

SITE AND LANDSCAPE COVENANTS  
FOR

4-16-87

Situate in the            P.U.D. N.E. 1/4 OF SECTION 23, TWN 7 NORTH,  
City of Fort Collins, County of Larimer, RANGE 69 WEST OF THE 6TH P.M.  
State of Colorado

KELLY-MOORE REVISION TO THE

The undersigned, fee owner of BANK CENTER SQUARE P.U.D. (The Property) located in the City of Fort Collins, County of Larimer, State of Colorado, does hereby make the following declarations as limitations, restrictions and uses to which the Property may be put, and hereby specifies that these declarations shall constitute covenants to run with all of the Property and shall be binding on all parties and all persons claiming under them, and for the benefit of and limitations on all future owners of all or part of the Property, this declaration being signed for the purpose of guaranteeing that the Property will be developed and landscaped initially and kept in desirable condition in the future as herein specified. "Owner" shall include the signator to this document and all successors or assigns of said signator.

The landscape improvements, parking areas, sidewalks, open spaces and site amenities including, without limitation, energy generation or conservation amenities, as described in the site and landscape plans submitted to the City of Fort Collins and on record therewith shall be made and installed in the manner as described in said plans unless amended pursuant to the approval of the City of Fort Collins. With the exception of lands necessary for construction, the owner shall cause the property to be developed according to the site and landscape plan submitted to and approved by the City of Fort Collins. It is further understood and agreed that the owner of the Property, or its assigns or successors in interest, shall be responsible for the maintenance and care (including necessary replacement of dead grasses, plants, trees or shrubs) of all "planted and landscaped" areas and other amenities within said P.U.D. together with all parking, sidewalks and open space areas and all areas otherwise utilized for buffering energy conservation or other site amenity. Should the owner fail in any respect to comply with the terms of this Agreement, the City of Fort Collins upon notifying said owner in writing of the matters in regard to which default is asserted and should the owner fail either to cure said default within thirty (30) days after receipt of such notice or to commence within twenty (20) days to rectify such default until it is fully rectified or cured, then the City of Fort Collins shall have the right (1) to obtain, in the district Court of Larimer County, Colorado, a mandatory injunction requiring rectification of the default, or (2) to enter upon said property and perform the work necessary to replace said improvements or maintain the same and the owner shall pay or cause to be paid to the City of Fort Collins such sums necessary to reimburse said City of Fort Collins for the labor and material expended to complete or maintain said improvements which payment shall be made within ten (10) days after receipt of billing. The sum due and unpaid shall accrue interest at the statutory rate for judgements from the date that such sum is due. If said billing is not paid, then the City of Fort Collins pursuant to the authority granted by these covenants, shall have a lien on the above described property and

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improvements thereto. Said lien to be exercisable by filing a notice of said lien against said property and improvements thereto; provided, however, that the City of Fort Collins shall not have a lien against any single-family lots and improvements thereto within the property, if applicable. The City of Fort Collins shall be entitled to all rights of foreclosure or other remedies existing pursuant to Colorado law for enforcement of liens against real property and may also, at its discretion, without waiving any other rights it may have pursuant to law, proceed directly with legal action against the owner, its assigns or successors in interest, to collect payment of the reasonable amounts so expended pursuant to the terms hereof.

The undersigned, its successors and assigns, hereby expressly reserve the right, with the consent of the City of Fort Collins, Colorado, to amend or restate these Covenants, by including the provisions contained herein within the Protective Covenants for the real property platted as "The Kelly-Moor Revision to the BANK CENTER SQUARE P.U.D." which real property shall include the property subject to these Covenants.

DATED this 16 day of APRIL, 1987.

Owner KELLY-MOORE PAINT CO., INC.

By W E Berry  
Title MANAGER STORE PLANNING

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF COLORADO )  
                                  ) ss

**GENERAL ACKNOWLEDGMENT**

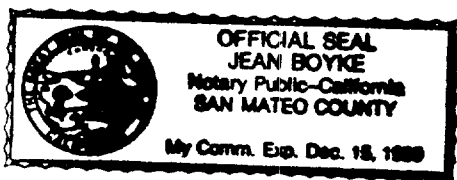
NO. 201

State of CALIFORNIA  
County of SAN MATEO } ss.

