

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
ONION CREEK, SECTION 100**

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THE STATE OF TEXAS :

COUNTY OF TRAVIS :

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made by Lumbermen's Investment Corporation ("LIC" or "Developer"), a Delaware corporation duly qualified in Texas, and WSP DEVELOPMENT #10, LTD., a Texas limited partnership, and/or its assigns ("WSP"), to be effective on the date hereinafter set forth.

RECITALS:

A. LIC is the owner of Lot 3 of Onion Creek, Section 100, Travis County, Texas, and WSP has acquired Lots 1 and 2 of Onion Creek, Section 100 from Developer, such tracts being described on Exhibit "A", which is attached hereto and incorporated herein by reference (Lot 1, Lot 2 and Lot 3 hereinafter referred to collectively as the "Property.")

B. It is the desire of Developer to protect the existing and future development and improvements within, and character of, the Property and the larger Onion Creek subdivision, at the entry to which the Property is located, as a quality development by subjecting the Property to the covenants and restrictions hereinafter set forth.

ARTICLE I – PROTECTIVE COVENANTS

NOW, THEREFORE, in consideration of the conveyance of Lots 1 and 2 to WSP and the mutual benefits of the easements and restrictions contained in this document, Developer and WSP do hereby impose upon the Property the following covenants, conditions, and restrictions, (collectively, the "Protective Covenants"), which shall be covenants running with the Property and shall be binding upon all parties having or acquiring any right, title of interest therein or any portion thereof, their heirs, executors, administrators, devisees, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE II – EASEMENTS

2.1 Utility Easements. Developer and WSP each hereby agree to grant to the other (in accordance with this Section 2.1) perpetual, nonexclusive, reasonable underground utility easements in, on, under and across their respective portions of the Property, as are reasonably necessary to serve the other's intended development. Such easements shall be in locations and of sizes reasonably acceptable to the granting party. Upon the written request by either Developer or WSP delivered to the other party for the grant of an easement meeting the requirements of this Section 2.1, and at such requesting party's sole cost and expense (including a survey, if necessary), the non-requesting party shall execute a recordable instrument granting such utility easement to the requesting party. No easement shall be created hereunder until an

instrument specifically locating such easement is recorded, it being the intention of the parties hereto not to burden the Property unnecessarily with "blanket" easements.

ARTICLE III – PROTECTIVE COVENANTS

3.1 Permitted Uses. Lots 1 and 2 of the Property shall be used only for office or retail uses (which retail uses may include, without limitation, a Quality Liquor Store [as hereinafter defined] and any restaurant that derives less than fifty percent [50%] of its annual gross revenues from the sale of alcoholic beverages), unless otherwise approved by Developer in its sole discretion. Lot 3 of the Property shall be used only for residential uses. As used herein, the term "Quality Liquor Store" shall mean a liquor store that (a) has no drive-thru, (b) dedicates a minimum of thirty percent (30%) of floor and/or shelf space to the sale of wine, (c) has coolers within the retail portion of the store that occupy no more than ten percent (10%) of the retail floor space, (d) does not sell individual beers or place ice chests or other containers on the floor for the sale of other individual cold beverages, (e) does not place posters or other advertising materials in its store windows, and (f) has quality flooring, wall treatments and lighting in the areas of the store that are open to the public.

3.2 Use Limitations. Notwithstanding the above, no portion of the Property may be used for (i) any activities or purposes which violate or otherwise are contrary to the laws, regulations and ordinances of any governmental authorities with jurisdiction over the Property or its owners ("Governmental Regulations") including without limitation, applicable zoning ordinances and classification(s) of the City of Austin, Texas (when and if applicable to the Property), or any other provisions of this Declaration, or (ii) any of the following uses, directly or indirectly:

a. **Prohibited Uses.** A liquor store that is not a Quality Liquor Store, a cocktail lounge (including a restaurant that derives more than fifty percent [50%] of its annual gross revenues from the sale of alcoholic beverages), bar, disco, bowling alley, pool hall or billiard parlor (other than as an amenity in a restaurant), skating rink, roller rink, amusement arcade (including a restaurant that derives more than ten percent [10%] of its annual gross revenues from video game machines), children's party facility, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store (provided that a Tuesday Morning, Second Looks or similar store is permitted), auction house, flea market, educational or training facility, drug or alcohol treatment facility, probation office, blood bank, sleeping quarters or lodging (except that multifamily housing is permitted on Lot 3), the outdoor housing or raising of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use, an assembly hall, off track betting establishment, bingo parlor or other gambling establishment, any use involving the use, storage, disposal or handling of hazardous materials or underground storage tanks, gas station, car washes (either coin or hand, but occasional use for fund-raising car washes by volunteer or civic organizations will be permitted), coin operated laundries, pay for parking automotive parking lots (as opposed to parking for customers, employees and visitors to retail and office establishments), farms or truck gardens, tattoo or piercing parlors, pawn shops, abortion services, cellular towers or radio antennae (but satellite dishes and

transmission antennae for communication from and to a store or other building on which the dish or antenna is located are permitted), commercial kennels (other than as part of a pet store or veterinary clinic), mobile home or trailer park, or mortuary or funeral home.

