

743518

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**EASEMENTS WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND ("ECR")**

THIS AGREEMENT is made as of the 3 day of February, 1988,<sup>99</sup>  
between Lakeway Plaza I, LLC, (Developer) and  
NASH FINCH COMPANY, a Delaware corporation (Grantee).

W I T N E S S E T H:

WHEREAS, Developer is the owner of Tract 1 which consists of the land  
described on Exhibit A; and

WHEREAS, Grantee is the owner of Tract 2 which consists of the land described  
on Exhibit A; and

WHEREAS, the parties desire that Tract 1 and 2 be developed in conjunction with  
each other pursuant to a general plan of improvement to form a commercial  
Shopping Center (sometimes hereinafter referred to as the "Shopping Center") and  
further desire that said tracts be subject to the easements and the covenants,  
conditions and restrictions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises, easements,  
covenants, conditions, restrictions and encumbrances contained herein, the  
sufficiency of which is hereby acknowledged, Developer and Grantee do hereby  
agree as follows:

**1. Building/Common Areas.**

- a. "Building Areas" as used herein shall mean those portions of Tract 1 and those  
portions of Tract 2 within which buildings will be constructed, subject to the  
building square footage limitations for each lot set forth on the site plan attached  
hereto as Exhibit B. Canopies may encroach from the Building Areas over the  
Common Areas provided the canopies do not interfere with the use of the  
Common Areas.
- b. "Common Areas" shall be all of Tracts 1 and 2 except the Building Areas.
- c. Conversion to the Common Areas: Those portions of the Building Areas on

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**Exhibit B.**  
(to Purchase Agreement)



each tract which are not from time to time used or cannot, under the terms of this Agreement be used for building shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

2. Use.

Buildings on Tract 1 shall be used for commercial purposes of the type normally found in a retail shopping center including without limitation fast-food restaurants, financial institutions, service shops, drugstores, video stores, offices and retail stores. No grocery store, meat market, bakery, delicatessen, theater, bowling alley, billiard parlor, night club, tavern, adult theater or video game arcade shall occupy space within the Shopping Center without the written consent of Grantee.

3. Buildings.

- a. Design and Construction. The buildings on the lots of Tract 1 shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible with buildings on Tract 2 and so that building wall footings shall not encroach from one tract onto another tract except as provided for in Subsection d. below. The design and construction of buildings on Tract 1 shall be consistent with the construction quality of the buildings on Tract 2. No building on Tract 1 (except for buildings constructed on outlots) shall exceed 30 feet in height above finished grade, except that said buildings may have a facade of up to 35 feet in height above finished grade. No building on Tract 1 outlots shall exceed 22 feet in height above finished grade. No building shall have a metal exterior, exclusive of decorative metal roofs, awnings or store fronts.
- b. Location. No buildings shall be constructed on Tract 1 or Tract 2 (as either immediate development or future expansion) except within the Building Areas; however, the parties shall be able to lease space for kiosks or automatic teller machines on Tract 1 and Tract 2 provided the parking ratio thereon is not reduced below that set forth in Section 5(a)(ii), and further provided that drive lanes are not blocked.
- c. Placement. The parties hereby specifically consent to the placement of the buildings within the Building Areas along the common boundary line between Tract 1 and Tract 2, and each agrees to support any request by the other for a

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sideway or setback variance if the same is required in order to accommodate such construction.

- d. **Classification.** Developer acknowledges that Grantee may construct on Tract 2 a supermarket of a type which is generally classified under applicable building code regulation as an "unlimited area" building. (By way of explanation, but not limitation, such building classification is designated II-N or 5N under the Uniform Building code.) So long as Grantee plans to construct a building of such classification, or so long as a building of such classification exists on Tract 2 (including any restoration or reconstruction thereof), Developer agrees that any building to be placed or constructed on Tract 1, that is (1) located within 60 feet of the Building Area on Tract 2, or (2) located within 60 feet of any building referenced in (1) above shall comply with the requirements of said classification, including the installation of approved sprinkler systems for fire protection. In addition to the requirements set forth above, no building located on Tract 1, shall be placed or constructed in a manner which will itself preclude the construction of a building of such classification within the Building Area on Tract 2.
- e. **Party wall.** The second party to construct a building along the common boundary line between Tract 2 and Tract 1, shall do so in a manner that does not result in damage to the improvements in place on the adjoining Tract, and further shall undertake and assume at its sole cost the obligation of completing and maintaining the nominal attachment (flashing and seal) of its building to that of the existing building on the other Tract, it being the intent of the parties to establish and maintain the appearance of one continuous building complex. In performing such attachment, the wall of one building shall not receive support from nor apply pressure to the wall of the other building.
- f. **Fire Protection.** Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.
- g. **Easements.** In the event building wall footings encroach from one tract onto another, despite efforts to avoid that occurrence, the party onto whose tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

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4. Common Areas.