On this the 13th day of May, 1987, before me,  
Jean Boyke

the undersigned Notary Public, personally appeared  
W. E. Berry

personally known to me  
 proved to me on the basis of satisfactory evidence  
to be the person(s) whose name(s) is subscribed to the  
within instrument, and acknowledged that he executed it.  
WITNESS my hand and official seal.



Jean Boyke  
Notary's Signature

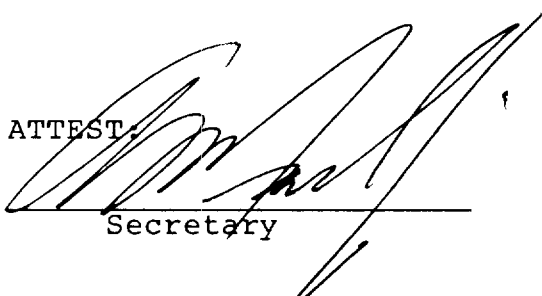
ASSIGNMENT

*released  
9/17/80*

As security for the performance by Bankcenter, Incorporated (the "Developer"), of its obligation to The City of Fort Collins to complete development of the property described on Exhibit A attached hereto in accordance with the planned unit development for such property filed with and approved by the City of Fort Collins, the Developer hereby assigns and pledges Savings Account No. 8-068165-3 in its name with World Savings and Loan Association, such account being in the amount of Ten Thousand Two Hundred Twenty Five Dollars and Twenty Three Cents (\$10,225.23).

The conditions of this Assignment are that if the Developer completes the development of such site in accordance with the referenced planned unit development by the 1<sup>st</sup> day of August, 1980, then this Assignment shall be of no further effect and all interest of the City of Fort Collins in such account shall terminate. In the event such work is not completed by said date, the City of Fort Collins shall have the right to complete such work and to recover the cost of the same from the account pledged hereby.

Dated: 2/20, 1980.

ATTEST:   
Secretary

BANKCENTER, INCORPORATED

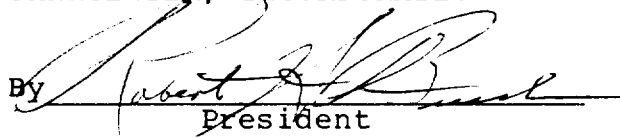
By   
President

EXHIBIT A

A portion of the NE 1/4 of Section 23, Township 7 North, Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado, described as follows: Begin at a point on the South line of said NE 1/4 which is N 90°00'00" W 744.77 feet from the East 1/4 corner of said Section 23 (said point also lies in the South line of Lot 3, Bankcenter Square First Filing, a subdivision in the City of Fort Collins, Colorado) and runs thence N 90°00'00" W 185 feet to the SW corner of Lot 3, Bankcenter Square First Filing; thence continuing N 90°00'00" W 58.75 feet to the westerly line of the Colorado and Southern Railway Company right-of-way; thence along said right-of-way N 05°47'30" E 214.10 feet; thence S 90°00'00" E 35.53 feet to the West line of Lot 3, Bankcenter Square First Filing; thence continuing S 90°00'00" E 185 feet; thence S 00°26'00" W 213.01 feet more or less to the point of beginning.

JUN 20 1978 at 3:03 P  
255106  
RECORDED AT... JAMES P. TERRELL

BK1001 PGU U 04

LOT 3, BANKCENTER SQUARE,  
COMMERCIAL PLANNED UNIT  
DEVELOPMENT, FORT COLLINS,  
COLORADO.

The undersigned, being the owners of Lot 3, Bankcenter Square Planned Unit Development, Fort Collins, Colorado, more particularly described on Exhibit A, attached hereto and by this reference made a part hereof, hereby covenant with the City of Fort Collins, Colorado, that in consideration of the approval of the final plat and plan for Lot 3, Bankcenter Square Planned Unit Development, the undersigned agrees to maintain all landscaping, parking areas, sidewalks, and all other open spaces as shown on the site plan for said planned unit development and to keep said open spaces clean and in good repair. In the event of the failure of the undersigned or its assigns to keep said open space clean and in good repair, the City of Fort Collins, Colorado, upon twenty-four (24) hours notice to the undersigned or its assigns, may proceed to clean, repair or maintain said open space and any cost expended by the City of Fort Collins, Colorado, for such work shall be an obligation of the undersigned or its assigns. Upon failure to pay for such work, the City of Fort Collins may file a lien against said property, obtain a judgement against the undersigned or its assigns and foreclose said lien. This shall be a covenant running with the land and shall be binding upon the undersigned and its assigns.

