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POLK COUNTY, IOWA
FILED FOR RECORD

AT 3 NOV 30 1970
WREN H. MALEY, RECORDER

DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT, dated this 27 day of October, 1970, made by RACCOON VALLEY INVESTMENT CO., an Iowa corporation, having an office for the transaction of business at 2127 McKinley Avenue, Des Moines, Iowa (hereinafter referred to as "Owner"),

WITNESSETH:

WHEREAS, the Owner holds the fee simple title to certain real property located in the City of Des Moines, County of Polk and State of Iowa, as more particularly described on Exhibit "A" hereto attached and made a part hereof, consisting of two parcels, Parcel A and Parcel B, (hereinafter referred to as the "Premises"); and

WHEREAS, it is the desire of the Owner to develop the Premises as an integrated retail and/or commercial center and the Owner desires to execute this declaration for the benefit of the Owner, mortgagees having an interest in the Premises and for the benefit of the lessees, sublessees, licensees and concessionaires of the Owner, their successors and assigns, and their respective customers, suppliers, invitees, employees, licensees, sublessees and concessionaires; and

WHEREAS, the Owner has groundleased that portion of the Premises more particularly described in Exhibit "A" and hereinafter referred to as Parcel "A" to Macerich Real Estate Company by Indenture of Lease dated as of November 7, 1968, as amended by First Amendment of Lease dated October 17, 1969, a Short Form of

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Lease having been recorded in the Office of the Polk County, Iowa Recorder on December 22, 1969 in Mortgage Book 4090, Page 455 and which Lease, as amended, was assigned by Macerich Real Estate Company to Middle Iowa Development Corp. (hereinafter referred to as "Groundlessee") by assignment dated May 28, 1970 and recorded in the Polk County, Iowa Recorder's Office on June 5, 1970 in Book 4132, Page 308. The Owner has groundleased Parcel "A", as aforesaid, for the purpose of having said parcel developed by Groundlessee, and to retain that portion of the Premises more particularly described on Exhibit "A" and hereinafter referred to as Parcel "B" for future development.


NOW, THEREFORE, the Owner does hereby declare as follows:

1.01 No barriers, fences or other obstructions shall be erected upon the Premises so as to:

(a) Prevent the reasonable and adequate passage of motor vehicles of all kinds, natures and description, or pedestrians over the entrance roads, pedestrian entrances, curb cuts and other means of ingress and egress now or hereafter constructed, to and from any public or private street or road bordering the Premises.

(b) Prevent the reasonable and adequate passage of motor vehicles of all kinds, natures and description or pedestrians to, from, on and over the Premises; and

(c) Prevent the parking of motor vehicles of all kinds, natures and description, by the lessees, sublessees, licensees and concessionaires of the Owner, their successors and assigns, and their respective customers, suppliers, invitees, employees, licensees

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sublessees and concessionaires in the respective areas, designated from time to time by the Owner with respect to Parcel B and by the Groundlessee, with respect to Parcel A, for parking on said Premises, subject to the restrictions contained in this Declaration.

1.02. The Owner and/or Groundlessee may install and maintain any necessary or desirable public utility lines from the adjoining public or private streets and roads to service the Premises, and/or for the servicing of buildings, structures and improvements now located on or hereafter located on said Premises. All such public utility lines shall be constructed underground to the buildings or structures which they serve. The installation of such utilities over Parcel A for the benefit of Parcel B shall be so located so as not to interfere with the location of buildings on Parcel A. Except as provided in Paragraph 2.01, Owner shall install and maintain, at Owner's cost and expense, all utilities located within or for the sole benefit of Parcel B.

Any disturbing of the surface of Parcel A by the Owner, for the installation by the Owner of additional utilities or additional connections to service Parcel B, shall be restored by the Owner at Owner's expense, to a condition at least equal to its condition prior to said disturbance.

1.03. The foregoing Paragraphs 1.01 and 1.02 shall, however, not be interpreted as preventing: (a) the construction of buildings on any portion of the Premises except as prohibited by this Declaration and subject to the requirements of Paragraphs 2.02 and 2.05 hereof, or (b) the imposition by the Owner or any groundlessee of the Owner of reasonable requirements with respect to parking.

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ingress and egress or with respect to the installation and maintenance of the aforesaid public utility lines.

