

RECORDING REQUESTED BY  
OLD REPUBLIC TITLE CO.

2124000304-LL

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

TRAINOR FAIRBROOK  
Charles W. Trainor, Esquire  
Post Office Box 255824  
Sacramento, California 95865-5824



El Dorado, County Recorder  
William Schultz Co Recorder Office  
DOC- 2008-0049711-00

Acct 5-OLD REPUBLIC TITLE CO  
Monday, OCT 13, 2008 13:55:04  
Tel Pd \$81.00 Nbr-0001123700  
DRW/C1/2-22

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DECLARATION OF USE RESTRICTIONS AND  
AGREEMENT TO GRANT EASEMENTS  
(El Dorado Hills Town Center East, Parcels 1-4)**

This Declaration of Use Restrictions ("Declaration") is made this 13th day of October, 2008, by TOWN CENTER EAST, L.P., a California limited partnership and EL DORADO HILLS THEATRE, LLC, a Delaware limited liability company (collectively "Declarant".)

Recitals

This Declaration is made in contemplation of and with reference to the following facts, understandings, and intentions:

A. Declarant is the owner of that certain real property ("Covered Property") located in the County of El Dorado ("County"), State of California, which is shaded on the map attached hereto as Exhibit A, and which is more particularly described in the legal description attached hereto as Exhibit B.

B. Concurrently with the recordation of this Declaration, Declarant is conveying to Tradewinds Lodge, a California general partnership ("Tradewinds") a portion of the Covered Property, consisting of the following four (4) separate legal parcels of real property: (i) a parcel containing 59,223 gross square feet of land area and more particularly described on the attached Exhibit C ("Parcel 1"), (ii) a parcel containing 110,541 gross square feet of land area and more particularly described on the attached Exhibit C ("Parcel 2") (iii) a parcel containing 29,097 gross square feet of land area and more particularly described on the attached Exhibit C ("Parcel 3"), and (iii) a parcel containing approximately 36,803 gross square feet of land area and more particularly described on the attached Exhibit D ("Parcel 4"). Parcel 1, Parcel 2, Parcel 3 and Parcel 4 shall collectively be referred to herein as the "Tradewinds Property."

C. Tradewinds intends to develop, own, and operate on the parcels comprising the Tradewinds Property, a hotel, retail and general commercial project, described as follows:

1. Parcel 1: general commercial and retail use with a maximum of 20,000 square feet of gross rentable area.

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2. Parcel 2: a full-service hotel and conference center that will include, at a minimum, (i) one hundred (100) hotel rooms, (ii) a table service lunch and dinner restaurant containing not less than four thousand (4,000) square feet and not more than four thousand five hundred (4,500) square feet of gross rentable area, (iii) a conference facility sufficient to accommodate at least two hundred fifty (250) persons, and (iv) retail space with frontage on Town Center Boulevard containing not less than three thousand (3,000) square feet of gross rentable area.

3. Parcel 3: general commercial and retail use with a minimum of 10,000 square feet of rentable retail shop space with frontage on Town Center Boulevard.

4. Parcel 4: general commercial and retail use with a maximum of 10,000 square feet of gross rentable area.

D. The Covered Property, exclusive of the Tradewinds Property, is referred to herein as the "TCE Property."

E. Declarant desires to impose certain restrictions on each of the parcels constituting the Tradewinds Property concerning the use of each respective parcel as set forth herein and to establish certain exclusive uses in favor of Parcel 2 as more fully set forth herein.

F. Declarant will hereafter convey title to the Covered Property subject to the use restrictions hereinafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Covered Property, and any part thereof, shall be held and conveyed subject to the following use restrictions which are hereby declared to be for the benefit of the TCE Property. The use restrictions affecting each parcel within the Tradewinds Property shall run with such parcel for the benefit of the TCE Property and shall be binding upon all parties having or acquiring any right or title in the Tradewinds Property or any part thereof, and shall inure to the benefit of the TCE Property.

#### Agreement

1. Owner Defined. The term "Owner" or "Owners" shall mean and refer to one or more persons or entities who from time to time are alone or collectively the record owner of a fee simple title to the Covered Property, or any portion thereof. In the event that the ownership of any building or other improvements on any parcel within the Covered Property shall ever be severed from the land, whether by lease or by deed, only the owner of the interest in the land shall be deemed an Owner hereunder.