b. Fire and Explosive Hazards. Activities involving the storage and utilization of materials or products which are explosive or otherwise decompose by detonation are prohibited, except firearms for the protection of the owner's or occupant's person, family and property, and firearms for sporting or recreational purposes are permitted. The foregoing restriction is not intended to prohibit pool supplies.

c. Liquid or Solid Wastes. No discharge shall be made into the sewage disposal system unless in accordance with the standards and ordinances approved by the City of Austin, Texas (as and when applicable to the Property) and any other Governmental Regulations, which are applicable to the specific use.

d. Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be unreasonably permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants; provided, however that this restriction shall not apply to odors normally associated with the operation of a restaurant, pet store, veterinary clinic or other use permitted under this Declaration.

e. Noise. No exterior speakers (except those used in connection with the operation of a restaurant, bank or other retail establishment with drive-thru service situated on Lot 1 or Lot 2, provided the sound level of the speakers is appropriately loud to serve only drive-thru customers, and such speakers are directed away or appropriately screened from Lot 3 by buildings, landscaping, etc.), horns, whistles, bells or other sound devices (other than the security devices used exclusively for security purposes) shall be located, used or placed on any of the Property.

f. Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon the Property, except that temporary structure necessary for the storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of Developer, such approval to include the nature, size, duration and location of such structure, and not to be unreasonably withheld.

g. Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel aggregate, or earth.

h. Animals. Except in connection with the operation of a veterinary clinic or a retail pet store, no animals or poultry may be kept or raised on the Property without the prior consent of Developer, which said consent may be withheld for any reason.

i. Performance Standards. No portion of the Property or any Improvement, equipment or other personalty on the Property shall be used or occupied in any manner so as to unreasonably create any dangerous, hazardous, injurious, noxious, or otherwise offensive or objectionable noise, smoke, dust, odor (excluding odors normally associated with the operation of a restaurant, pet store, veterinary clinic or other use permitted under this Declaration), fumes or other form of air pollution, liquid or solid refuse or waste, or other substance, condition, or element in such a manner or in such amount as to substantially affect any enjoyable use of premises within the Property. All uses of the Property shall be conducted and operated in conformance with the applicable ordinances and regulations for the City of Austin, Texas (if and when applicable to the Property) and other applicable Governmental Regulations.

j. Zoning Ordinance Restrictions. In addition to the foregoing, the Property shall not be used for any use prohibited by the Zoning Ordinance for the Property adopted by the City Council of the City of Austin on September 30, 2004 (whether or not such ordinance may hereafter be amended, vacated or modified).

k. Additional Shopping Center Restrictions. Lots 1 or Lot 2 of the Property shall not be used so as to violate the following provisions (as the terms used in these provisions are defined in the Code of Ordinances of the City of Austin in effect on September 30, 2004):

- i. BUSINESS OR TRADE SCHOOL: Shall be limited to no more than 5,000 Sq. Ft. in size per individual tenant.
- ii. FOOD SALES: Shall be limited to no more than 5,000 Sq. Ft. in size per individual tenant. This provision does not apply to restaurants.
- iii. GENERAL RETAIL SALES (GENERAL): Shall be limited to uses other than automotive parts and accessories. This provision restricts auto parts stores.
- iv. MEDICAL OFFICES: Shall be limited to no more than 6,000 Sq. Ft. per individual tenant.
- v. PET SERVICES: Shall exclude the overnight boarding services for animals not owned by the tenant.
- vi. THEATER: Shall be limited to no more than 5,000 Sq. Ft. in size per individual tenant.
- vii. COLLEGE AND UNIVERSITY FACILITIES: Shall be limited to no more than 5,000 Sq. Ft. in size per individual tenant.
- viii. PRIVATE PRIMARY EDUCATIONAL FACILITIES: Shall be limited to no more than 4,000 Sq. Ft. in size per individual tenant.

3.3 Minimum Setback Lines. Any Improvement (as hereinafter defined) constructed upon any portion of the Property shall comply with all valid applicable Governmental Regulations and the restrictions set forth herein. As used in this

Declaration, the term "Improvement" shall mean and include all buildings, structures, parking areas, loading areas, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes and signs; it shall not include groundcover, shrub or tree replacements. In addition, no building structure of any kind nor any part thereof shall be placed on Lots 1 or 2 within twenty-five feet (25') of the boundary line of such lots and Lot 3 of the Property; provided, however, that the following Improvements are expressly excluded from the setback requirements above: structures below and covered by the ground; ponds; walkways, parking areas, driveways and curbing; planters, walls or hedges not to exceed six feet (6') in height; fences required pursuant to Section 5.1 hereof, and landscaping.