2.01. Water, electric, sanitary sewer, storm sewer, telephone and gas required to service the improvements and building to be erected on Parcel A shall be constructed and extended underground by the Grantee of Parcel A, and such utilities, shall be extended by such Grantee to the northeast corner of Parcel A for the convenience and use of Owner in developing Parcel B. The costs and expenses of maintaining the aforesaid utility lines within Parcel A shall be at the expense of the Grantee of Parcel A.

2.02. A minimum parking ratio of three square feet of non-exclusive common area (including all areas of Parcel A covered by roadways, parking improvements and facilities, including grading, surfacing, lighting, striping and planting in, under, over and upon those portions of the Parcel A not included within any area on which buildings are erected) to one square foot of gross building area (which ratio shall be referred to herein as the Parcel A "Required Ratio") shall be maintained at all times by the Grantee within the Parcel A. Provided the Parcel A "Required Ratio" is maintained, nothing herein shall be construed as prohibiting any sublessee of the Grantee of Parcel A from designating and using certain portions of the parking area in Parcel A in excess of the Parcel A "Required Ratio" for the purpose of selling within such outdoor area, seasonal merchandise.

2.03. The north thirty-six feet and the east thirty-six feet of Parcel A are hereby reserved for permanent non-exclusive

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Accesses and driveways for purposes of ingress and egress to serve Parcels A and B. Said drives shall be designated by curbsings as main accesses with openings to the parking areas of Parcels A and B. Utilities may be located underground therein and the Owner may at its expense, hook onto any utilities located therein to service any uses or buildings to be erected upon Parcel B.

2.04. A parcel of land approximately one hundred twenty-five (125) feet by one hundred fifty (150) feet contiguous to the southwest corner of Parcel A has been heretofore leased by Owner to Sunray D-X Oil Company. A strip of land 25 feet wide east and west and 150 feet long north and south and located along that portion of the southwest side of Parcel A which is contiguous to the east side of the Sunray D-X Oil Company leased premises, is subject to a previously recorded non-exclusive easement for driveway purposes only for ingress and egress to and from Parcel A and the Sunray D-X Oil Company leased premises.

2.05 In the event that Parcel B shall be developed for retail use, Owner shall construct and maintain at all times thereon a parking ratio of three (3) square feet of non-exclusive common area (including all areas of Parcel B covered by roadways, parking improvements and facilities, including grading, surfacing, lighting, striping and planting in, under, over and upon those portions of Parcel B not included within the area on which buildings are erected) to one (1) square foot of gross building area, or such parking as shall be required and enforceable by the zoning ordinances of the City of Des Moines, Iowa, whichever is the lesser. In the event that Parcel B shall be developed for any non-retail use, Owner

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shall construct and maintain on Parcel B such parking facilities as are necessary or required to provide adequate and sufficient parking facilities on Parcel B so that the parking facilities on Parcel B shall, at all times, be sufficient and adequate for such non-retail use of Parcel B without any need to use or utilize the parking facilities located on Parcel A.

2.06. For so long as Parcel A is occupied in whole or in part by an Arlan's Department Store or a discount department store similar to Arlan's and said use not discontinued for more than three (3) years, Parcel B shall not be used or permitted to be used in whole or in part as a discount department store.

2.07. There shall be no supermarket business (as said supermarket business is normally operated in Des Moines, Iowa) for the sale of food (such as a grocery store or supermarket) for off-premises consumption within Parcel B for so long as such a service is offered on Parcel A and not discontinued for more than three (3) years, provided, however, that this restriction shall not apply to any restaurant use where the sale of prepared food to be taken off of the Premises is an incident to the use of all or any part of the Premises as a restaurant.

2.08. No building shall be erected upon the North One Hundred Forty (140) feet of Parcel A, or upon the West Four Hundred (400) feet of Parcel A, so as not to interfere with the view and development of the east part of Parcel B.