2. Limitations on Number of Improvements: No more than one (1) building shall be constructed on any of Parcel 1, Parcel 2, Parcel 3 or Parcel 4.

3. Use of Parcel 1. Parcel 1 shall be used for general commercial and retail use with a maximum of twenty thousand (20,000) square feet of gross rentable area, and all uses on such Parcel 1 shall in all respects strictly comply with (i) all of the provisions of El Dorado County Planned Development Ordinance PD94-04 for Town Center East ("PD94-04"), including the

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Design Guidelines and Development Standards established thereunder, and (ii) all other covenants, conditions and restrictions applicable thereto.

4. Use of Parcel 2. Parcel 2 shall be used for a full-service hotel and conference center containing at a minimum (i) one hundred (100) hotel rooms, (ii) a table-service lunch-and-dinner restaurant containing not less than four thousand (4,000) square feet and not more than four thousand five hundred (4,500) square feet of gross rentable area, (iii) a conference facility sufficient to accommodate at least two hundred fifty (250) persons, and (iv) retail space with frontage on Town Center Boulevard containing not less than three thousand (3,000) square feet of gross rentable area, and for no other uses and, notwithstanding the foregoing, all uses on such Parcel 2 shall in all respects strictly comply with (i) all of the provisions of PD94-04, including the Design Guidelines and Development Standards established thereunder, (ii) that certain Declaration of Use Restrictions, recorded in the Official Records of El Dorado County on April 15, 2004 as Document No. 2004-0028684-00 ("Holiday Inn Declaration"), and (iii) all other covenants, conditions and restrictions applicable thereto. In accordance with the Holiday Inn Declaration, no portion of the Covered Property may be used for the operation of a limited-service hotel/motel, an extended stay hotel/motel or a budget motel or other similar form of Transient Lodging Facility (collectively, the "Hotel Exclusive"). The Hotel Exclusive does not, however, prohibit the following uses on the Covered Property: (a) one or more full-service hotels offering food and beverages with table service, and (b) one or more boutique hotels offering food and beverages with table service.

5. Use of Parcel 3. Parcel 3 shall be used for general commercial and retail use with a minimum of ten thousand (10,000) square feet of gross rentable retail shop space with frontage on Town Center Boulevard, which shall be developed in the main street theme consistent with other developed portions of Town Center Boulevard, and for no other use and, notwithstanding the foregoing, all uses of Parcel 3 shall in all aspects strictly comply with (i) all of the provisions of PD94-04, including the Design Guidelines and Development Standards established thereunder, and (ii) all other covenants, conditions and restrictions applicable thereto.

6. Use of Parcel 4. Parcel 4 shall be used for general commercial and retail use with a maximum of ten thousand (10,000) square feet of gross rentable area, and all uses on such Parcel 4 shall in all respects strictly comply with (i) all of the provisions of PD94-04, including the Design Guidelines and Development Standards established thereunder, and (ii) all other covenants, conditions and restrictions applicable thereto.

7. Sushi Restaurant Exclusive. In no event shall the Covered Property, exclusive of the Hotel Parcel, or any portion thereof, be sold or leased for the operation of a full-service, sit down restaurant serving Japanese food or sushi as its primary food item (the "Protective Use Covenant"). The Protective Use Covenant shall not, however, apply with respect to (a) any restaurant that consists of less than two thousand (2,000) square feet, or (b) the leases already in existence as of the date on which this Declaration is recorded. The Protective Use Covenant shall terminate upon the earlier or (i) the date that is ten (10) years after the recordation of this Declaration, (ii) thirty (30) days after the date on which Parcel 2 is no longer being utilized for a restaurant serving Japanese food or sushi, except for temporary closures due to casualty, condemnation or remodeling, or (iii) the date that is three (3) years after the recordation of this

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Declaration in the event that the full-service restaurant serving Japanese food or sushi does not open for business on Parcel 2 within such three (3)-year period.

8. Termination of Declaration. Unless otherwise expressly provided herein, the restrictions set forth in this Declaration shall be effective until December 31, 2018.