- a. Grant of Easements. Each party, as grantor, hereby grants to the other party as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive easement over, through and around their respective tracts for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.
- b. Limitations on Use.
  - (i) Customers. Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business.
  - (ii) Employees. Each party shall use reasonable efforts to ensure that employees shall only park on the tract of their respective employer.
  - (iii) General. All of the activity permitted within the Common Areas shall be conducted with reason and judgment so as not to interfere with the primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses. The operator of the business on Tract 2 shall, however, be allowed to conduct seasonal sidewalk and truckload sales in the Common Area in front of its building so long as such sales or trucks are not situated in traffic lanes. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.
- c. Utility and Service Easements. The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel.



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- d. **Water Flow.** Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.
- e. **Ingress.** Each party shall provide for curb cuts for vehicular ingress and egress from its Tract directly to the adjoining streets.

**5. Development, Maintenance and Taxes.****a. Development.**

- (i) **Arrangement.** The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.
- (ii) **"Parking Area" Ratio.** The parties agree that at all times they shall maintain on their respective tracts parking area sufficient to accommodate the greater of (i) four (4) car spaces for each one thousand (1,000) square feet of Building Area on their respective tracts, or (ii) the number of spaces required by the Gillette city ordinances covering zoning and parking.
- (iii) **Development Timing.** When any building is constructed within the Building Areas of a tract, the Common Areas of that tract shall be developed at the expense of the owner of said tract. In the event one party ("Developing Party") constructs improvements on Developing Party's tract prior to the development of the other tract, Developing Party shall have the right to grade, pave and use any portion of the Common Areas of non-developing party's tract for access to its tract and for construction of, including but not limited to, drainage structures and utility lines as are necessary to provide essential services to Developing Party's Tract.

**b. Maintenance.**

- (i) **Standards.** Following completion of the improvements on the

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Common Areas, the parties hereto shall maintain the Common Areas on their respective tracts in good condition and repair. The maintenance is to include without limitation the following:

- (a) Maintaining the surfaces in an even and smooth 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) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition.;
- (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
- (d) Operating, keeping in repair and replacing, when necessary, such artificial lighting facilities as shall be reasonably required.
- (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and
- (f) Maintaining and mowing all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

c. Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against their respective tracts.

6. Signs.

No sign shall be located on the Common Areas except signs advertising businesses conducted in the Shopping Center. There shall be two shopping center pylon signs on Tract 1 (located substantially as depicted on Exhibit B, attached hereto), which signs will be for advertising the businesses in the shopping center other than the businesses located on outlots A, B or C of Tract 1. Grantee shall have the right to advertise its business on the highest sign

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space of each of the shopping center pylon signs. In addition, one pylon sign shall be allowed on each of outlots A, B and C of Tract 1, provided however that the pylon sign on outlot A of Tract 1 shall not interfere with or restrict the view of the shopping center pylon sign on said outlot A.

**7. Indemnification/Insurance.**

- a. **Indemnification.** Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from its own tract, except if caused by the act or negligence of the other party hereto.
- b. **Insurance.**
  - (i) Each party shall procure and maintain in full force and effect throughout the term of this Agreement commercial general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000, 000.00 for any one occurrence, and to the limit of not less than \$100,000.00 for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten (10) day's prior written notice to the other party.
  - (ii) At all times during the terms of this Agreement, each party shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of uniform Extended Coverage Clause in effect from time to time the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements.

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- (iii) Each party hereto as their respective interest may appear, shall provide to the other upon written request certificates evidencing the fact that all such insurance has been obtained.
- (iv) Each party, for itself and its property insurer hereby releases the other, and from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either party resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

**8 Eminent Domain.**

- a. **Owner's Right to Award.** Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's tract or giving the public or any government any rights in said tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Tract 1 and 2, the award attributable to the land and improvement of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owner of any other portion of the Common Area.
- b. **Collateral Claims.** All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.
- c. **Tenant's Claim.** Nothing in this Paragraph 8 shall prevent a tenant from making claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

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- d. **Restoration of Common Areas.** The owner of each portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned as nearly as practicable to the condition of the same immediately prior to such 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 other owner.

9. **Rights and Obligations of Lenders.**

If by virtue of any right or breach of obligation set forth herein a lien shall be placed upon the tract of either party hereto by the other party, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on Tract 1 or 2, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

10. **Expansion of Shopping Center.**

The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties, or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area and the parking to building ratio in the expanded area shall not be less than that provided in paragraph 5a(ii).

