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AUDREY KOLTISKA, SHERIDAN COUNTY CLERK

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# DECLARATION OF COVENANTS FOR WHITNEY PLAZA

**OCTOBER 2007**

## TABLE OF CONTENTS


**RECITALS** ..... **1**
**SUBMISSION OF REAL ESTATE** ..... **1**
**ARTICLE I** ..... **1**
**DEFINITIONS** ..... **1**
A. "Association" ..... 1
B. "Owner" ..... 1
C. "Property" ..... 1
D. "Common Area" ..... 1
E. "Roads and Easements" ..... 1
F. "Lot" ..... 2
G. "Architectural Control Committee ..... 2
H. "Common Expenses" ..... 2
**ARTICLE II** ..... **2**
**ACCEPTANCE OF COVENANTS** ..... **2**
**ARTICLE III** ..... **2**
**COMMON AREA** ..... **2**
A. Common Areas. ..... 2
B. Written Notice ..... 3
C. Suspension ..... 3
D. Association Rules and Regulations ..... 3
E. Delegation of Use. ..... 3
**ARTICLE IV** ..... **4**
**ADMINISTRATION** ..... **4**
A. Governing Instruments ..... 4
B. Membership. ..... 4
C. Class of Members ..... 4
**ARTICLE V** ..... **4**
**COVENANT FOR COMMON AREA MAINTENANCE RESPONSIBILITIES** ..... **4**
A. Covenant for Maintenance of Common Area ..... 4
B. Insurance. ..... 4
C. Delegation. ..... 4
**ARTICLE VI** ..... **5**
**ASSESSMENT FOR COMMON EXPENSES** ..... **5**
A. Personal Obligation of Owners for Assessments ..... 5
B. Amount of Assessments ..... 5
C. Notice of Assessments. ..... 5
D. Destruction of Common Areas ..... 5
**ARTICLE VII** ..... **5**
**LIEN FOR NONPAYMENT OF ASSESSMENTS** ..... **5**
A. Effect of Nonpayment of Assessments ..... 5
B. Evidence of Lien ..... 6
**ARTICLE VIII** ..... **6**
**OWNER'S OBLIGATION FOR PAYMENT OF ASSESSMENTS** ..... **6**
A. Personal Obligation to Pay Assessments ..... 6
B. Liability of Successor ..... 6
C. Statement of Status of Assessments ..... 7

**ARTICLE IX** ..... **7**
**LAND USE AND BUILDING TYPE** ..... **7**
A. Outlots ..... 7
B. Corporate Use Lot ..... 7
C. Attached Mixed Use Lots Block One ..... 8
D. Attached Mixed Use Lots Block Two ..... 11
E. Live Work Block Two Lots 3-10 ..... 13
F. Live Work Lots Block Two Lots 11-14 ..... 17
G. Detached Residential Block 2 Lots 15-21 ..... 19
H. Attached Residential Block 2 Lots 22-32 ..... 21
**ARTICLE X** ..... **24**
**OTHER PROVISIONS RELATING TO THE CONSTRUCTION OF IMPROVEMENTS** ..... **24**
A. Setbacks and Location. ..... 24
B. Roofs ..... 24
C. Sanitation and Appearance of Lots During Construction ..... 24
D. Architectural Design ..... 24
E. Site Planning ..... 25
F. Structures ..... 25
**ARTICLE XI** ..... **25**
**USE RESTRICTIONS AND RULES** ..... **25**
A. Permitted Uses ..... 25
B. Drainage ..... 25
C. Condition of Property ..... 25
D. Yard Maintenance and Lawn Seeding ..... 25
E. Appearance of Lots ..... 25
F. Signs ..... 26
G. Animals ..... 26
H. Clothes Lines ..... 26
I. Exterior Antennae ..... 26
J. Re-subdivision ..... 26
K. Awnings & Fences ..... 26
L. Temporary Structures – Trailers ..... 26
M. Parking. ..... 26
N. Emissions ..... 26
O. Window Coverings ..... 27
P. Motor Vehicle Repair and Towing of Vehicles ..... 27
**ARTICLE XII** ..... **27**
**ARCHITECTURAL REVIEW** ..... **27**
A. Architectural Control Committee. ..... 27
B. Pre-design Conference. ..... 27
C. Preliminary Design Submittal ..... 27
D. Final Design Submittal ..... 28
E. Final Design Review ..... 29
F. Construction Requirements ..... 29
G. Membership to the Committee ..... 30
H. Adoption of Guidelines ..... 30
I. Non-Waiver ..... 30
J. Estoppel Certificate ..... 30
K. Variances ..... 31

**ARTICLE XIII** ..... **31**
**RESERVED RIGHTS** ..... **31**
A. Reserved Whitney Benefits Rights and Additional Reserved Rights ..... 31
B. Reserved Whitney Benefits Rights Concerning Association. ..... 31
**ARTICLE XIV** ..... **31**
**ADDITIONAL PROVISIONS** ..... **31**
A. Covenants to Run With the Land ..... 31
B. Delinquency ..... 32
C. Association's Performance of Owner's Duties ..... 32
D. Legal Proceedings ..... 32
E. Imposition of Charges and Fees ..... 33
F. Cumulative Remedies ..... 33
G. Condemnation of Common Area ..... 33
H. Invalidation ..... 33
I. LIABILITY ..... 33

TABLE OF FIGURES

Figure 1 AMU - 4 Story- Uses..... 9
Figure 2 AMU – Setbacks..... 9
Figure 3 AMU – Components..... 10
Figure 4 AMU – Vertical Proportions..... 10
Figure 5 B2-AMU - 3 Story Uses..... 11
Figure 6 B2 - AMU - Setbacks .....12
Figure 7 B2 - AMU – Components..... 12
Figure 8 B2 - AMU – Vertical Proportions..... 13
Figure 9 Live-Work Allowed Uses..... 14
Figure 10 Live-Work Setbacks..... 14
Figure 11 Variance..... 15
Figure 12 LW-Components, 3-10..... 15
Figure 13 LW-Vertical Proportions, 3-10..... 16
Figure 14 LW-Parking, 3-10..... 16
Figure 15 LW-Allowed Uses 11-14..... 17
Figure 16 LW-Setbacks 11-14..... 18
Figure 17 LW-Components 11-14..... 18
Figure 18 LW-Proportions 11-14..... 19
Figure 19 LW-Parking 11-14..... 19
Figure 20 DR-Allowed Uses 15-21..... 20
Figure 20 DR-Allowed Uses 15-21..... 20
Figure 21 DR- Components 15-21..... 20
Figure 22 DR- Proportions 15-21..... 21
Figure 23 AR- Allowed Uses 22-32..... 22
Figure 24 AR- Setbacks 22-32..... 22
Figure 25 AR- Components 22-32..... 23
Figure 26 AR- Proportions 22-32..... 23
Figure 27 AR- Parking 22-32.....24

# DECLARATION OF COVENANTS FOR WHITNEY PLAZA

THIS DECLARATION of Protective Covenants ("Declaration") is made by Whitney Benefits, a Wyoming nonprofit corporation and Sheridan Ice, LLC, a Wyoming limited liability company (hereafter collectively referred to as "Covenantors").

## RECITALS

Covenantors are the owners of all of the lands included in Whitney Plaza, a subdivision to the City of Sheridan depicted on the Final Plat of Whitney Plaza (the "Subdivision Plat") recorded in the Office of the County Clerk of Sheridan County, Wyoming. The lands included in the plat are Lots 1 through 8 of Block 1 and Lots 1 through 32 of Block 2 and Outlots A through M, all located in Whitney Plaza in the City of Sheridan.

## SUBMISSION OF REAL ESTATE

Covenantors declare that, in addition to all applicable governmental laws and ordinances, the following terms, covenants, conditions, easements, liens, reservations, restrictions, uses, locations, and obligations are adopted and shall be deemed to run with Whitney Plaza, as hereafter defined, and shall be a burden and benefit to any person or persons acquiring or owning an interest in Whitney Plaza and any improvements thereon, and their successors and assigns.

## ARTICLE I

DEFINITIONS

A. "Association" shall mean the Whitney Plaza Owners Association, a Wyoming nonprofit corporation, its successors, and assigns. Members of the Association shall be the Owners of Lots within the Property.

B. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title of any Lot which is part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

C. "Property" or "Whitney Plaza" shall mean Lots 1 through 8 of Block 1 and Lots 1 through 32 of Block 2 and Outlots A through M, all located in Whitney Plaza, a subdivision of the City of Sheridan, and such other lands as may hereafter be added to or brought within this Declaration and/or the jurisdiction of the Association by amendment of this Declaration.

D. "Common Area" shall mean all real property within the Property owned or controlled by the Association for the common use and enjoyment of the Owners, and shall include, Outlot A and Outlots C through M, inclusive, of Whitney Plaza. Outlot B is not part of the Common Area.

E. "Roads and Easements" shall mean all roads, streets and easements shown on the recorded plat of the Whitney Plaza.

F. "Lot" shall mean and refer to any lot shown on the final plat of Whitney Plaza, together with any improvements thereon, with the exception of the Common Area.

G. "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee, as hereafter defined.

H. "Common Expenses" shall mean all costs and expenses associated with the Common Areas, including without limitation the following: maintenance, insurance, taxes, repair, operations, debt repayment, management and administration expenses, legal and accounting expenses, management fees, costs and expenses to construct and maintain improvements on the Common Area, and other expenses declared by the provisions of this Declaration or by the Bylaws and Articles of Incorporation of the Association to be Common Expenses or assessable against Owners of Lots, and all sums lawfully assessed to maintain, administer, and operate the Common Area by the Association or to construct improvements on the Common Area.

## ARTICLE II

ACCEPTANCE OF COVENANTS

A. Each Owner, as grantee in any deed or conveyance of an ownership interest, is and shall be subject to this Declaration by acceptance of a deed or other instrument conveying title, or the execution of a contract for purchase. Every Owner shall be deemed to have accepted this Declaration and each and all of the covenants and the agreements herein contained, and also the jurisdiction, rights and powers of the Association. By such acceptance, each Owner has and shall continue to covenant, consent and agree to and with the Association and to and with the grantees and subsequent Owners of each of the Lots within Whitney Plaza to keep, observe, comply with and perform the covenants and agreements of this Declaration.