9. Indemnification. Each Owner of a parcel within the Covered Property, and its successors or assigns, shall indemnify, defend and hold the other Owner(s), the Declarant and its affiliates, and the Tenants of the other Owners, and their respective successors or assigns, harmless from and against all claims, expenses, liabilities, losses, damages, and costs, including any actions or proceedings in connection therewith and including reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of (i) the death of or any accident, injury, loss, or damage, howsoever caused, to any person or loss or damage to the property of any person as shall occur on or about such Owner's parcel, or (ii) violation of, or failure to comply with, by such Owner, of any and all covenants, conditions and restrictions and exclusives applicable to the Covered Property or any other property within the El Dorado Hills Town Center East development, including, without limitation, the Hotel Exclusive.

10. Covenants Run with the Land. The use restrictions contained herein shall run with and bind the Tradewinds Property, shall inure to the benefit of the TCE Property and shall be enforceable by the Owner(s) of the TCE Property. The Protective Use Covenant contained in Section 6 of this Declaration shall run with and bind the TCE Property, shall inure to the benefit of Parcel 2 and shall be enforceable by the Owner of Parcel 2.

11. Modification Provision. This Declaration may not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the consent of Declarant, which consent shall not be unreasonably withheld, and then only by written instrument duly executed and acknowledged by the Declarant, duly recorded in the Office of the County Recorder of El Dorado County. Declarant shall have the right to modify this Declaration without obtaining the consent of any other Owners of the Covered Property, provided such modification does not materially and adversely affect such other Owner's use of the TCE Property. To the extent that such modification materially and adversely affects another Owner's use of the TCE Property, or any portion thereof, such Owner shall have the right to approve such modification, which approval shall not be unreasonably withheld, conditioned or delayed.

12. Assignment by Declarant. Because Declarant is the master developer of the Town Center East Property (as hereinafter defined), Declarant's rights under this Declaration are personal to Declarant and shall be retained by Declarant during its ownership of the Town Center East Property notwithstanding any transfer by Declarant of the TCE Property or any portion thereof. At such time as Declarant no longer has an ownership interest in the TCE Property, Declarant shall have the right, but not the obligation, to assign its rights under this Declaration to one (1) of the Owners of the TCE Property or to the El Dorado Hills Town Center East Owners' Association ("Association"). At such time as Declarant no longer has an ownership interest in any portion of the Town Center East Property, Declarant shall assign its rights under this Declaration to one (1) of the Owners of the TCE Property or to the Association. The term "Town Center East Property" shall mean and refer to those properties depicted on the map attached hereto as Exhibit E and as described by the assessor's parcel numbers listed on

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**Exhibit F.** Except for the TCE Property, which is located within the Town Center East Property, the parties do not intend for this Declaration to encumber any other portion of the Town Center East Property.

13. **Court Costs.** Should suit or legal action be instituted to enforce any of the provisions of this Declaration or because of any breach of such provisions, then the losing party, in addition to any judgment, order, or decree, agrees to pay the prevailing party its reasonable attorney's fees and court costs as may be awarded by a court adjudging or decreeing such suit or action.

14. **Severability.** If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

15. **Exhibits.** All exhibits referred to in this Declaration are attached and incorporated by this reference.


[Signatures on Next Page]

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth below.

**TOWN CENTER EAST, L.P., a California limited partnership**

By: The Mansour Company, a California corporation, its general partner

By:   
Anthony E. Mansour, Sr., Chief Executive Officer

Date: 10/10/08

**EL DORADO HILLS THEATRE, LLC, a Delaware limited liability company**

By: Town Center East, L.P., a California limited partnership

Its: Managing Member

By: The Mansour Company, a California corporation

By:   
Anthony E. Mansour, Sr., Chief Executive Officer

Its: General Partner

Date: 10/10/08

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State of California

County of El Dorado

On 10th day of October, 2008 before me, Lorraine Lew a Notary Public, personally appeared Anthony E. Mansour, Sr., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she/they executed the same in ~~his~~ her/their authorized capacity(ies), and that by ~~his~~ her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

*Lorraine Lew*

Name: Lorraine Lew  
(typed or printed)

(Seal)



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**Exhibit List to Declaration of Use Restrictions**

- Exhibit A - Map Showing Location of Covered Property
- Exhibit B - Assessor's Parcel Numbers or Legal Description for Covered Property
- Exhibit C - Legal Description of Parcel 1, 2, and 3
- Exhibit D - Legal Description of Parcel 4
- Exhibit E - Map of Town Center East Property
- Exhibit F - Assessor Parcel Numbers of Town Center East Property