3.4 Impervious Cover, Floor Area Ratio and Building Coverage. The Property is subject to that certain single site development permit issued by the City of Austin on June 18, 2004, and identified as SP 03-0405-C (the "Site Plan"). So long as the Site Plan and this Declaration shall be in effect and cover all of the Property, the parties agree as follows:

a. As used herein, the terms "Impervious Cover", "Floor Area Ratio" and/or "Building Coverage" shall have the meanings ascribed to them in the City of Austin Land Development Code. Except as otherwise herein provided with respect to Remaining Entitlements (as hereinafter defined), (i) the total Impervious Cover, Floor Area Ratio and/or Building Coverage on Lots 1 and 2 of the Property in the aggregate shall not exceed that shown on the Site Plan without the prior written consent of the owner(s) of Lot 3, and (ii) the total Impervious Cover, Floor Area Ratio and/or Building Coverage on Lot 3 of the Property shall not exceed that shown on the Site Plan without the prior written consent of the owner(s) of Lot 1 and Lot 2. As of the date of this Declaration, the total Impervious Cover, Floor Area Ratio and/or Building Coverage on Lots 1 and 2 of the Property in the aggregate permitted by the Site Plan is 145,672 square feet, and the total Impervious Cover, Floor Area Ratio and/or Building Coverage on Lot 3 of the Property permitted by the Site Plan is 120,418 square feet.

b. As of the date of this Declaration, if additional Impervious Cover, Floor Area Ratio and/or Building Coverage is available (the "Remaining Entitlements") for additional development on the Property (i.e., the Site Plan uses less than the maximum Impervious Cover, Floor Area Ratio and/or Building Coverage allowed on the Property), then the parties agree that any such Remaining Entitlements shall be allocated to any particular portion of the Property by multiplying such Remaining Entitlements by a fraction, the numerator of which shall be the number of square feet in such particular portion of the Property, and the denominator of which shall be the number of square feet in the Property. No applications for permits for the construction of improvements shall be made for any portion of the Property that, if issued, would prevent or restrict the owner(s) of the remaining portion of the Property from constructing improvements on such remaining portion of the Property equal to the sum of (i) the improvements permitted as of the date of this Declaration as shown on the Site Plan on such remaining portion of the Property, and (ii) the additional improvements, if any, permitted under the allocation of the Remaining Entitlements to such remaining portion of the Property existing as of the effective date of this Declaration.

3.5 Height Limitation. No building Improvement exceeding thirty-five feet (35') or one (1) story in height may be erected upon the Property; provided, however, that architectural tower and roof features may be up to forty-five feet (45') in height (measured from the ground floor elevation of the building).

3.6 Parking Areas. Parking areas shall be at minimum curbed and paved and reasonably screened from Lot 3 by use of berms, trees, landscaping or other means acceptable to Developer. Such parking shall comply with all applicable zoning ordinances for the City of Austin, Texas (as and when applicable to the Property), and other applicable Governmental Regulations.

3.7 Driveways. All driveways shall have a minimum width of twelve feet (12') and a maximum width of thirty-five feet (35') and shall otherwise comply with the applicable zoning ordinances for the City of Austin, Texas (as and when applicable to the Property), and other applicable Governmental Regulations.

3.8 Signs. All signs on any building improvements constructed on Lot 1 and Lot 2 of the Property must be approved by Developer in writing prior to installation or alteration, such approval not to be unreasonably withheld; provided, however, that Developer acknowledges that any proposed building sign shall be deemed to be approved by Developer if such sign meets the applicable sign criteria set forth in Exhibit "B" which is attached hereto and incorporated herein by reference, or a successor sign criteria adopted by Developer and the owner of Lot 1 (as applicable, the "Building Sign Criteria Exhibit"). As used in the Building Sign Criteria Exhibit, the term "Landlord" shall mean WSP and its successors and assigns, the term "Tenant" shall mean any occupant of any building improvement situated on Lot 1 or Lot 2 of the Property, and the term "shopping center" shall mean Lot 1 and Lot 2 of the Property and any improvements situated thereon. Developer shall have the right to enter onto Lot 1 or Lot 2 of the Property to remove, at the owner's expense, any building sign erected or altered without such written or deemed approval, and the right to enjoin the installation or alteration of a sign which does not have written or deemed approval. The design and location of any freestanding monument or pylon sign (a "Freestanding Sign") installed on Lot 1 and/or Lot 2 must be approved by Developer in writing prior to the installation of any such Freestanding Sign, such approval not to be unreasonably withheld. Developer and WSP agree that one (1) Freestanding Sign may be installed on Lot 1 and that one (1) Freestanding Sign may be installed on Lot 2. The height of any Freestanding Sign on Lot 1 or Lot 2 shall not exceed the greater of (a) twenty-five feet (25'), or (b) the Adjacent Property Maximum Sign Height (as hereinafter defined). As used herein, the term "Adjacent Property Maximum Sign Height" shall mean the maximum permitted height, as of January 1, 2005, of any pylon or freestanding sign constructed (or permitted to be constructed) on the property described in Exhibit "C" which is attached hereto and incorporated herein by reference (the "Adjacent Property"). In no event will any Freestanding Sign higher than twenty-five feet (25') be installed on Lot 1 or Lot 2 prior to January 1, 2005. The design of any sign panels installed on any Freestanding Sign must be approved by Developer in writing prior to the installation of any such sign panels, such approval not to be unreasonably withheld; provided, however, that if, after the date hereof, Developer and WSP agree on criteria for the Freestanding sign panels (the "Panel Criteria"), Developer and WSP shall record

