

RESTATED DECLARATIONS OF PROTECTIVE CONDITIONS,
COVENANTS AND RESTRICTIONS
FOR
GATEWAY PLACE
MISSOULA, MONTANA

THIS RESTATED DECLARATION ("Declaration"), is dated the 7 day of August, 1991, by A & C VENTURES II (the "Declarant") to restate and replace the Declaration dated May 16, 1989, and recorded under Book 293, Pages 1809-1816, the Declaration dated March 8, 1989, and recorded under Book 290, Pages 2197-2206, and the Declaration dated November 14, 1984, and recorded under Book 216, Pages 0594-0617.

WITNESSETH
Declarant at the time of the original Declaration was the owner of all the Property, at the time of this restated Declaration owns in excess of two-thirds of the Property, embraced within the boundaries of the Property known as Gateway Place, the plat of which is attached hereto as Exhibit A and by this reference incorporated herein, located in Missoula County, Montana.

Declarant proposes to sell or lease all or a portion of the Property in said Gateway Place, and desires to subject said Property to the conditions, restrictions and covenants hereinafter set forth.

Declarant restates the Declarations to make creation of an owners' association optional in the future, to eliminate general assessments against the Lots and to confirm the enforcement of the development guidelines and landscape maintenance requirements by each Owner.

NOW, THEREFORE, Declarant hereby makes declares and imposes the following conditions, restrictions and covenants running with the land and binding upon all present and future Owners of any part of such real property, and further declares that each Lot within the Property is and shall be held, transferred, sold, conveyed and occupied subject to the protective conditions, restrictions, covenants, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

As used herein, the following words and terms shall have the following meaning, unless in context specifically provided otherwise:

1. "Declarant": A & C Ventures II or any successor owner or assignee from A & C Ventures II who acquires all of the unsold portions of the Property for development or resale and not for end use.

2. "Building": Any improvement built for the occupancy of persons or property or for any business or use of any kind.

3. "Lot": The parcels of land into which the Property was divided as shown on any recorded plat of the Property.

4. "Owner": The record owner (including without limitation the Declarant), whether one or more persons or entities of the fee simple title to any Lot or other portion of the Property, except that:

(a) Where any Lot has been sold by Declarant under an agreement for deed, the buyer thereunder (provided that he is not in default under said agreement), and not the Declarant, shall be deemed to be the Owner, and

(b) The term "Owner" shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure of any proceeding in lieu of foreclosure.

5. "Property": That certain real property described in Article II.

5. "Structure": Any improvement erected or placed upon any portion of the Property, including but not limited to part of and additions to Buildings, walls, fences and other enclosures, antennas, walks and driveways.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold and occupied pursuant to this Declaration is located in the City of Missoula, Missoula County, Montana, and more particularly described on Exhibit A attached hereto and known as Gateway Place, including all subsequent phases or replattings of said Property.

Section 2. Recording. This restated Declaration is recorded on the 7 day of August, 1996, applies to all of the Property and restates and supersedes the Declaration recorded in Book 293, Pages 1809-1816. Effective upon the recording of this restated Declaration, the provisions of the original

Declaration shall no longer be applicable to the Property. For purposes of identification, all Lots on the Property have been or will be given identifying numbers and delineated by such numbers on the official plats. The legends and notes contained upon such official plats are incorporated herein by this reference.

ARTICLE III

FUTURE CREATION OF ASSOCIATION

Upon the affirmative vote of Owners representing at least two-thirds of the Property (based upon square footage), the Owners may incorporate under the laws of the State of Montana a non-profit corporation for any lawful purpose relating to the Property, including without limitation enforcement of this Declaration or re-establishment of an architectural control committee (after Declarant has sold all of the Lots to end users). However, no assessments shall be levied or charged against any Lot unless each Lot to be assessed has consented to an assessment system as part of formation of the non-profit corporation or on a case-by-case basis.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 1. Development Guidelines and Required Approvals. No Structure, Building, excavation or construction of any kind and no fence, wall, garage, outbuilding, driveway or any kind or any addition, alteration or remodeling thereof shall be made, erected, constructed, altered, placed or permitted to remain upon any of the Lots until the plans and specification showing the nature, kind, shape, height, materials, and location of the same have been submitted to Declarant, through the Architectural and Development Control Committee appointed by Declarant, and approved in writing by Declarant as to exterior design, size, height, type of construction, location and relation to surrounding structures and topography, including grading, drainage and ground cover. If Declarant fails to approve or disapprove within thirty (30) days after receipt of complete and detailed plans and specifications, approval shall not be required and this Article will be deemed to have been fully complied with. Development Guidelines for Gateway Place have been prepared by Declarant, and may be amended or waived by Declarant from time to time, to inform individual owners of the established standards which will be applied in approving or disapproving all proposed improvements under this Article IV.