2.09. The rights, benefits and restrictions set forth in this Declaration of Easement shall run with the land and shall be binding upon and inure to the benefit of the Owner, lessees,

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sublessees, licensees and concessionaires of the Owner, future grantees and existing and future mortgagees having an interest in the Premises, except that the rights of any present or future mortgagee having an interest in the Premises shall cease and terminate at such time as their respective mortgage is paid in full and discharged, and to the benefit of all successors or assigns of the aforesaid parties or future parties in interest, but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public. The right is hereby reserved to the Owner of Parcel A to close temporarily all or any portion of the common areas in Parcel A, to such extent, in the opinion of such Owner as may be legally necessary and sufficient to prevent a dedication thereof or an accrual of any rights in any person other than as aforesaid or in the public generally therein, only one entrance shall be closed at a time, and only for so long as legally required to protect said rights of the Owner. Owner shall notify Groundlessee prior to said closing and secure the consent of the Groundlessee, which consent shall not be unreasonably withheld.

2.10. Owner/or Groundlessee shall have the right to cure any default of the other hereunder, including specifically but without limitation thereof, the right to cure a default which continues for ten (10) days after written notice of such default, with the further right of reasonable access for such purposes upon Parcel A or B and with the right to demand and collect reimbursement from the other of any amount advanced to cure such default, together with interest thereon from the date of such advance at the highest legal rate, in the State of Iowa, not to exceed nine per

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cent (9%). Any claim herein for reimbursement and interest shall be respectively a secured right and secured obligation and a lien therefor shall attach to Groundlessees Interest in Parcel A or Owners' interest in Parcel B, effective upon recording notice thereon in the Office of the Recorder in and for the County where the Premises are located. Any such lien shall, however, be subordinate and inferior to the lien of any first Mortgage or First Deed of Trust now or hereafter covering any portion of the Entire premises, and any purchaser at any foreclosure or trustee's sale (as well as any grantee of any deed given in lieu of foreclosure or at a trustee's sale) under any such first Mortgage or first Deed of Trust shall take title free from any such then existing lien but otherwise subject to the provisions hereof. The easements, rights, and burdens created under this Declaration shall not be deemed liens for the purpose of this paragraph 2.10 and this Declaration is, shall be, and shall be deemed to be superior in interest and estate to any and all mortgages, and/or deeds of trust, leases, and ground-leases hereafter affecting all or any part of the Premises.

2.11. In the event that: (a) Owner or Groundlessee shall fail to construct and maintain the parking ratios in Parcels A and B as provided and defined in this agreement to be constructed by each, or (b) Owner or Groundlessee shall fail to maintain such parking areas in Parcel A and B as each is required herein in a proper state of repair, maintenance and care, then in either event and in addition to any remedies available to the Owner or Groundlessee herein or by law, Owner or Groundlessee shall have the right to proceed in Court to secure the performance of the other, and

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each consents to the jurisdiction of the Polk County, Iowa District Court for said purpose.

2.12. Unless and until the groundlease with Groundlessee shall have expired or have been otherwise terminated and all mortgages on Parcel A shall have been satisfied of record, this Declaration of Easement shall not be amended, altered or modified without the prior written consent of the Groundlessee and all mortgagees of record in Polk County, Iowa, having an interest in Parcel A. Such amendment, alteration or modification shall in addition be by written instrument, in recordable form.

2.13. Notwithstanding anything to the contrary contained in this Declaration of Easement, the Owner and/or the Groundlessee, their respective successors and assigns, shall not be in violation of the provisions of Paragraph "2.02" and/or Paragraph "2.05" hereof in the event the parking ratios required to be maintained by the aforesaid paragraphs are reduced by reason of a taking for any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof.

IN WITNESS WHEREOF, this Declaration of Easement has been duly executed as of the day and year first above written.

MIDDLE IOWA DEVELOPMENT CORP.

RACCOON VALLEY INVESTMENT CO.

By *Maughrip*
President

By *[Signature]*
E.C. Coppola President

By *[Signature]*
Assistant Secretary

By *[Signature]*
Joanne Coppola Secretary

Richard E. Carter

Joanne Coppola

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EXHIBIT "A"

PARCEL A

ALL THAT CERTAIN tract or parcel of land and premises situated in the City of Des Moines, County of Polk, and State of Iowa, bounded and described as follows:

"Commencing at the South Quarter Corner of Section 20, T 78 N, R 24 W of the 5th Principal Meridian, Polk County, Iowa; said corner also being the point of intersection of the centerlines of Fleur Drive and McKinley Avenue in the City of Des Moines, Iowa; thence N 89° 39' E along the centerline of McKinley Avenue for a distance of 175.00 feet; thence N 0° 00' E parallel to the centerline of Fleur Drive for a distance of 37.00 feet to the point of beginning which point is on the north R. O. W. of McKinley Avenue; thence N 0° 00' E a distance of 146 feet; thence S 89° 39' W a distance of 125.00 feet; thence N 0° 00' E along the east R. O. W. line of Fleur Drive a distance of 453.35 feet; thence N 90° 00' E a distance of 190.00 feet; thence N 0° 00' E a distance of 145.00 feet; thence N 90° 00' W a distance of 200.00 feet to a point on the east R. O. W. line of Fleur Drive and 40.00 feet east of the centerline of Fleur Drive; thence N 0° 00' E a distance of 36.00 feet; thence N 89° 38' E a distance of 737.36 feet; thence S 0° 02' W a distance of 776.57 feet to a point on the north R. O. W. line of McKinley Avenue which point is 41.05 feet north of the centerline of McKinley Avenue; thence S 89° 03' 22" W along the north R. O. W. line of McKinley Avenue a distance of 361.95 feet; thence N 0° 00' E a distance of 1.77 feet; thence S 89° 39' W a distance of 40.00 feet to the point of beginning, a tract of land containing 11.98 acres more or less, all in the southeast quarter of Section 20 T 78 N, R 24 W in the City of Des Moines, Polk County, Iowa."

PARCEL B

ALL THAT CERTAIN tract or parcel of land and premises situated in the City of Des Moines, County of Polk, and State of Iowa, bounded and described as follows:

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PARCEL "B"

The SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20 T 78 N, R 24 West of the 5th Principal Meridian, Polk County, Iowa; except the East 533.9 feet of the South 659.7 feet and except the N 322.2 feet of the West 451 feet and except roads of said SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20 T 78 N, R 24 W and except "commencing at the South Quarter Corner of Section 20 T 78 N, R 24 W of the 5th Principal Meridian, Polk County, Iowa; said corner also being the point of intersection of the centerlines of Fleur Drive and McKinley Avenue in the City of Des Moines, Iowa; thence N 89° 39'E along the centerline of McKinley Avenue for a distance of 175' feet; thence N 0° 00'E parallel to the centerline of Fleur Drive for a distance of 37.00 feet to the point of beginning which point is on the north R.O.W. of McKinley Avenue; thence N 0°00'E a distance of 146 feet; thence S 89°39'W a distance of 125.00 feet; thence N 0°00'E along the East R.O.W. line of Fleur Drive a distance of 453.35 feet; thence N 90°00'E a distance of 190.00 feet; thence N 0°00'E a distance of 145.00 feet; thence N 90°00'W a distance of 200.00 feet to a point on the east R.O.W. line of Fleur Drive and 40.00 feet east of the centerline of Fleur Drive; thence N 0°00'E a distance of 36.00 feet; thence N 89°38'E a distance of 737.36 feet; thence S 0°02'W a distance of 776.57 feet to a point on the north R.O.W. line of McKinley Avenue which point is 41.05 feet north of the centerline of McKinley Avenue; thence S 89°03'22"W along the north R.O.W. line of McKinley Avenue a distance of 561.95 feet; thence N 0°00'E a distance of 1.77 feet; thence S 89°39'W a distance of 40.00 feet to the point of beginning, a tract of land containing 11.98 acres more or less, all in the southeast quarter of Section 20 T 78 N, R 24 W in the City of Des Moines, Polk County, Iowa."

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STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 28 day of November A. D. 1970, before me, the undersigned, a Notary Public in and for said County in said State, personally appeared E. C. Coppola and JoAnn Coppola, to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of Raccon Valley Investment Co., an Iowa corporation; that no seal has been procured by the said corporation; that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and that the said E. C. Coppola and JoAnn Coppola as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



John Connolly, III
John Connolly, III, Notary Public in and for said County.

STATE OF Iowa)
) SS:
COUNTY OF Polk)

On this 27 day of October A. D. 1970, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Mace Siegel and Richard E. Carter, to me personally known, who being by me duly sworn, did say that they are the President and Assistant Secretary, respectively, of Middle Iowa Development Corp., an Iowa corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and that the said Mace Siegel and Richard E. Carter, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



John Connolly, III
John Connolly, III, Notary Public in and for said County.