B. Every person who becomes the legal or equitable owner of any Lot in Whitney Plaza by any means is by the act of acquiring such title or by the act of contracting to acquire such title, obligated to pay the Association the assessments and charges that the Association shall make in accordance with this Declaration.

C. The funds received by the Association shall be used exclusively for the purposes of the Association.

## ARTICLE III

COMMON AREA

A. Common Areas. The Common Area shall be owned, controlled, maintained and operated by the Association for the benefit of the members of the Association subject to the following provisions:

1. The right of the Association to charge reasonable fees and assessments (including attorney's fees relating to the collection of the same) with respect to the maintenance,

use or misuse of the Common Area or any other portion of the Property, or the non-compliance of any Owner with this Declaration.

2. The right of the Association to suspend the voting rights and the right to use the Common Area or portions thereof by an Owner for any period during which any assessment, fee, or lien imposed by the Association against an Owner's Lot remains unpaid.

3. The right of the Association to suspend the right to use of the Common Area or portions thereof by an Owner for any period during which the Owner fails to comply with the terms of this Declaration.

4. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

5. Before the Association suspends the voting rights and right to use the Common Area, the Association shall follow the following procedure:

6. The Association shall give the Owner not less than fifteen (15) days prior written notice of suspension and an opportunity to be heard, orally or in writing, not less than five (5) days before the effective date of the suspension by the President of the Association, who is authorized to decide whether or not the proposed suspension shall take place.

B. Written Notice. Any written notice given by mail shall be given by first class, return receipt requested, sent to the last address of the member shown on the Association's records.

C. Suspension .Suspension of voting rights or the right to use the Common Area shall not release the Owner from liability for assessments becoming due either before or after the assessment or from liability for future assessments.

D. Association Rules and Regulations. The Association shall have the right and power to adopt such rules and regulations as it, in its discretion, shall determine from time to time to regulate and govern the use of, and construction of improvements on the Common Area and Whitney Plaza. Such rules and regulations may include the imposition of reasonable fees and assessments (including attorney's fees incurred in collection of the same).

E. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the following persons who reside on the Property: members of his family who reside with the Owner on a Lot, his tenants who lease a Lot, or contract purchasers of a Lot.

## ARTICLE IV

ADMINISTRATION

A. Governing Instruments. The administration of the Property by the Association shall be governed by this Declaration, the Articles of Incorporation and the Bylaws of the Association.

B. Membership. Membership in the Association will be comprised of Owners of Lots in the Property. Every person acquiring legal or equitable title to any Lot in the Property is automatically a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Membership shall pass by operation of law upon the sale of any Lot, which sale may be by deed or by installment land contract.

C. Class of Members. The Association shall have two (2) classes of voting members Class A or B, and Common Areas will not be allocated votes. The two (2) classes of voting members are as follows:

1. Class Members. Class A members shall be all owners of Lots, with the exception of Whitney Benefits, Inc. Each Lot owned by a Class A Member shall be allocated one (1) vote in the Association. When more than one person or entity owns an interest in a Lot, the owners of that Lot shall designate in writing to the Association the person who shall have the power to vote for that Lot. The designation may be changed from time to time by a written instrument filed with the Association.

2. Class B Members. The only Class B member shall be Whitney Benefits, Inc. which shall be allocated ten (10) votes for each Lot owned by it.

## ARTICLE V

COVENANT FOR COMMON AREA MAINTENANCE RESPONSIBILITIES

A. Covenant for Maintenance of Common Area. The Association will provide for the operation and maintenance of the Common Area and the construction of such improvements on the Common Area as are deemed appropriate by the Association.

B. Insurance. The Association shall maintain such insurance coverage, as a Common Expense, as it in its sole discretion shall determine from time to time.

C. Delegation. The Association may from time to time enter into such management agreements or arrangements with such persons, firms, or corporations as it shall so elect to perform the duties of the Association and shall pay such compensation for such services as it, in its sole discretion, shall so determine. Such compensation shall be a Common Expense.

## ARTICLE VI

ASSESSMENT FOR COMMON EXPENSES

A. Personal Obligation of Owners for Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the assessments imposed by the Association to meet the Common Expenses attributable to the Common Area and the Property. Assessments for the Common Expenses shall be due monthly or at such other intervals as may be set by the Association from time to time. The Association shall prepare and deliver by mail to each member at such intervals as may be set by the Association from time to time, a statement for the Common Expenses.

B. Amount of Assessments. Assessments made for the Common Expenses shall be based on the cash requirements deemed to be the aggregate sum the Association shall, from time to time, determine is to be paid by the Owners of Lots, to provide for payment of all expenses growing out of or connected with the maintenance or operation of the Common Area, which sum may include, among other things, Common Expenses, expenses for management, taxes and special assessments, casualty and public liability and other insurance premiums, landscaping and care of grounds, common lighting, repairs, construction of improvements, renovations, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from a previous period, and the creation of a reasonable contingency or other reserve, sinking, or surplus fund, as well as other costs and expenses related to the Common Area. Assessments by Lot Schedule A.

C. Notice of Assessments. The Board of Directors of the Association shall fix the amount of the assessment to be made against each Owner of a Lot at least thirty (30) days in advance of the assessment period. The due date shall be established by the Board of Directors and set forth in the notice of the assessment.

D. Destruction of Common Areas. If the Common Area or a portion thereof is destroyed by fire or other casualty, the Association may replace or repair the Common Area if the Association determines that such replacement or repair is in the best interest of the Owners of the Property. The cost of such repair or replacement shall be a Common Expense that may be assessed against each Owner as defined herein.

## ARTICLE VII

LIEN FOR NONPAYMENT OF ASSESSMENTS

A. Effect of Nonpayment of Assessments. Each Owner of each Lot shall be allocated a percentage of the Common Expenses as shown on attached Schedule 1. Each Owner of a Lot shall pay the Owner's proportionate share of the Common Expenses and expenses of administration, maintenance, and repair of the Common Area and any other expenses set forth in this Declaration, or lawfully assessed by the Association. Payment thereof shall be in such amounts and at such times as may be determined by the Association. If any Owner shall fail or refuse to make any such payments of the Common Expenses when due, the amount

thereof, including late charges and interest, shall constitute a lien against the Lot of the Owner, together with the Owner's membership in the Association, and upon the recording of notice thereof by the Association, such liens shall be constituted upon such Owner's interest in said Lot prior to all other liens and encumbrances, recorded or unrecorded, except only (a) taxes, special assessments, and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this state, and other state or federal taxes which by law are a lien on the interest of such Owner prior to pre-existing recorded encumbrances thereon and (b) all sums unpaid on a first mortgage recorded prior to the arising of such lien.

B. Evidence of Lien. To evidence such lien for unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed on behalf of the Association by an officer of the Association and shall be recorded in the office of the County Clerk of Sheridan County, Wyoming. The Association may enforce the lien against the defaulting Owner's Lot in like manner as mortgages on real property. The lien provided herein shall be in favor of the Association. In any such foreclosure, the Owner shall be liable for and required to pay all the costs and expenses of such proceedings; the costs, expenses, and attorney's fees which preceded the filing of such proceeding; and the costs, expenses and attorney's fees for filing the notice of claim of lien; and all reasonable attorney's fees incurred in connection with such foreclosure and collection of all such unpaid amounts, including late charges and interest. These amounts shall constitute a lien on the Lot of the Owner, together with the Owner's membership in the Association, and shall have the same priority, and shall be documented, evidenced, attached, enforced and accompanied by the same benefits as the lien for non-payment of assessments herein described. The Owner shall also be required to pay to the Association all assessments during the period of a foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. The Association shall send to each first mortgagee a copy of the notice of lien provided for herein. Any encumbrancer holding a lien on a Lot may, but shall not be required to, pay any unpaid Common Expenses payable with respect thereto; and upon such payment, such encumbrancer shall have a lien on such Lot for the amounts paid of the same rank as the lien of his or its encumbrance.

## ARTICLE VIII

OWNER'S OBLIGATION FOR PAYMENT OF ASSESSMENTS

A. Personal Obligation to Pay Assessments. The amount of expenses assessed by the Association against each Owner shall be the personal and individual debt of the Owner at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. No Owner may exempt himself or itself from liability for his or its contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of the Lot of the Owner.

B. Liability of Successor. All successors in interest to the fee simple title to a Lot shall be jointly and severally liable with the prior Owner of the Lot for all unpaid assessments, interest, late charges, costs, expenses and attorney fees against such Lot without prejudice to such

successor's right to recover from any prior Owner any amounts paid thereon by such successor.

C. Statement of Status of Assessments. Upon written request, any prospective purchaser or mortgagee of a Lot shall be entitled to a statement from the Association setting forth (1) the amount of any unpaid assessments, interest, late charges, costs, expenses and attorney fees then existing against the Lot, and (2) the amount of current installment of the assessment and the date the next installment is due and payable. Unless a response to the request is sent by the Association within 20 days after the Association receives the request, then the prospective purchaser shall not be liable for, nor shall the Lot, if conveyed to the prospective purchaser or mortgaged to the prospective mortgagee, be subject to a lien for any unpaid assessments against the Lot.

## ARTICLE IX

LAND USE AND BUILDING TYPE

A. Outlots. Unless otherwise authorized by the ACC of Whitney Plaza, the following Outlots shall be limited in their use as follows:

1. Outlots A, C, I, and J shall be used only for parking by Owners of Lots and their invitees while visiting or engaging in business with the Owners of Lots or their tenants.

2. Outlots D, E, F, and H may be used only as a right of way for access by Owners of Lots, law enforcement, and fire and emergency vehicles. Outlots D, E, F, and H may also be used for sidewalks and walkways and as a right of way for access by invitees of Owners of Lots while visiting or engaging in business with Owners of Lots or their tenants. No parking shall be allowed on Outlot D (Whitney Lane) or Outlot E (Custer extension). On street parking is allowed in areas designated by the Association on Outlot F (Park Lane) and Outlot H (Plaza Lane).

3. Outlots G, K and L may only be used for pedestrian walkways and for other uses as may be approved from time to time by the Association, such as, location of utilities, benches, seating, landscaping, planters, and sculptures, which do no prevent the use of these Outlots as pedestrian walkways.

4. Outlot M may be used only by the Association for landscaping and signage.

5. Storm water from Lots in Whitney Plaza may drain across Outlots in order to reach City of Sheridan storm drains and any Outlot may be used for utility easements if approved by the Association.