11. **Release from Liability.**

Any person acquiring fee or leasehold title to Tract 1 or 2, or any part thereof, or any expansion of the Shopping Center pursuant to Paragraph 10, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restriction in this Agreement shall continue to be benefits to and servitude upon said tracts running with the land.

12. **Breach.**

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In the event of breach or threatened breach of this Agreement, only all record owners or lessees of Tract 1 as a group or all the record owners or lessees of Tract 2 as a group, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

**13. Rights of Successors.**

The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective lessees, successors masculine gender includes the feminine and neuter.

**14. Document, Modification and Cancellation.**

This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of the owners of Seventy-Five percent (75%) of the land area of Tracts 1 and 2.

**15. Duration.**

Unless otherwise canceled, terminated or further extended, this Agreement and all the easements, rights and obligations hereof shall automatically terminate and be of no further force and effect after sixty (60) years from the date hereof.

**16. Headings.**

The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

**17. Entire Agreement.**

This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

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**18. Notices.**

All notices and other communication required or permitted hereunder shall be in writing and shall be considered delivered when mailed by certified mail, postage prepaid, or sent via nationally recognized overnight courier service, addressed as follows:

**If to Developer:**  
2993 Broadmoor Valley Rd.  
Colorado Springs, CO 80906

**If to Grantee:**  
7600 South France Avenue  
Minneapolis, MN 55435

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

**NASH FINCH COMPANY**

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 1998, before me, a notary public in and for the county and state aforesaid came \_\_\_\_\_, President of Nash Finch Company, a Delaware corporation, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.  
In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

Notary Public

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*M.*

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STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 1998, before me, a notary public in and for the county and state aforesaid came \_\_\_\_\_, of \_\_\_\_\_, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of said corporation and such person duly acknowledged the execution of the same to be the free and voluntary act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

\_\_\_\_\_  
Notary Public

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**LEGAL DESCRIPTION**

Tract "1" and Tract "2" as shown on attached Exhibit "B" to this ECR Agreement.

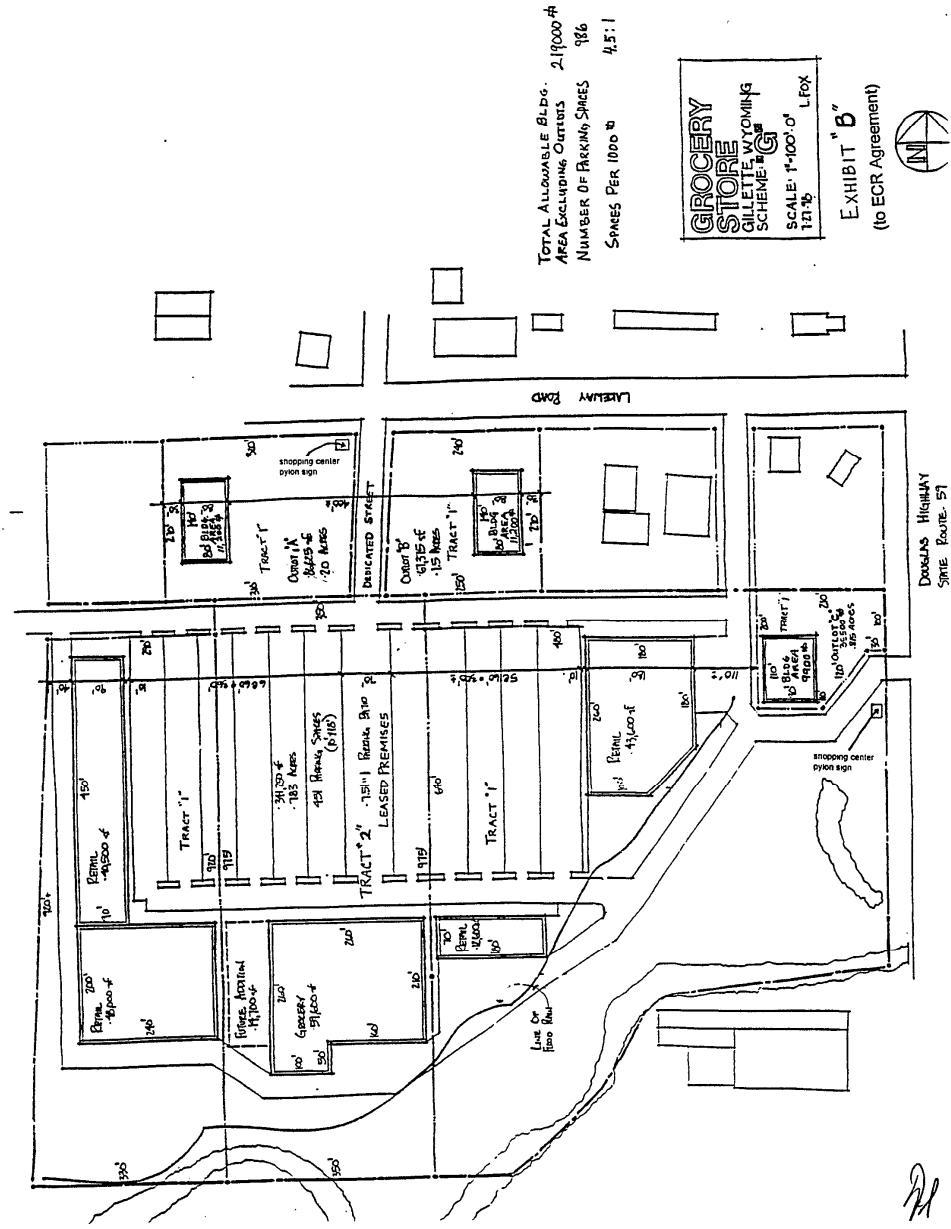
A Metes and Bounds legal description of Tract "1" and Tract "2" shall be prepared by a licensed land surveyor (the survey shall be paid for by the Lessor) and shall be substituted for the legal descriptions of Tract "1" and Tract "2" and shall be incorporated herein by an appropriate lease amendment prior to the commencement date of the lease now known as See Exhibit "C".

