

THE COLUMNS

DECLARATION OF RECIPROCAL EASEMENTS AND RESTRICTIONS

This Declaration of Reciprocal Easements and Restrictions (this "Declaration") is made as of JUNE 16, 1998 by Westside Venture, a Tennessee joint venture ("Westside"), and joined in by Rushmeade Development Corporation, a Tennessee corporation ("Rushmeade", sometimes collectively referred to with Westside as the "Declarants").

RECITALS

A. Westside is the owner of certain real estate located in the City of Jackson, Madison County, Tennessee and more particularly described on Exhibit A-1 attached hereto and made a part hereof (the "Westside Property").

B. Rushmeade is the owner of certain real estate located in the City of Jackson, Madison County, Tennessee and more particularly described on Exhibit A-2 attached hereto and made a part hereof (the "Rushmeade Property").

C. Subject to the terms of a Ground Lease between Westside and Rushmeade, in its capacity as a developer (the "Developer"), dated June 22, 1995, Westside has leased the Westside Property to the Developer.

D. The Developer is currently developing the Westside Property and the Rushmeade Property (collectively the "Property") as a shopping center (the "Project").

E. Declarants desire to enter into this instrument to provide for the integrated use of the land and buildings constituting the Project and for the mutual benefit of the present and future owners of the Property.

NOW, THEREFORE, the Declarants agree as follows:

ARTICLE I - DEFINITIONS

For purposes of this Declaration, the following terms shall have the meanings hereinafter specified and the meanings

assigned to them shall be equally applicable to both the singular and plural forms of the terms defined:

(a) "Buildings" means the buildings located on the Property from time to time.

(b) "Common Area" means those areas designated by the Developer, from time to time, for the common use, convenience and benefit of the Declarants and all other Occupants (and their customers, guests, agents, contractors, employees, tenants, licensees and invitees) including, without limitation, the Parking Area, and the entrances and exits of the Shopping Center but excluding (i) any portion of the Shopping Center which may, from time to time, be occupied by any dedicated public street or highway; (ii) such portions of the Shopping Center, from time to time, exclusively appropriated for use as a permanent or temporary outdoor selling area if permitted under this Declaration or pursuant to a bona fide lease or other bona fide arrangement with one or more of the Declarants; and (iii) any portion of the Shopping Center as shall comprise Leasable Area (excluding fire corridors).

(c) "Drainage Plan" shall have the meaning given it in Section 3.2.

(d) "Improvements" mean all improvements on the Property including, without limitation, all Buildings, roads, driveways, parking areas, fences, screening walls, retaining walls, loading areas and facilities, signs, utilities, lawns, hedges, plantings, landscaping, water lines, sewers, electrical and gas distribution facilities and all structures of any type or kind.

(e) "Leasable Area" means the total constructed leasable area of the Shopping Center whether or not actually rented or open for business and whether or not owned or leased by the Occupant thereof, measured at each level in any Building from the exterior faces or the exterior lines of the exterior walls, store fronts, walls fronting on any enclosed malls or interior Common Area, corridors and service areas (except party and interior common walls, as to which the center thereof instead of the exterior faces thereof shall be used).

(f) "Monument Sign" means a monument-type sign having the characteristics specified on Exhibit B attached hereto and made a part hereof.

(g) "Occupant" means any Person entitled to occupy a portion or portions of the Shopping Center, as an owner or under and pursuant to a bona fide lease or other bona fide arrangement with one or more of the Declarants.

(h) "Parking Area" shall have the meaning given it in Section 3.1.

(i) "Person" means any person, firm, trust, partnership, corporation, limited liability company, association or other entity.

(j) "Property Owner" means Westside or Rushmeade, as the case may be, with respect to their respective portions of the Property owned by them from time to time.

(k) "Pylon Sign" means a pylon-type sign having the characteristics specified on Exhibit C attached hereto and made a part hereof.

(l) "Shopping Center" means the Property, together with all Improvements erected thereon, as constituted from time to time.

(m) "Signage" shall have the meaning given it in Section 9.5.

(n) "Tract" shall have the meaning given it in Section 2.1.

(o) "Unavoidable Delay" means a delay due to strike, lockout or other labor or industrial disturbance (whether or not on the part of an Occupant's employee), civil disturbance, future valid order of any government, court or regulatory body claiming jurisdiction, act of the public enemy, riot, sabotage, blockade, embargo, failure or inability to secure materials or labor by reason of priority or similar regulation or order of any government or regulatory body, lightning, earthquake, fire, storm, hurricane, flood, washout, explosion, act of god or any

cause whatsoever beyond the reasonable control of an Occupant whether or not similar to any of the causes hereinabove stated; provided, however, that, for purposes of this definition, lack of funds or inability to obtain financing shall not be deemed a cause beyond the control of an Occupant.

(p) "Utility Easements" means those easements (i) granted over the Property by the Declarants, from time to time, for utility services to serve the Shopping Center and the Occupants, including, without limitation, telephone, cable, water, electricity, natural gas and storm and sanitary sewers, and (ii) recorded in final plats with the Register's Office of Madison County, Tennessee, all as such easements are amended from time to time, and as such plats are revised from time to time.

(q) "Vehicular Access Area" shall have the meaning given it in Section 3.1.

## ARTICLE II - DESIGNATION OF TRACTS

Section 2.1 The Property may be developed in one or more tracts (the "Tracts", each of which shall hereinafter be referred to as a "Tract"). Initially, the Property shall be a Tract. Thereafter, the legal description and a designation of each Tract shall be set forth on one or more major subdivision plats on which the Developer designates that the Tracts, as identified on the plat(s), shall be subject to this Declaration. Each plat so designated by the Developer shall (a) include all of the recording information pertaining to this Declaration at the time of the designation, (b) be recorded in the Register's Office of Madison County, Tennessee and (c) be deemed, upon recording, to be incorporated herein by reference. After a Tract has been identified on a recorded plat (the "Identifying Plat") the Property Owner may subdivide or amend a Tract while it is owned by the Property Owner by recording a subsequent plat (a "Subsequent Plat") after the recording of the Identifying Plat. The Subsequent Plat shall supersede the Identifying Plat with respect to the subdivided or amended Tract, and the subdivided or amended parcels resulting from the subdivision or amendment of the Tract shall each be deemed a "Tract" for purposes of this Declaration. Once a Tract is sold, transferred or conveyed to a Person other than one of the Property Owners or the Developer, that Tract shall not thereafter be subdivided.

Section 2.2 Additional real property may become subject to this Declaration in the following manner. Any such additions shall be a part of the "Property" for the purposes of this Declaration and shall be designated as one or more "Tracts." As the owner thereof, or if not the owner, with the consent of the owner thereof, the Developer shall have the unilateral right, privilege and option, from time to time and at any time until forty-five (45) years from the date this Declaration is first recorded, to subject to the provisions of this Declaration additional real property, by filing in the Register's Office of Madison County, Tennessee an amendment annexing such real property, together with a major subdivision plat identifying the real property as one or more Tracts. Any such annexation shall be effective upon the filing for record of such amendment and plat unless otherwise provided in the amendment. Upon such annexation, the restrictions, covenants, easements and

conditions contained in this Declaration shall apply to the additional property in the same manner as if it were originally covered by this Declaration and, thereafter, the rights, powers and responsibilities of the parties subject to this Declaration and responsibilities of the parties subject to this Declaration with respect to the additional property shall be the same as with respect to the Property and, likewise, the rights, privileges, duties and liabilities of the Occupants of the additional property, or any portion thereof shall be the same as the Occupants of the Property.

### ARTICLE III - EASEMENTS OVER SHOPPING CENTER

Section 3.1 The Declarants hereby establish a perpetual, non-exclusive easement over that portion of the Property designated by the Developer, from time to time, for walkway, driveway and roadway purposes (the driveway and roadway areas hereinafter referred to as the "Vehicular Access Area") in favor of any Occupant of the Shopping Center to permit unobstructed pedestrian and vehicular passage by such Occupant thereof and its customers, guests, agents, contractors, employees, tenants, licensees and invitees who are on the Shopping Center to use the Buildings, provided that nothing herein shall prevent the exclusive use of any receiving area situated in the Shopping Center by the Occupant thereof or its tenant or licensee. At all times there shall be free and uninterrupted access for motor vehicles between each of the main streets and the that portion of the Property designated by the Developer, from time to time, for parking (the "Parking Area") and the service doors of the Buildings, and for pedestrians between the Parking Area and the Buildings. Except for such portions of the Parking Area, from time to time, exclusively appropriated for use as a permanent or temporary outdoor selling area if permitted under this Declaration or pursuant to a bona fide lease or other bona fide arrangement with one or more of the Declarants, no fences or other barriers shall be erected in the Parking Area, walkways, driveways or roadways of the Shopping Center, except during periods of construction (including, without limitation, repaving), provided that during such construction such fence or other barrier shall not impede the free flow of traffic and commercial intercourse to or through the Shopping Center.

