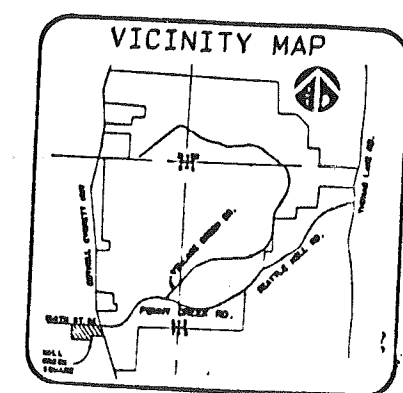
MILL CREEK SQUARE
 A REPLAT OF LOTS 28&29, MILL CREEK PLAZA
 A PORTION OF THE NORTH HALF OF SEC. 7, T. 27 N., R. 8 E., W.M.
 CITY OF MILL CREEK
 SNOHOMISH COUNTY WASHINGTON



INITIAL
 [Signature]

- LEGEND**
- - Concrete monument
 - - Snohomish County street monument
 - - Found 1" iron pipe w/cap L.B. 11568
 - SS - Sanitary Sewer easement
 - CP - Cutting Preserve

NOTES:
 The basis of bearings of this Plat is the Plat of Mill Creek Plaza and the Washington State Grid System - North Zone.
 A Warranty Deed recorded under AF #7909040136 (paragraph C) refers to an easement for public utilities over the South 20 feet of Lot 28, Plat of Mill Creek Plaza, as shown on the face of said Plat. No such easement shows on the face of said Plat.