B. Corporate Use Lot. Lot 3 of Block 1 of Whitney Plaza is designated "a corporate use lot." The corporate use lot is subject to the following limitations:

1. Height. No building or structure may exceed two stories in height.

2. Uses. This Lot may be used only for retail business and office purposes. No accessory

structures are allowed. No retail business shall be conducted on the corporate use lot unless the type and nature of the business is first approved by the ACC. The portion of the building that is below grade may be used only for storage and service purposes and not for retail business or office purposes.

3. Setbacks. No setbacks are required. The building may occupy the entire lot. The street facade facing Grinnell Plaza and Connor Street shall be constructed so that at least 90% of the building is built to the setback line, and the balance may be recessed or modulated.

4. Components. No subgrade windows or window wells are allowed for the exterior facades. Glazing on all levels shall generally be clear, nonreflective glass.

5. Vertical proportions. The floor level of the first story shall be four (4) inches above prevailing grade. It shall be at least ten (10) feet and not more than fourteen (14) feet from the floor of the first story to the ceiling of the first floor. It shall be at least nine (9) feet and not more than eleven (11) feet from the floor on the second floor to the ceiling on the second floor. Feature towers and spires are allowed at the discretion of the Architectural Control Committee; provided, however, such feature towers or spires must comply with all ordinances of the City of Sheridan.

6. Off street parking. All parking for the corporate use lot shall be in the Outlots designated to be used for parking by this Declaration. By prior contractual agreement, fifty five (55) parking spaces within Whitney Plaza shall be used for parking in connection with the Lot 3, School District lot, which parking shall be for the general (not exclusive) use by the Owner of the School District Lot in connection with that lot.

7. Materials. Structures shall contain elevations consisting of a minimum of 5% stone plus 60% masonry on the street facing facade for both levels, not including glazing area, subject to adjustment by the ACC.

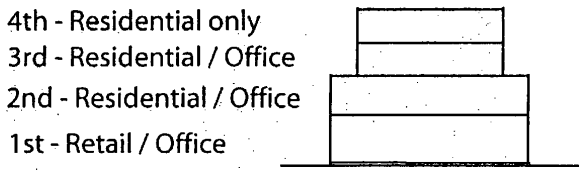
C. Attached Mixed Use Lots Block One. Lots 1, 2, 4, 5, 6, 7, 8 of Block 1 of Whitney Plaza are designated as "attached mixed use lots' which are subject to the following limitations:

1. Height. No building or structure may exceed four stories in height.

2. Uses. The first story may be used only for retail business and office purposes. The second and third stories may be used only for office or residential purposes. The fourth story may be used only for residential purposes. No retail business shall be conducted on any attached mixed use lot unless the type and nature of the business is first approved by the ACC.

259

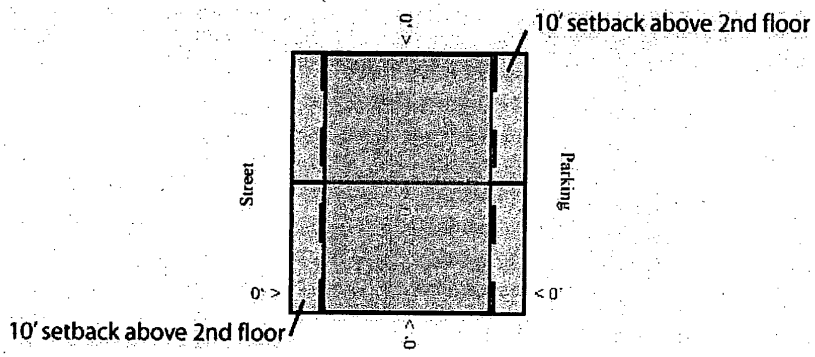
Figure 1
AMU - 4 Story- Uses




a. Lots 7 and 8 Block 1 using Outlot C may have underground parking. The Covenantors retain the right to build underground parking below Lots 7 & 8.

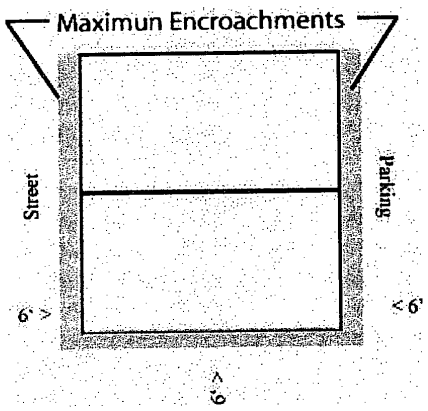
3. Setbacks. No setback is required for the first two stories; provided, however, that portion of the building next to either Connor Street or Grinnell Plaza shall be constructed so that not more than 80% of the building is built to the lot line and the balance shall be recessed or modulated The elevations shall include a minimum setback of 10 feet from the lot line above the second floor on the front and rear elevations of the building.

Figure 2
AMU - Setbacks



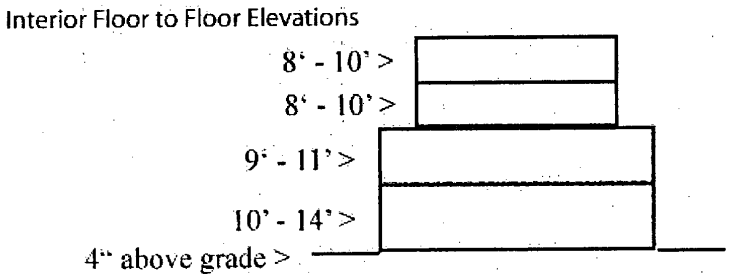

4. Components. No subgrade windows or window wells are allowed. Glazing on all levels shall generally be clear glass unless otherwise approved by the ACC. Roofs, window extensions, balconies and patio coverings may not encroach into the Right of Way more than 6'.

Figure 3
AMU – Components




5. Vertical proportions. The floor level of the first story shall be four (4) inches above prevailing grade and flush at all exterior doors. It shall be at least ten (10) feet and not more than fourteen (14) feet from the floor of the first story to the ceiling of the first floor. It shall be at least nine (9) feet and not more than eleven (11) feet from the floor on the second floor to the ceiling on the second floor. It shall be at least eight (8) feet and not more than ten (10) from the floor of the third floor to the ceiling of the third floor. It shall be at least eight (8) feet and not more than ten (10) feet from the floor of the fourth floor to the ceiling of the fourth floor.

Figure 4
AMU – Vertical Proportions




6. Off street parking. All parking for attached mixed use lots described in Article IX. C shall be as prescribed by the ACC in the Outlots designated to be used for parking by this Declaration. There shall be no parking on an attached mixed use lot.

261

7. Materials. Structures shall contain elevations consisting of 10% stone plus 60% masonry on the street facing facade for only the first two levels, not including glazing area, subject to adjustment by the ACC.

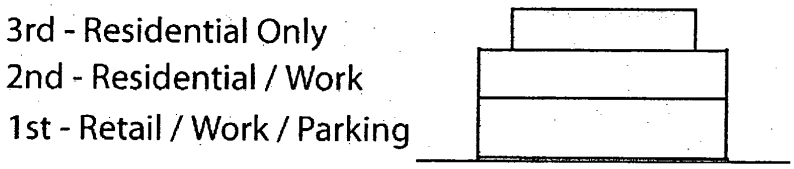
8. General Parameters. The Architectural intent of the ACC is to complement the Sheridan Downtown Style (SDS) and shall be applied to all exposed elevations. Variations are allowed by the ACC for any and all of these urban regulations for this particular use.

D. Attached Mixed Use Lots Block Two. Lots 1 and 2 of Block 2 of Whitney Plaza are designated as "attached mixed use lots" which are subject to the following limitations:

1. Height. No building or structure may exceed three stories in height.

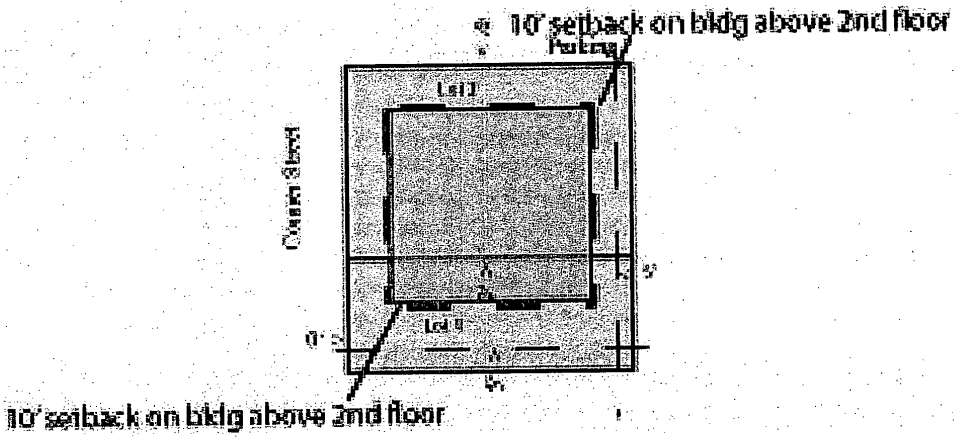
2. Uses. The first story may be used only for retail business, office, and residential garage purposes. The second story may be used for office or lodging purposes and the third story for lodging purposes only facing Connor Street. No retail business shall be conducted on any attached mixed use lot unless the type and nature of the business is first approved by the ACC. Uses shall comply with the following Figure 2:

Figure 5
B2-AMU - 3 Story Uses



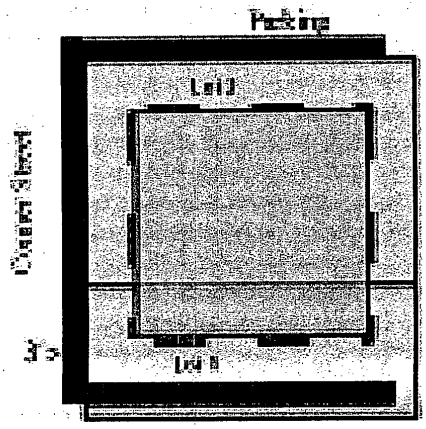

3. Setbacks.
   a. Option A. There shall be a 0 foot front setback for the First Two stories facing Connor Street. There shall be one 5 foot setback on the Park Lane side. The building constructed on the lot shall not cover more than 80% of the lot. The rear elevation adjacent to lot 3 shall include a 5 foot setback. Setbacks shall comply with the following diagram:

Figure 6
B2 - AMU - Setbacks




4. Components. No subgrade windows or window wells are allowed. Roofs, window extensions, balconies and patios may not encroach into setbacks more than 3 feet.

