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NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
PARR WADDUPS BROWN GEE &  
185 S STATE #1300 LOVELESS  
SLC UT 84111-1536  
BY: KCC, DEPUTY - WI 10 P.

PREPARED BY AND WHEN  
RECORDED RETURN TO:

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7718719

FIRST AMENDMENT TO  
DECLARATION OF RESTRICTIONS

[Boyer-3300 South Shopping Center Associates, Ltd. and West Bench Plaza,  
L.C./Alan Summerhays and Kristine Summerhays]

THIS FIRST AMENDMENT (this "First Amendment") is entered into as of the 6th day of July, 2000, between BOYER-3300 SOUTH SHOPPING CENTER ASSOCIATES, LTD., a Utah limited partnership, and WEST BENCH PLAZA, L.C., a Utah limited liability company (collectively, "Boyer"), whose address is 127 South 500 East, Suite 100, Salt Lake City, Utah 84102, and ALAN SUMMERHAYS and KRISTINE SUMMERHAYS, husband and wife (collectively, "Summerhays"), whose address is 136 East 12300 South, Draper, Utah 84020.

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Boyer and Summerhays agree as follows:

1. Definitions. As used in this First Amendment, each of the following terms shall have the indicated meaning:

1.1. "Declaration" means the Declaration of Restrictions, dated March 27, 1997 and recorded April 3, 1997 as Entry No. 6611002 in Book 7635 at Page 2335 of the official records of the Salt Lake County Recorder, Utah, covering the Guadalahonky's Parcel, Parcel 1 and Parcel 2.

1.2. "Guadalahonky's Parcel" means the real property located in Salt Lake County, Utah, described as follows:

Beginning at a point South 89°48'40" East which is the base of bearing, along the Section line 1130.25 feet (total quarter section line distance 2642.34 feet) and North 1533.76 feet to the South line of 12300 South Street from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 89°40'10" East along the South side of said street 128.72 feet; thence South 230.00 feet; thence North 89°40'10" West 128.72 feet; thence North 230.00 feet to the point of beginning.

28-30-351-035  
28-30-351-027  
28-30-351-041

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1.3. "Parcel 1" means the real property located in Salt Lake County, Utah, described as follows:

Shopping Center Parcel:

Beginning at a point South 89°48'40" East along the section line 1130.25 feet and North 909.595 feet and North 89°57'00" East 26.08 feet from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 393.99 feet; thence South 89°40'10" East 102.64 feet; thence North 210.00 feet to the South line of 12300 South Street (53 foot half width); thence South 89°40'10" East along said South line 935.50 feet to a point on the West line of the Anderson Lumber Company property recorded March 2, 1993, as Entry No. 5445958, in Book 6613, at Page 2531 of official records; thence South 02°43'00" West along said West line 186.11 feet; thence South 02°29'00" West along said West line 411.61 feet to a point on the North line of 12450 South Street (not yet recorded); thence South 89°57'00" West along said North line 1011.47 feet to the point of beginning. Contains approximately 13.631 acres.

1.4. "Parcel 2" means the real property located in Salt Lake County, Utah, described as follows:

Summerhays Parcel:

Beginning at a point which is South 89°48'40" East along the section line 1130.25 feet and North 879.59 feet from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 89°57'00" West 229.08 feet to a point of curvature; thence northwesterly along the arc of a 300.00 foot radius curve to the right, through a central angle of 37°21'32", a distance of 195.611 feet; thence North 52°41'28" West 61.05 feet to a point on the arc of a 400 foot radius curve to the left; thence northeasterly along said curve (center bears North 52°41'28" West), through a central angle of 37°22'04", a distance of 260.877 feet to a point of tangency; thence North 00°03'32" West 105.63 feet; thence South 89°40'10" East 54.00 feet; thence South 20.06 feet; thence South 89°40'10" East 350.084 feet; thence South 430.13 feet; thence South 89°57'00" West 26.08 feet; thence North 6.00 feet to the point of beginning. Contains approximately 4.133 acres.

2. Purpose. Boyer is the owner of Parcel 1 and Summerhays is the owner of the Guadalhonky's Parcel and Parcel 2. Boyer and Summerhays desire to amend the Declaration as set forth in this First Amendment.

