

DECLARATION OF MILL A

THIS DECLARATION is made this 13<sup>th</sup> day of November, 1996 by Mill A Associates Limited Partnership, an Oregon limited partnership ("Declarant").

Declarant desires to subject the property described on Exhibit A attached hereto, to the covenants, conditions, restrictions, easements, and charges set forth herein for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares that the property described as Lot Four (4) in Block Two (2) of Mill "A" AREA OF SHEVLIN CENTER, SECOND ADDITION, City of Bend, Deschutes County, Oregon, and Lot One (1) in Block Three (3) of SHEVLIN CENTER, City of Bend, Deschutes County, Oregon (the "Property"), shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and charges, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title, or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

## ARTICLE 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 "Building" means a structure located on a Lot within the Property designated for office or retail use.

1.2 "Common Areas" means all areas designated as such or as "common parking area," "open space," or "private way" on Exhibit A attached hereto and the undivided 7% interest the Property holds in the land shown as a private way (Industrial Way) on the official plat of the Mill "A" Area of Shevlin Center, City of Bend, Deschutes County, Oregon.

1.3 "Declarant" means Mill A Associates Limited Partnership, an Oregon limited partnership and any person owning any portion of the Property and designated by Mill A Associates Limited Partnership as successor declarant.

After recording, please return document to: Mill A Development Corporation, 15 S. W. Colorado Avenue, Suite A, Bend, OR 97702

1.4 "Lot" means legally partitioned lot within the property.

1.5 "Mortgage" means a mortgage, trust deed, or land sales contract; "mortgagee" means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract; and "mortgagor" means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

1.6 "Owner" means the person or persons, including Declarant, owning any Lot, including any vendee under a recorded land sales contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations, and other status of being an Owner shall commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.7 "Private Way" means any area that is designated as such on Exhibit A attached hereto.

1.8 "Property" means the land described above and all improvements thereon.

## ARTICLE 2

### PROPERTY RIGHTS IN COMMON AREAS

2.1 Owners' Easements of Enjoyment. Subject to provisions of this Declaration, every Owner and such Owner's tenants and invitees shall have a right and easement of enjoyment in and to the Common Areas, including, without limitation, Private Ways.

2.2 Purpose of Easement. The easement herein granted shall be for the purpose of furnishing utility, pedestrian and vehicular ingress, egress and access, including without limitation, driveways, parking areas, underground utilities, sewers, storm drains, and similar facilities, curbs, gutters, traffic islands, lighting facilities, plants and landscaping, planters, sprinklers and valves, and shall include incidental rights of maintenance, repair and replacement.

2.3 No Walls, Fences or Barriers. No walls, fences, grade differentials or other barriers or physical

conditions which create an impediment to the use and enjoyment of the easements granted herein shall be constructed or permitted to remain in or upon Common Areas; provided, however, that curbs, traffic islands and such other reasonable facilities as may be necessary or appropriate to guide and control the orderly flow of pedestrian and vehicular traffic may be installed, constructed and permitted to remain in and upon the easement areas. No Owner shall make any material modifications or additions to the improvements on any portion of the Common Area without the consent of Declarant, which consent will not be unreasonably withheld.

2.4 Use of the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners for the purposes specified on Exhibit A and no private use may be made of the Common Areas. Declarant shall have the right to publish rules and regulations governing the use of common areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas for the purpose of identifying the businesses operated by owners and their tenants, provided such signs are approved by Declarant.

2.5 Industrial Way. Declarant shall represent all of The Property with respect to Industrial Way including the power to dedicate Industrial Way to the Public.

### ARTICLE 3

#### RESTRICTIONS ON USE OF LOTS

3.1 Maintenance. Each Lot and all Buildings and landscaping thereon shall be maintained in a clean and attractive conditions, in good repair, and in such a fashion as not to create a fire hazard. All garbage, trash, cuttings, refuse, garbage refuse containers, and other service facilities located on each Lot shall be screened from view in a manner approved by Declarant.

3.2 Offensive Activity. No offensive activity shall be carried on nor shall anything be done on any Lot that may be or become an annoyance or nuisance to the other Owners.