Section 3.2 The Declarants hereby establish a perpetual, non-exclusive easement over the Utility Easements in favor of any Occupant of any portion of the Shopping Center and any other adjoining property owned by Declarants to permit the construction, maintenance and use of all apparatus necessary to provide utility services to any Tract occupied by such party, including, without limitation, telephone, cable, water, electricity, natural gas and storm and sanitary sewers, provided that the same (a) are constructed, maintained and used (i) in compliance with all of the terms (written, codified as laws, rules, regulations or ordinances, or generally known in Madison County, Tennessee as local customs or requirements of the local utility service providers) of the Utility Easements, (ii) with the consent, if required, of the grantees of the Utility Easements and (iii) at the expense of such Occupant, (b) are constructed underground and (c) do not unreasonably interfere with the construction, use or enjoyment of any Improvements on the Shopping Center. Any disruption or demolition of a servient Tract by reason of the use of this easement shall be kept to a minimum and, for the forty-five (45) year period beginning on the date this Declaration is recorded in the Register's Office of Madison County, Tennessee, shall be performed in accordance with plans and specifications which shall be reasonably approved by the Developer in writing before the commencement of any construction. Any dominant Tract Occupant affecting the Shopping Center by its use of this easement shall restore each area of the Shopping Center affected by its use of this easement to such area's original condition immediately before such construction, maintenance and use at no expense to the servient Tract Occupant. If any servient Tract Occupant is required by the utility companies or applicable governmental authority to furnish utilities to the dominant Tract, then the servient Tract Occupant shall have the right to install a meter for the measurement of such usage on the dominant Tract at the expense of the dominant Tract Occupant and bill the costs of such utility usage to the dominant Tract Occupant, which costs shall not be in excess of the public utility rates for the same service, if applicable. Any invoice for such utility shall be paid within fifteen (15) days after receipt thereof by the dominant Tract Occupant. In addition, the servient Tract Occupant shall have the right, at its own expense, to relocate, from time to time, any utilities and appurtenant structures installed by or for the benefit of the dominant Tract Occupant,

provided such relocation does not unreasonably interfere with the dominant Tract Occupant's rights under this Declaration.

Section 3.3 The Declarants hereby establish a perpetual, non-exclusive easement over the Parking Area and the Vehicular Access Area in favor of any Occupant of the Shopping Center for the purpose of causing the existing surface storm water flow to be diverted and directed across the Shopping Center, in discharging all existing or future surface storm water flow from such Shopping Center onto, over, upon, under and across the Shopping Center, and, to the extent applicable, into the underground storm sewer system serving the Shopping Center so as to prevent any discharge or release or any erosion, backup, accumulation or pooling of surface water on the Shopping Center; provided, however, that, any Occupant using this non-exclusive easement shall coordinate such Occupants' storm drainage system, grading and drainage plan in a way that is consistent with the Declarant's grading and drainage plan set forth on Exhibit D attached hereto and made a part hereof, as such plan is amended or supplemented from time to time by the Developer with the approval of the City of Jackson Planning Commission (the "Drainage Plan"), and thereby cause surface water flow from the Occupants' Tract to be diverted and directed in accordance with the Drainage Plan.

Section 3.4 The Occupant of a Tract shall execute all easements reasonably necessary and required by the Property Owner or the Developer or any utility company for the further development of the Property and any adjoining property of the Property Owner or the Developer provided that such easements do not unreasonably interfere with the Occupant's use and/or development of the Tract. These easements may (a) be for any utility, including, without limitation, telephone, water, electricity, natural gas and storm and sanitary sewers, (b) include reasonably necessary rights to cut down or trim trees and other landscaping materials and (c) contain such other limitations on construction or improvement of the portion of the Tract covered by the easement as be reasonably necessary or required.

Section 3.5 The Declarants hereby reserve the right, to be exercised by the Developer, to change from time to time, the location of all common areas and easements of record on any plat



of the Property to provide for the further development of the Property or for purposes generally benefitting, maintaining or beautifying the Property provided that such changes (a) do not unreasonably interfere with an Occupant's use and/or development of a Tract, (b) do not materially reduce access to a Tract owned by a Person other than the Property Owner or the Developer and (c) do not materially impair the front-side visibility of a Tract owned by a Person other than the Property Owner or the Developer with visibility being measured from the nearest road running in front of the Tract.

Section 3.6 If any mechanic's, materialmen's or other similar lien shall be filed at any time against a servient Tract of the Shopping Center on account of any work, labor or service performed or claimed to be performed, or on account of any materials furnished or claimed to have been furnished, for or at the direction of a dominant Tract Occupant or anyone holding or occupying the dominant Tract through or under a dominant Tract Occupant, then the dominant Tract Occupant shall forthwith either (a) discharge such lien of record by payment, bond, order of a court of competent jurisdiction or otherwise or (b) contest the validity of such lien, in which event any judgment or other process issued in such contest shall be paid or discharged before execution thereof.

Section 3.7 Each dominant Tract Occupant shall indemnify and save harmless the other Occupants of the Shopping Center and their respective customers, guests, agents, contractors, employees, tenants, licensees and invitees from all claims, liens, liabilities and expenses, including, without limitation, reasonable attorneys' fees, arising out of the dominant Tract Occupant's use of any of the easements established in this Article III, unless such claims, liens, liabilities and expenses are caused in whole or part by the negligence, misconduct or wrongful act of the Occupant seeking indemnity or its agents, contractors or employees.

Section 3.8 Nothing herein shall create a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever. Notwithstanding any other provision hereof to the contrary, the owner of any Tract periodically may restrict ingress and egress over such Tract in order to prevent a

prescriptive easement from arising by continued public use of same. Any restriction on ingress and egress shall (a) be limited to the minimum time period necessary to prevent the creation of a prescriptive easement, (b) occur at such times as to have minimum effect on the construction or operation of the Shopping Center, and (c) not occur on any day which is an official United States Government holiday.

Section 3.9 The word "over" with respect to an easement herein granted means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and "under", or any one or more of the foregoing.

#### ARTICLE IV - GENERAL SITE WORK, DEVELOPMENT AND CONSTRUCTION REQUIREMENTS

Section 4.1 No Improvements shall be erected, placed, altered, maintained or permitted to remain on any Tract subject to this Declaration until plans and specifications showing the plot layout and all exterior elevations with materials and colors therefor and structural designs, signs, and landscaping, as well as a separate set of plans prepared by the proposed Occupant setting forth in detail the proposed Occupant's maintenance program for the Tract shall have been submitted to and approved in writing by the Developer. Such plans and specifications shall be submitted in writing in duplicate over the authorized signature of the Occupant of the Tract, or his authorized agent. Such plans and specifications, excluding those relating solely to the Occupant's maintenance plans, shall also be submitted to and approved in writing by the City of Jackson to the extent required by law. The Occupant shall be responsible for obtaining any and all necessary permits and approvals of the City of Jackson.

Section 4.2 Approval of the Developer shall be based, among other things, on adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of locations and use of proposed Improvements on neighboring Tracts, the nature of Improvements on neighboring Tracts and the types of operations and uses thereon, relation of topography, grade and finish ground elevation of the Tract being improved to that of neighboring Tracts, storm drainage, proper facing of main

elevation with respect to nearby streets, adequacy of maintenance plans, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Developer shall not arbitrarily or unreasonably withhold its approval of such plans and specifications or other matters required to be approved pursuant to this Article.

Section 4.3 If the Developer fails either to approve or disapprove such plans and specifications within forty-five (45) days after the same have been submitted to it, it shall be presumed that the Developer has approved said plans and specifications; provided, however, that if within said forty-five (45)-day period, the Developer gives written notice of the fact that one additional forty-five (45)-day period is required for the examination and review of such plans and specifications, there shall be no such presumption that the same are approved until the expiration of the additional forty-five (45)-day period of time as set forth in said notice.

Section 4.4 Upon receipt of approval from the Developer pursuant to this Article, the owner or lessee or other party to whom the same is given shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction and alterations. In all cases, work shall be commenced within one (1) year from the date of such approval. If there is a failure to comply with this Section, then the approval given pursuant to this Article shall be deemed revoked unless the Developer, upon request made prior to the expiration of said one (1)-year period, extends the time for commencing work. All construction of Improvements shall be performed in compliance with all applicable building and fire codes, zoning ordinances and any other laws, rules, regulations and ordinances of any governmental jurisdiction.

Section 4.5 After commencement of the construction and alterations referred to in Section 4.4 above, the work shall be diligently prosecuted so that the Tract shall not remain in a partly finished condition any longer than reasonably necessary for the completion thereof. With regard to excavation, and without limiting any other provision of this Declaration, no excavation shall be made on, and no sand, gravel, soil or other material shall be removed from the Tract, except in connection

with the construction or alteration of Improvements approved in the manner set forth in this Article, and upon completion of any such operations, exposed openings shall be backfilled and disturbed ground shall be graded, leveled and paved or landscaped in accordance with the previously approved plans and specifications contemplated in this Article. In any event, completion of construction or alteration of such Improvements shall be within two (2) years after the commencement thereof except for so long as completion is rendered impossible or would result in great hardship due to an Unavoidable Delay. In addition, and without limiting any other provision of this Declaration, landscaping (in the manner previously approved by the Developer pursuant to the provisions of this Article) shall be installed within ninety (90) days of occupancy or completion (whichever shall first occur) of the Improvements as aforesaid. After such completion of the Improvements, there shall not be any other material change in the aforesaid Improvements or maintenance without prior approval in writing by the Developer in the manner contemplated in this Article. Failure to comply with this Section shall constitute a breach of this Declaration and subject the defaulting party or parties to all enforcement procedures set forth in this Declaration and any other remedies provided by law or equity.

