

E.L. Bunch

16⁰⁰

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

SECOND AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS

This Second Amendment to Declaration of Restrictive Covenants executed the 19th day of July, 1996 by and among MDI Management, Inc. (herein "MDI Management"), Dr. Kevin J. Guthrie (herein "Guthrie") and Steven F. Bimbo (herein "Bimbo"), and

Whereas, MDI Management is the owner of fee simple title to those certain parcels of real property described as Lots 2 and 3, Plat Book 39 at page 53, Randolph County Registry, and

Whereas, Guthrie is the owner of fee simple title to that certain parcel of real estate described as Lot 1, Plat Book 39 at page 53, Randolph County Registry, and

Whereas, Bimbo has agreed to purchase Lot 3, Plat Book 39, Page 53, Randolph County Registry from MDI Management, and

Whereas, MDI Management and Guthrie entered into a Declaration of Restrictive Covenants on February 1, 1994 which Declaration is recorded in Book 1397 at page 1626, Randolph County Registry, and

Whereas, MDI Management and Guthrie entered into a First Amendment to Declaration of Restrictive Covenants, dated April 13, 1995 which Amendment is recorded in Book 1452 at Page 1763, Randolph County Registry, and

Whereas, the parties desire to further amend the foregoing Declaration of Restrictive Covenants,

Now, therefore, in consideration of the mutual covenants contained herein MDI Management, Guthrie and Bimbo hereby amend and restate the Restrictive Covenants by deleting them in their entirety and restating them as follows:

1. MDI Management hereby gives, grants, conveys for itself and its grantees, successors, and assigns, as an appurtenance to and for the benefit of Lots 1 and 3, and Guthrie and Bimbo hereby gives, grants, conveys for itself and its grantees, successors, and assigns, as an appurtenance to and for the benefit of Lot 2, and to the respective grantee, successors, and assigns and to each and every other person, firm, entity or corporation hereafter owning any portion of Lots 1, 2 or 3, and for the benefit of all said owners as well as for the benefit of each of the respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees and all other persons lawfully upon any portion of Lots 1, 2 or 3, a mutual reciprocal and non-exclusive easement, right, and privilege of use, both pedestrian and automotive, for the purposes of ingress, egress, parking and passage over, upon, under, and

9612805

BK 1463 PG 0366

through those portions of Lots 1, 2 and 3 which have driveways and driving areas thereon (such portion being hereinafter referred to as the "Easement Area").

2. MDI Management, Guthrie and Bimbo and their respective grantees, successors, and assigns hereby agree they shall not erect or permit erection of any curbing, fencing or other barriers or obstruction on or within the Easement Area that will in any way interfere with the use thereof for the purposes allowed in this Agreement. The Easement Area is to be kept open at all times for free use thereof as intended herein.

3. MDI Management, Guthrie and Bimbo hereby covenant and agree for themselves, their grantees, successors, and assigns that no portion of Lots 1 or 3 shall be used for prescription drug sales, the sale of grocery and food products, the operation of an adult book store, the operation of a bar, or the sale of alcoholic beverages. The provisions of this paragraph shall be real covenants running with the land and not personal covenants and shall be enforceable by the owner or owners from time to time of Lots 1, 2 and 3. A
SFB

4. Bimbo, his grantees, successors and assigns, Guthrie, his grantees, successors and assigns, and MDI Management, its grantees, successors and assigns, hereby agree that no building or other structure shall be erected upon Lots 1 or 3 until the complete final architectural plans and specifications therefore have been approved in writing by MDI Management, its grantees, successors, and assigns. MDI Management has approved the architectural plans and specifications for Lot 1. The provisions of this paragraph shall be real covenants running with the land and not personal covenants and shall be enforceable by the owner or owners from time to time of Lots 1, 2 and 3. It is further agreed that for so long as the owner of Lot 3 is conducting the operation of a retail video rental and sales establishment, then the owners of Lot 2 agree not to lease, rent, occupy or suffer or permit to be occupied any part of Lot 2 for the purpose of operating a retail video leasing or sales establishment. Provided further however that nothing in this paragraph shall be construed to prevent the sale and leasing of videos in the Lowe's Food Stores, Inc. grocery facility or in any subsequent supermarket that is a tenant or owner of Lot 2. A
SFB

5. MDI Management, Guthrie and Bimbo, their grantees, successors and assigns hereby agree that any building or any other structure erected on Lots 1 or 3 shall be no more than one story. The provisions of this paragraph shall be real covenants running with the land and not personal covenants and shall be enforceable by the owner or owners from time to time of Lots 1, 2 and 3.

6. All easements as specified herein are to be superior to all leases, sales, conveyances, transfers, assignments, contracts, mortgages, or other encumbrances and documents in any way affecting Lots 1, 2 and 3, and any party foreclosing any such mortgage, deed of trust, lien, or encumbrance and all other persons or entities acquiring title or interest in any portion of the Easement Area shall acquire and hold the title of such property and any portion thereof subject to aforementioned easements.