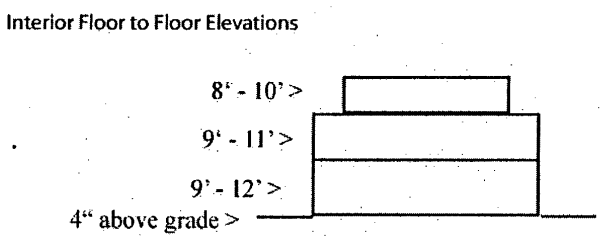
Figure 7
B2 - AMU – Components



5. Vertical Proportions. The floor level of the first stop shall be four (4) inches above prevailing grade and flush at all exterior doors. It shall be at least nine (9) feet and not more than twelve (12) feet from the floor of the first story to the ceiling of the first floor. It shall be at least nine (9) feet and not more than eleven (11) feet from the floor on the second floor to the ceiling on the second floor. It shall be at least eight (8) feet and not

more than ten (10) feet from the floor on the third floor to the ceiling on the third floor Flat roofs are allowed for Lots 1 and 2 of Block 2.

Figure 8
B2 - AMU – Vertical Proportions




6. Off street parking. The Owner of Lot 1 and 2 of Block 2 of Whitney Plaza shall be required to provide two parking spaces on each lot from Whitney Lane with the exception of lot 2, which may be from Park Lane or Whitney Lane if the lots are under common ownership.

7. Materials. Structures shall contain elevations consisting of a minimum of 10% stone plus 60% masonry on the street facing facade only for the first two levels, not including glazing area, subject to adjustment by the ACC.

8. General Parameters. The Architectural intent of the ACC is to complement the Sheridan Downtown Style (SDS) and shall be applied to all exposed elevations. Variations are allowed by the ACC for any and all of these urban regulations for this particular use.

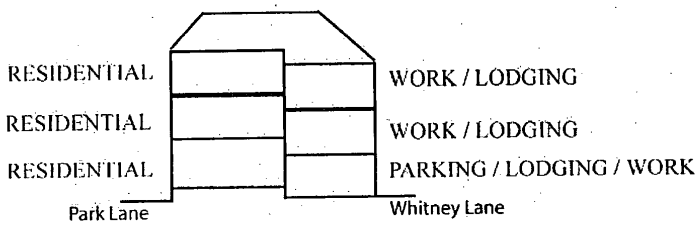
E. Live Work Block Two Lots 3-10. Lots 3 through 10, inclusive, of Block 2 of Whitney Plaza are designated as "Live Work Area 1 lots." Live Work Area 1 lots are subject to the following limitations:

1. Height. No building or structure may exceed three stories in height for both the front and rear of the lot.

2. Uses. Residential, Commercial, Retail, Parking, and Office uses are permitted on these lots. Residential use is proposed as primary use for the first 30' of the lot measured from Park Lane. Commercial, retail, residential, and parking uses shall be permitted on these lots on the rear 41'. The ACC may use flexibility in approving the actual use location. Block 2 Lot 3 can be combined with Lots 1 and 2 AMU.

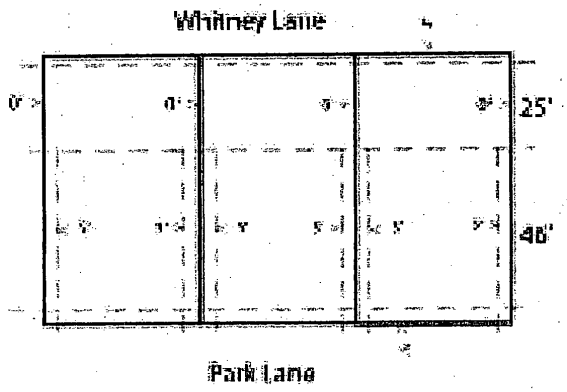
   All areas of the lot used for office or commercial purposes must be accessed using only Whitney Lane (Outlot D). Any ancillary lodging uses excluding the principal residence shall be accessed from Whitney Lane also. All parking required for the principal residence must also be accessed from Whitney Lane. Allowed uses shall comply with the following Figure 9:

*Figure 9*
*Live-Work Allowed Uses*



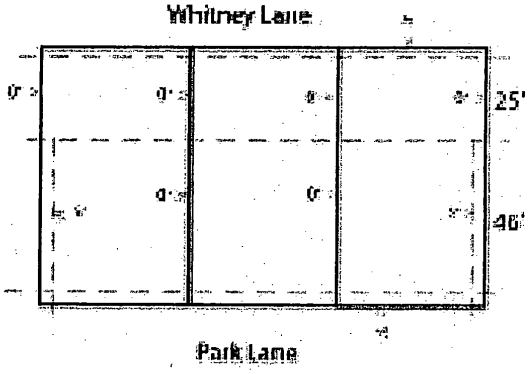

3. Setbacks. There shall be a five (5) foot setback from Park Lane (Outlot F) for the three stories above grade. There shall be a five (5) foot setback on both sides of the Lot on the residence side Figure 10. A variance Figure 11, may be allowed if two adjoining lots are designed as a zero lot line with adjoining setbacks to neighboring lots remaining as five (5) foot setbacks. The building on the Lot may occupy not more than 80% of the lot. That portion of the building facing Whitney Lane (Outlot D) for the last thirty feet of the lot shall be constructed as zero lot line and so that at least 50% of the building is built to the lot line and the balance may be recessed or modulated. Setbacks shall comply with the following Figure 10 or as a variance in Figure 11:

Figure 10
Live-Work Setbacks



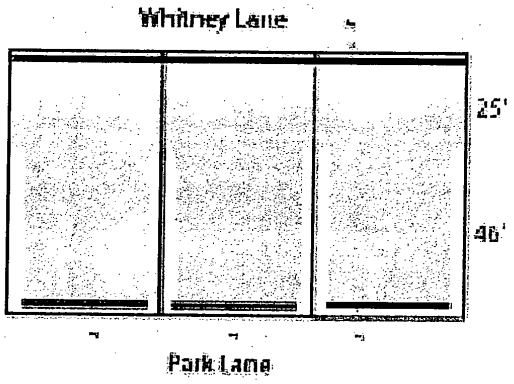

265

Figure 11
Variance




4. Components. Subgrade windows or window wells are allowed if approved by the ACC. Glazing on all levels shall generally be clear glass. Roofs, window extensions, balconies and patios may not encroach into front or back setbacks more than 3 feet. Roofs, window extensions, balconies and patios may not encroach into side setbacks more than 1.5 feet. All encroachments shall comply with Figure 12.

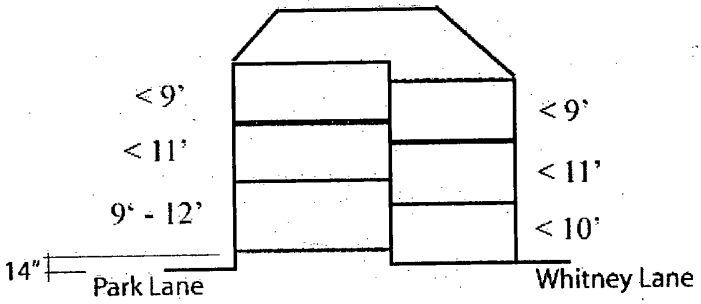
Figure 12
LW-Components, 3-10




5. Vertical proportions. The floor level of the first story shall be fourteen (14) inches above prevailing grade. It shall be at least nine (9) feet and not more than twelve (12) feet from the floor of the first story to the ceiling of the first floor. It shall be not more than eleven (11) feet from the floor on the second floor to the ceiling on the second floor. It shall be not

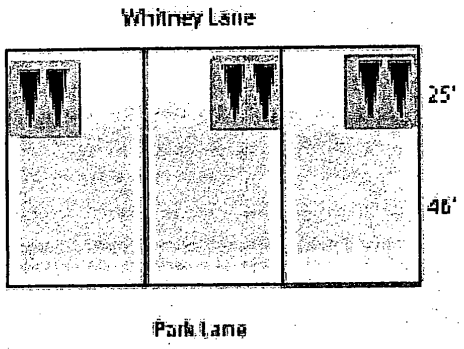
more than nine (9) feet from the floor on the third floor to the ceiling on the third floor. No flat roofs are allowed.

Figure 13
LW-Vertical Proportions, 3-10




6. Off street parking. The Owner of a Live Work Area 1 Lot (Lots 3-10 Block 2) shall be required to provide two covered parking spaces on the Lot, which spaces shall adjoin Outlot D (Whitney Lane). Off-street parking shall comply with the following Figure 14:

Figure 14
LW-Parking, 3-10




7. General Parameters. The Architectural intent of the ACC is to complement the Sheridan Downtown Style (SDS) and shall be applied to all exposed elevations. Variations are allowed by the ACC for any and all of these urban regulations for this particular use.

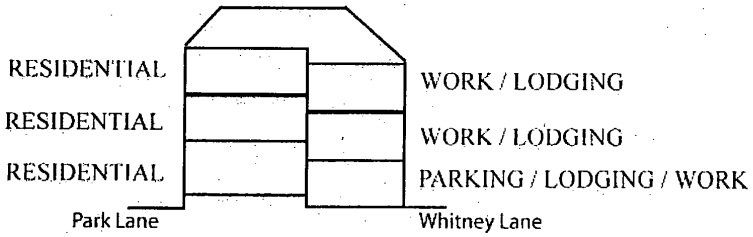
267

F. Live Work Lots Block Two Lots 11-14. Lots 11 through 14, inclusive, of Block 2 of Whitney Plaza are designated as "Live Work Area 2 lots." Live Work Area 2 lots are subject to the following limitations:

1. Height. No building or structure may exceed three stories in height.

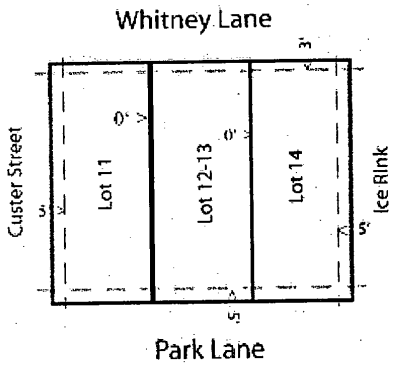
2. Uses. Residential and office uses are permitted on these lots. Commercial and retail uses shall be permitted on these lots only if the nature and type of the use is first approved by the ACC. All areas of the lot used for office or commercial purposes must be accessed using only Whitney Lane (Outlot D).