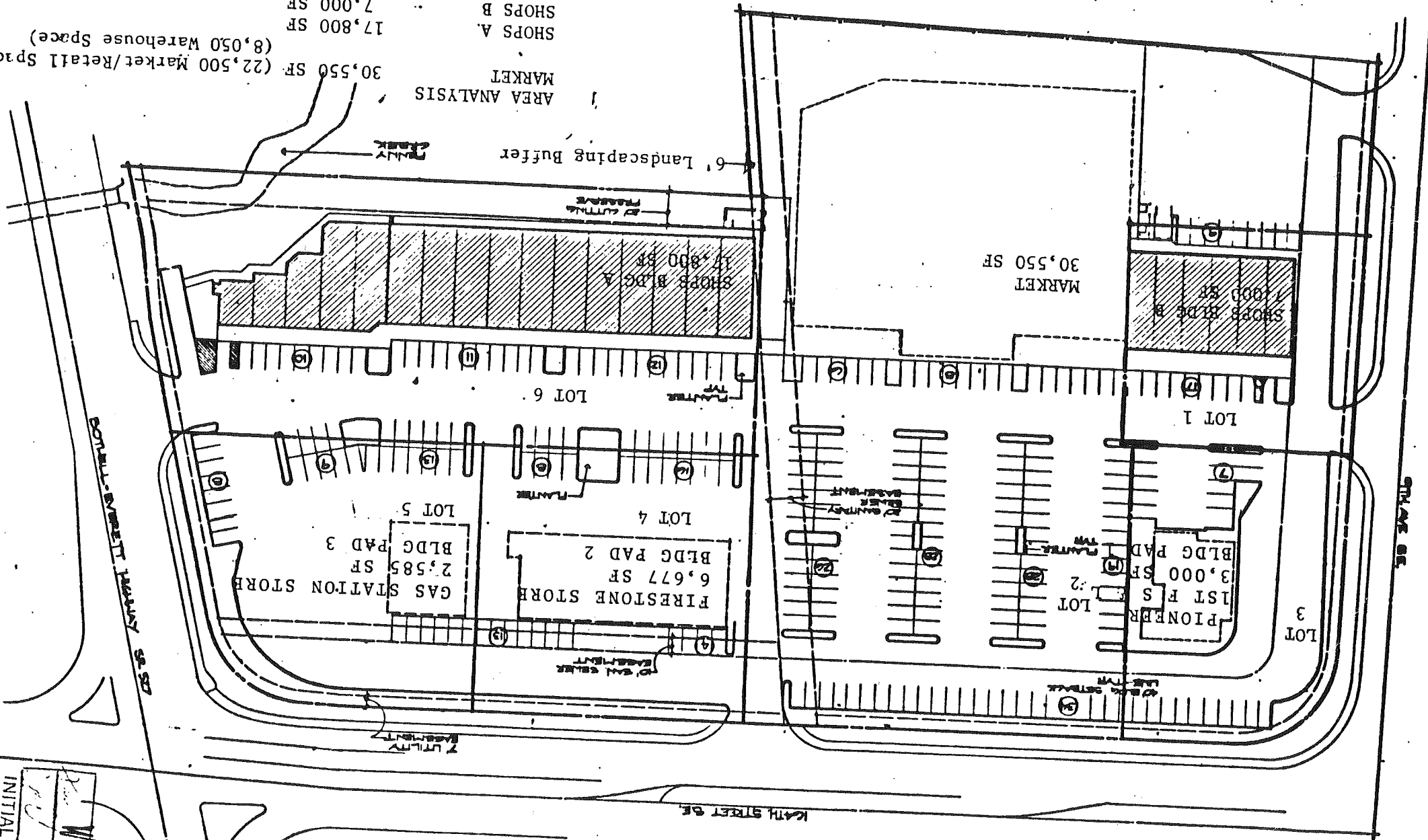


W·H WILSEY & HAM, INC.
 ENGINEERING · PLANNING · SURVEYING
 ENVIRONMENTAL ANALYSIS



SITE PLAN

SITE PROJECT DATA
 PARKING PROVIDED: 286 CARS
 SITE: 6.03 ACRES



MARKET	30,550 SF	(22,500 Market/Retail Space)
AREA ANALYSIS		
MARKET	17,800 SF	
SHOPS A.	7,000 SF	
SHOPS B	6,677 SF	
AUTO SERVICE	3,000 SF	
SAVINGS 7 LOAN	2,585 SF	
GAS STATION/		
STORE	67,612 SF	TOTAL

INITIAL

mill creek square developed by **the rainier fund inc.**
 12400 A.E. 36th Bellevue, WA 98006 206 645 1000

architect P.A. — 1/24/84
 4/19/84
 4/24/84

dkeman, ogden, andridge & quinton
 325 University Street, Suite 2000, Seattle, WA 98101

EXHIBIT "D"

Lot 2 of Plat of Mill Creek Square, a replat of Lots 28 and 29, Mill Creek Plaza, as set forth in the plat of Mill Creek, recorded in Volume 40, page 59 in the records of Snohomish County, Washington.

EXHIBIT "D"

W. J. [unclear]
W. J. [unclear]
INITIALS



Management Corporation

RECEIVED

MAY 04 1984

May 3, 1984

CITY OF MILL CREEK
In Reply Refer To: 3067

Allan Newbill, P.E.
CITY OF MILL CREEK
16030 Bothell-Everett Hwy., Suite 140
Mill Creek, WA 98012

RE: MILL CREEK SQUARE, 164TH STREET S.E. & BOTHELL-EVERETT HIGHWAY, BOTHELL, WASHINGTON 98012

Dear Mr. Newbill:

In respects the City of Mill Creek's requirement for maintenance of the storm water system for our proposed shopping center at Mill Creek Square, the following is our proposed maintenance program:

"The entire system will be inspected once a year. Sediment accumulations in the catch basins and oil/water separator will be removed. Any sediment and/or debris in the pipes will be flushed out. The grass lined ditches will be cleaned only when substantial amounts of sediment have accumulated, otherwise, the vegetation will not be disturbed."

The above maintenance program is that which has been recommended by Wilsey and Hamm, our civil engineers for the project.

If you have any further questions in this matter, or if additional clarification is required by the City, please do not hesitate to call.

Yours Truly,

TRF MANAGEMENT CORPORATION
as agent for Mill Creek Square

Robert H. Burton
Robert H. Burton, RPA
Property Manager

EXHIBIT "F"

Handwritten initials and a stamp with the word "INITIAL" visible.