3.3 Parking. No vehicles, trailers, boats, or other items shall be stored on the parking areas within the Property. Parking areas shall be used solely to provide short-term parking for Owners, their tenants, and their invitees.

3.4 Compliance with Laws and Regulations. In addition to compliance with this Declaration, each Owner shall comply with all applicable state and local laws and regulations, including but not limited to those of the State of Oregon Department of Environmental Quality, the health and zoning ordinances of Deschutes County, and the applicable building codes. This Declaration is designed to compliment such laws and regulations, and where any conflict occurs, the more rigid requirement shall prevail.

#### ARTICLE 4

#### MAINTENANCE

4.1 Maintenance of Common Areas. Declarant shall repair and maintain, or cause to be repaired and maintained, the Common Areas at all times in good, clean, safe, and attractive condition. Such repair and maintenance shall include, but not be limited to: (a) maintaining paved surfaces; (b) removing all papers, debris, and refuse and sweeping to the extent necessary to maintain a clean and orderly condition; (c) repairing, repainting and replacing any necessary or appropriate signs, markers, and lines; (d) operating, maintaining, repairing, and replacing lighting facilities; (e) pruning, cultivating, watering, fertilizing, fumigating and otherwise maintaining all landscaped areas and repairing sprinkler systems and water lines and making replacements of plants and other landscaping as necessary or appropriate; (f) maintenance and repair of enclosures for garbage receptacles; and (g) repair and reconstruction of any damage resulting from fire, earthquake or other casualty or necessitated by any exercise of the power of eminent domain or any conveyance in lieu thereof.

4.2 Maintenance of Buildings and Landscaping. Maintenance of Buildings and that portion of landscaping on the Lots not included in Common Areas, shall be the responsibility of the Owners thereof.

4.3 Maintenance of Industrial Way. Declarant shall represent all The Property with respect to the Declaration of Assessments for Mill A Area of Shevlin Center recorded November 18, 1986 in Book 136, Page 2256, Deschutes County records.

4.4 Allocation of Maintenance Costs. The cost of maintenance and repair of Common Areas shall be borne in proportion to the square footages of the building area of

each lot as a percentage of the total square footage of building area for all lots covered by this declaration. As of the date hereof, Lot 1, Block 3, Shevlin Center, represents 4,474 square feet (11.36%), Mill A, 25,483 square feet (64.68%) and the Green Chain Shed 9,440 square feet (23.96%). In the event additional buildings are constructed or existing buildings added to, the percentage interests will change to reflect such additions.

4.5 Books and Records. Declarant shall keep and maintain at its principal office in Bend, Oregon, a full and accurate set of books and records of all costs and expenses incurred to repair and maintain the Common Areas. The other Owner's shall have the right at any reasonable time during normal business hours to inspect and to audit such books and records.

## ARTICLE 5

### ENFORCEMENT

5.1 Injunctive Relief and Damages. In the event of any breach or threatened breach of any restriction or other provision of this Declaration, any Owner may prosecute any proceedings at law or in equity to enjoin such breach or threatened breach and to recover damages for any such breach.

5.2 Cure by Non Defaulting Party. In the event any Owner defaults in the performance of any of its obligations or agreements hereunder, or breaches any restriction or other provision of this Declaration, any other Owner shall have the right, but not the obligation, after giving written notice to such defaulting Owner specifying such default or breach in reasonable detail and allowing such defaulting Owner a reasonable time (not less than thirty (30) days) to cure such default or breach for the account of and at the expense of such defaulting Owner, and the Owner curing such default or breach shall have the right to recover from such defaulting Owner all reasonable costs and expenses expended in connection therewith, plus interest thereon at the rate of 12 percent per annum.