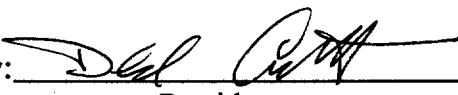
7. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

8. If the owner of any of the lots shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or entity owning any of said lots to prosecute any proceedings at law or in equity against the person or entities violating or attempting to violate any such covenants and either to prevent such person or entity from doing so or to recover damages for such violation.

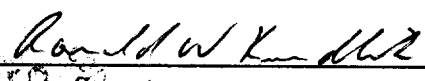
9. All covenants, terms, agreements, conditions, and restrictions set forth in this Agreement are intended to be and shall be construed as covenants binding with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto, the respective successors-in-interest, grantees and assignees upon the terms, provisions and conditions herein set forth.

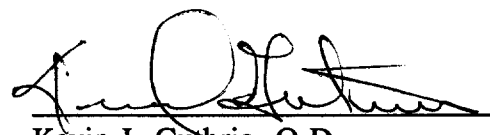
IN WITNESS WHEREOF, MDI Management, Inc., Dr. Kevin J. Guthrie and Steven F. Bimbo have executed, sealed, and delivered this Agreement as of the day and year first above written.

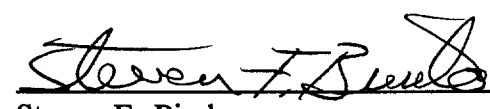
MDI MANAGEMENT, INC.

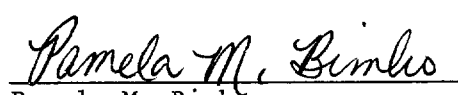
By: 
President

ATTEST:


Secretary
(Corporate Seal)

 (SEAL)
Kevin J. Guthrie, O.D.

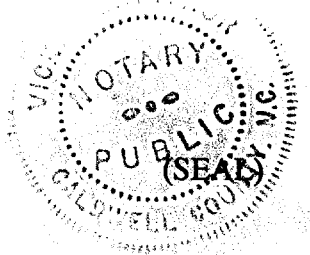
 (SEAL)
Steven F. Bimbo

 (SEAL)
Pamela M. Bimbo

NORTH CAROLINA
_____ COUNTY

I, Vickie McAthur, a Notary Public of the County and State aforesaid, certify that RONALD W. KNEDLIK personally came before me this day and acknowledged that he is Secretary of MDI MANAGEMENT, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by Ron Knedlik as its _____ Secretary.

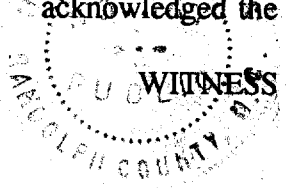
WITNESS my hand and official stamp or seal, this 27th day of June, 1996.



Vickie McAthur
Notary Public
My commission expires: 10-7-96

NORTH CAROLINA
Randolph COUNTY

I, Mary H. Edwards, a Notary Public of the County and State aforesaid, certify that KEVIN J. GUTHRIE, O.D., personally appeared before me this day and acknowledged the execution of the foregoing instrument.



WITNESS my hand and official stamp or seal, this 18th day of July, 1996.

Mary H. Edwards
Notary Public
My commission expires: 3/14/2000

(SEAL)

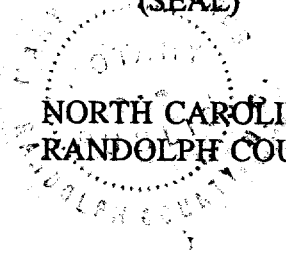
NORTH CAROLINA
Randolph COUNTY

I, Mary H. Edwards, a Notary Public of the County and State aforesaid, certify that STEVEN F. BIMBO, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 17th day of July, 1996.

Mary H. Edwards
Notary Public
My commission expires: 3-14-2000

(SEAL)



NORTH CAROLINA
RANDOLPH COUNTY

The foregoing certificate(s) of _____

is (are) certified to be correct. This instrument was presented for registration and recorded in this office at Book _____, Page _____, this _____ day of _____, 19____ at _____ o'clock ____ m.

By: _____ Register of Deeds

NORTH CAROLINA

RANDOLPH COUNTY

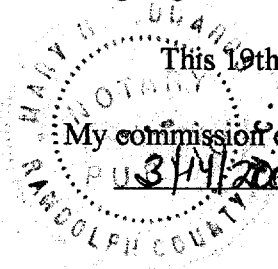
I, a Notary Public for said County and State, do hereby certify that PAMELA M. BIMBO, personally came before me this day and acknowledged the due execution of the foregoing instrument.

This 19th day of July, 1996.

My commission expires:

3/14/2000

Mary H. Edwards (SEAL)



NORTH CAROLINA — Randolph County

The foregoing certificate(s) of _____

Debbie McArthur & Mary H. Edwards NP's

is (are) certified to be correct. This instrument was presented for registration and recorded in this office at Book 1463, Page 346, This 23 day of July, 19 96 at 1:29 o'clock P. M.

Ann Shaw, Register of Deeds
By Debbie McArthur Register of Deeds