an amendment to this Declaration attaching such Panel Criteria (the "Panel Criteria Exhibit") and providing that any proposed Freestanding sign panel shall be deemed to be approved by Developer if such sign panel meets the applicable sign criteria set forth in the Panel Criteria Exhibit. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, Developer hereby acknowledges that Developer (a) shall have no approval rights over (i) the design or location of any directional or other traffic control signage, or (ii) any "For Sale", "For Lease" or other signs related to the marketing of all or any portion of Lot 1 or Lot 2 of the Property, and (b) has approved the location(s) of all Freestanding Signs indicated on the Site Plan.

3.9 Landscaping. Landscaping shall be required to be substantially completed on a given Lot contemporaneously with completion of other Improvements thereon, but in no event later than sixty (60) days after issuance of a certificate of occupancy or completion of buildings, whichever shall first occur, and all landscaping shall conform to a landscaping plan approved by Developer and drawn by a registered landscape architect and shall otherwise comply with the applicable zoning ordinances for the City of Austin, Texas and other applicable Governmental Regulations. Factors to be considered by Developer may include, without limitation, whether the plans meet the following criteria:

- a. Provide automatic sprinkling systems for all landscaped areas.
- b. Do not include landscaping or other Improvements which obstruct sight lines at street or driveway intersections.
- c. Permit reasonable access to public and private utility lines and easements for installation and repair.
- d. Provide that all setback areas will be covered with grass, shrubs, flowers and other ground cover.

Notwithstanding the foregoing or anything to the contrary contained in this Declaration, Developer hereby acknowledges that Developer has approved the landscaping for the Property as described and/or depicted in the Site Plan.

3.10 Screening. No outdoor storage or display of material or products shall be permitted other than (a) the temporary storage of construction materials and equipment; (b) the location of docks, tanks, trailers, equipment, dumpsters, drum storage, shipping and receiving areas, but only so long as such items are reasonably screened from Lot 3 and all public roads and rights-of-way immediately adjacent to and at a level not more than ten feet (10') above the Property; (c) storage tanks, cooling towers, air treatment facilities and support facilities normally segregated from primary structures; (d) the display and/or sale of merchandise by any occupant of Lot 1 or Lot 2 on the west-facing (i.e. toward IH-35) and north-facing sidewalk areas adjacent to such occupant's premises; and (e) on a west-facing or north-facing patio associated with a restaurant; provided that each individual patio on Lot 1 shall not be larger than 1,500 square feet, and any patio on Lot 2 shall not be larger than 2,500 square feet. Storage areas, air conditioning and heating equipment, incinerators, storage tanks, trucks based on the

premises, roof objects (including without limitation fans, vents, cooling towers, skylights and all roof mounted equipment which rises above the roof line), trash containers and treatment and maintenance facilities shall either be housed in closed buildings or otherwise reasonably screened or not visible from Lot 3 or immediately adjacent public roads and rights-of-way. Such screening shall (x) include landscaping or permanent fences of solid wood or masonry; provided, however, that screening for any pond located on Lot 1 and Lot 2 may consist of (i) black vinyl chain link fence (with or without slats), and/or (ii) wax myrtles (or other non-deciduous trees providing top-to-ground foliage) of at least eight feet (8') in height (any such trees to be located as shown on the August 16, 2004, revision of Land Design Partners' Job 40136-04 drawing), (y) be located as far from property lines as reasonably possible unless otherwise approved by Developer, and (z) comply with the applicable zoning ordinance for the City of Austin, Texas and other applicable Governmental Regulations. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, Developer hereby acknowledges that (i) those items required by this Section to be screened for which the design of the screening is shown on the Site Plan shall be deemed to be reasonably screened or not visible from Lot 3 and all public roads and rights-of-way so long as the screening for the Property as described and/or depicted in the Site Plan is constructed or installed, and (ii) minor changes to such approved screening shall not require Developer's approval. Any and all utility lines (including those for water, wastewater, gas, electricity and telephone) not within a building shall be constructed or placed and maintained underground.