3. Limitation on Parcel 2. Paragraph 2.3 of the Declaration is deleted in its entirety and is replaced with the following new Paragraph 2.3 (new or changed provisions are set forth in bold and underlined):

2.3. Limitation on Parcel 2. Parcel 2 may not be used for general or specialty retail purposes **or for the sale of prepared foods**, other than for the following:

2.3.1. not more than **4,500** square feet for general or special retail purposes (**"retail" does not include the sale of prepared food**);

**2.3.2. a Fassoli's fast food restaurant containing not more than 3,500 square feet, as shown on the Fassoli's site plan attached as Exhibit B, incorporated by this reference; provided, however, that the plans and specifications for such restaurant must be reviewed and approved in advance by Boyer, such approval not to be unreasonably withheld;**

**2.3.3. if Fassoli's ceases to operate the restaurant described in Paragraph 2.3.2, a replacement fast food restaurant operating in the same building in which Fassoli's was operating, provided that such replacement restaurant and any changes made to such building are approved in advance by Boyer, such approval not to be unreasonably withheld;**

**2.3.4. (a) sit-down restaurants within and incidental to a hotel or office building, or (b) retail uses within and incidental to a hotel or office building, such as a gift shop, book store or snow board/ski shop; or**

**2.3.5. the incidental encroachment of a facility almost wholly located on the parcel North of Parcel 2 at or near the Southeast corner of the intersection of 12300 South Street and State Street.**

4. **Fassoli's Site Plan.** The Fassoli's site plan attached to this First Amendment as **Attachment No. 1** is added as **Exhibit B** to the Declaration.

5. **General Provisions.** The Declaration shall be amended to the extent set forth in this First Amendment, but except as set forth in this First Amendment, the Declaration is ratified and affirmed in its entirety. This First Amendment shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This First Amendment shall inure to the benefit of, and be binding on, Boyer and Summerhays and their respective heirs, personal representatives, successors and assigns.

BOYER AND SUMMERHAYS have executed this First Amendment on the respective dates set forth below, to be effective as of the date first set forth above.

BOYER:

BOYER-3300 SOUTH SHOPPING CENTER  
ASSOCIATES, LTD.,  
by its general partner:

THE BOYER COMPANY, L.C.,  
a Utah limited liability company

By *Ken Gardner*  
Its *Manager*  
Date *9-11-00*

WEST BENCH PLAZA, L.C.,  
by its two managers:

THE BOYER COMPANY, L.C.,  
a Utah limited liability company

By *Ken Gardner*  
Its *Manager*  
Date *9-11-00*

ARBOR COMMERCIAL PROPERTIES, L.C.,  
a Utah limited liability company,  
by its managers:

  
\_\_\_\_\_

John Gust

Date 9/10-2000

  
\_\_\_\_\_

Cory Gust

Date 9/10/2000

  
\_\_\_\_\_

Trisha Christensen

Date 9/11/00

SUMMERHAYS:

  
\_\_\_\_\_

ALAN SUMMERHAYS

Date 9-10-00

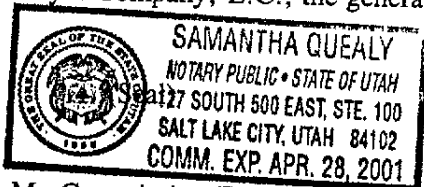
  
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KRISTINE SUMMERHAYS

Date 9-10-00

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 11 day of September, 2000,  
by Ken C. Gardner, the manager of The  
Boyer Company, L.C., the general partner of Boyer-3300 South Shopping Center Associates, Ltd.



[Signature]  
Notary Public

My Commission Expires:

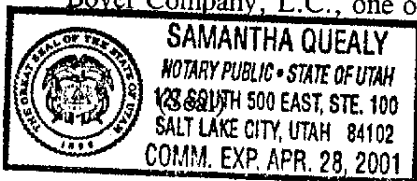
4/28/01

Residing at:

Salt Lake

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 11 day of September, 2000,  
by Ken C. Gardner, the manager of The  
Boyer Company, L.C., one of the managers of West Bench Plaza, L.C.



[Signature]  
Notary Public

My Commission Expires:

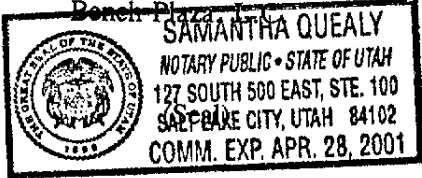
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Residing at:

Salt Lake

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 11 day of September, 2000,  
by John Gust, one of the managers of Arbor Commercial Properties, L.C., one of the managers of West  
Bench Plaza, L.C.



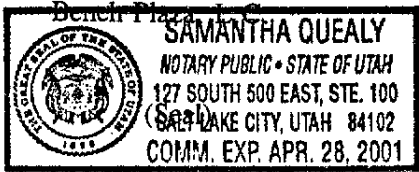
[Signature]  
Notary Public

My Commission Expires:  
9/28/01

Residing at:  
Salt Lake

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 11 day of September, 2000,  
by Cory Gust, one of the managers of Arbor Commercial Properties, L.C., one of the managers of West  
Bench Plaza, L.C.



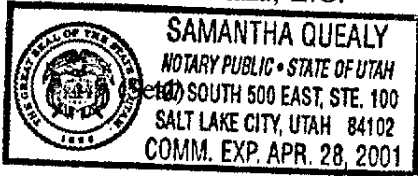
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Notary Public

My Commission Expires:  
9/28/01

Residing at:  
Salt Lake

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 11 day of September, 2000, by Trisha Christensen, one of the managers of Arbor Commercial Properties, L.C., one of the managers of West Bench Plaza, L.C.