Section 4.6 The Developer shall not be liable for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications; or (c) the development of any part of the land within the Property.

ARTICLE V - OTHER SITE WORK, DEVELOPMENT  
AND CONSTRUCTION REQUIREMENTS

Section 5.1 Unless the Developer consents in writing to a lower parking ratio, each Occupant of a Tract which constructs Improvements to its Tract shall also construct or cause to be constructed at the same time no fewer than five (5) parking spaces (and driveways and footways incidental thereto) on the Tract for each one thousand (1,000) square feet of Leasable Area of the Improvements constructed on the Tract by the Occupant, such ratio to be fourteen (14) parking spaces (and driveways and footways incidental thereto) for each one thousand (1,000) square feet of Leasable Area in the case of a restaurant, other than a restaurant that sells food and beverages solely for off-premises consumption; provided, however, that nothing in this Declaration shall prevent the Property Owner or the Developer from granting from time to time parking easements or reciprocal parking easements between and among various Tracts and lands adjacent to the Shopping Center owned by the Property Owner or the Developer so long as the parking spaces located on the Tracts and/or lands subject to such easements shall in the aggregate, when measured in comparison with the aggregate Leasable Area of the Improvements located on such Tracts and/or lands, meet or exceed the minimum ratio set forth in this Section 5.1. The Declarants hereby expressly reserve the right to be exercised by the Developer to lower the minimum ratio set forth in this Section 5.1 from time to time so long as the reduced minimum ratio (a) complies with all then existing applicable governmental laws, rules, regulations and ordinances, including, without limitation, those pertaining to zoning matters, or (b) is in accordance with an approved variance, waiver, consent or other similar issuance, position or ruling of the relevant governmental authority.

Section 5.2 Without the prior written consent of the Developer, no Building to be constructed on any Tract shall extend higher than eighteen (18) feet above the ground (exclusive of architectural details like arches, spires and cupolas that do not materially and adversely affect the visibility of other Buildings) nor shall the building area of such Building exceed twenty-five percent (25%) of the square footage of the Tract.

Section 5.3 All grade elevations, parking lots, walkways, driveways, and roadways located on the Tracts shall be of elevation and grade so as to be conducive to the free flow of traffic and commercial intercourse to, through and between the Tracts, all as determined in the discretion of the Developer which shall not be arbitrary or unreasonable.

Section 5.4 The Occupant of a Tract, at the Occupant's own expense, shall (a) maintain the Tract and the Improvements located thereon in a first-class manner similar to other first-class shopping centers in the geographical area; (b) comply in all respects with all applicable governmental laws, rules, regulations and ordinances; (c) ensure that the driveways, roadways, parking areas and sidewalks located upon the Tract are (i) properly graded and covered with all-weather asphalt surfacing, (ii) maintained at all times in a useful condition and state of repair and (iii) maintained free of all snow, ice, dirt and debris; (d) adequately mark all driveways and parking areas on the Tract with necessary striping and directional signs for the proper flow of traffic and parking; and (e) provide and maintain adequate lighting for the proper illumination of the driveway, the parking area, the sidewalks, the building perimeter and the canopies in the Tract, such lighting to be in compliance with the lighting criteria set forth on Exhibit E attached hereto and made a part hereof.

Section 5.5 At the time that the Occupant of a Tract with frontage on Vann Drive or Pleasant Plains Extended constructs Improvements on the Tract, the Occupant shall construct or cause to be constructed driveway aprons and sidewalks along the street frontage of its Tract on Vann Drive and Pleasant Plains Extended in accordance with the City of Jackson specifications.

Section 5.6 Each Occupant of a Tract shall install, if not previously installed, and maintain a storm drainage system to convey runoff from the ten (10) year rainfall event. Such system shall be coordinated with the surface water detention facility for the Shopping Center provided by the Developer, and the owner of each Tract (other than the Property Owner or the Developer) shall pay the Developer an annual fee for the maintenance of the detention facility and the entrance colonnade

for the Shopping Center. The annual fee shall be \$500.00 per acre of the Tract and shall be prorated with respect to any fraction of an acre. For example, if a Tract contains 2.5 acres, then the annual fee for such Tract is \$1,250.00. The initial annual fee shall be applicable to the period beginning on the date the surface water detention facility becomes operational (the "Facility Date") and ending on the last day of the calendar year in which the Facility Date occurs (the "First Facility Year"). For any owner acquiring an interest in a Tract subsequent to the date hereof but prior to the end of the First Facility Year the annual fee shall be prorated on a calendar year basis and shall be due upon the later of the Facility Date or the owner's acquisition of a fee interest in the Tract. Likewise, any owner acquiring a fee interest in any Tract from the Property Owner or the Developer subsequent to the First Facility Year shall, at the time of acquiring such an interest in the Tract, pay to the Developer the fee applicable to the remaining portion of the year in which such interest is acquired. Thereafter, the fee shall be paid by the owner with respect to a Tract in advance on January 1 of each year to the Developer. Any annual fee not paid by the due date shall bear interest from the date due at a rate equal to the lesser of twelve percent (12%) or the highest rate permitted by applicable law. Each assessment, together with any interest thereon, shall be (a) a personal obligation of the owner of the Tract upon which the assessment is made at the time the assessment was levied and (b) shall constitute a lien upon the Tract against which the assessment is made. The lien shall be subordinate to the lien of any first mortgage or vendor's lien on the Tract and shall be enforceable by foreclosure or otherwise. The Developer may record a notice of lien or *lis pendens* as notice of nonpayment of an assessment but failure to record shall not invalidate or extinguish the lien.

Section 5.7 Each Occupant of a Tract shall install, if not previously installed, and maintain an irrigation system for the landscaping on its Tract.

Section 5.8 Each Occupant of any part of the Shopping Center shall install and maintain signage and site lighting only in accordance with applicable sections of this Declaration, any other applicable document and all code requirements. No

Occupant shall install or maintain any other signage or site lighting.

Section 5.9 Unless otherwise required by local code requirements, all parking striping shall be white. Handicap parking striping shall be in accordance with all local code requirements.

Section 5.10 Each Occupant of a Tract shall install, if not previously installed, and maintain erosion control measures as necessary to keep all sediment from adjacent properties, public streets and storm drainage systems. Erosions control measures may include, but shall not be limited to, silt fence, hay bales, and stone construction entrances. Each Occupant of a Tract shall remove dirt, mud, and debris generated by its construction activities from public streets on a daily basis during construction.

Section 5.11 Each Occupant of a Tract shall provide dust control measures for dust generated by its construction.

Section 5.12 In the event the installation or connection of any utilities by any Occupant of the Shopping Center will require an interruption in utility service for any other Occupant of the Shopping Center, then written authorization must be obtained from the Developer prior to performing any such utility work.

Section 5.13 In the event any construction by any Occupant of a Tract shall affect traffic on Vann Drive or Pleasant Plains Extended, said Occupant must submit traffic control plans and schedules to the Developer, receive written approval of said plans and strictly adhere to the approved plans and schedules.



## ARTICLE VI - LIABILITY INSURANCE

Section 6.1 Each owner of a Tract shall maintain or cause to be maintained public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas in the Tract by the Occupants of such Tract and their respective customers, guests, agents, contractors, employees, tenants, licensees and invitees. The insurance shall be carried by a reputable insurance company or companies qualified to do business in the state of Tennessee and having aggregate limits for loss of life or bodily injury in an amount of not less than \$2,000,000. Any owner or party responsible for maintaining such insurance may "self-insure" as to such coverage so long as its tangible net worth is at least \$50,000,000, as determined in accordance with generally accepted accounting principles. Each owner or party responsible for maintaining such insurance shall, upon request from any Occupant of another Tract, furnish to the party making such request, certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section or evidence of a self-insurance capacity as provided herein, as the case may be.

## ARTICLE VII - DAMAGE OR DESTRUCTION

Section 7.1 If any part of the Common Area located on a Tract is destroyed or damaged by fire, casualty or force majeure, the owner of such Tract shall promptly clear and restore such area.

Section 7.2 If any part of the Improvements located on a Tract (excluding the Common Area) is destroyed or damaged by fire, casualty or force majeure, the owner of the damaged Improvements shall, at its sole expense (a) promptly repair and restore the damaged Improvements or (b) promptly raze the damaged Improvements, remove all debris and landscape such area in a manner similar to the landscaping in the Shopping Center. Any area landscaped under Subsection (b) in the preceding sentence shall be maintained as though it were a part of the Common Area until improved with Buildings.

Section 7.3 If any part of the Common Area is condemned, the owner of the affected Tract, at its sole expense, shall promptly restore such area as much as practicable to provide the same approximate configuration, size, location and number of all light standards, driveways, walkways, parking spaces and curb cuts to adjacent roadways existing prior to the condemnation! Any award on account of the condemnation of the Common Area first shall be used in the restoration of the Common Area, and any claim to the award made by the Occupants of the Tract shall be expressly subject and subordinate to its use in such restoration. The term "condemnation" shall include all conveyances made in anticipation of or in lieu of an actual taking by eminent domain.