3.11 Loading Docks and Areas. Loading docks and areas shall not be located on the street side of any building or structure, except that, with respect to Lot 1 or Lot 2, Developer may approve such location in writing (subject to express screening requirement below) on one street side of corner buildings or structures. Loading areas may not encroach upon setback areas, except that, with respect to Lot 1 or Lot 2, Developer may approve such encroachment in connection with the approval of street side loading areas for corner buildings as described in the preceding sentence. Loading docks and areas shall be reasonably screened from Lot 3 and immediately adjacent properties, public roads and rights-of-way, and shall comply with the applicable zoning ordinance for the City of Austin, Texas (as and when applicable to the Property) and other applicable Governmental Regulations. The trash receptacles commonly known as "dumpsters" shall not be emptied between the hours of 10:00 p.m. and 7:00 a.m. local time. The purpose of this provision is to minimize noise during the time periods in which it is anticipated that residents of Lot 3 might be sleeping. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, Developer hereby acknowledges that Developer has approved the location of the loading docks and areas on the Property as described and/or depicted in the Site Plan.

3.12 Exterior Illumination. Illumination will be required on all exterior walls facing streets or proposed streets and for all parking areas and walkways between buildings and parking areas. Notwithstanding anything to the contrary contained herein, the intensity of such illumination may be that which is prudent and standard for similar shopping centers in Austin, Texas. In addition, all light fixtures providing exterior illumination within the Property, whether mounted on buildings or on light poles, pylons or other fixtures, must be designed so as not to be directly visible from adjacent areas

and so as not to create a direct glare into any adjoining streets or properties. Without limiting the generality of the foregoing provision, the light fixtures providing illumination for the rear of the buildings on Lots 1 and 2 shall be either mounted on the buildings and of the design known as "cut off fixtures" designed to prevent light transmission to the adjacent residential area on Lot 3; or shall be mounted on poles on or near the common property line of Lot 3 and Lot 1 and Lot 3 and Lot 2 and directed so as to illuminate only Lot 1 or Lot 2 and not to allow light transmission to the adjacent residential areas of Lot 3.

3.13 Construction Standards.

a. An aggregate of seventy-five percent (75%) of the building facades and the building sides that face public roads and rights-of-way must be faced with masonry materials, which may include stone, brick, stucco (provide stucco is not to exceed twenty-five percent [25%] of all masonry materials), EFIS (provided EFIS is not to exceed ten percent [10%] of all masonry materials) or other similar masonry products (excluding cementitious siding, which is prohibited). Windows shall not be glazed or reglazed with mirrored or reflective glass, nor shall reflective film be applied to the interior of any window so as to give a mirrored or reflective appearance from the exterior. Notwithstanding anything to the contrary contained herein, non-reflective window tinting is expressly permitted.

b. Each building or complex of buildings shall have a dumpster or trash compactor on the premises adequate to handle the trash and waste items generated, manufactured, or acquired thereon by such commercial activities. The sorting, handling, moving, storing, removing, and disposing of all such waste materials must be housed or screened in the manner required by Section 3.10 hereof. All facilities and plans for the disposal of wastes other than by public sewage methods (such as shredding, compaction, incineration, reclamation or chemical dissolution) must be approved in writing by Developer, which approval shall not be unreasonably withheld.

c. Any kitchen facility within a clubhouse or like food preparation facility in a multifamily building or complex of buildings on Lot 3 shall contain a water flushing garbage grinder disposal.

d. No excavation shall be made except in conjunction with construction of an Improvement. When such Improvement is completed, all exposed openings shall be back filled and graded and all disturbed landscaping replaced.

e. Once commenced, construction shall be diligently pursued to the end that it may not be left in a partly finished condition any longer than reasonably necessary.

3.14 Duty of Maintenance. Owners and occupants (including lessees) of any part of the Property shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of the Property so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, without limitation, the following which shall be performed in a timely manner:

- a. Prompt removal of all litter, trash, refuse, and wastes.
- b. Mowing of lawns.
- c. Pruning of trees and shrubs.
- d. Watering, fertilization and general care of and maintenance of all landscaping in a healthy attractive condition, free from diseases, pests, weeds and litter, consistent with generally accepted horticultural practices.
- e. Keeping exterior lighting and mechanical facilities in working order and in compliance with the requirements of Section 3.12.
- f. Keeping parking areas, driveways, and roads in good repair.
- g. Complying with all Governmental Regulations.
- h. Striping of parking areas and repainting of Improvements.
- i. Repairing damage and wear and tear to Improvements, and keeping all improvements in good condition and repair and adequately painted.