Figure 15
LW-Allowed Uses 11-14



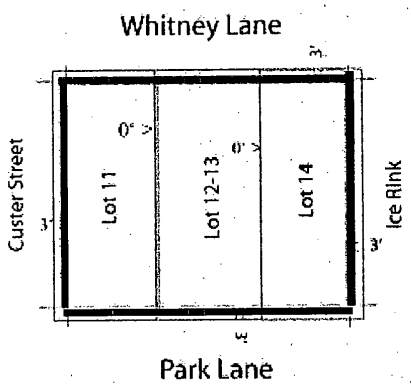

3. Setbacks. There shall be a five (5) foot setback from Outlot F (Park Lane) for the three stories above grade and three (3) foot setback from Whitney Lane. These shall be a zero (0) foot setback on both sides of the Lot excepting a five (5) foot setback on Lot 11 along Custer and along the east side of Lot 14 adjacent to the ice rink. The building on the Lot may occupy not 100% of the lot. That portion of the building facing Outlot D (Whitney Lane) shall be constructed so that at least 100% of the building is built to the lot line, and the balance may be recessed or modulated. Setbacks shall comply with the following Figure 16:

Figure 16
LW-Setbacks 11-14




4. Components. Subgrade windows or window wells are allowed if approved by the ACC. Glazing on all levels shall generally be clear glass. Roofs, window extensions, balconies and patios may not encroach into front or back setbacks more than 3 feet. Roofs, window extensions, balconies and patios may not encroach into side setbacks more than 3 feet on the west side of Lot 11 and the east side of Lot 14. All encroachments shall comply with Figure 17.

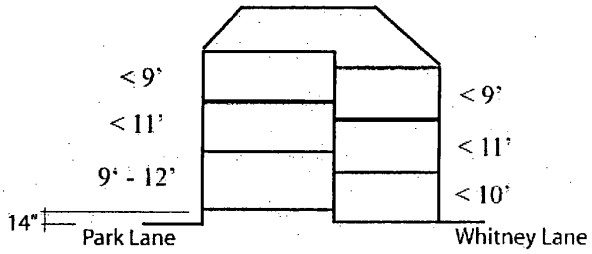
Figure 17
LW-Components 11-14




5. Vertical proportions. The floor level of the first story shall be fourteen (14) inches above prevailing grade. It shall be at least nine (9) feet and not more than twelve (12) feet from the floor of the first story to the ceiling of the first floor. It shall be not more than eleven (11) feet from the floor on the second floor to the ceiling on the second floor. No flat roofs are allowed.

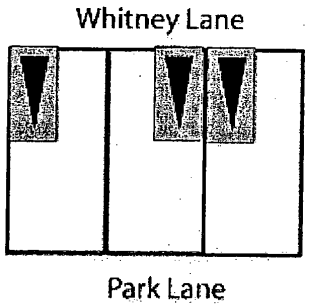
Figure 18 269

LW-Proportions 11-14




6. Off-street parking. The Owner of a Live Work Area 2 Lot (Lots 11-14 Block 2) shall be required to provide one covered parking space on the Lot, which spaces shall adjoin Outlot D (Whitney Lane). Off-street parking shall comply with the following diagram Figure 19:

Figure 19
LW-Parking 11-14



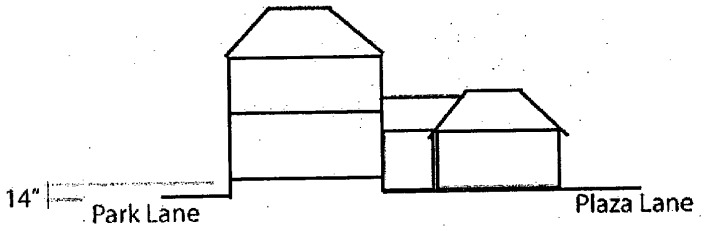

7. General Parameters. The Architectural intent of the ACC is to complement the Sheridan Downtown Style (SDS) and shall be applied to all exposed elevations. Variations are allowed by the ACC for any and all of these urban regulations for this particular use.

G. Detached Residential Block 2 Lots 15-21. Lots 15 through 21, inclusive, of Block 2 are designated as "detached residential lots." Detached residential lots are subject to the following limitations:

1. Height. No building may exceed two (2) stories in height or 30 feet from grade to roof ridge, whichever is less.

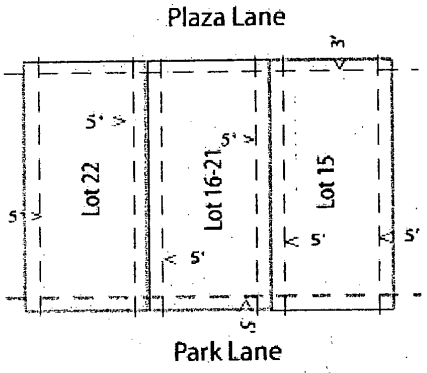
2. Use. Detached residential lots may be used only for a one family dwelling. No commercial or business activity may be conducted on these lots, other than rental of a dwelling on a Lot for residential purposes.

Figure 20
DR-Allowed Uses 15-21




3. Setbacks. There shall be a five (5) foot setback from Park Lane (Outlot F) and Brundage Street and a three (3) foot setback from Plaza Lane (Outlot H). The building on the Lot may not occupy more than 85% of the Lot. The street facade shall be constructed so that at least 50% of the building is built to the setback line, and the balance may be recessed or modulated. Side setbacks shall be maintained at 5' for each side.

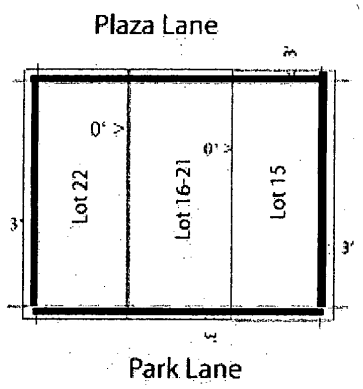
Figure 20
DR-Allowed Uses 15-21




4. Components. Subgrade windows and wells are allowed. Roofs, window extensions, balconies and patios may not encroach into front or back setbacks more than 3 feet. Roofs, window extensions, balconies and patios may not encroach into side setbacks except more than 3 feet on the west side of Lot 15 and the east side of Lot 21. All encroachments shall comply with Figure 21.

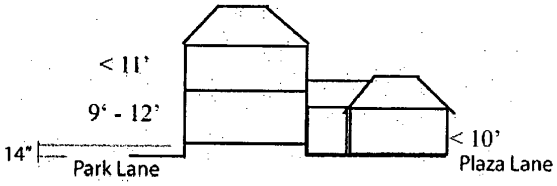
Figure 21
DR- Components 15-21

271




5. Vertical proportions. The floor level of the first story shall be fourteen (14) inches above prevailing grade. It shall be at least eight (8) feet and not more than ten (10) feet from the floor of the first story to the ceiling of the first story. It shall be at least eight (8) feet and not more than ten (10) feet from the floor of the second story to the ceiling of the second floor.

Figure 22
DR- Proportions 15-21




6. Off street parking. The Owner of a detached residential lot shall be required to provide a minimum of two (2) parking spaces on the Lot.

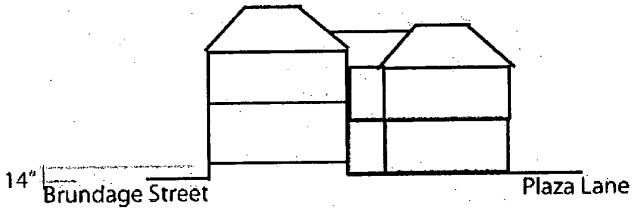
H. Attached Residential Block 2 Lots 22-32. Lots 22 through Lot 32, inclusive, of Block 2 are designated as "attached residential lots." Attached residential lots are subject to the following limitations:

1. Height. No building may exceed two (2) stories in height.

2. Uses. Attached residential lots may be used only for a one family or multiple family dwelling. No commercial or business activity may be conducted on these lots other than rental of a dwelling unit on a Lot for residential purposes. The number of dwelling units allowed on each lot are as follows:

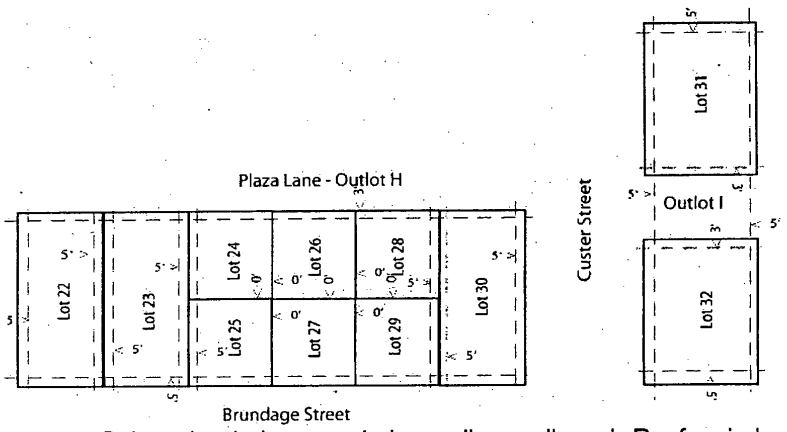
a. Lot 22: 3 dwelling units
b. Lot 23: 4 dwelling units
c. Lots 24 – 29: 1 dwelling unit each
d. Lot 30: 5 dwelling units
e. Lot 31: 3 dwelling units
f. Lot 32: 3 dwelling units

Figure 23
AR- Allowed Uses 22-32




3. Setbacks. There shall be a five (5) foot setback from Brundage Street for Lots 22, 23, 25, 27, and 29 and from Custer Street for Lots 30, 31 and 32 (Figure 10). There shall be a three (3) foot setback from Plaza Lane (Outlot H) for Lots 22, 23, 24, 26, and 28 and from Outlot I for Lots 31 and 32 (Figure 24).