**EXHIBIT "A"**

(to ECR Agreement)



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**LEGAL DESCRIPTION**

Tract 1,2,3,4,5,6,7, and 8 of Market Square Plaza, a resubdivision of Lot 2B, Block 7; Lots 1 & 2, Block 8 and Lot 1A, Block 9 and a part of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 34, Township 50 North, Range 72 West of the Sixth Principal Meridian, Campbell County, Wyoming, according to the official plat thereof filed for record 20 January 1999 in Book 6 of Plats, pages 166 and 167 of the records of Campbell County, Wyoming.

**EXHIBIT "C"**

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**Attachment to the Agreement**  
EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND  
("ECR")

THIS ATTACHMENT TO THE AGREEMENT pertains to the "ECR" Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 1999 between \_\_\_\_\_, (Developer) and NASH FINCH COMPANY, a Delaware corporation (Grantee).

The undersigned "adjacent land owners" in the Market Square Subdivision, whom are not the Developer or the Grantee, hereby authorize the said "ECR" Agreement and become a party to the "ECR" Agreement with the land areas they own in the Market Square Subdivision. It is agreed that the "adjacent land owners" shall receive all benefits of the "ECR" Agreement and shall be bound by the terms and conditions of the "ECR" Agreement. It is also understood and agreed that the "adjacent land owners" are not the Developer and are participating in the "ECR" agreement only as owners of adjacent property inclusive in the Market Square Subdivision.

Markie A. Peterson Barcl C Carlson  
Christine Carlson Connie S. Carlson  
Madal A Carlson \_\_\_\_\_

Consented and Agreed to:  
NASH FINCH COMPANY

By Harold D. Morris

State of Wyoming      }  
 County of Campbell    } ss.

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On 3 February, 1999 Marlys Peterson personally appeared before me,

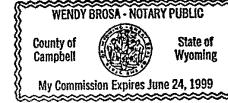
who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Wendy Brosa  
 Notary Public

My commission expires: \_\_\_\_\_

(Seal)



State of Wyoming      }  
 County of Campbell    } ss.

On 3 February, 1999 Michael A. Carlson personally appeared before me,

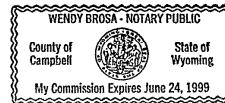
who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Wendy Brosa  
 Notary Public

My commission expires: \_\_\_\_\_

(Seal)



State of Wyoming      }  
 County of Campbell    } ss.

On 3 February, 1999 Ronald Carlson personally appeared before me,

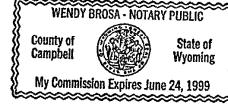
who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Wendy Brosa  
 Notary Public

My commission expires: \_\_\_\_\_

(Seal)



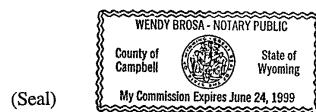
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State of Wyoming      }  
 County of Campbell    } ss.

On 3 February, 1999, Connie Carlson personally appeared before me,

who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.