Section 2. City Compliance. Declarant and all Owners shall observe rules of the City of Missoula in regard to placement of any Structure or other improvement on any Lot.

ARTICLE V

GENERAL RESTRICTIONS AND COVENANTS

Section 1. General Purposes. This Declaration is made for the purpose of creating and keeping the Property desirable, attractive, beneficial and suitable in architectural design, materials and appearance, and for the mutual benefit and protection of the Owners of the Lots.

Section 2. Uses and Zoning. All Lots within the Property shall be used in conformity with the zoning restrictions of the City of Missoula, Missoula County, Montana.

Section 3. Construction. All construction on or within the Property shall be diligently prosecuted to completion and shall in any event be completed within six (6) months of commencement unless specific extension is given by Declarant. No construction materials shall at any time be placed or stored so as to impede, obstruct or interfere with pedestrian or vehicular traffic. Natural drainage must not be blocked or filled.

Section 4. Landscaping. Within one hundred twenty (120) days of the construction or placement of a Structure upon any Lot, all portions of such Lot not covered by improvements shall be landscaped or maintained in accordance with the Development Guidelines and the approvals by Declarant under Article IV. The Owner of each Lot shall maintain, replace dead or dying, irrigate, and cultivate all trees, hedges, shrubs, flowers, grass or other ground cover on its respective Lot so that the same are healthy, not unsightly nor a detriment to adjacent Lots. All landscaping must be designed to preserve and protect the area to prevent erosion.

Section 5. Unused Land. All unused land area that is planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, stored material, rubbish and debris.

Section 6. Trash, Garbage, Stockpiles, Etc. No trash, garbage or other refuse or inventory or stockpiles or wrecked automobiles, excluding a lumber yard, shall be maintained on any Lot without adequate fencing or screening from public view and protected from disturbance, all of which shall be approved by the Declarant. All rubbish, trash, garbage and all other waste materials shall be stored in containers of metal, plastic or other material which has a sufficiently tight fitting lid to

prevent the escape of odors or the attraction of flies or other vermin.

Section 7. Flammable, Caustic or Toxic Liquids. All flammable, caustic and toxic liquids in excess of fifty-five (55) gallons shall be maintained in underground storage approved in advance by the Declarant, and no discharge of any flammable, caustic or toxic materials shall be allowed which infiltrates groundwater or surface water in the area. Each Owner shall comply with all governmental regulations applicable to flammable, caustic and toxic materials.

Section 8. Industrial Waste. All industrial waste shall be subject to such pretreatment as may be required by the Missoula City Engineers, and Missoula Health Department or other agency.

Section 9. Fire and Casualty Damage. Any Structure damaged by fire or other casualty must be removed from the Property or repairs commenced within thirty (30) days unless an extension of time for such removal or repair is granted by the Declarant. Any damaged Structure not so removed or repaired may be removed and stored at the Owner's Expense.

Section 10. Easement Reservation. Declarant shall have and hereby does reserve the right to locate, install, erect, construct, maintain, use or authorize the location, installation, erection, construction, maintenance and use of drains, sewers, electrical lines, telephone lines, rail spur track lines and other utilities and to give or grant a right-of-way or easement no more than twenty (20) feet in width over, on or under along the perimeter of any Lot; provided, however, any disturbed portion of the Lot as a result of exercise of the easement shall be restored as nearly as practical to its condition prior to exercise of the easement rights under this Section 10, at no cost to the Lot Owner. In addition, the Property is subject to the easements and rights-of-way for roads and rail lines that show on or are described on any recorded plat of the Property.