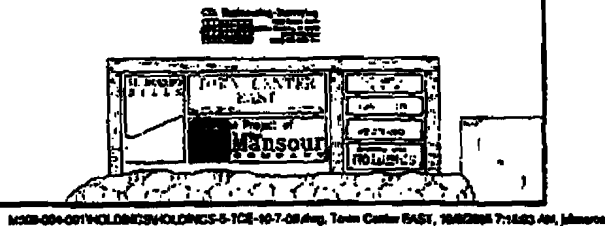
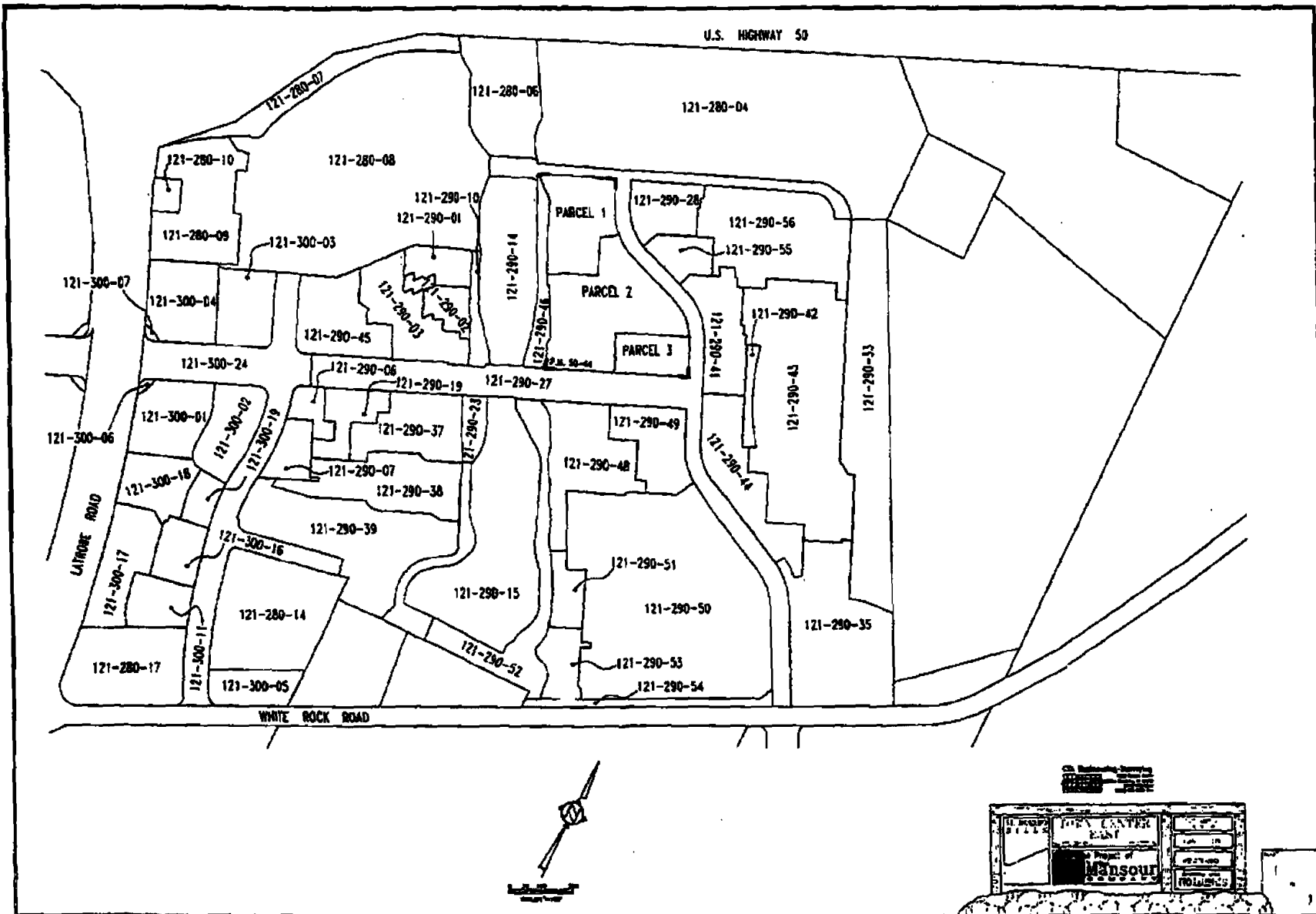
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**Exhibit A to Declaration of Use Restrictions**