Wendy Brosa  
Notary Public

My commission expires: \_\_\_\_\_

State of Wyoming      }  
 County of Campbell    } ss.

On 3 February, 99, Christine M. Carlson personally appeared before me,

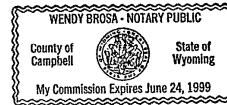
who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Wendy Brosa  
Notary Public

My commission expires: \_\_\_\_\_

(Seal)



State of Minnesota      }  
 County of Hennepin    } ss.

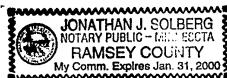
Be it remembered that on this 4th day of February, 19 99, before me, a notary public in and for the county and state aforesaid came Gerald D. Maurice, Vice, President of Nash Finch Company, a Delaware corporation, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

Jonathon J. Solberg  
Notary Public

My commission expires: \_\_\_\_\_

(Seal)



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**Attachment to the Agreement**  
EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND  
("ECR")

This Agreement between the First Interstate Bank, Gillette as Trustee of the Howard A. Tanner Trust, Donna B. Tanner (Tanner) and Nash Finch Company (Grantee) which adopts certain covenants and restrictions between Grantee and others pursuant to the "ECR" Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 1999 by and between Nash Finch Company (Grantee) and N/A as (Developer).

The undersigned (Tanner), being the owners of Tract 7 and Tract 8 of the Market Square Plaza, according to the Official Plat Thereof recorded at Book 6 of Plats, page 166 in the official records of the Campbell County Clerk and Ex-Officio Register of Deeds hereby agrees as follows:

1. The undersigned (Tanner) agrees to restrict the use of her property, in order to effectuate a common scheme of development, in accordance with the terms of Sections 1, 2, 3(a), (d), 4, 5 (a)(i), (iii), (b), 6, 7(a), (b)(ii), (iii), (iv), 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of the agreement. The undersigned also agrees to abide by the zoning regulations for the City of Gillette.
2. The undersigned agree to the alternate terms of Sections of the "ECR" as follows:
  - 3(b). The first sentence of this Section is amended to read; No buildings shall be constructed on Tract 1 or Tract 2 (as either immediate development or future expansion) except within the general scope of the Building Areas in order to maintain the visual corridor demonstrated on the Exhibit "B" to the "ECR" Agreement.
  - 3(c). This Section does not pertain to Tract 7 and Tract 8.
  - 3(e). This Section does not pertain to Tract 7 and Tract 8.
  - 3(f). This Section does not pertain to Tract 7 and Tract 8.
  - 3(g). This Section does not pertain to Tract 7 and Tract 8.
  - 5(a)(ii). The term "Building Area" shall mean the area of the building actually constructed.
  - 7(b) (i). The commercial general public liability insurance and property damage insurance associated with this clause shall be provided by the Developer for the benefit of (Tanner) at zero (cost) to Tanner.
  - 15. If development of the access road and the southern adjoining property has not commenced within two (2) years from the date of this Attachment to the Agreement, then this Attachment to the Agreement shall be null and void.
  - 18. Notice to (Tanner) shall be delivered to the address as provided from time to time by (Tanner). Current address to deliver notice is: P.O. Box 1389  
Gillette, WY 82217
3. The parties and their successors and assigns agree to cooperate in the common development of the property and to commit no act, or construct any facility which unreasonably interferes with the common scheme of development of the property.

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4. Tanner can vary from the terms of this agreement only with the express written consent of Nash Finch Company. Such consent shall not be unreasonably withheld.

Dated this 26 day of February, 1999.

First Interstate Bank, Gillette  
Trustee of the  
Howard A. Tanner Trust

By: Delores Wayfield

Donna B. Tanner



Nash Finch Company

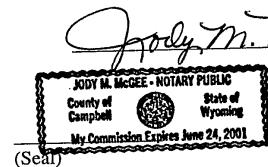
By: Jerald D. Maurice

State of Wyoming )  
 ) ss.  
County of Campbell )

On February 25, 1999, Donna B. Tanner personally appeared before me,

who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_  
\_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.



Notary Public

My commission expires:

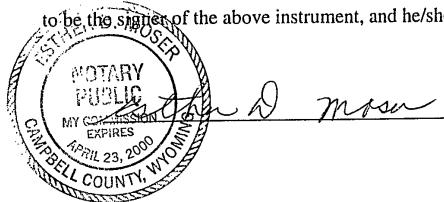
Book 1529 of Photos, Page 156

State of Wyoming )  
 ) ss.  
County of Campbell )

On February 21, 1999, Delores Worfield, of First  
Interstate Bank, Trustee of the Howard A. Tanner Trust personally appeared before me,

who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_  
\_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.