DATED this 31st day of May, A.D. 1978.

*Charles J. Bowling*  
Charles Bowling, Owner

*Earl Wilkinson*  
Earl Wilkinson, Owner

*Robert H. Bush*  
Bankcenter Incorporated

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
A.D. 19\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

My Commission expires:

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this  
31st day of June, A.D. 1978, by Charles Bowling, Earl Wilkinson  
and Robert H. Busch as President of Bankcenter, Incorporated.

Witness my hand and official seal.

My commission expires: February 14, 1981.



Linda K. Long  
Notary Public

## EXHIBIT A

## TOTAL PARCEL A AND B

Begin at the Northwest corner of Lot 3 of Bankcenter Square, First Filing, and run thence West 8.75 feet to a point on the east right-of-way of the C & S Railroad which is 50 feet from the centerline of the tracks; thence along said east right-of-way line, S 05<sup>o</sup>47'30" W 461.13 feet; thence East 58.75 feet to the Southwest corner of said Lot 3; thence N 00<sup>o</sup>26' W 458.79 feet to the point of beginning, containing 15481 square feet, more or less.

MEMORANDUM OF AGREEMENT  
THIS IS A LICENSE TO USE ONLY

Mr. Earl Wilkinson and Mr. Chuck Bowling, who desire to use a piece of ground owned by James Johnson & Son, Inc., which lies directly south of the Sherwood Irrigation Ditch, agree to the following:

1. The ground will be used only for a required detention pond.
2. The detention pond will be constructed as an earth berma.
3. The area will be landscaped.
4. The landscape plan will be approved by Mr. Melvin Johnson, President of James Johnson and Son, Inc.
5. Wilkinson-Bowling or future owners of the Wilkinson-Bowling property will maintain the landscaping at their sole expense.
6. The credit for landscaping and the land area involved will relate to the planned unit development requirements of the Johnson property only. A description of the area is attached.

In return for the above James Johnson & Son, Inc. or future owners agree to allow continuous use of the piece of ground for a detention pond as long as required for the Wilkinson-Bowling property by the City of Fort Collins. If the requirement by the City is terminated or the Wilkinson-Bowling property is redeveloped and there is a way the drainage requirement can be otherwise satisfied, this agreement shall terminate.

Accepted and agreed to this 26th day of April, 1978.

Earl Wilkinson  
Earl Wilkinson  
Chuck Bowling  
Chuck Bowling

JAMES JOHNSON & SON, INC.  
By: Melvin Johnson  
Melvin Johnson, President

ATTEST:  
Gene Johnson  
Secretary



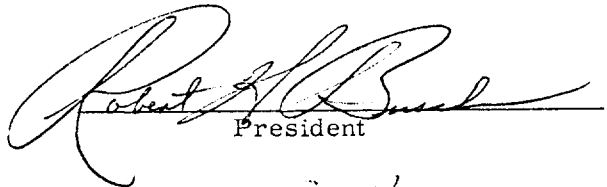
DEDICATION OF STREET

Bankcenter Incorporated, being the owner of the following described property hereby dedicates the same to public use forever for street purposes:

A part of Lot 3, Bankcenter Square, First Filing, City of Fort Collins, County of Larimer, State of Colorado, which considering the East line of the Northeast 1/4 of Section 33, Township 7 North, Range 69 West of the 6th P. M., as bearing N 00° 25' W and with all bearings contained herein relative thereto is contained within the boundary lines which begin at the Southwest corner of said Lot 3, which bears West 664.55 feet from the East 1/4 corner of said Section 23, and run thence N 00° 26' W 458.79 feet; thence East 55.00 feet; thence S 00° 26' E 458.79 feet; thence West 55.00 feet to the point of beginning.