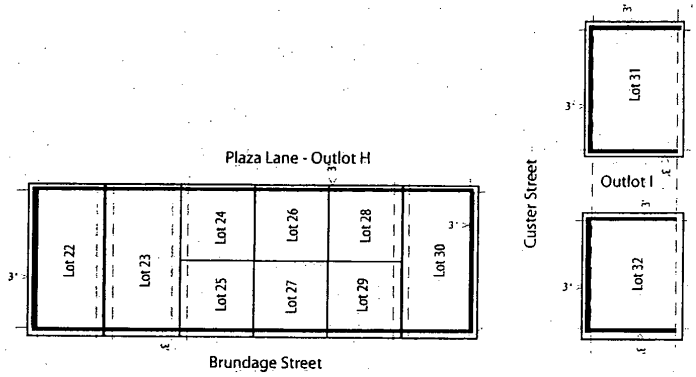
Figure 24
AR- Setbacks 22-32




4. Components. Subgrade windows or window wells are allowed. Roofs, window extensions, balconies and patios may not encroach into front or back setbacks more than 3 feet. Roofs, window extensions, balconies and patios may not encroach into side setbacks except more than 3 feet on the west side of Lots 31 and 32 and the east side of Lot 30. All encroachments shall comply with Figure 25.

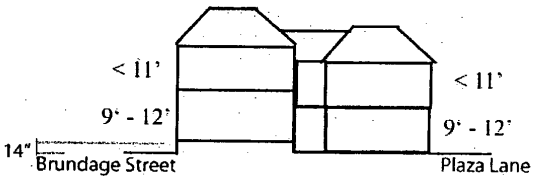
273

Figure 25
AR- Components 22-32



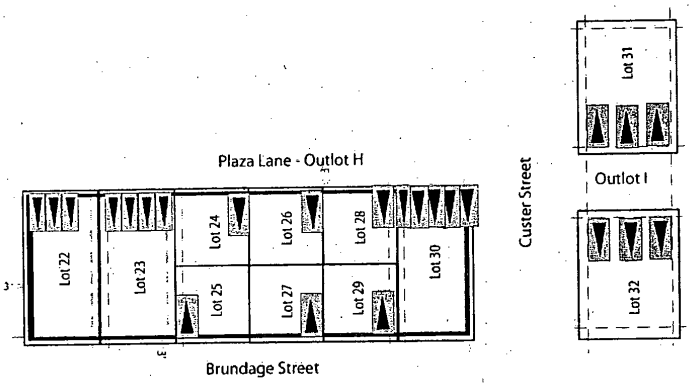

5. Vertical proportions. The floor level of the first story shall be fourteen (14) inches above prevailing grade. It shall be at least nine (9) feet and not more than twelve (12) feet from the floor of the first story to the ceiling of the first floor. It shall be not more than eleven (11) feet from the floor on the second floor to the ceiling on the second floor.

Figure 26
AR- Proportions 22-32




6. Parking. The Owner of an attached residential lot shall be required to provide one parking space for each residence to be built on the Lot, which parking space shall adjoin Plaza Lane (Outlot H) for Lots 22, 23, 24, 26, 28 and 30 and shall adjoin Outlot I for Lots 31 and 32. Parking spaces for lots 25, 27, and 29 shall adjoin Brundage. Off street parking shall comply with Figure27:

Figure 27
AR- Parking 22-32




## ARTICLE X

OTHER PROVISIONS RELATING TO THE CONSTRUCTION OF IMPROVEMENTS

A. Setbacks and Location. The ACC may, in its sole discretion, require and enforce varied and more restrictive set-back and location requirements with respect to the various Lots located in the Whitney Plaza. No portion of any improvement or building on a Lot may encroach upon another Lot.

B. Roofs. All roofs, including without limitation pitch, slope and composition, must be approved by the ACC, in its sole discretion.

C. Sanitation and Appearance of Lots During Construction. During construction on a Lot, the Owner of such Lot is responsible for ensuring that the Owner or Owner's builders (i) provide a portable toilet at the construction site; (ii) provide suitable receptacles for construction waste; (iii) do not deposit excess concrete, building materials and waste on the Common Area, adjacent Lots, ditches, or on the Roads and Easements, and that all such materials are appropriately removed from the Property by at least the time the construction is complete; and (iv) pay for and repair any damage to Common Area, Roads and Easements, drainage ways, or any other portion of the Property occurring during the construction of the dwelling.

D. Architectural Design. The overall design of any improvements constructed on a Lot, including, but not limited to, size, colors, materials and colors shall be subject to the approval of the ACC, in its sole discretion. The ACC may adopt from time to time an Architectural Control Handbook (the "Architectural Control Handbook"), setting forth such matters which may include the size, materials, colors, and systems which may be permitted on the Property. The Architectural Control Handbook may be changed at any time without notice, in the sole discretion of the ACC. No Owner of a Lot may paint or change the exterior color scheme or surfacing materials without the prior written approval of the ACC.

275

E. Site Planning. Overall site planning and grading of each Lot shall be subject to the approval of the ACC, in its sole discretion.

F. Structures. No more than one building may be constructed on any Lot unless otherwise approved by the ACC. No accessory structures are allowed unless otherwise approved by the ACC.

## ARTICLE XI

USE RESTRICTIONS AND RULES

A. Permitted Uses. No noxious or offensive activity shall be carried on upon any Lot, or the Common Area, nor may anything be done which may be or may become an unreasonable nuisance or annoyance to the Property or other Owners.

1. No campers, trailers, motor homes, buses, tractors/trailers, "RV's" (recreational vehicles), boats, snow mobiles, four wheelers, all terrain vehicles or heavy equipment shall be stored or parked on the Property. No motor vehicles of any kind may be stored, junked, or otherwise maintained anywhere on any Lot or any other portion of the Whitney Plaza in any idle or unworkable condition. Only those vehicles in good running condition which are currently licensed and registered are permitted on any portion of the Property.

B. Drainage. No Owner of any Lot shall permit hazardous wastes or petroleum products to drain into storm drains or street gutters.

C. Condition of Property. The Owner of a Lot shall keep the Lot and all improvements located on a Lot clean, safe and in neat condition and in good order and repair. The Owner of a Lot shall comply in all respects with applicable statutes, ordinances and government regulations. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage, or any other form of solid, semisolid, or liquid waste. Rubbish, garbage, or other waste shall be kept and disposed of in a sanitary container. All containers or other equipment for the storage or disposal of garbage, trash, rubbish, or other refuse shall be kept in a clean, sanitary condition and shall be kept inside the residence or individually housed or screened from view. No trash, litter, or junk shall be permitted to remain exposed upon the premises and visible from public roads or adjoining or nearby premises. Burning of trash will not be permitted at any time in the Whitney Plaza, during construction or otherwise.

D. Yard Maintenance and Lawn Seeding. Each Lot will be completely landscaped with grass or other landscaping accepted in writing by the ACC. All Owners of Lots shall cut and control all weeds and vegetation growing on all Lots, whether vacant, occupied, or with improvements under construction and shall comply with any landscaping plan approved by the ACC.

E. Appearance of Lots. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so they are visible from any neighboring Lot or streets, except as necessary during the period of construction.

In the event any structure is destroyed, either wholly or partially, by fire or any other casualty, said structure shall be promptly rebuilt or remodeled to conform with this Declaration; or if the structure is not to be rebuilt, all remaining portions of the structure, including the foundation and all debris, shall be promptly removed from the Lot.

F. Signs. No signs shall be located on any Lots unless approved in writing by the ACC in its sole discretion and as may be further described in the Architectural Control Handbook adopted by the ACC.

G. Animals. An Owner may have no more than two generally recognized house or yard pets on any Lot. Any animal allowed outside the Owner's Lot shall be on a leash and controlled at all times. All animals shall be controlled so that they do not make sounds that disturb the peace and quiet of occupants of Lots in Whitney Plaza. Owner shall pick up animal droppings left by any animal kept on Owner's Lot and dispose of the same in a proper receptacle. The Association may assess a charge for liquidated damages against any Owner who violates this provision regarding disposal of animal waste. The charge shall be $50.00 for the first violation and $100.00 for any subsequent violation. Any such charge is due to the Association upon Owner's receipt of notice that the charge is due. Any charge unpaid when due shall become a lien against the Owner's Lot, and the Association shall have the right to collect the charge or enforce the lien in the same manner as other assessments.

H. Clothes Lines. No exterior clothes line shall be maintained on any Lot.

I. Exterior Antennae. No outside radio or television antennae or satellite dishes shall be permitted on any Lot unless approved in writing by the ACC in its sole discretion, except as otherwise may be provided by State or Federal law.

J. Re-subdivision. No lot may be partitioned, divided or re-subdivided unless approved in writing by the ACC in its sole discretion and by the City of Sheridan.

K. Awnings & Fences. All fencing, screening, awnings, trellises and the like, shall be constructed in a good and workmanlike manner. All fencing, screening, awnings, trellises and the like shall be maintained in good repair and shall be of the size, color, and material as approved by the ACC, in its sole discretion, and as may be further described in the Architectural Control Handbook adopted by the ACC.

L. Temporary Structures – Trailers. No temporary structure, tent, trailer or mobile home may be placed, used or occupied in Whitney Plaza; provided, however, the ACC may permit temporary construction trailers to be placed on a Lot for a limited period of time during construction of improvements on a Lot.

M. Parking. Motor vehicles shall be parked only in parking spaces as designated or allocated by the ACC. The ACC may designate spaces to jointly serve the Owners of more than one Lot. No parking space may be used for storage or for any purpose other than parking vehicles. Each Lot shall be allocated the number of parking spaces in the Outlots designated for parking use as shown on attached Schedule 2.

N. Emissions. No substance, thing or material shall be kept on any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that disturbs the quiet, safety,

comfort or serenity of the occupants of other Lots. Any commercial enterprise that creates emissions (i.e. restaurants, coffee roasters) must have ceiling exhaust system.

O. Window Coverings. No reflective materials, including, without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of any building on a Lot without the prior written approval of the ACC.