Notary Public

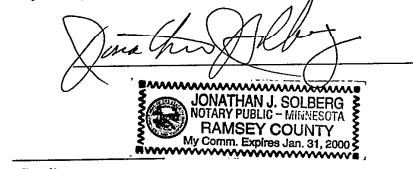
My commission expires: April 23, 2000

(Seal)

State of Minnesota )  
 ) ss.  
County of Hennepin )

Be it remembered that on this 16 day of February, 1999, before me,  
a notary public in and for the county and state aforesaid came Gerald D. Maurice  
Vice, President of Nash Finch Company, a Delaware  
corporation, who is personally known to me to be the person who executed as such  
officer the within instrument of writing on behalf of said corporation, and such person  
duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the  
day and year last above written.



Notary Public

My commission expires: 1-31-2000

(Seal)

Book 1529 of Photos, Page 157

**Attachment to the Agreement**  
EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND  
("ECR")

THIS ATTACHMENT TO THE AGREEMENT pertains to the "ECR" Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 1999 between \_\_\_\_\_, (Developer) and NASH FINCH COMPANY, a Delaware corporation (Grantee).

The undersigned "adjacent land owners" in the Market Square Subdivision, whom are not the Developer or the Grantee, hereby authorize the said "ECR" Agreement and become a party to the "ECR" Agreement with the land areas they own in the Market Square Subdivision. It is agreed that the "adjacent land owners" shall receive all benefits of the "ECR" Agreement and shall be bound by the terms and conditions of the "ECR" Agreement. It is also understood and agreed that the "adjacent land owners" are not the Developer and are participating in the "ECR" agreement only as owners of adjacent property inclusive in the Market Square Subdivision.

*Markie A. Petersen* \_\_\_\_\_ *Ronald R. Carlson*  
*Christine Carlson* \_\_\_\_\_ *Connie L. Carlson*  
*Markie A. Carlson* \_\_\_\_\_

Consented and agreed to by:

Lakeway Plaza I, LLC

*David W. Schwab*  
\_\_\_\_\_  
David W. Schwab, Manager

Date: 2-4-99

State of Wyoming      }  
 County of Campbell    } ss.

Book 1529 of Photos, Page 158

On 3 February, 1999, Marlys Peterson personally appeared before me,

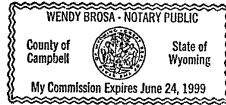
who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Wendy Brosa  
 Notary Public

My commission expires: \_\_\_\_\_

(Seal)



State of Wyoming      }  
 County of Campbell    } ss.

On 3 February, 1999, Michael A. Carlson personally appeared before me,

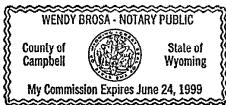
who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Wendy Brosa  
 Notary Public

My commission expires: \_\_\_\_\_

(Seal)



State of Wyoming      }  
 County of Campbell    } ss.

On 3 February, 1999, Ronald Carlson personally appeared before me,

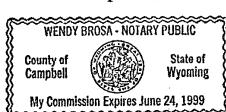
who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Wendy Brosa  
 Notary Public

My commission expires: \_\_\_\_\_

(Seal)



Book 1529 of Photos, Page 159

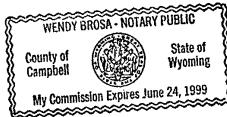
State of Wyoming      }  
 County of Campbell    } ss.

On 3 February, 1999, Connie Carlson personally appeared before me,

who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

(Seal)



Wendy Brosa  
Notary Public

My commission expires: \_\_\_\_\_

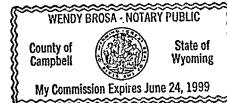
State of Wyoming      }  
 County of Campbell    } ss.

On 3 February, 1999, Christine M. Carlson personally appeared before me,

who is personally known to me  
 whose identity I proved on the basis of \_\_\_\_\_  
 whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

(Seal)



My commission expires: \_\_\_\_\_

State of Minnesota    }  
 County of Hennepen   } ss.

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a notary public in and for the county and state aforesaid came \_\_\_\_\_, President of Nash Finch Company, a Delaware corporation, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(Seal)

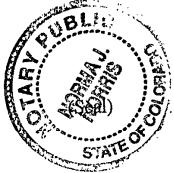
State of Colorado } ss.  
County of El Paso } ss.