3.15 Owner's Right to Cure. In the event the owners of any part of the Property default in their obligations and duties under 3.14 or Section 3.16 herein and such default is not cured within thirty (30) days after notice thereof is given to such owners, the owner of any other part of the Property shall have the right to take any and all reasonable actions necessary to cure such default. The person or party who is the owner of such Property at the time the non-defaulting party cures the subject default shall be personally obligated to reimburse the non-defaulting party for any and all actual out-of-pocket costs and expenses incurred by the non-defaulting party in curing the default. Such amount shall be paid within thirty (30) days after notice of the amount is given to such owner and if such amount is not timely paid, such owner shall be obligated thereafter to pay interest thereon at the maximum rate allowed by applicable law, and to pay attorneys' fees and court costs incurred by the owner curing the default in collecting such amount.

3.16 Casualties. In the event of any damage to or destruction of any building or improvement on any portion of the Property, the owner of the affected portion, at its sole option and expense, shall, promptly after such damage or destruction, either (i) repair, restore, or rebuild such building or improvement with reasonable diligence, (ii) raze and demolish such building or improvement (or such part thereof that has been damaged or destroyed), clear the affected area of all debris and thereafter either pave and/or landscape such affected area and keep the same weed-free and clean, or (iii) effectuate any combination of subsections (i) and (ii) of this Section 3.16 as such owner may deem appropriate, so long as the affected area is left in a clean and safe condition.

ARTICLE IV - GENERAL PROVISIONS

4.1 Applicability. Except as expressly set forth herein, each contract, deed, deed of trust, or ground lease which may be hereafter executed with respect to any portion of the Property shall be deemed and held to have been executed, delivered and accepted subject to all of the provisions of this Declaration, including, without limitation, the reservations, restrictions, covenants, conditions, liens and charges set forth herein, regardless of whether or not any of such provisions are set forth in such contract, deed, deed of trust, or ground lease, and whether or not referred to in any such instrument.

4.2 Duration. The Protective Covenants of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Developer, WSP and any other owner of the Property, or portion thereof, and their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the date of filing hereof and ending twenty (20) years from such date. Upon the expiration of such initial term, these Protective Covenants (as amended, if amended), and the enforcement rights relative thereto, shall be automatically extended for successive periods of five (5) years each.

4.3 Enforcement. The Developer, WSP, the Onion Creek Home Owners' Association (as to subsections 3.2(j) and 3.2(k) of this Declaration only), and any other owner of the Property, or portion thereof, at such party's own expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, assessments, and all other provisions set out in this Declaration; provided, however, that failure of the Developer, WSP, the Onion Creek Home Owners' Association (as to subsections 3.2(j) and 3.2(k) only), or such owner to take any enforcement action upon a breach of the Protective Covenants shall not render such party liable in any manner for such failure. Failure of any of Developer, WSP, the Onion Creek Home Owners' Association (as to subsections 3.2(j) and 3.2(k) only), or any such owner to take any enforcement action upon any breach or default of or with respect to any of the foregoing shall not be deemed a waiver of the right to take enforcement action upon any subsequent breach or default.

4.4 Amendments. This Declaration may be amended by the recording in the Official Records of Real Property of Travis County of an instrument executed and acknowledged by (i) the Owner of Lot 3 of the Property at the time of the modification, amendment, or termination; provided, however, that Lumbermen's Investment Corporation (or its successor entity or a successor owner of substantially all of Lot 3) shall be considered the Owner of Lot 3 until a non-profit corporation or other similar entity constituting the homeowners' association for Lot 3 (the "HOA") is created by the filing of its articles of incorporation with the Secretary of State and as otherwise necessary, after which the HOA shall be deemed to be the Owner of Lot 3, and (ii) the owner(s) of the majority of land area contained within all of Lot 1 and Lot 2, setting forth the amendment and stating that each owner signing has approved such amendment.

4.5 Assignment by Developer. The term "Developer" as used herein shall mean Lumbermen's Investment Corporation and its successors (excluding any owner/occupant of any living unit situated on Lot 3 [a "Homeowner"]), and any person;

partnership, corporation or other entity to which Lumbermen's Investment Corporation makes an assignment for the purpose of continuing the development, maintenance or protection of the Property (excluding any Homeowner). The Developer may at any time and from time to time, by instrument filed for record in the Official Records of Real Property of Travis County, Texas, appoint any person, firm or corporation (excluding any Homeowner) as agent and attorney-in-fact to perform any act, function or duty of Developer hereunder, and such power may be effectively revoked only by instrument similarly filed for records.