#### ARTICLE VIII - USE RESTRICTIONS

Section 8.1 Without the prior written consent of the Developer, no Occupant shall use any portion of the Shopping Center for the following prohibited uses or conduct operations that produce or are accompanied by the following characteristics:

- (a) a business or use which (i) creates strong, unusual or offensive odors, fumes, dust or vapors, (ii) constitutes a public or private nuisance, (iii) emits noises or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness or (iv) creates unusual fire, explosive or other hazards;
- (b) bookstore or other establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials (provided this prohibition shall not apply to a full-line bookstore which, as an incidental part of its business, includes among its inventory, books or other reading material that might be characterized as pornographic or obscene);
- (c) "head shop" or any other shop featuring, in any part, manner or way drug paraphernalia;

- (d) video or other type of game room or arcade (provided this prohibition shall not apply to the sale of video games, to the operation of a game room or arcade as an incidental use to a theater operation on the Shopping Center nor to the operation by any Occupant engaged in a retail business of no more than four (4) video or electronic games as an incidental use to that Occupant's retail business);
- (e) off-track betting establishment;
- (f) pawn shop;
- (g) business selling so-called "second-hand goods", flea market, flea circus or other operation primarily for the sale of used goods;
- (h) junkyard, recycling facility, stockyards or lot for raising animals;
- (i) lot for the sale of new or used motor vehicles, trailers, mobile homes or boats, car wash facility, or motor vehicle, trailer, mobile home or boat storage facility (provided this prohibition shall not apply to luxury car dealerships primarily engaged in selling or leasing new or used luxury motor vehicles including, without limitation the following types of motor vehicles: Mercedes, BMW, Jaguar, Range Rover, Rolls Royce, Lexus and Cadillac);
- (j) banquet hall, auditorium or other place of public assembly (provided this prohibition shall not apply to movie theaters and/or hotels and uses incidental to either of them);
- (k) bar serving alcoholic beverages (except as an incident to a full kitchen restaurant operation);
- (l) discotheque, dance hall or night club;
- (m) bingo parlor;

- (n) gymnasium, exercise facility or massage parlor(excluding high-class health spas offering therapeutic massage treatments);
- (o) dry cleaning, laundry plant or laundromat(except for an establishment that only receives and dispenses items that are laundered and/or dry cleaned at a location outside the Shopping Center);
- (p) any warehouse operation or assembling, manufacturing (other than such manufacturing use as is conducted in conjunction with any home improvement center business) distilling, refining, smelting, industrial, agricultural, drilling or mining operation;
- (q) beauty school, barber college, reading room, school, place of instruction or any other activity catering primarily to students or trainees as opposed to customers;
- (r) house of worship;
- (s) "social encounter" restaurant which does not have and maintain a full-service food menu and serves alcoholic beverages for on-premises consumption (which alcoholic beverage sales including, without limitation, beer, wine and spirits, are anticipated to, or do, account for fifty percent (50%) or more of the restaurant's gross sales);
- (t) trailer court, mobile home park or labor camp;
- (u) dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner;
- (v) veterinary hospital;

- (w) gasoline or automobile service stations (provided this prohibition shall apply only to lots 6 and 26, as more specifically identified on Exhibit F attached hereto and made a part hereof);
- (x) funeral establishment, mortuary or similar service;
- (y) auction or bankruptcy sale, except for a charity auction and except for a bankruptcy sale ordered by a bankruptcy court having jurisdiction;
- (z) outdoor circus, carnival or amusement park;
- (aa) operation of "elephant trains" or similar transportation devices;
- (bb) shooting gallery or gun range; and
- (cc) day care.

#### ARTICLE IX - SIGNAGE

Section 9.1 All Occupants of the Shopping Center shall have the right, subject to the Developer's approval and all applicable laws, rules, regulations and ordinances, to install and maintain Pylon Signs and Monument Signs as set forth herein:

- (a) Single tenants or contiguous "strip center" tenants of 100,000 square feet or more may install a Pylon Sign.
- (b) Single tenants of less than 40,000 square feet may install a Monument Sign.

Section 9.2 Occupants shall have the right, subject to the approval of the Developer and any and all applicable laws, rules, regulations and ordinances, to install and maintain exterior wall signs as set forth in their respective contracts or agreements.

Section 9.3 Occupants shall have the right, subject to the approval of the Developer and any and all applicable laws, rules, regulations and ordinances, to install directional signs as necessary to direct vehicular traffic in an orderly manner.

Section 9.4 The Developer reserves the right in its sole discretion to approve additional signage so long as all such signs are in accordance with all applicable laws, rules, regulations and ordinances.

Section 9.5 For purposes of this Declaration, the term "signage" shall include signs, placards, lights or other advertising symbols or objects, irrespective of whether they are temporary or permanent.

#### ARTICLE X - MISCELLANEOUS PROVISIONS

##### Section 10.1

(a) Unless terminated sooner by agreement as hereinafter set forth in Subsection (b), this Declaration shall terminate, except for any easements or other provisions of this Declaration which by their terms survive such date, on the date which is forty-five (45) years after the date this Declaration is recorded in the Register's Office of Madison County, Tennessee.

(b) Except for the perpetual, non-exclusive easements for the benefit of the portion of the Property conveyed to third parties other than the Declarants which shall be considered easements appurtenant to that portion of the Property, this Declaration may be canceled, altered, modified and amended by the Declarants at any time, and from time to time, as long as either of the Declarants owns any part of the Property; provided, however, any cancellation, alteration, modification or amendment made by the Declarants shall not (i) apply retroactively, (ii) be more restrictive than the restrictions set forth herein and (iii) shall be consistent with the general purpose of this Declaration in maintaining and promoting the integrated use of the Property. In addition, this Declaration may be canceled, altered, modified or amended at any time by the affirmative action of the fee owners of 75% or more of the

Property based on the number of square feet of the Property owned as compared to the total number of square feet then contained in the Property; provided, however, that so long as either of the Declarants owns any part of the Property, no such cancellation, alteration, modification or amendment shall be effective without the written approval of the Declarants. '

(c) No cancellation, alteration, modification or amendment of this Declaration shall be effective until the proper written instrument as required by this Declaration has been executed, acknowledged and recorded in the Register's Office of Madison County, Tennessee.

Section 10.2 Any and all rights, powers and reservations of the Developer herein contained may be assigned by the Developer to one or more Persons, which will assume the duties of the Developer pertaining to the particular rights, powers and reservations assigned, and upon any such Person evidencing its consent in writing to accept such assignment and assume such duties, such Person, shall, to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are given and assumed by the Developer herein. If at any time the Developer ceases to exist and has not made such an assignment, a successor Developer may be appointed in the same manner as this Declaration may be canceled, altered, modified or amended under Section 10.1 of this Declaration.

Section 10.3 Every Person who now or hereafter owns or acquires any right, title or interest in or to any Tract or any portion thereof is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Tract or portion thereof.

Section 10.4

(a) All restrictions, covenants, easements and conditions contained herein (i) are made for the direct, mutual and reciprocal benefit of each and every Tract, (ii) shall create mutual and equitable servitudes upon each Tract in favor of every other Tract, (iii) shall create reciprocal rights and obligations between the respective Occupants of the Tracts and privity of contract and estate between all Occupants of Tracts, their respective heirs, assigns and successors in interest, and (iv) shall, as to each Occupant of each Tract, its heirs, assigns and successors in interest, operate as covenants running with the land, both as respects the benefits and burdens created herein, for the benefit of all other Tracts.

(b) In any legal or equitable proceeding for the enforcement of, or to restrain the violation of, this Declaration or any provision hereof, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, in such an amount as may be fixed by the Court in such proceedings. All remedies provided for herein, whether at law or in equity, shall be cumulative and not exclusive of any remedies.

(c) The Developer may, from time to time, at any reasonable hour or hours, enter upon and inspect any Tract and the Improvements thereon so as to insure or ascertain compliance with the terms of this Declaration, provided, however, that the Developer shall have no duty to make such an inspection.

(d) Failure of the Developer or any Occupant to enforce any restriction, covenant, easement or condition herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor a waiver of the right to enforce any other restriction, covenant, easement or condition.

Section 10.5 So long as the Occupants of a Tract comply with the parking ratio set forth in Section 5.1, then the Occupants of such Tract shall be free to grant or otherwise convey any easement for or right of access, ingress, egress or parking or otherwise over the Tract for the benefit of the other Tracts or for the benefit of the lands adjacent to the Shopping Center owned by either of the Declarants.



Section 10.6 This Declaration shall not create an association, partnership, joint venture or a principal and agency relationship among any of the Occupants of the Shopping Center.

Section 10.7 No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or of any other provision set forth herein.

Section 10.8 If any provision of this Declaration is declared invalid or unenforceable by any legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by such determination and the affected provision shall be deemed valid and enforceable to the greatest extent allowed by law.

Section 10.9 All notices and approvals required or permitted under this Declaration shall be served by certified mail, return receipt requested, to a party at the last known address of its principal place of business. Date of service of notice or approval shall be the date on which such notice or approval is deposited in a Post Office of the United States Postal Service or any successor governmental agency. Should a parcel be subdivided by separate ownership, the party who owns the largest portion thereof is irrevocably appointed attorney-in-fact for all parties who may own an interest in the parcel to receive all notices and to render all approvals hereunder, which receipt of notices and delivery or approvals shall be binding on all such parties.