Book 1529 of Photos, Page 160

On February 4, 1999, David W Schmid personally appeared before me,  
as Manager of Takeaway Plaza I, LLC  
who is personally known to me  
whose identity I proved on the basis of  
whose identity I proved on the oath/affirmation of  
a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Julia J. Hunt  
Notary Public

My commission expires: 3/1/2002

STATE OF WYOMING } ss.  
Campbell County 2nd day of March AD 1999 at 2:52 o'clock P. M. and recorded in Book 1529  
Filed for record this Photos on page 136-160 Fees \$54.00 **743518**  
of David Saunders Denise Research  
County Clerk and Ex-Officio Register of Deeds

1052379

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
MARKET SQUARE PLAZA

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This Declaration, made on the date hereinafter set forth by MACH II, LLC, a Wyoming limited liability company, Donkey Creek Vistas, LLC, a Wyoming limited liability company, and Barracuda Properties, LLC, a Wyoming limited liability company, as the owners of Tracts 3A, 3, 3B and 3C (referred to hereinafter as the "Declarant" or collectively as the "Declarants") of the resubdivision of Tract 3, Market Square Plaza, to be known as Tracts 3A, 3B, 3C & Tract A Market Square Plaza, and a part of the NW1/4SE1/4 and the NE1/4SE1/4 of Section 34, Township 50 North, Range 72 West of the Sixth Principal Meridian, Campbell County, Wyoming, according to the official plat thereof filed for record March 2, 2012, in Book 6 of Plats, Page 166 of the records of Campbell County, Wyoming as follows:

The terms "Tract", "Tracts", "Property", or "Properties" shall refer to the existing Tracts and Properties and all subdivision and resubdivision of the Tracts and Properties as described herein and according to the official plat filed for record March 2, 2012, in Book 6 of Plats, Page 166 of the records of Campbell County, Wyoming. The Tracts and the Properties are hereby made subject to the following covenants, conditions, restrictions, reservations, charges, liens, and easements, all of which shall be deemed to run with the Tracts and Properties and each and every portion thereof, to ensure proper use and appropriate development, improvement and maintenance of the Tracts and Properties so as to:

1. Restrict the use of certain Tracts and the Properties as provided herein.

The Declarants declare that Tract 3 of Market Square Plaza, a resubdivision of Tract 3, Market Square Plaza, to be known as Tracts 3A, 3B, 3C & Tract A Market Square Plaza, a resubdivision of Lot 2B, Block 7; Lots 1 & 2, Block 8 and Lot 1A, Block 9 and vacated Iris Street and Hickory Avenue in Stocktrail Subdivision and a part of the NW1/4SE1/4 and the NE1/4SE1/4 of Section 34, Township 50 North, Range 72 West of the Sixth Principal Meridian, Campbell County, Wyoming, according to the official plat thereof filed for record March 2, 2012 in Book 6 of Plats, Page 166 of the records of Campbell County, Wyoming (the "Development") shall be subject to the following covenants:

1. Properties and Tracts Defined. These Covenants shall apply to the Properties including but not limited to Tracts 3A, 3B, 3C & Tract A, Market Square Plaza, and any further resubdivision of the Properties and the aforementioned Tracts, as designated and shown on the aforementioned plat (herein referred to as "Tract" or "Tracts"). Each Tract, and all improvements thereon, shall be owned separately and in fee simple. Each covenant herein shall apply to each such Tract, shall be binding upon, and run with the land.

2. Special Provisions Regarding Medical Office Practice, Physical Therapy and Occupations Practice, and Related Services. The providing of services of physical therapy, occupational therapy, massage therapy, performance training, athletic and personal training and services related to each of the aforementioned services (hereinafter collectively the "Restrictive Services") within the properties and tract. The Restrictive Services shall be applicable to Lot 3B so long as Kenneth Clouston and/or Randy Hite own in excess of 33% of the equity and voting right in Gillette Physical Therapy, LLC. The Restrictive Covenant shall apply to any successor and assignees.

3. Enforceability. These Covenants may be enforced by any current or previous record owner of any Tract or Property, but shall not run to the benefit of a third party, except as otherwise specifically provided below. The record owner or effected party shall be entitled to the recovery of its attorney's fees and costs incurred in a successful enforcement of these Covenants.

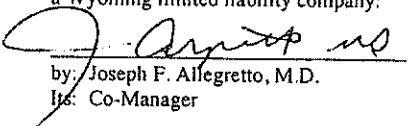
4. **Severability.** Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall in no way affect any other provisions which shall remain in full force and effect.

5. **Non-Waiver.** Any failure to promptly enforce a violation of these Covenants shall not be deemed a waiver of the right to so enforce whatsoever.

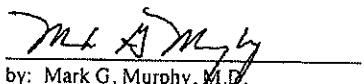
6. **Covenants Run with the Land: Amendment.** The Declaration of Covenants shall run with the land, and shall be binding upon all parties, their successors and assigns.