Section 11. Nuisance. No unreasonable noise or noise in excess of governmental standards, disturbances of the peace or other noxious or offensive activity shall be permitted, conducted or carried out upon any Lot.

Section 12. Insurance Rates. No Owner shall permit nor suffer any activity or failure to act upon their respective Lots which will increase the rate of insurance upon surrounding Lots or which will obstruct or interfere with the rights of other Owners.

Section 13. Underground Utilities. All exterior wiring or other utilities upon said Property that may lead to or from any Structure thereto shall be buried underground.

Section 14. Parking. All present and future vehicle parking including trucks, trailers, employee and visitor parking shall be provided on the Property and shall comply with all provisions of the applicable Missoula City Zoning Regulations. All parking areas are to be paved to provide dust free all-weather surfaces with asphalt, concrete or other material approved by Declarant other than gravel.

Section 15. Effect and Duration of Covenants. The covenants, conditions and restrictions of this Declaration shall run with the land and shall be binding upon each Lot within the Property and each Owner therein, his or its heirs, successors, representatives and assigns, shall continue in full force and effect for a term of ten (10) years from the date this restated Declaration is recorded, after which this Declaration shall be automatically extended for successive periods of ten (10) years unless otherwise terminated or modified under Section 16 below.

Section 16. Amendment or Termination. The conditions, restrictions and covenants contained in this Declaration shall not be waived, altered, abandoned, terminated or amended in whole or in part except by written consent duly recorded in the office of the Clerk and Recorder of Missoula County, Montana, of the Owners representing at least two-thirds of the Property (based on square footage). The Declarant reserves the right to grant variances to any of the provisions of this Declaration where in its discretion it believes the same to be necessary and believes the same will not be injurious to the rest of the Property, except that no variance affecting roads, sidewalks, landscaping, Lot size or other such variance will be granted by the Declarant without prior written approval, where required by Code, by the appropriate City officials.

ARTICLE VI

ANIMALS AND LIVESTOCK

No chickens, swine, poultry, goats, horses, livestock or similar animals or fowl shall be raised, kept or cared for on any Lot, except under the immediate care of a veterinarian.

ARTICLE VII

ENFORCEMENT

Section 1. By Owners. All conditions, restrictions and covenants contained in this Declaration shall bind and inure to

the benefit of and be enforceable by the Declarant, its successors, personal representatives and assigns, and/or by the Owner or Owners of any Lot(s) within the Property. Any Owner of any Lot may institute and prosecute any proceeding at law or in equity against any person, firm or corporation violating or threatening to violate any of the conditions, covenants, or restrictions herein contained. Any such action may be maintained for the purpose of preventing a violation of or to recover damages or obtain specific performance for the violation or for both such purposes. The failure of Declarant, its successors or assigns, or of any Owner of any Lot to enforce any of the conditions, restrictions or covenants herein contained shall in no way be deemed a waiver of the right to enforce such conditions, restrictions or covenants thereafter against any party. Nothing contained herein shall be construed as preventing the application of any remedy given by law against public or private nuisance. The remedies herein provided shall be in addition to any other remedy now or hereafter provided by law.

Section 2. Entry for Maintenance. If any Owner fails to maintain, replace, irrigate and/or cultivate landscaping on its respective Lot as required by Section 4 of Article V, then Declarant and/or any other Owner(s), after delivery of a 14-day written notice to the Owner which has failed to maintain or replace its landscaping, may enter that Owner's Lot and undertake such maintenance, replacement, irrigation and/or cultivation as necessary to restore and maintain the Property in accordance with Section 4 of Article V. The Declarant or other Owner undertaking such maintenance and replacement shall be entitled to full reimbursement for all costs and fees incurred in undertaking said maintenance and replacement, in addition to any remedy or recovery otherwise provided under this Article VII. The cost of such maintenance and replacement shall, together with interest thereon at 18% per annum or the maximum allowed by law, whichever is less, shall from and after completion of the work be a continuing lien on the Lot which shall run with the land. The Declarant and/or any Owner may bring an action to foreclose the lien against the Lot, in addition to any other remedy provided in this Article VII. The Owner which failed to maintain or replace shall remain liable after any conveyance of its Lot.