P. Motor Vehicle Repair and Towing of Vehicles. Other than temporary emergency repairs, no vehicle shall be constructed, reconstructed, serviced (including but not limited to oil changes) or repaired and no inoperable vehicle may be stored on any portion of Whitney Plaza. The Association shall have the right to have any vehicle in violation of this Declaration towed at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle. If the vehicle is owned by an Owner, any amounts payable to the Association shall be secured by an assessment lien, and the Association may enforce collection of such amounts in the same manner as provided in this Declaration for the collection of assessments.

## ARTICLE XII

ARCHITECTURAL REVIEW

A. Architectural Control Committee. There shall be created a committee called the Architectural Control Committee ("ACC"). No building or improvement shall be erected, placed, or altered on any Lot until construction plans and specifications, including, without limitation, exterior colors for surfaces, plot plan and configuration, and size and square footage of improvements, have been submitted to and have been approved by the ACC, in its sole discretion, as to quality of workmanship and materials, harmony of design with surrounding structures, and the design concept of Whitney Plaza, exterior colors, location with respect to topography and grade, and compliance with these covenants.

B. Pre-design Conference. Prior to submitting preliminary plans for any proposed improvement the Owner or Owner's designated representative shall meet with the ACC or its designee in a pre-design conference to discuss proposed building plans and to obtain guidance prior to initiating preliminary design.

C. Preliminary Design Submittal. After the pre-design conference, the Owner shall then submit the following documents to the ACC:

1. A site plan (scale 1" = 10' or 1/8' = 1'0") showing the entire property, the location of the proposed structure and proposed finished floor elevations.

2. Floor plans (scale 1/4" or 1/8" = 1'0") showing proposed finish floor elevations.

3. All exterior elevations (scale 1/4" or 1/8" = 1'0") showing both existing and proposed grade lines, plate heights, ridge heights, roof pitch, and a preliminary indication of all exterior materials and colors.

4. If a business, commercial or retail use is proposed for a Lot where such uses are permitted, a description of the nature and type of such use.

5. Any other drawings, materials, or samples requested by the ACC.

6. A nonrefundable design review fee of $350.00 must accompany the initial submittal. This fee will be used to partially cover the costs of compensation of any professional retained to advise and assist the ACC in reviewing the proposal. Additional fees may be charged for changes to a proposed plan or for changes or additions to an existing structure, landscape plan or the late or incomplete submittal of plans. The ACC will establish charges for changes.

7. The submittal shall consist of two (2) sets of prints, one (1) of which will be retained by the ACC.

8. After review of the preliminary design submittal, the ACC shall advise the Owner of whether it approves or disapproves of the preliminary design submittal, and, if the submittal is approved, advise the Owner of any special issues the Owner needs to address in the final design submittal.

D. Final Design Submittal. After preliminary approval is obtained from the ACC, two (2) sets of the following final design documents and prints shall be submitted by Owner for final review by the ACC, one of which will be retained by the ACC:

1. A letter responding to all itemized conditions presented by the ACC from the Preliminary Review.

2. A Site Plan (scale 1" = 10' or 1/8"= 1'0") showing the entire property, adjacent roadways, the location of the building and improvement, driveways, parking areas, existing and proposed topography, finished floor elevations, any protected plants or special terrain features to be preserved, trees to be removed, all utility sources and connections, sited walls, building setbacks and the location of any retaining structures.

3. Standard Proctor testing will be conducted and a soils investigation report (minimum of two (2)) borings for Lots 1 through 8 Block 1, and a minimum of one (1) for all lots in Block 2) will be submitted.

4. Floor plans (scale 1/4"= 1'0") fully dimensioned showing finished floor elevations relative to existing and final grades.

5. Roof plan (scale 1/4"= 1'0") showing all roof pitches and drainage devices.

6. Building sections (scale 1/4"= 1'0" or larger) indicating existing and proposed grade lines.

7. All exterior elevations (scale 1/4"= 1'0") showing both existing and proposed grade lines, plate heights, roof pitch, exterior materials, trim components, gutters and downspouts as well as any anticipated changes in color.

279

8. Paint chips or stains indicating actual exterior material surface and any literature as requested by the ACC depicting or further describing all exterior materials.

9. Foundation plan that responds to the soils report and framing plan and associated details.

10. Exterior lighting plan and fixture "cut sheets."

11. A preliminary construction schedule for construction. This schedule shall be in a graph format and highlight critical milestones, i.e., excavation, framing, roofing, interior work, substantial completion and landscaping.

12. Landscape plan including plant material and lawns, decks, patios, ponds, driveways, sidewalks, lighting, and drainage.

13. Such other documents as were required by the ACC after the preliminary design review.

E. Final Design Review. After review of the submittal, the ACC will advise the Owner in writing of the ACC's decision on the submittal. In the event the Architectural Control Committee or its designated representative fails to approve or disapprove within thirty (30) days after the final design documents have been submitted to it, the plans and specifications will be deemed to be approved; provided, however, that such approval will only be deemed to have occurred with regard to matters sufficiently and specifically described in plans and specifications which are actually received by the Architectural Control Committee.

F. Construction Requirements. Upon approval of the final design submittal by the ACC and after complying with all requirements of the City of Sheridan, the Owner shall commence construction of any work pursuant to the approved plans within one year from the date of such approval. All work must be done in strict accordance with the approved plans. All buildings and improvements shall be constructed in accordance with the plans and specifications approved by the ACC. Any changes to approved plans and specifications shall require resubmission to, and approval by, the ACC. If Owner fails to commence construction within the one year period, the ACC's approval of the plans shall be revoked unless otherwise agreed to in writing by the ACC. Owner shall complete the construction of any improvement within 18 months after commencing construction unless the ACC has approved in writing an alternative construction schedule. The Association shall have the right to require an Owner to deposit with the Association a deposit of up to $500.00 when the ACC approves the final plans. This deposit will be held to insure architectural control by the ACC and construction compliance. When construction on Owner's Lot has been completed, the deposit will be refunded if, in the sole judgment of the Association, the Owner has complied with the approved plans and specifications and requirements of these covenants. If the Association, in its sole judgment, determines that Owner has not complied with the approved plans and specifications, then the Association may, in addition to any other remedy available to the Association, expend the deposit to correct any noncompliance and assess Owner for any costs incurred in excess of the deposit.

1. All construction on any Lot shall be done by a contractor who is licensed and bonded. Before commencing construction, the Owner of the Lot shall provide the ACC with a copy of the contract between the Owner, and the contract shall provide the following:

a. Prior to commencing work, the contractor shall provide ACC with a construction schedule in "bar graph" form indicating the completion date of all phases of the work.

b. The contractor shall not impede or delay Whitney Benefits or Whitney Benefits, contractor in the completion of work within Whitney Plaza, and the contractor shall be liable for any delays or damage caused by the contractor to Whitney Benefits, Inc. or owners of adjacent lots.

c. The contractor shall be responsible for the repair, replacement and cleanup of any damage done by the contractor to other contractor's work within Whitney Plaza, including, without limitation, damage to access ways or adjacent premises that may be concurrently used by others.

d. The contractor shall confine its operations and storage within the Owner's Lot or such other space as the contractor may be assigned by the ACC.

e. The contractor shall store and confine all trash and surplus construction materials within the Lot and shall clean up trash and debris and promptly remove it from the Lot on a regular basis.

2. The ACC may inspect all work in progress and give notice of noncompliance with the terms of its approval. The ACC's failure to inspect the work or to give notification during the construction period does not constitute approval by the ACC of the work in progress or waive compliance with the approved plans or these covenants.

G. Membership to the Committee. The ACC shall consist of the Board of Directors of the Association.

H. Adoption of Guidelines. The ACC from time to time may formulate and adopt handbooks, guidelines and procedures (which may be altered or amended at any time) consistent with this Declaration for the purpose of clarifying or assisting in the exercise of its duties contemplated by this Declaration. Additionally, the ACC may formulate guidelines and rules regarding the adoption of architectural and construction standards and the regulation of use of Lots on the Property, the contents of which guidelines may not necessarily be reflected by this Declaration. Copies of the adopted guidelines and procedures may be obtained from the ACC upon request and payment of an amount equal to the cost of copying such guidelines and procedures.

I. Non-Waiver. The approval or disapproval by the ACC of any plans, drawings, or specifications for any work or construction done or proposed, or in connection with any other matter requiring the approval of the ACC under this Declaration, shall not be deemed to constitute a waiver of any right to approve or disapprove any similar plan, drawing or specification or matter whenever subsequently or additionally submitted for approval by any Owner.

J. Estoppel Certificate. Within thirty (30) days after written demand therefore is delivered to the ACC by any Owner, and upon payment to the Association of a reasonable fee from time to time to be fixed by the ACC, the ACC shall provide an Owner with an Estoppel certificate executed by any one of its members, certifying with respect to any Lot of said Owner, that as of the date thereof either:

281

1. All improvements and other work made or done upon or within said Lot by the Owner and all uses then being made of the Lot by the Owner comply with this Declaration, or

2.. Such improvements, work, or uses do not so comply, in which event the certificate shall also (i) identify the non-complying improvements, work or uses and (ii) set forth with particularity the cause or causes for such non-compliance.

K. Variances. The ACC may authorize variances from the provisions of this Declaration when circumstances such as hardship, aesthetic, or environmental considerations may require. Such variance must be evidenced by a writing signed by a majority of the ACC. The granting of a variance does not operate to waive any of the terms of the Declaration except as to the particular provision covered by the variance. The ACC shall have the right to condition the variance, including without limitation, making a variance temporary or permanent. The granting of a variance in one instance does not mandate the granting of a variance under similar or related circumstances.

## ARTICLE XIII

RESERVED RIGHTS

A. Reserved Whitney Benefits Rights and Additional Reserved Rights. To the maximum extent permitted by law Whitney Benefits reserves the absolute, unilateral right for a period of twenty (20) years after the recording of this Declaration to amend, alter, revise or add to these covenants and this Declaration in any way, in its sole discretion. Whitney Benefits may make revisions, modifications, amendments or additions to this Declaration by signing a document reflecting such revisions, modifications, amendments or additions and filing the same with the County Clerk of Sheridan County, Wyoming. Such revisions, modifications, amendments or additions shall not cause any building, improvement or use that conforms with this Declaration on the date such action is taken to be in violation of this Declaration.

B. Reserved Whitney Benefits Rights Concerning Association. Whitney Benefits reserves the right to designate the directors of the Association until Whitney Benefits files with the Association a written disclaimer of the right to designate directors or until Whitney Benefits. files articles of dissolution with the Wyoming Secretary of State, whichever occurs first.