Executed by the Declarants this 21<sup>st</sup> day of March 2019.

MACH II, LLC,  
a Wyoming limited liability company:

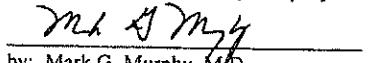
  
by: Joseph F. Allegretto, M.D.  
Its: Co-Manager

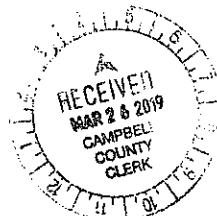
  
by: Ken Clouston  
Its: Co-Manager

  
by: Mark G. Murphy, M.D.  
Its: Co-Manager

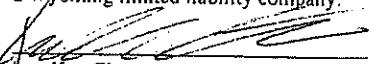
  
by: Randal R. Hite  
Its: Co-Manager

Donkey Creek Vistas, LLC,  
a Wyoming limited liability company:

  
by: Mark G. Murphy, M.D.  
Its: Co-Manager



Barracuda Properties, LLC,  
a Wyoming limited liability company:

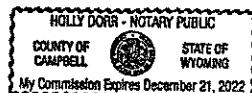
  
by: Ken Clouston  
Its: Co-Manager

  
by: Randal R. Hite  
Its: Co-Manager

STATE OF WYOMING )  
COUNTY OF CAMPBELL )

On the 21<sup>st</sup> day of March 2019, before me personally appeared Joseph F. Allegretto, M.D., to me personally known, who having been by me first duly sworn did say that he is a Co-Manager of MACH II LLC, a Wyoming limited liability company and described herein which executed the foregoing instrument, and that said instrument was signed and sealed on behalf of the company by authority of their Members, and said person acknowledged said instrument to be signed as a free act and deed of said corporation.

WITNESS my hand and official seal.



Holly Dorr  
Notarial Officer

My Commission Expires: Dec 21, 2022

STATE OF WYOMING )  
COUNTY OF CAMPBELL )

On the 21<sup>st</sup> day of March 2019, before me personally appeared Ken Clouston, to me personally known, who having been by me first duly sworn did say that he is a Co-Manager of MACH II LLC, a Wyoming limited liability company and as co-manager of Barracuda Properties, LLC, a Wyoming limited liability company described herein which executed the foregoing instrument, and that said instrument was signed and sealed on behalf of the company by authority of their Members, and said person acknowledged said instrument to be signed as a free act and deed of said corporation.

WITNESS my hand and official seal.



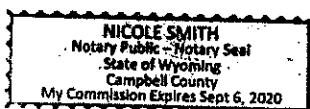
Holly Dorr  
Notarial Officer

My Commission Expires: Dec 21, 2022

STATE OF WYOMING )  
COUNTY OF CAMPBELL )

On the 22<sup>nd</sup> day of March 2019, before me personally appeared Mark G. Murphy, M.D., to me personally known, who having been by me first duly sworn did say that he is a Co-Manager of MACH II LLC, a Wyoming limited liability company and as co-manager of Donkey Creek Vistas, LLC, a Wyoming Limited liability company described herein which executed the foregoing instrument, and that said instrument was signed and sealed on behalf of the company by authority of their Members, and said person acknowledged said instrument to be signed as a free act and deed of said corporation.

WITNESS my hand and official seal.



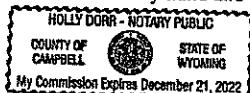
My Commission Expires:

*Nicole Smith*  
Notarial Officer

STATE OF WYOMING )  
COUNTY OF CAMPBELL )

On the 21<sup>st</sup> day of March 2019, before me personally appeared Randal R. Hite, to me personally known, who having been by me first duly sworn did say that he is a Co-Manager of MACH II LLC, a Wyoming limited liability company and as co-manager of Barracuda Properties, LLC, a Wyoming limited liability company described herein which executed the foregoing instrument, and that said instrument was signed and sealed on behalf of the company by authority of their Members, and said person acknowledged said instrument to be signed as a free act and deed of said corporation.

WITNESS my hand and official seal.



*Holly Dorn*  
Notarial Officer

My Commission Expires: Dec 21, 2022



RECORDED  
ABSTRACTED  
INDEXED  
CHECKED

1052379 Recorded on 03/26/2019 at 04:26  
Book 3195 of PHOTOS Fee 21.00  
Susan F. Saunders, Campbell County Clerk Pages 548 to 551  
by: J WARLOW

Declaration of Covenants, Conditions and Restrictions  
Market Square Plaza  
4 of 4