4.6 Notice. Any notice, approval, consent or other communication required or desired to be given under the Declaration shall be in writing and shall be deemed to have been properly served when (i) delivered in person and receipted for, or (ii) three (3) days after deposit in the United States Mail, certified, return receipt requested, postage prepaid, addressed, if to an owner to the owner's last known address as shown on the records of Developer at the time of such mailing or, if to Developer or WSP, at the following respective addresses:

| | |
|------------|---|
| Developer: | Lumbermen's Investment Corporation 1300 S. MoPac Expressway Austin, Texas 78746 Attention: Mr. Robert Mann |
| WSP: | WSP Development #10, Ltd. 595 Round Rock West Drive, Suite 701 Round Rock, Texas 78681 Attention: Bradley D. Smith |

Such address for Developer and WSP shall be effective unless and until a supplement to this Declaration shall be made and filed in the Real Property Records of Travis County, Texas, specifying notice of a different address for the party filing such supplement (in which event such address specified in such supplement shall be the address, for the purposes of this Section 5.6 for the addressee named in such supplement).

4.7 Severability. Invalidity of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, whether by reason of abandonment, waiver, estoppel, judicial decision or otherwise, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Declaration this the 30 day of September, 2004.

[SIGNATURES AND ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES]

[SIGNATURE AND ACKNOWLEDGMENT PAGE OF DEVELOPER]

Developer:

Lumbermen's Investment Corporation,
a Delaware corporation

By: Robert Mann

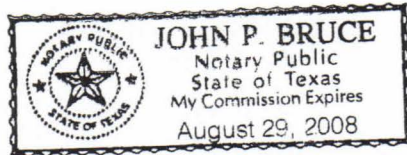
Name: ROBERT MANN

Title: SVP.

THE STATE OF TEXAS :

COUNTY OF TRAVIS :

This instrument was acknowledged before me on the 30 day of September, 2004, by Robert Mann, SR. Vice President of Lumbermen's Investment Corporation.



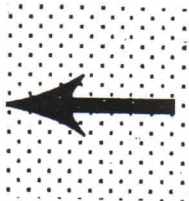
[Signature]
Notary Public in and for
The State of Texas

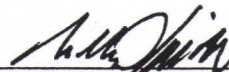
[SIGNATURE AND ACKNOWLEDGMENT PAGE OF WSP]

WSP:

WSP DEVELOPMENT #10, LTD., a Texas
limited partnership

By: WSP Management, L.L.C.,
a Texas limited liability company
Its: General Partner

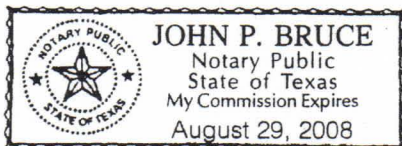



By: 
Name: Bradley D. Smith
Title: Chief Executive Officer

THE STATE OF TEXAS :

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 30 day of September, 2004, by Bradley D. Smith, Chief Executive Officer of WSP Management, L.L.C., a Texas limited liability company, General Partner of WSP DEVELOPMENT #10, LTD., a Texas limited partnership, on behalf of said limited partnership.




Notary Public in and for
The State of Texas

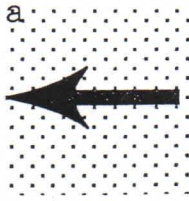


EXHIBIT A

Property

Lot(s) 1, 2 and 3, Block "A", ONION CREEK SECTION 100, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200200221 of the Official Public Records of Travis County, Texas.

EXHIBIT B

Building Sign Criteria Exhibit

Landlord reserves the right to modify these sign criteria at its sole discretion.

I. GENERAL

- A. The purpose of our sign criteria is to inform the Tenant of the framework within which the Landlord will review and approve all signs to be erected in the shopping center by the Tenant. There will be no deviation from or modification of the criteria set forth except by or with the express permission of Landlord. When "General" requirements are mentioned, the Landlord reserves the sole right to interpret them. Each sign will be reviewed on its merits and relationship to the total design of the shopping center. The Landlord's decision is final. **Nothing herein contained shall be construed as limiting the Landlord's right to require modification to signs prior to its approving them or to modify these criteria at its sole discretion.**
- B. Only one (1) sign per Tenant permitted except Tenants with frontage on two (2) sides of building, where Landlord may permit two (2) signs. Sign and mounting shall not stain or discolor building or walkways. Previous mounting holes shall be filled or repaired to match facade upon installation. Sign shall be maintained in good repair and alignment. Sign must be contained within fascia area directly in front of Tenant's space. Sign shall be attached to the fascia as indicated by the attached sign section drawing.
- C. Sign text will be limited to the Tenant's trade name as it appears on the Lease. The Landlord reserves the right to limit use of the Tenant's logo.
- D. Tenant and sign company shall be liable and shall bear all costs for removal and/or correction of signs, sign installation, and damage to the building, by sign installations that do not conform to the criteria.
- E. Tenant shall not be allowed to open for business without approved required signs in place. Failure to open for this reason shall not excuse the Tenant from the performance of its obligations under the Lease.
- F. All signs to be erected in the shopping center by the Tenant shall comply with the applicable ordinances of the City of Austin, Texas.