Section 10.10 This Declaration contains the entire undertaking by the Declarants and there are no other terms, expressed or implied, except as contain herein.

Section 10.11 Except to the extent otherwise expressly provided herein, the time within which any Occupant shall be required to perform any act under this Declaration, other than the payment of money, shall be extended by a period of time equal to the number of days during which such performance of such act is delayed by any Unavoidable Delay.

Section 10.12 The provisions of this Declaration are for the exclusive benefit of the Declarants and the Occupants and not for the benefit of any third person, and this Declaration shall not be deemed to have conferred any rights, express or implied, upon any third persons.

Section 10.13 It is expressly agreed that no breach of this Declaration shall entitle any owner of any Tract to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not effect, in any manner, any other right or remedies which the owners of the Tracts or other Occupants may have by reason of any breach of this Declaration.

Section 10.14 This Declaration shall be governed by and construed in accordance with the laws of Tennessee.

IN WITNESS WHEREOF, the Declarant has executed this Declaration in three counterparts, each of which constitutes an original instrument.

WESTSIDE VENTURE,  
a Tennessee joint venture

By James H. Wallace, Jr.

Title: MANAGING PARTNER

Date: JUNE 16, 1998

RUSHMEADE DEVELOPMENT CORPORATION,  
a Tennessee corporation

By James H. Wallace, Jr.

Title: PRESIDENT

Date: JUNE 16, 1998

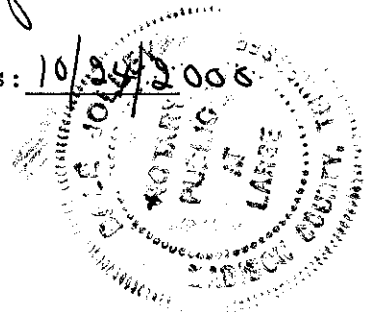
STATE OF TENNESSEE )  
 ) SS  
COUNTY OF MADISON )

BE IT REMEMBERED, that on this 16<sup>th</sup> day of June, A.D. 1998, before me, the undersigned, a Notary Public in and for said County and State, came James H. Wallace, Jr., as Managing Partner of WESTSIDE VENTURE, a joint venture duly organized and existing under and by virtue of the laws of Tennessee, and such person duly acknowledged the execution of same to be the act and deed of said joint venture.

IN WITNESS WHEREOF, I have hereunto affixed my name and affixed my official seal the day and year as written above.

Dale Jolley  
Notary Public

My commission expires: 10/24/2006



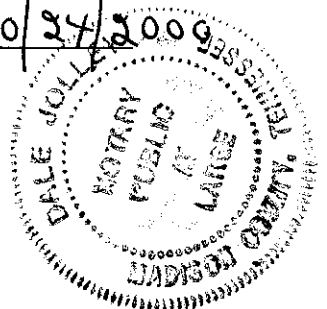
STATE OF TENNESSEE )  
 )SS  
COUNTY OF MADISON )

BE IT REMEMBERED, that on this 16<sup>th</sup> day of June, A.D. 1998, before me, the undersigned, a Notary Public in and for said County and State, came James H. Wallace, Jr., as President of RUSHMEADE DEVELOPMENT CORPORATION, a corporation duly organized and existing under and by virtue of the laws of Tennessee, and such person duly acknowledged the execution of same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto affixed my name and affixed my official seal the day and year as written above.

Dale Jolley  
Notary Public

My commission expires: 10/24/2009



05167.109523  
F:\USERS\116\RUSHMEAD\DECLARA6.DOC  
rw/jkj/mjg/tlt/lha 6/2/98

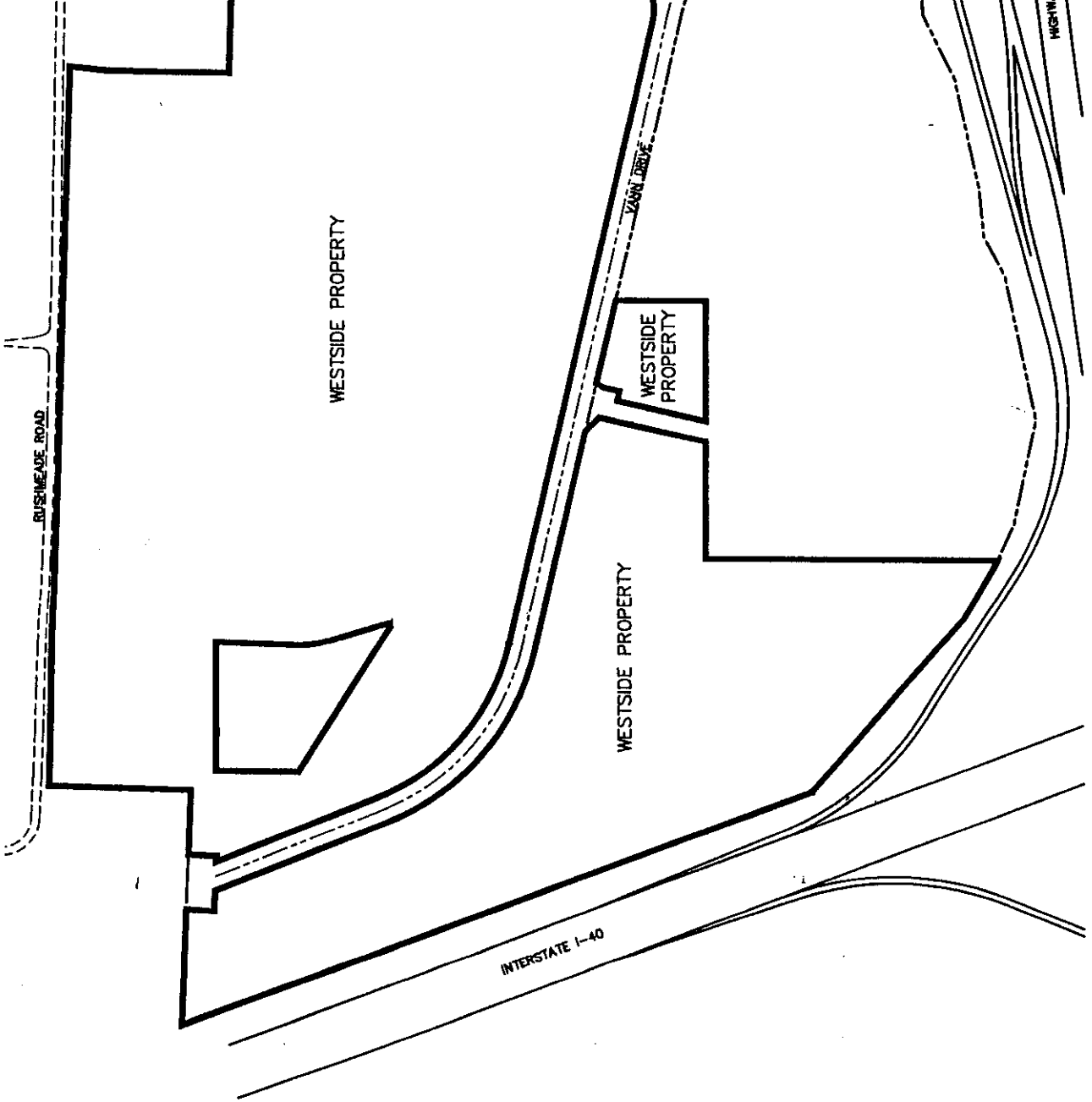


GRAPHIC SCALE



( IN FEET )

1 inch = 400 ft.



WESTSIDE PROPERTY  
EXHIBIT "A-1"  
THE COLUMNS  
JACKSON, TENNESSEE

JUNE 2, 1998

Roanoke-Jackson  
Engineering Management  
1750 Madison Avenue  
Memphis, TN 38104  
TEL: 901-570-8811