**Map Showing Location of Covered Property**

(See Attached)

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**Exhibit B to Declaration of Use Restrictions**

**Assessor's Parcel Numbers or Legal Description of Covered Property**

(See Attached)

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## LEGAL DESCRIPTION

THAT CERTAIN LAND SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF EL DORADO, STATE OF CALIFORNIA, AND DESCRIBED AS FOLLOWS:

- A. PARCEL 1, AS SHOWN ON THAT CERTAIN MAP RECORDED ON MARCH 15, 2004, IN BOOK 48 OF PARCEL MAPS AT PAGE 103, EL DORADO COUNTY RECORDS.

AP# 121-290-37-100

- B. PARCEL 1, AS SHOWN ON THAT CERTAIN MAP RECORDED ON DECEMBER 1, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 85, EL DORADO COUNTY RECORDS.

AP# 121-290-19-100

- C. PARCEL 6, AS SHOWN ON THAT CERTAIN MAP RECORDED ON AUGUST 26, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 78, EL DORADO COUNTY RECORDS.

AP# 121-290-06-100

- D. PARCEL 1, AS SHOWN ON THAT CERTAIN MAP RECORDED ON AUGUST 26, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 78, EL DORADO COUNTY RECORDS.

AP# 121-290-01-100

- E. PARCEL 2, AS SHOWN ON THAT CERTAIN MAP RECORDED ON AUGUST 26, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 78, EL DORADO COUNTY RECORDS.

AP# 121-290-02-100

- F. PARCEL 3, AS SHOWN ON THAT CERTAIN MAP RECORDED ON AUGUST 26, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 78, EL DORADO COUNTY RECORDS.

AP# 121-290-03-100

- G. PARCEL 4 AND 5, AS SHOWN ON THAT CERTAIN MAP RECORDED ON AUGUST 26, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 78, EL DORADO COUNTY RECORDS. SAID LOTS HAVE BEEN MERGED INTO ONE PARCEL BY

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THAT CERTAIN CERTIFICATE OF MERGE RECORDED ON OCTOBER 11, 2005  
AS INSTRUMENT NO. 2005-85729 OFFICIAL RECORDS.

AP# 121-290-45-100 (WAS 121-290-04 AND 121-290-05)

- H. PARCEL 3, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JUNE 24, 2004  
IN BOOK 48 OF PARCEL MAPS AT PAGE 114, EL DORADO COUNTY  
RECORDS.

AP# 121-290-43-100

- I. PARCEL 4, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JUNE 24, 2004  
IN BOOK 48 OF PARCEL MAPS AT PAGE 114, EL DORADO COUNTY  
RECORDS.

AP# 121-290-44-100

- J. PARCEL 1, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JUNE 24, 2004  
IN BOOK 48 OF PARCEL MAPS AT PAGE 114, EL DORADO COUNTY  
RECORDS.

AP# 121-290-41-100

- K. PARCEL 1, AS SHOWN ON THAT CERTAIN MAP RECORDED ON NOVEMBER  
30, 2006 IN BOOK 49 OF PARCEL MAPS AT PAGE 107, EL DORADO COUNTY  
RECORDS.

AP# 121-290-55-100

- L. PARCEL 1, AS SHOWN ON THAT CERTAIN MAP RECORDED ON SEPTEMBER  
29, 2008 IN BOOK 50 OF PARCEL MAPS AT PAGE 44, EL DORADO COUNTY  
RECORDS.

AP# NOT ASSIGNED YET

- M. PARCEL 2, AS SHOWN ON THAT CERTAIN MAP RECORDED ON SEPTEMBER  
29, 2008 IN BOOK 50 OF PARCEL MAPS AT PAGE 44, EL DORADO COUNTY  
RECORDS.

AP# NOT ASSIGNED YET

- N. PARCEL 3, AS SHOWN ON THAT CERTAIN MAP RECORDED ON SEPTEMBER  
29, 2008 IN BOOK 50 OF PARCEL MAPS AT PAGE 44, EL DORADO COUNTY  
RECORDS.