5.3 Enforcement by Lien. All costs and expenses of curing any breach or default of a defaulting Owner including interest on such amounts and all costs and expenses of any suit, including attorneys' fees, shall be assessed against such defaulting Owner and shall be payable to the curing owner or Declarant upon written demand. Should such defaulting Owner fail to pay such costs and

expenses within thirty (30) days of its receipt of such written demand, such costs and expenses shall also constitute a lien until paid, effective upon recordation of a verified notice of lien in the Official Records of Deschutes County, Oregon. Such costs and expenses shall constitute a lien against, and such notice of lien shall describe only the portion of the Property owned by such defaulting Owner. Any such lien shall be subject and subordinate to any bona fide first Mortgage in favor of an unrelated mortgagee encumbering any portion of the Property at the time such notice of lien is recorded or thereafter, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such Mortgage shall take title free and clear of any such lien, but otherwise subject to all of the restrictions and other provisions of this Declaration. Except as provided above, any such lien shall be prior and superior to any lien recorded subsequent to the recordation of such notice of lien. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 TO 87.386 shall apply to any such lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88.

5.4 Attorneys Fees and Costs. In the event suit (including arbitration) is brought for the enforcement of or the declaration of rights pursuant to this Declaration or as the result of any alleged breach of any provision of this Declaration, the prevailing party or parties in such suit shall be entitled to recover their costs and expenses, including reasonable attorneys' fees at trial, on appeal, or in any bankruptcy proceeding.

## ARTICLE 6

### MISCELLANEOUS PROVISIONS

6.1 Amendment and Repeal. This Declaration, or any provision hereof, may be amended or repealed by the vote or written consent of Owners owning not less than Seventy (70) percent of total square footage of building area of the Property. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments, or repeal so approved and certifying that such amendment, amendments, or repeal has been approved in the manner required by this Declaration.

6.2 Duration. Unless otherwise amended or repealed pursuant to Paragraph 6.1, this Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to the property and the owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent, or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by written consent of Owners owning not less than Seventy (70) percent of the area of the Property. Any such termination shall become effective only if prior to the intended termination date a certificate of the consenting Owners certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

6.3 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest.

6.4 Tenants and Other Invitees. Tenants, invitees, contractors, and other persons entering the Property under rights derived from an Owner shall comply with all the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's lot, building, and other areas with the Property. The Owner shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

6.5 Nonwaiver. Failure by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

429 - 0421

6.6 Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, and this Declaration shall be strictly limited to and for the purposes expressed herein.

6.7 Succession. In the event Declarant sells all of its interest in The Property without designating a successor Declarant, the owners of 70% or more of the property shall appoint a manager who shall perform the duties of the Declarant.

IN WITNESS WHEREOF, Declarant has executed this Declaration the date first above written.

MILL A ASSOCIATES LIMITED PARTNERSHIP,  
an Oregon limited partnership

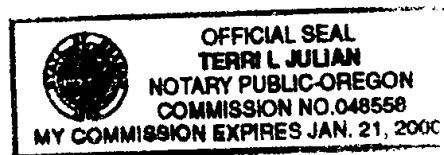
By: MILL A DEVELOPMENT CORPORATION,  
General Partner

By: William L. Smith  
William L. Smith, Secretary

STATE OF OREGON        )  
                                  ) ss  
COUNTY OF DESCHUTES )

The foregoing instrument was acknowledged before me on this 13<sup>th</sup> day of November, 1996 by William L. Smith as Secretary of Mill A Development Corporation, on behalf of Mill A Associates Limited Partnership.