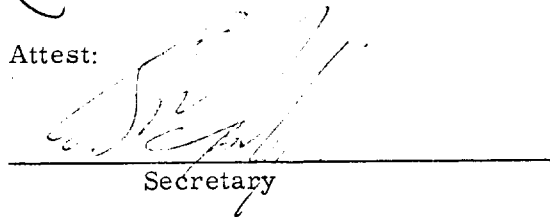
IN WITNESS WHEREOF, the President and Secretary of Bankcenter, Incorporated have hereunto set their hands and seals this 8<sup>th</sup> day of November, A. D. 1971.

BANKCENTER, INCORPORATED

  
\_\_\_\_\_  
President

SEAL

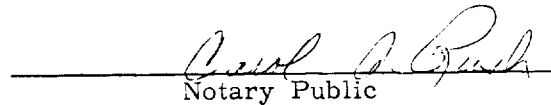
Attest:

  
\_\_\_\_\_  
Secretary

State of Colorado )  
                          ) ss.  
County of Larimer)

The foregoing instrument was acknowledged before me this 8th day of November A. D., 1971, by Robert H. Busch as President and A. E. March, Jr. as Secretary of Bankcenter, Incorporated.

My notarial commission expires:  
August 7, 1972

  
\_\_\_\_\_  
Notary Public

APPROVAL: By the Planning and Zoning Board of Fort Collins, Colorado, this 10<sup>th</sup> day of November A. D., 1971.

  
\_\_\_\_\_  
Donald R. Reynolds

A G R E E M E N T

THIS AGREEMENT made and entered into this 4<sup>th</sup> day of April, 1978, by and between

EARL R. WILKINSON and CHARLES D. BOWLING,  
d/b/a Wilkinson-Bowling Partnership,

hereinafter designated as the "applicant", and

THE SHERWOOD IRRIGATION COMPANY,  
a Colorado mutual irrigation corporation,

hereinafter designated as "ditch company".

PROJECT:

Construction of a detention pond in connection with the development of a warehouse building or other structure on or near Lot 3, Bankcenter Square P.U.D., in the City of Fort Collins, County of Larimer, State of Colorado.

WITNESSETH:

WHEREAS, the ditch company is the owner of an irrigation ditch and the right-of-way therefor; and applicant desires to construct a building with its appurtenances, and in connection herewith, must provide for the orderly runoff and drainage of storm waters therefrom; and

WHEREAS, attached hereto as Exhibit "A" is a map showing the building to be constructed and its proper location; and

WHEREAS, the ditch company is willing to grant to applicant the right to construct the detention pond substantially shown on Exhibit "A" upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the terms of the within agreement, it is agreed as follows:

1. Ditch company grants unto applicant the right to construct said detention pond and related facilities for orderly drainage into the existing ditch of the ditch company, and further grants unto applicant the right of ingress and egress to a part of its ditch as shall be reasonable and necessary for the exercise of the rights granted herein.

2. Applicant will construct a detention pond reasonably effective to temporarily withhold a 100-year storm, as commonly defined, with an outlet pipe six (6") inches in diameter in the general location shown in Exhibit "A", and subject to final inspection and approval by ditch company or its engineers.

3. In the event ditch company should reasonably require changes in the exterior material of the detention pond bank or additional height thereto, applicant agrees to forthwith comply with ditch company's request.

4. Applicant agrees to pay ditch company a permit fee in the amount of Two Hundred Fifty and No/100 (\$250.00) Dollars for the grant of this right and shall further reimburse ditch company for any additional legal or engineering expenses incurred by the ditch company in examining the facility or in enforcing the terms of this agreement.

5. Applicant further agrees to maintain said detention pond and pipe in perpetuity and include this obligation as a covenant running with the title to the land, unless the runoff from this project eventually is carried by an adequate storm sewer.

6. It is understood and agreed that the problem of water quality and responsibility and liability therefor is not determined by this agreement.

7. The project shall be without cost to the ditch company and the applicant hereby indemnifies and forever holds the ditch company harmless from liability for damages caused by the project.

8. Ditch company shall have full power to operate, maintain, alter, enlarge or relocate its ditch as if this agreement had not been made and any expenses caused thereby to the applicant shall not be chargeable to the ditch company.

THIS AGREEMENT shall extend to and be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereby have caused this agreement to be signed the day and year first hereinabove written.