INTERSTATE I-40

RUSHMEADE ROAD

WESTSIDE PROPERTY

WESTSIDE PROPERTY

WESTSIDE PROPERTY

WESTSIDE PROPERTY

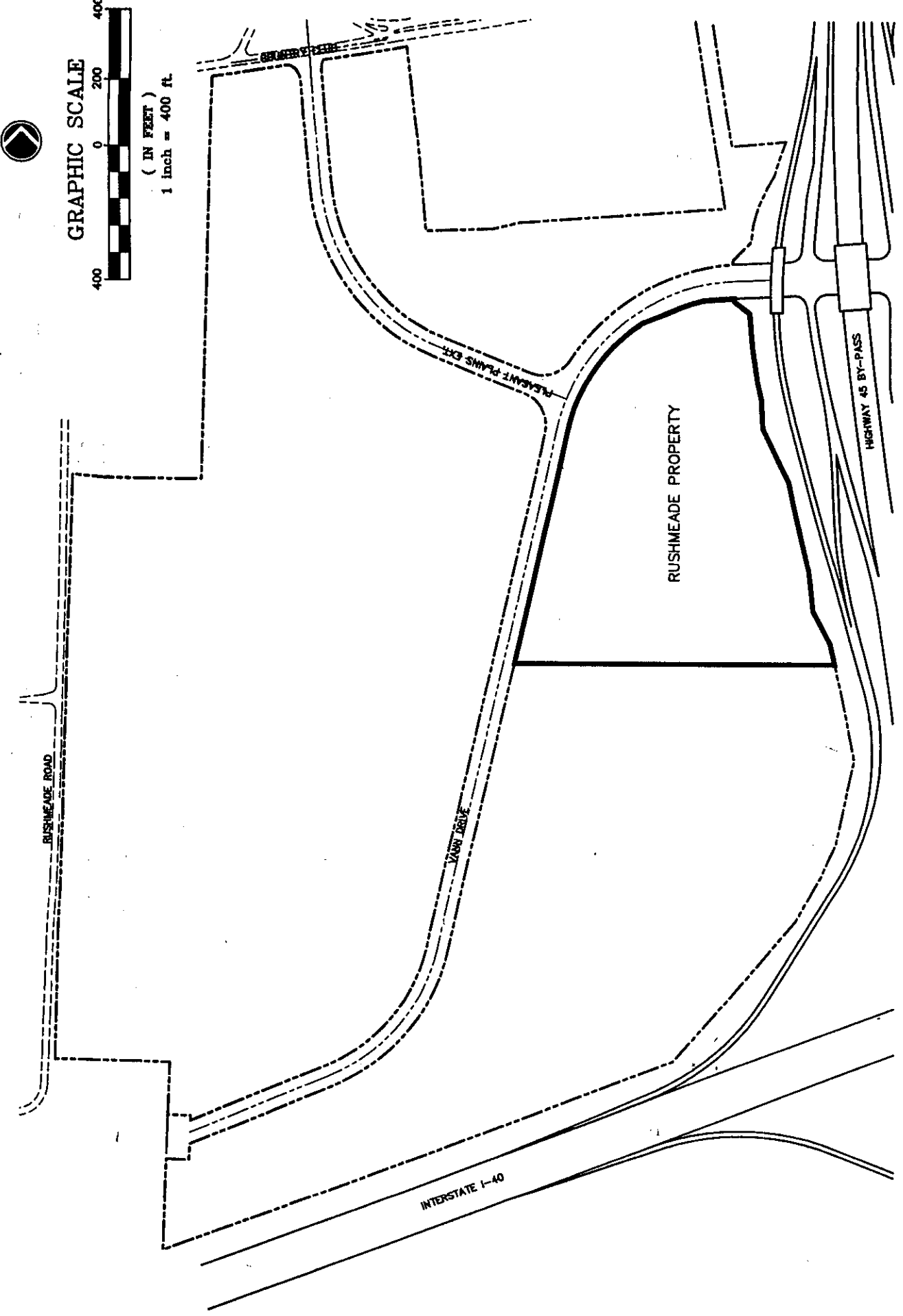
MEASUNT PLAINS DR

LAWN DRIVE

HIGHWAY 45 BY-PASS

**RUSHMEADE PROPERTY**  
EXHIBIT "A-2"  
THE COLUMNS  
JACKSON, TENNESSEE  
JUNE 2, 1998

Planning & Surveying  
1750 Madison Avenue  
Jackson, TN 38204  
TEL: 901-979-8111



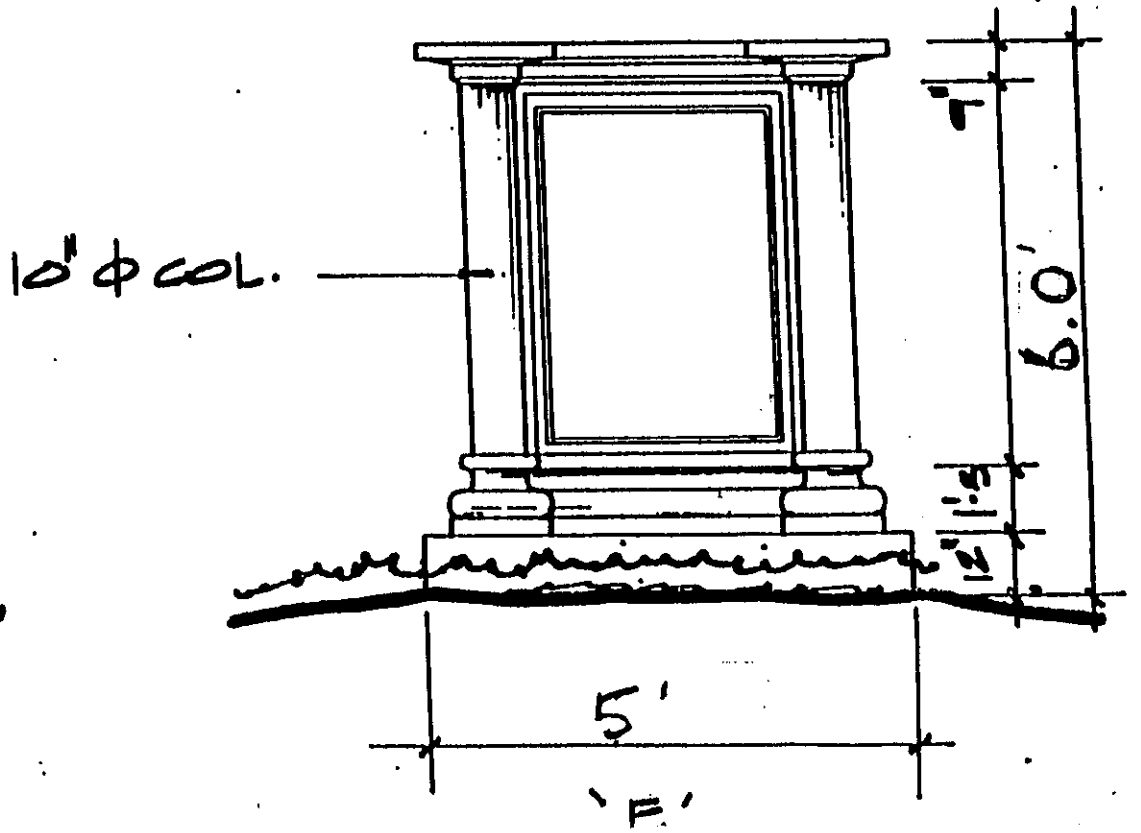
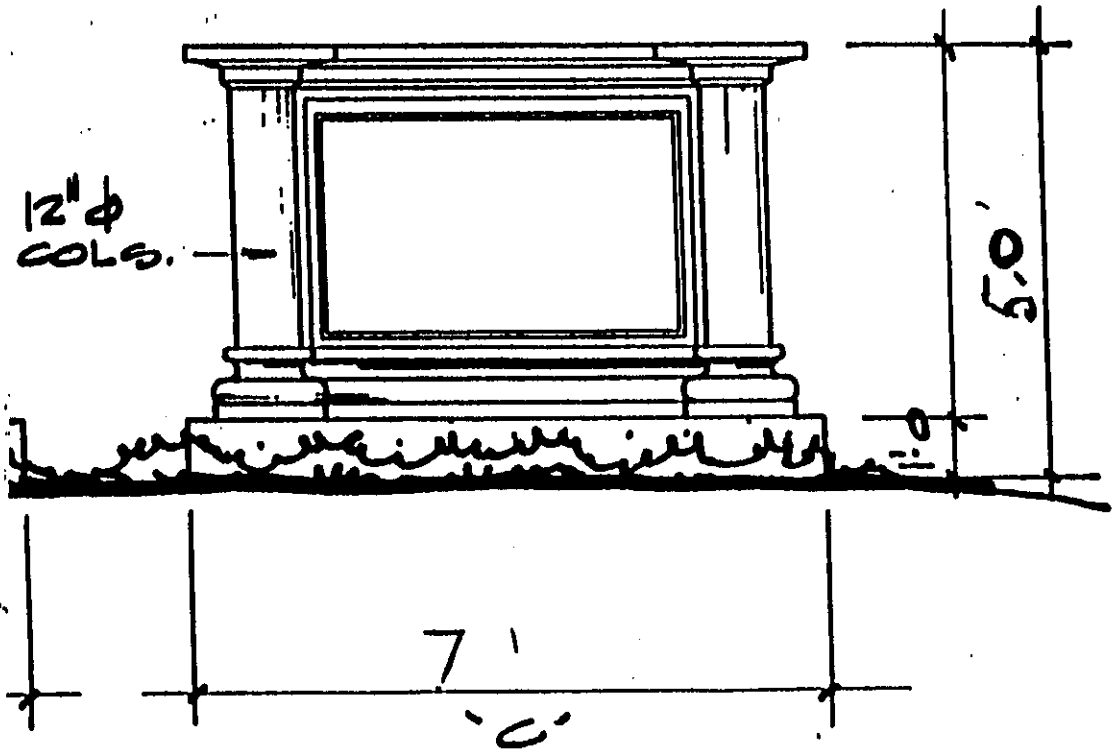
GRAPHIC SCALE



( IN FEET )

1 inch = 400 ft.