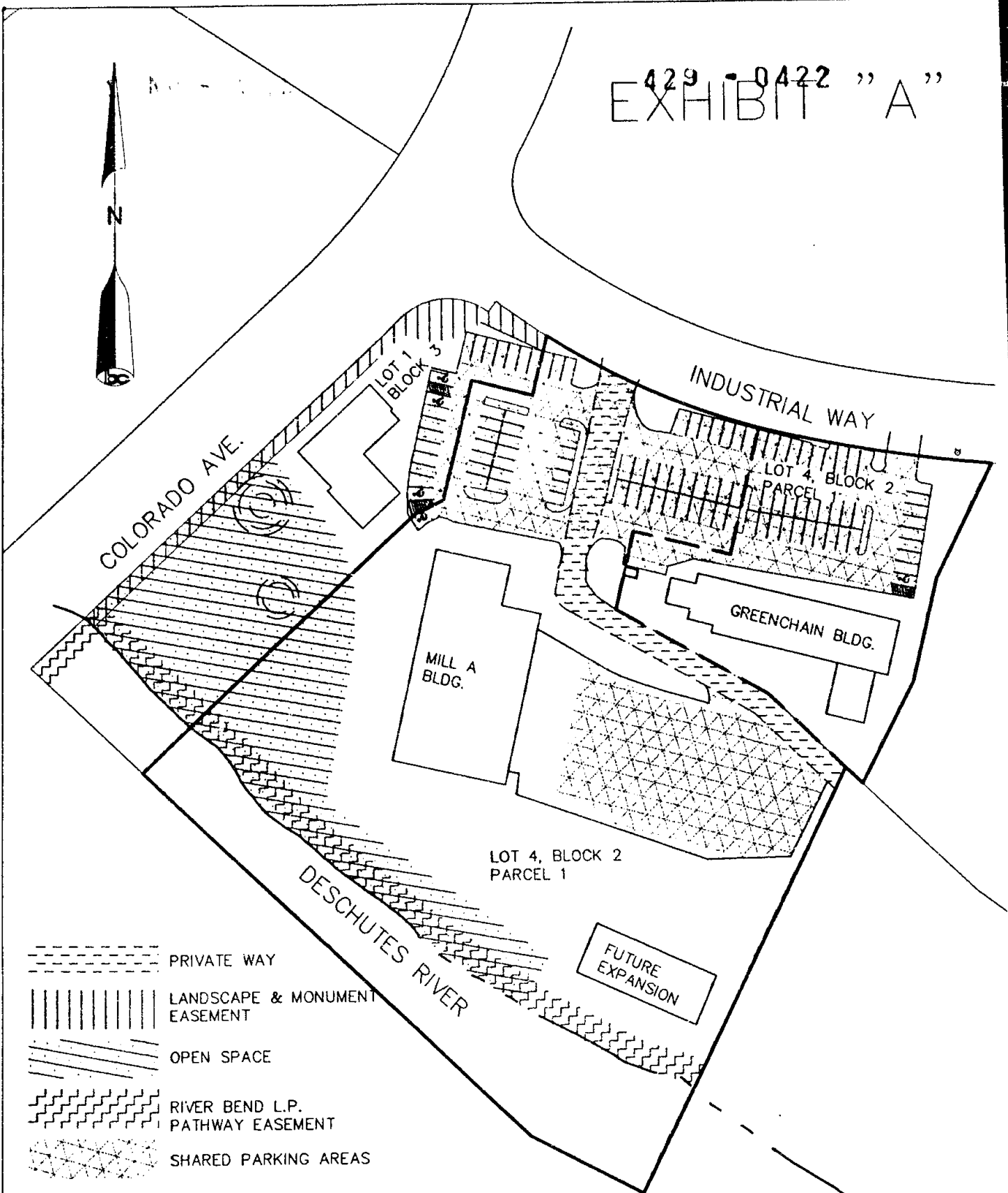
Terril L. Julian  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 1-21-2000

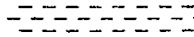

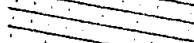
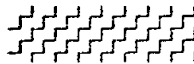



Please return recorded document to:  
Mill A Development Corporation  
15 SW Colorado Ave., Suite A  
Bend, OR 97702

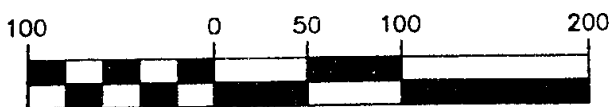


429 - 0422 "A"  
EXHIBIT "A"



-  PRIVATE WAY
-  LANDSCAPE & MONUMENT EASEMENT
-  OPEN SPACE
-  RIVER BEND L.P. PATHWAY EASEMENT
-  SHARED PARKING AREAS

GRAPHIC SCALE



( IN FEET )  
1 inch = 100 ft.

STATE OF OREGON

429 - 0423

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

96 NOV 13 PM 1:41

MARY SUE PENHOLLOW  
COUNTY CLERK

BY:  DEPUTY  
NO. **96-41879** FEE **50** -  
DESCHUTES COUNTY OFFICIAL RECORDS