*[Signature]*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

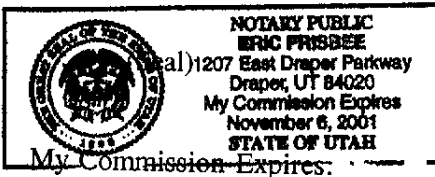
4/28/01

Residing at:

Salt Lake

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of September, 2000, by Alan Summerhays and Kristine Summerhays.



*[Signature]*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

Nov. 6, 2001

Residing at:

Draper, Utah



ATTACHMENT NO. 1

to

FIRST AMENDMENT TO  
DECLARATION OF RESTRICTIONS

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FASSOLI'S SITE PLAN

The Fassoli's site plan referred to in the foregoing instrument is attached, and consists of one (1) page.

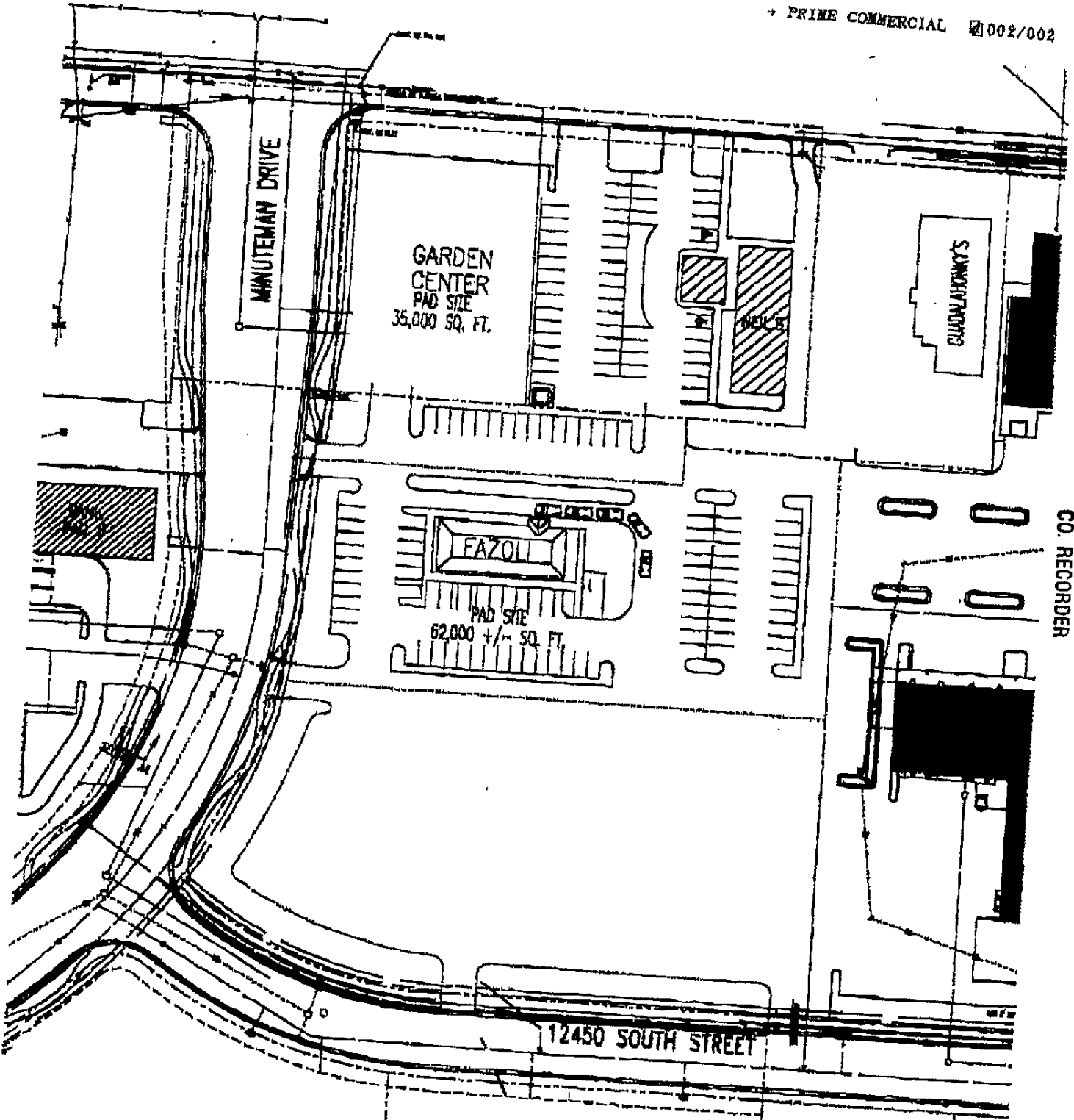
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CO. RECORDER



NORTH

MAY 19 2000

PROPOSAL MAY 19 2000  
12450 S. + MIN. MAN DR  
SITE PLAN

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