AP# NOT ASSIGNED YET

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O. PARCEL 3, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JULY 11, 2006  
IN BOOK 49 OF PARCEL MAPS AT PAGE 69, EL DORADO COUNTY RECORDS.

AP# 121-290-48-100

P. PARCEL 4, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JULY 11, 2006  
IN BOOK 49 OF PARCEL MAPS AT PAGE 69, EL DORADO COUNTY RECORDS.

AP# 121-290-49-100

Q. PARCEL 6, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JULY 11, 2006  
IN BOOK 49 OF PARCEL MAPS AT PAGE 69, EL DORADO COUNTY RECORDS.

AP# 121-290-51-100

R. PARCEL 8, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JULY 11, 2006  
IN BOOK 49 OF PARCEL MAPS AT PAGE 69, EL DORADO COUNTY RECORDS.

AP# 121-290-53-100

S. PARCEL 8, AS SHOWN ON THAT CERTAIN MAP RECORDED ON DECEMBER  
24, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 91, EL DORADO COUNTY  
RECORDS.

AP# 121-290-35-100

T. PARCEL C, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JULY 11, 2000  
IN BOOK 47 OF PARCEL MAPS AT PAGE 72, EL DORADO COUNTY RECORDS.

AP# 121-280-07-100

U. PARCEL 5, AS SHOWN ON THAT CERTAIN MAP RECORDED ON DECEMBER  
12, 1995 IN BOOK 45 OF PARCEL MAPS AT PAGE 82, EL DORADO COUNTY  
RECORDS.

AP# 121-300-05-100

V. PARCEL 2, AS SHOWN ON THAT CERTAIN MAP RECORDED ON JUNE 24, 2004  
IN BOOK 48 OF PARCEL MAPS AT PAGE 114, EL DORADO COUNTY  
RECORDS.

AP# 121-290-42-100

W. PARCEL 1, AS SHOWN ON THAT CERTAIN MAP RECORDED ON DECEMBER  
24, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 91, EL DORADO COUNTY  
RECORDS.

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**Exhibit C to Declaration of Use Restrictions**

**Legal Description of Parcel 1, 2, and 3**

(See Attached)

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**LEGAL DESCRIPTION**

**THAT CERTAIN LAND SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF EL DORADO, STATE OF CALIFORNIA, AND DESCRIBED AS FOLLOWS:**

**PARCEL 1 AS SHOWN ON THE "PARCEL MAP OF TOWN CENTER EAST, PARCEL 3.4" FILED IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY, STATE OF CALIFORNIA ON SEPTEMBER 29, 2008 IN BOOK 50 OF PARCEL MAPS AT PAGE 44**

**PARCEL 2 AS SHOWN ON THE "PARCEL MAP OF TOWN CENTER EAST, PARCEL 3.4" FILED IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY, STATE OF CALIFORNIA ON SEPTEMBER 29, 2008 IN BOOK 50 OF PARCEL MAPS AT PAGE 44**

**PARCEL 3 AS SHOWN ON THE "PARCEL MAP OF TOWN CENTER EAST, PARCEL 3.4" FILED IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY, STATE OF CALIFORNIA ON SEPTEMBER 29, 2008 IN BOOK 50 OF PARCEL MAPS AT PAGE 44**



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**Exhibit D to Declaration of Use Restrictions**

**Legal Description of Parcel 4**

(See Attached)

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**LEGAL DESCRIPTION**

**THAT CERTAIN LAND SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF EL DORADO, STATE OF CALIFORNIA, AND DESCRIBED AS FOLLOWS:**

**PARCEL 1 AS SHOWN ON THE "PARCEL MAP OF TOWN CENTER EAST, PARCEL 3.2" FILED IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY, STATE OF CALIFORNIA ON DECEMBER 24, 2003 IN BOOK 48 OF PARCEL MAPS AT PAGE 91**