Section 3. Fees. The Declarant or any Owner prevailing in an enforcement proceeding under Sections 1 and/or 2 of this Article VII shall be entitled to recover all costs and fees of enforcement, including all reasonable attorneys' fees and court costs.

ARTICLE VIII

SEVERABILITY

Any invalidation of any condition, restriction or covenant herein contained by judgment or order of any court of competent jurisdiction shall in no way affect the validity of the remaining conditions, restrictions or covenants; and said remaining conditions, restrictions, and covenants shall continue and remain in full force and effect. Any condition, restriction or covenant as invalidated shall be deemed separable from remaining conditions, restrictions and covenants herein set forth.

ARTICLE IX

LIABILITY OF DECLARANT

Other than Declarant's obligations under this Declaration as an Owner, which shall be binding on Declarant, Declarant shall have no liability to any Owner or other person, except for Declarant's gross negligence or willful misconduct, for any damages or other relief for its actions or failures to act or for any of the actions or failures to act of any Owner(s) or with regard to any Property covered by this Declaration, including without limitation the issuance or not of building permits or any delays associated with Declarant's authority under Article IV (Architectural Control), Article V (General Restrictions and Covenants), and Article VII (Enforcement). The relationship between the Declarant and the Owners shall be deemed to be that of independent contractors and not that of principal and agent, partnership or joint venture. In addition, the Declarant shall have no liability or obligation under this Declaration to any person or entity except such liabilities and obligations as the Declarant has expressly assumed herein.

ARTICLE X

BINDING EFFECT

By execution of any contract to purchase or acceptance of any deed for any portion of the Property covered by this Declaration, and each successor, heir or assign thereof, as an Owner shall be conclusively deemed to have consented and agreed to all conditions, covenants and restrictions and agreements set forth herein. Any person who shall succeed in any manner to any interest therein by inheritance, decree, conveyance, lease, rental arrangement or by operation of law shall be bound fully by this Declaration.

IN WITNESS WHEREOF, this document has been executed the day and year first above written.

DECLARANT:

A & C VENTURES II, a Washington limited partnership

By ARGUS GATEWAY, INC., a Washington corporation, as its general partner

By [Signature]
Vice President

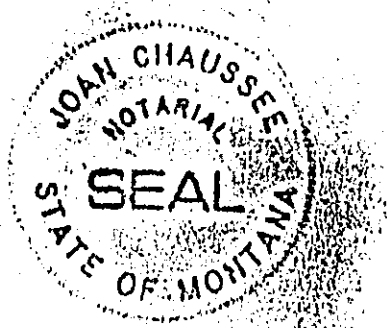
Exhibit A - Description and Map of Property

ATTEST:

By _____

STATE OF MONTANA)
COUNTY OF MISSOULA) ss.

On this 17th day of August, 1991, before me, Joan Chaussee, a Notary Public for the State of Montana, personally appeared John W. Allen, Vice President of the corporation that executed the within instrument and acknowledge to me that such corporation executed the same as the general partner of the limited partnership executing this document.



Joan Chaussee
NOTARY PUBLIC for the State of Montana, residing at Missoula
My commission expires 2-22-92