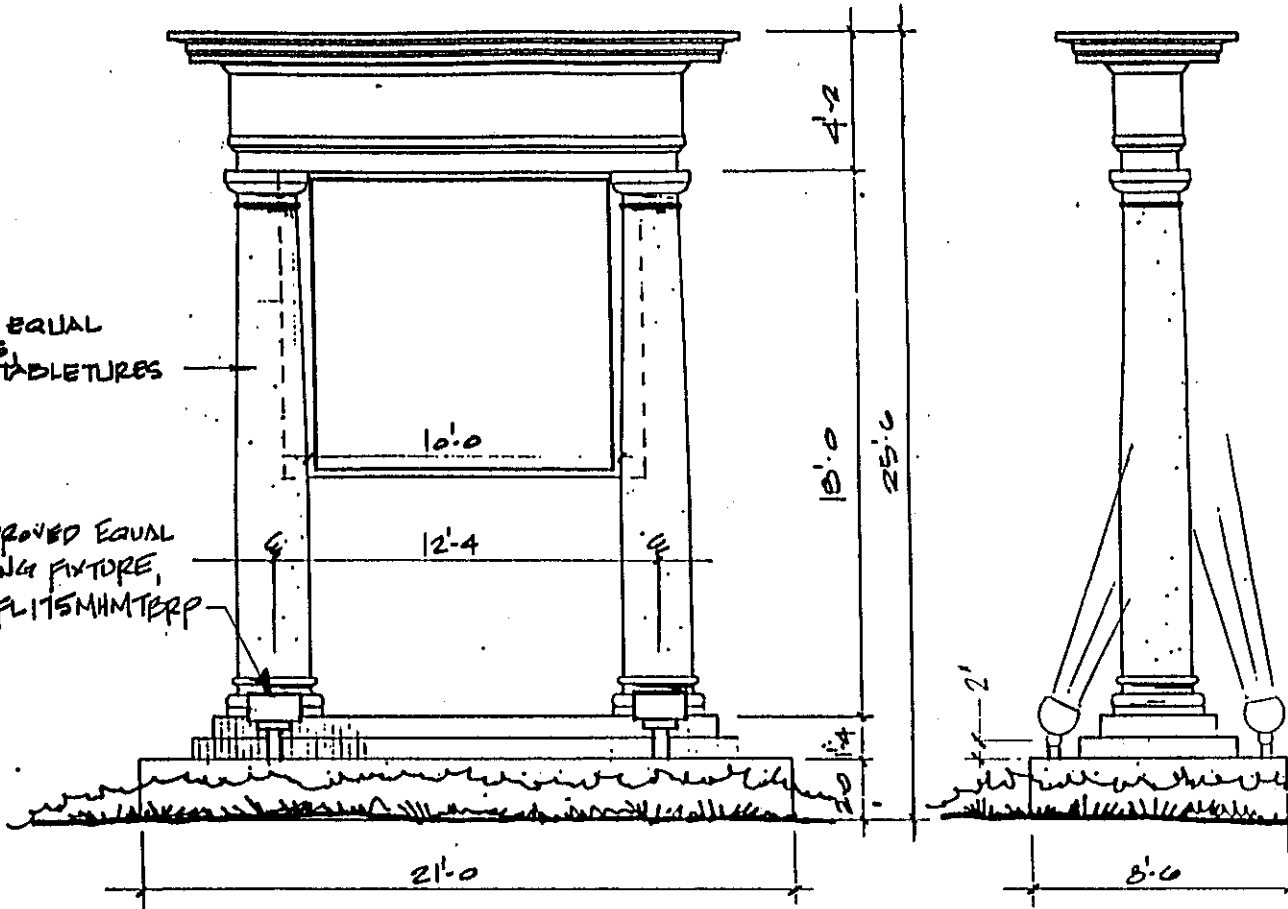
MONUMENT SIGN CRITERIA



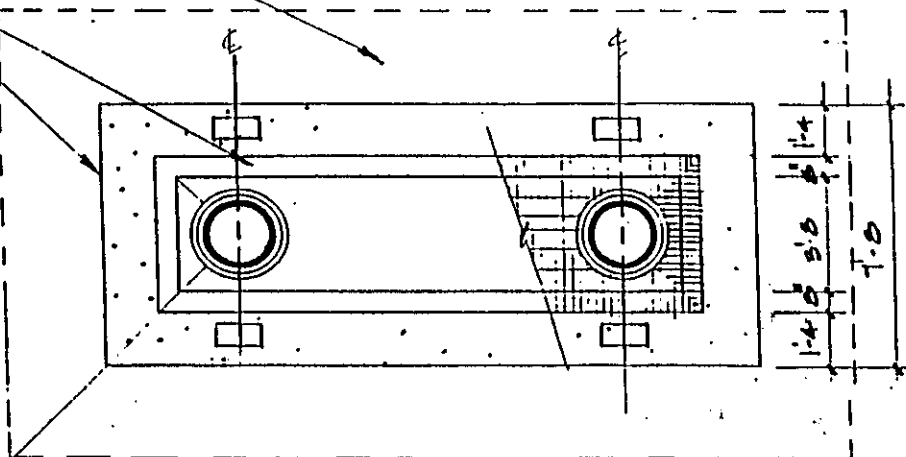
PYLON SIGN CRITERIA

'DECOFORM' OR EQUAL  
COLUMNS, BASES,  
CAPITOLS & ENTABLETURES

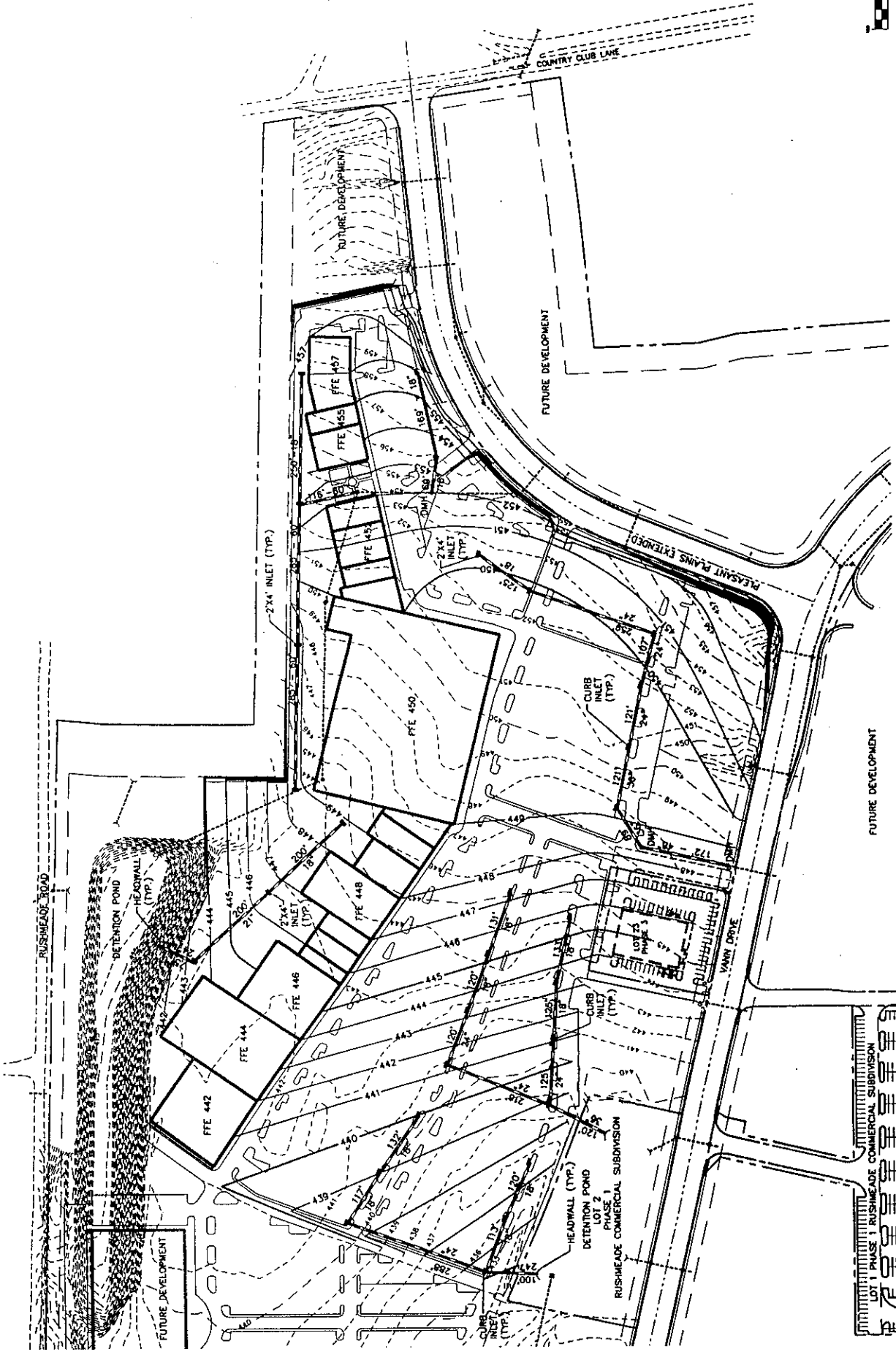
"GARCO" OR APPROVED EQUAL  
COLUMN HIGHLIGHTING FIXTURE,  
CMT. # DF75SPSTUPL175MMHTRP