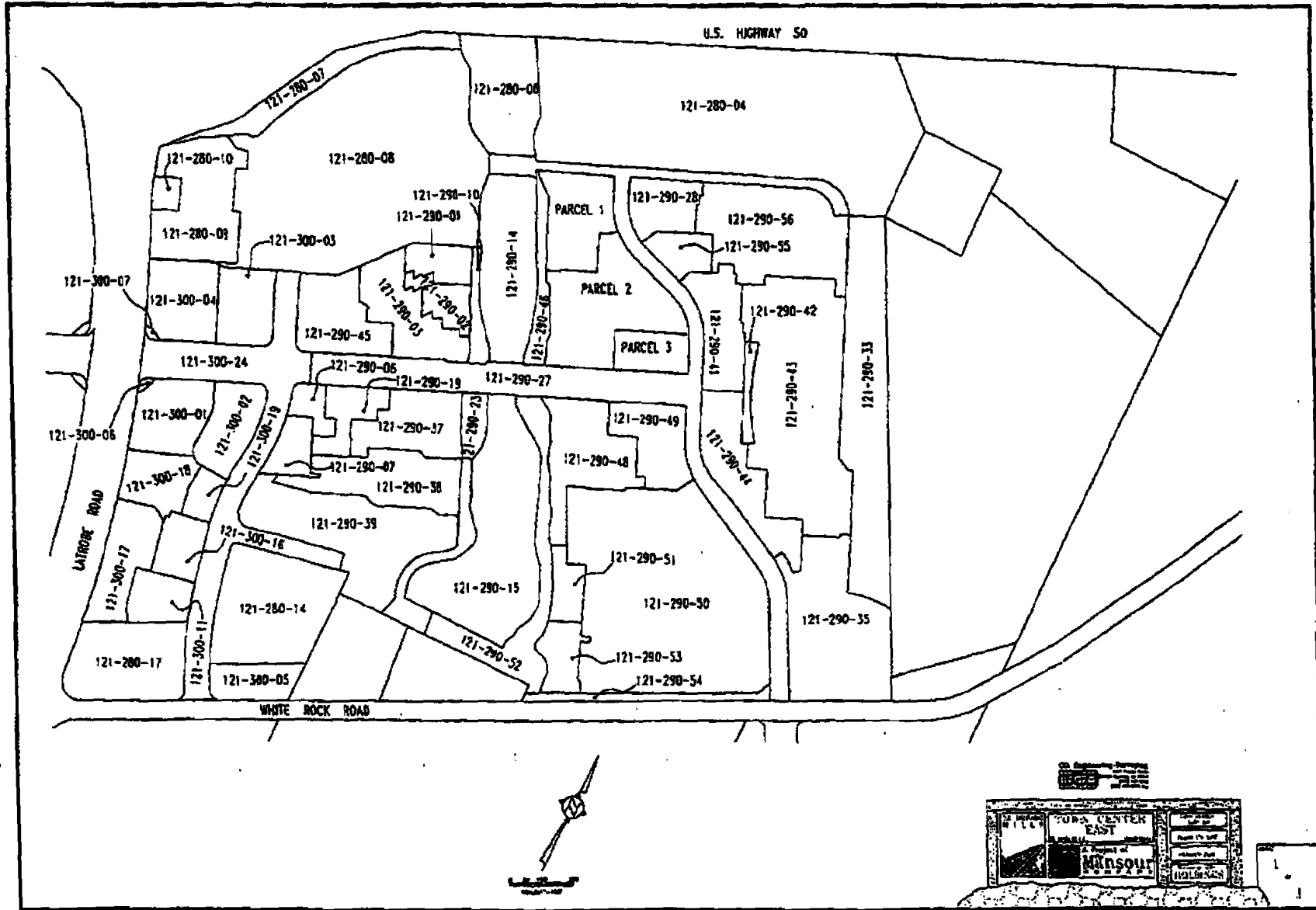
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**Exhibit E to Declaration of Use Restrictions**

**Map of Town Center East Property**

(See Attached)

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**Exhibit F to Declaration of Use Restrictions**

**Assessor's Parcel Numbers or Legal Description for Town Center East Property**

(To Be Attached)

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ASSESSORS PARCEL NUMBERS  
OF  
EL DORADO HILLS TOWN CENTER EAST

121-280-04-100	121-300-01-100
121-280-06-100	121-300-02-100
121-280-07-100	121-300-03-100
121-280-08-100	121-300-04-100
121-280-09-100	121-300-05-100
121-280-10-100	121-300-06-100
121-280-14-100	121-300-07-100
121-280-17-100	121-300-11-100
	121-300-16-100
121-290-01-100	121-300-17-100
121-290-02-100	121-300-18-100
121-290-03-100	121-300-19-100
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