## ARTICLE XIV

ADDITIONAL PROVISIONS

A. Covenants to Run With the Land. This Declaration and these provisions are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty (20) years after the recording of this Declaration, at which time this Declaration and said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then record Owners of the Lots it is agreed to amend this Declaration and said covenants in whole or in part. Provisions for maintenance of Common Area shall not be permitted to lapse with the other covenants unless other provisions acceptable to the City of Sheridan are

made for the continuation of maintenance. This Declaration may be amended by Whitney Benefits as provided in Article XIII, and, when Whitney Benefits no longer has the right to amend the Declaration, the Declaration may be amended in whole or in part at any time by a duly written and recorded instrument executed by the then record Owners of a majority of the Lots. Notwithstanding any provision to the contrary in this Declaration, until the expiration of twenty (20) years after the recording of this Declaration, any amendment to this Declaration shall require the consent of Whitney Benefits, Inc.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS DECLARATION, THE ASSOCIATION CANNOT BE DISSOLVED WITHOUT THE WRITTEN CONSENT OF THE CITY OF SHERIDAN, WYOMING.

B. Delinquency. Any assessment or other amount due from an Owner as provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each amount not paid within thirty (30) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed $10 or 10 percent of the amount due, whichever is greater, regardless of the number of individual amounts due. If any such amount or assessment is not paid within thirty (30) days after the delinquency date, the assessment or amount shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per year.

C. Association's Performance of Owner's Duties. In the event any Owner fails to comply with the provisions of this Declaration, the Association shall be entitled to, but shall not be obligated to, take whatever lawful actions are necessary to enforce the provisions hereof including performing such duties on behalf of the Owner. If the performance of an Owner's duties by the Association requires the Association or its delegates to enter onto the Lot of an Owner for such purposes, such entry shall be deemed to have occurred with the consent of the Owner and shall not constitute a trespass. The Association shall be entitled to recover all costs, expenses and attorneys' fees incurred by the Association in performing the duties of an Owner. If the Owner fails or refuses to pay the Association for such amounts within 30 days from the date invoiced by the Association, the amounts, including late charges and interest, shall constitute a lien against the Owner's Lot together with the Owner's interest in the Common Area, and shall have the same priority, and shall be documented, evidenced, attached, enforced and accompanied by the same benefits as the lien for non-payment of assessments described in this Declaration.

D. Legal Proceedings. If any Owner violates or attempts to violate any of the covenants or provisions described in this Declaration, it shall be lawful for the Association to prosecute any proceedings at law or in equity against the person or persons violating any such covenant, and either to prevent him or them from so doing or to recover damages or other assessments for such violation. Only the Association has the right to bring a proceeding to enforce these covenants or to collect assessments.

If any Owner, or an Owner's family, invitees, licensees, tenants, or subtenants, violates the terms of this Declaration, such Owner shall be liable to the Association for all costs, expenses and reasonable attorneys' fees incurred by the Association in enforcing the terms of this Declaration, regardless of whether suit is filed by the Association. If the Owner fails or refuses to pay the Association for such amounts within 30 days from the date invoiced by the Association, the amounts, including late charges and interest, shall constitute a lien against the Owner's Lot together with the Owner's membership in the Association, and shall have the same priority, and

shall be documented, evidenced, attached, enforced and accompanied by the same benefits as the lien for non-payment of assessments described in this Declaration.

E. Imposition of Charges and Fees. The Association, through its Board of Directors, may recover reasonable attorney's fees and other legal costs for collection of assessments and other actions to enforce these covenants or the power of the Association, regardless of whether or not suit is initiated.

F. Cumulative Remedies. The liens for unpaid assessments and unpaid amounts due from Owners and the rights to foreclosure and sale described in this Declaration shall be in addition to and not in substitution for any other rights and remedies which the Association and its assigns may have by law, including a suit to recover a money judgment for such unpaid amounts and assessments.

G. Condemnation of Common Area. If at any time, or from time to time, all or any portion of Common Area, or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, any award in condemnation shall be paid to the Association and deposited into its operating fund. No Owner shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation, such rights of participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interests of all Owners.

H. Invalidation. Invalidation of any one of the covenants or provisions in this Declaration by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

I. LIABILITY TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COVENANTORS, THE ASSOCIATION, THE ACC, AND THE MANAGERS, DIRECTORS, OFFICERS, OR EMPLOYEES OF THE COVENANTORS, THE ASSOCIATION, AND ACC, SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON FOR ANY ERROR OR OMISSION UNLESS THE PERSON AGAINST WHOM A CLAIM IS ASSERTED HAS PERSONALLY ACTED WITH INTENTIONAL BAD FAITH OR MALICE TOWARD THE PERSON MAKING THE CLAIM. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COVENANTORS, THE ASSOCIATION, AND THE ACC AND THE MANAGERS, DIRECTORS, OFFICERS, AND EMPLOYEES OF THESE ENTITIES SHALL NOT BE LIABLE OR RESPONSIBLE IN ANY WAY FOR ANY DEFECTS IN PLANS OR SPECIFICATION SUBMITTED NOR FOR ANY STRUCTURAL OR OTHER DEFECTS IN ANY WORK DONE ACCORDING TO SUCH PLANS AND SPECIFICATIONS NOR FOR ERRORS IN THE ON-SITE LOCATION OF ANY CONSTRUCTION. THE COVENANTORS, THE ASSOCIATION AND THE ACC SHALL NOT BE RESPONSIBLE OR LIABLE FOR REVIEWING THE PLANS AND SPECIFICATIONS FOR ENGINEERING OR STRUCTURAL SOUNDNESS OR COMPLIANCE WITH ANY APPLICABLE GOVERNMENTAL REGULATIONS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE OWNER OF A LOT SHALL NOT HAVE ANY RIGHT TO RECOVER DAMAGES FROM THE COVENANTORS, THE ASSOCIATION, OR THE ACC OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS FOR ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THE COVENANTS OR THE ASSOCIATION'S ARTICLES OR BYLAWS. THE EXCLUSIVE REMEDY OF EACH SUCH OWNER FOR SUCH CLAIMS SHALL BE A DECLARATION OF THE RIGHTS OF THE PARTIES AND AN ORDER ENJOINING SUCH PERSON OR ENTITY FROM TAKING ACTION INCONSISTENT WITH SUCH DECLARED RIGHTS.

Dated this 9 day of October, 20__.

Whitney Benefits, Inc.

By: _____

Title: President

Sheridan Ice, LLC

By: _____

Title: Agent

STATE OF WYOMING )
) ss.
COUNTY OF SHERIDAN )

The foregoing instrument was acknowledged before me by Tom Kinnison, the president of Whitney Benefits, Inc. this 9 day of October 2007.

Witness my hand and official seal.

_____
Notary Public

My commission expires: 4-13-11

DANIEL R. BLAKE - NOTARY PUBLIC
COUNTY OF SHERIDAN STATE OF WYOMING
My Commission Expires April 13, 2011

STATE OF WYOMING )
) ss.
COUNTY OF SHERIDAN )

The foregoing instrument was acknowledged before me by Patrick Henderson, the director of Sheridan Ice, LLC this 9 day of October 2007.

Witness my hand and official seal.

_____
Notary Public

My commission expires: 4-13-11

DANIEL R. BLAKE - NOTARY PUBLIC
COUNTY OF SHERIDAN STATE OF WYOMING
My Commission Expires April 13, 2011

285

**SCHEDULE A**

# Whitney Plaza Owners Association
# Assessment by Lot

| Block 1 | Lot # | Use | # Parking Spaces | % CAM Fees |
|---|---|---|---|---|
| 1 | 1 | AMU | 36 | 9.84% |
| 1 | 2 | AMU | 38 | 10.38% |
| 1 | 3 | CU | 55 | 15.03% |
| 1 | 4 | AMU | 48 | 13.11% |
| 1 | 5 | AMU | 36 | 9.84% |
| 1 | 6 | AMU | 18 | 4.92% |
| 1 | 7 | AMU | 18 | 4.92% |
| 1 | 8 | AMU | 27 | 7.38% |
| **BLOCK 1 TOTALS** | | | **276** | **75.41%** |

| Block | Lot # | Use | # Parking Spaces | % CAM Fees |
|---|---|---|---|---|
| 2 | 1 | AMU | 3 | 0.82% |
| 2 | 2 | AMU | 3 | 0.82% |
| 2 | 3 | LW | 4 | 1.09% |
| 2 | 4 | LW | 4 | 1.09% |
| 2 | 5 | LW | 4 | 1.09% |
| 2 | 6 | LW | 4 | 1.09% |
| 2 | 7 | LW | 4 | 1.09% |
| 2 | 8 | LW | 4 | 1.09% |
| 2 | 9 | LW | 3 | 0.82% |
| 2 | 10 | LW | 3 | 0.82% |
| 2 | 11 | LW | 3 | 0.82% |
| 2 | 12 | LW | 3 | 0.82% |
| 2 | 13 | LW | 2 | 0.55% |
| 2 | 14 | LW | 2 | 0.55% |
| 2 | 15 | DR | 1 | 0.27% |
| 2 | 16 | DR | 1 | 0.27% |
| 2 | 17 | DR | 1 | 0.27% |
| 2 | 18 | DR | 1 | 0.27% |
| 2 | 19 | DR | 1 | 0.27% |
| 2 | 20 | DR | 1 | 0.27% |
| 2 | 21 | DR | 1 | 0.27% |
| 2 | 22 | AR | 1 | 0.27% |
| 2 | 23 | DR | 1 | 0.27% |
| 2 | 24 | DR | | 0.14% |
| 2 | 25 | DR | | 0.14% |
| 2 | 26 | DR | | 0.14% |
| 2 | 27 | DR | | 0.14% |
| 2 | 28 | DR | | 0.14% |
| 2 | 29 | DR | | 0.14% |
| 2 | 30 | AR | 2 | 0.55% |
| 2 | 31 | AR | 2 | 0.55% |
| 2 | 32 | AR | 2 | 0.55% |
| Ice Rink | Outlot B | PK | 29 | 7.92% |
| **TOTAL BLOCK 2** | | | **90** | **25.20%** |
| **WHITNEY PLAZA OWNERS ASSOC** | | | 366 | 100.61% |