EXHIBIT A

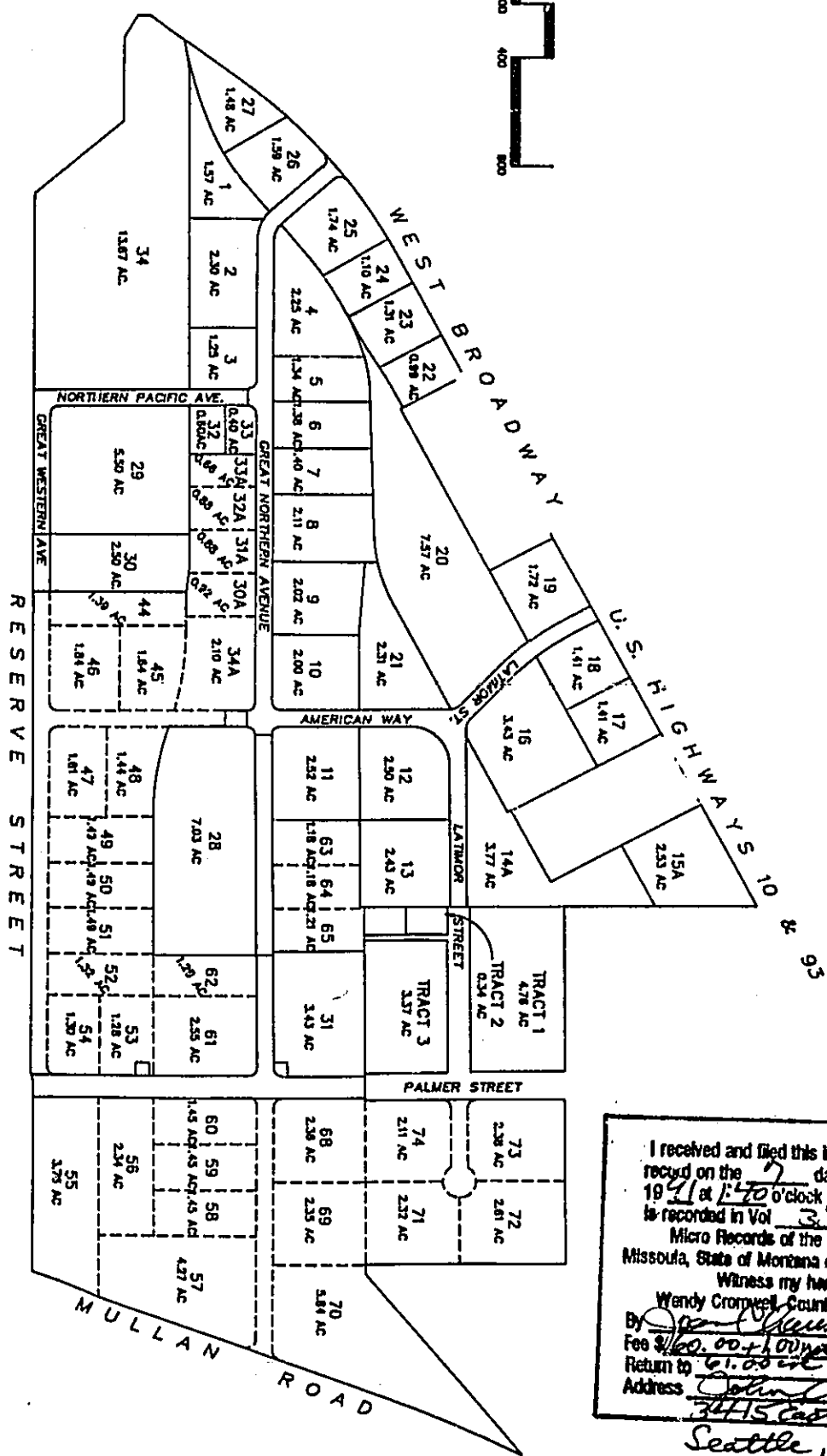
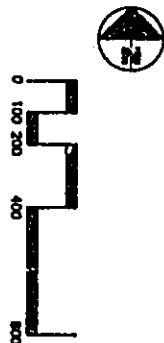
BOOK 334 PAGE 2062

GATEWAY PLACE

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I received and filed this instrument for record on the 7 day of Aug 1991 at 1:40 o'clock P.M. and it is recorded in Vol 334 of Micro Records of the County of Missoula, State of Montana on page 283.
 Witness my hand: Doc: DM
 Wendy Cromwell, County Recorder
 By [Signature] Deputy
 Fee \$100.00 + 1.00 Recording Fee Paid
 Return to 61.00
 Address [Signature]
3475 East St. Andrews
Seattle, WA 98112



SCHERSON & COMPANY
 REGISTERED PROFESSIONAL SURVEYORS
 1000 1/2 1st Avenue, Missoula, MT 59802
 Phone: 464-1111