II. TYPE SIGN PERMITTED

Only individual mounted, illuminated, all metal letters on raceway with plastic faces and bronze jewelite retainers on the front of the building.

III. LETTER STYLE

Letter style shall be any style (upper and lower case), but must be approved by the Landlord in writing, prior to fabrication.

IV. COLORS

The exterior portion of the metal letters shall be #313 Duroodic Bronze. Retainers shall be bronze trim cap jewelite. Raceway shall be painted to match the rock fascia. Paint color shall be provided by Landlord. The plastic face shall be 1/8" thick and the color will be Rohm Hass - "White": #W-7328 or other color(s) to be determined by Landlord and Tenant prior to fabrication.

V. SIZE OF LETTERS

- A. Depth is to be 5".
- B. Sign to consist of individual letters, not to exceed 30" in height, multiple rows of letters not to exceed 30" including space between rows. At no point shall letters be smaller than 12".
- C. All signs shall be not more than 80% of the storefront measured in linear feet and centered on the storefront.
- D. All signs shall be centered vertically on the rock sign fascia.

VI. LETTER CONSTRUCTION

- A. No armor ply or wooden back letters.
- B. No channel lume letters
- C. Fabricated aluminum letters (.062 min.).

VII: RACEWAY CONSTRUCTION

Metal 6" x 8" aluminum raceway painted to match the rock fascia. Color to match the rock fascia which is to be determined at a later date by Landlord. Raceway shall be attached to the bottom of the sign. Raceway shall be located such that connections to the rock fascia shall be through mortar joints only.

- VIII. Neon shall not be a noticeable source of light when sign is illuminated, 6500 degrees white in color, 15MM tubing using 30MA transformers. Only illuminated signs will be permitted on sign fascia.

IX. INSTALLATION

All letters will be individually mounted on raceway and grounded with flexible conduit to meet U.L. standards. All letters must be installed with hidden rust proof hardware. No exposed wiring permitted.

Secondary wiring shall be enclosed with flexible conduit to meet National Electrical Code. Supply to the raceway shall be through a hole drilled through the sign fascia and attached to the letter of word.

X. TRANSFORMERS

Transformers shall be all copper wound "GE/France" or equal with no more than 50' of neon loaded per transformer. All transformers should be grounded.

XI. THE FOLLOWING ARE PROHIBITED:

- A. No exterior signs are to be placed on building wall elevation.
- B. No portable signs are permitted without express written permission from Landlord.
- C. No window signs are allowed without the expressed written approval of the Landlord.
- D. Flashing, rotating, or moving signs are prohibited.
- E. Box, cube, or panel signs are prohibited.
- F. No vacuum formed plastic or injection molded plastic signs.
- G. Sign company name shall be displayed on small letters on the bottom of the aluminum wireway only.

XII. SECONDARY SIGNAGE

Entrance Door Graphics:

Address numbers shall be centered above entry door. Numbers shall be 4" white vinyl die cut, Helvetica medium.

Rear Door Graphics:

All rear doors shall be identified with suite number. Numbers shall be 4" white vinyl die cut, Helvetica medium.

For all entrance door and rear door graphics, all signs shall be installed by Landlord at Tenant's expense.

XIV. SIGN COMPANY SUBMITTALS

Prior to fabrication, three complete sets of 11"x 17" (min.) drawings must be submitted to the Landlord for approval showing (see sample submittal in Tenant Finish Handbook):

A. Building Elevations

- 1. Drawn to accurate scale of $3/8" = 1'-0"$.
- 2. Elevation of building side/storefront requiring signage.
- 3. Leased store width dimensions.
- 4. All signage heights, lengths, and thicknesses.
- 5. Dimensioned location of signage in relation to plane of fascia, reveals, and other building projections.
- 6. Signage intended for mounting on glass, brick, rock, exterior insulation and finish system, parking signs, walls and/or doors.
- 7. Interior signs intended to be viewed from outside.

B. Building Cross Section

- 1. Drawn to accurate scale of $3/4" = 1'-0"$.
- 2. Fixed location (vertical and horizontal dimensions) of sign in relation to facade reveals and projections, and projections of the letter or signage from the building facade.

C. Sign Sections

1. Drawn to accurate scale of $1\text{-}1/2" = 1'\text{-}0"$.
2. Sign materials.
3. Signage/letter heights, thicknesses, and colors.
4. Raceway size, color and paint formula/pms number used. Provide color sample on 3"x 3" (min.) aluminum material.
5. Sign mounting method.
6. Electrical services and connections.

EXHIBIT C

Adjacent Property

Lot 1 and Lot 2, ONION CREEK SECTION 4-E, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 87, Page 70D of the Plat Records of Travis County, Texas.