3'-0" WIDE PLANTER  
(BY OTHER)  
BRICK STEPS ON  
CONCRETE BASE  
(BY OTHER)







GRAPHIC SCALE

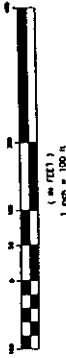


EXHIBIT "D"

SHEET 1 OF 1  
 DIVISION OF ENGINEERING  
**GRADING AND DRAINAGE PLAN**  
 COLUMNS WEST  
 JACKSON, TENNESSEE  
 PROJECT NO. 13972-14  
 DATE 5/98  
 BOOK  
 SCALE 1" = 100'  
 DRAWN BY: CL  
 DESIGN BY: CL  
 REVIEWED

NO.	REVISION	DATE	APPROVAL

**RUSHMEADE COMMERCIAL SUBDIVISION**  
 PHASE 2

EXHIBIT E

## LIGHTING CRITERIA

(a) All parking areas, entry/access drives, pedestrian sidewalks, building perimeter, and entry/exit canopies shall be illuminated until at least one (1) hour after the Designated Time (as hereinafter defined). The Designated Time shall be determined from time to time with respect to each Occupant as follows: If an Occupant (the "Designated Occupant") owns or leases, as a tenant, all or a portion of a Building (such owned or leased space hereinafter referred to as the "Designated Occupant's Space") and there is another Occupant operating a business in premises and, any portion of the interior portion of such premises is located within a 500 foot radius measured from the center point of the Designated Occupant's Space (each, an "Operating Occupant"), then the Designated Time for the Designated Occupant shall be the time at which the last of the Designated Occupant and the Operating Occupants closes its business to the public for the evening.

(b) Illumination Levels:

- (1) Open Parking Area and Receiving Areas Minimum Requirements: 1.0 minimum footcandle and 4:1 average-to-minimum luminance ratio for open parking area between poles and not less than 0.5 fc along paved perimeter.
- (2) Back Drive Minimum Requirements: In narrow drive areas, the following criteria shall be used: .7 minimum footcandle and 8:1 average-to-minimum luminance ratio.
- (3) The minimum maintained footcandle level along all entry and/or access drives from the public right-of-way to the main parking areas shall be not less than 1.5.
- (4) The first row of poles directly in front of any building shall include a minimum of two area cut-off

fixtures per pole, regardless of the number required to meet minimum light levels.

(c) Photometrics:

- (1) Photometric point-by-point and contour curves shall be submitted to the Developer for approval. Layouts shall be in 30' x 30' maximum grid and scaled to match the site lighting plan. Three (3) sets of each are required showing the outlines of all buildings, property lines, curbs, parking spaces, roadways, retaining walls, adjacent businesses, housing, etc.
- (2) Data sheets shall accompany the photometric layouts indicating the fixture used, lamp type, mounting height, tilt, axis, shielding, etc.
- (3) Calculations shall be made with, and photometrics shall reflect, a maintenance factor of 0.75.

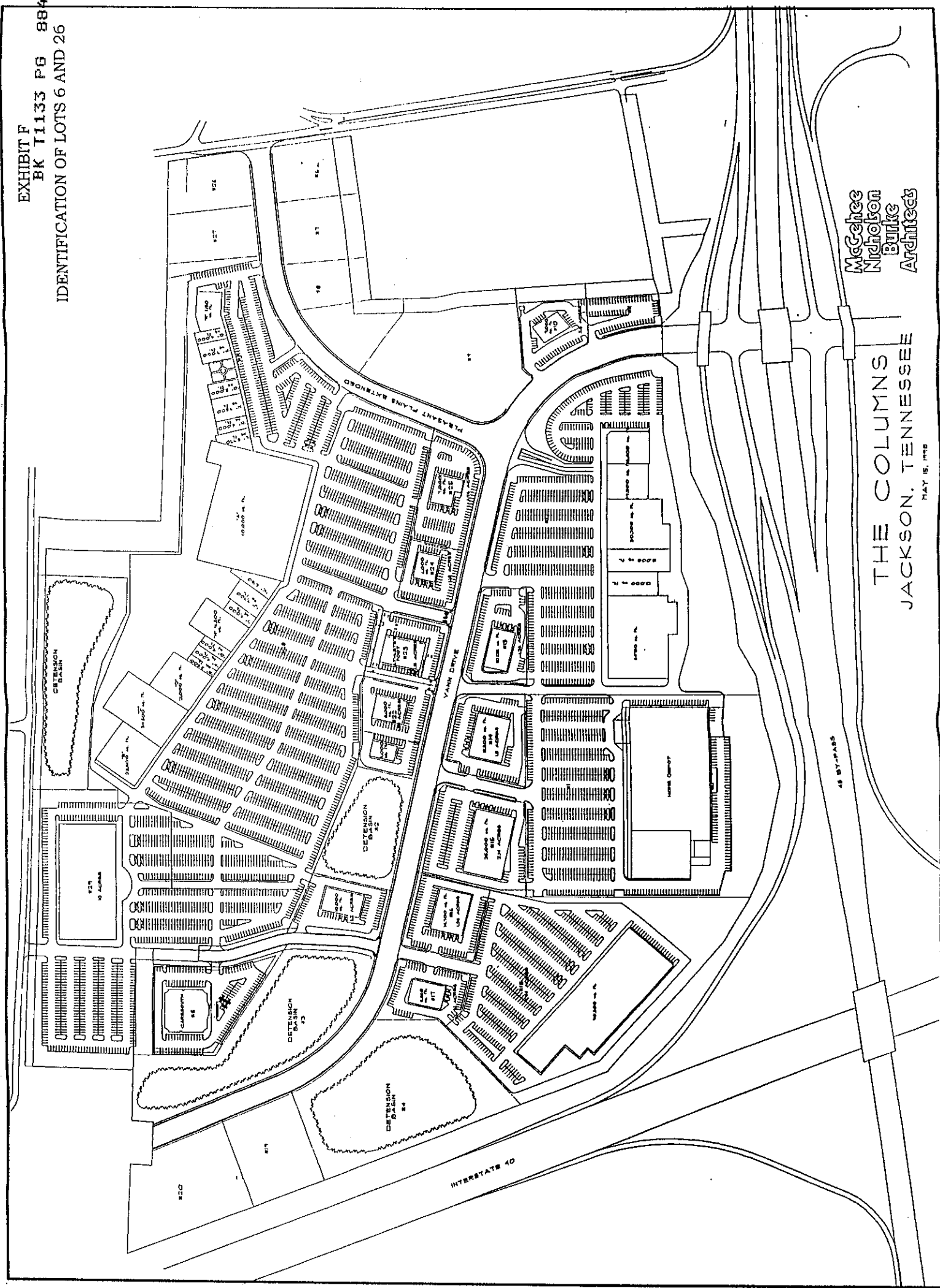
(d) Lamps, Optics and Fixtures:

- (1) Lamp source shall be 1000 watt metal halide for 40' mounting height and 400 watt metal halide for 25' mounting height, vertical base-up.
- (2) Fixture optics shall facilitate IES cutoff distribution Type V (symmetrical) to maximize the efficiency of the overall parking area lighting layout. Type III (asymmetric) and/or Type IV (forward throw) may be used where necessary to effectively illuminate difficult areas.
- (3) Fixture housings shall be made of durable metal or aluminum, finished dark bronze. Housing shall be bottom accessible only through the lens. Lenses shall be hinged with glass interlocked with the door frame. Door seals shall be watertight and bug-proof.
- (4) Fixture cutoff angle shall be less than 80 degrees.

(e) Poles:

- (1) Poles shall be round tapered steel, 37.5 feet high (1000 watt fixtures) and 22.5 feet high (400 watt fixtures) with 30" high concrete bases (typical).
  - (2) Pole finish shall be dark bronze, including all accessories and base covers.
- (f) Pole Location, Layout and Bases:
- (1) Pole bases shall be located at least 24" from the face of the base to the inside edge of any curb.
  - (2) Poles shall not be located in any pedestrian sidewalk, or in any handicapped parking area, or pathway, unless specific provisions are made to maintain adequate access around the base.
  - (3) Bases shall be 30" above the finished parking surface and 24" in diameter.
- (g) Building Mounted Lighting:
- (1) Lamp source shall be 250 or 400 watt metal halide.
  - (2) Fixtures shall be mounted 15'.0" A.F.F. and spaced as required to meet minimum before-mentioned illuminance. Where the wall faces Interstate 40 or Highway 45, wall mounted fixtures shall be used with a cutoff angle of less than 80 degrees.
- (h) Pylon Sign: Signs and lighting shall match drawings provided.

EXHIBIT F  
 BK T1133 PG 884  
 IDENTIFICATION OF LOTS 6 AND 26



McGehee  
 Nicholson  
 Burke  
 Architects

THE COLUMNS  
 JACKSON, TENNESSEE  
 MAY 15, 1998

State of Tennessee, County of MADISON  
 Received for record the 16 day of  
 JUNE 1998 at 4:15 PM. (REC# 11685)  
 Recorded in Book T1133 pages 848- 884  
 State Tax \$ .00 Clerks Fee \$ .00,  
 Recordings \$148.00, Total \$ 148.00.  
 Register of Deeds CURTIS WHITE  
 Deputy Register LINDA WALDON