

**DECLARATION OF  
EASEMENTS, COVENANTS AND RESTRICTIONS**

This DECLARATION FOR EASEMENTS, COVENANTS AND RESTRICTIONS ("Declaration") is made effective this 12<sup>th</sup> day of JAN, 2005, by Sierra Vista Associates, LLC, an Arizona limited liability company ("Sierra Vista").

**RECITALS**

WHEREAS, Sierra Vista is the owner of a parcel of land and all improvements thereon known as the Sierra Vista Shopping Center, located at 9500 Montgomery Blvd., NE, Albuquerque, New Mexico 87111, which real property is more particularly described on Exhibit "A" attached hereto and made a part hereof ("Sierra Vista Parcel"); and

WHEREAS, Sierra Vista is also the owner of a parcel of land adjacent to the Sierra Vista Parcel, more particularly described on Exhibit "A" attached hereto and made a part hereof ("NMBT Parcel"), which it has contracted to sell to New Mexico Bank & Trust, a New Mexico banking corporation ("NMBT"); and

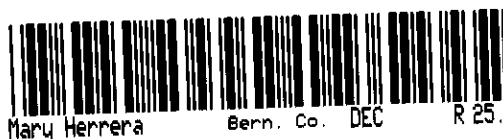
WHEREAS, NMBT has conditioned its purchase of the NMBT Parcel on the declaration of the easements, covenants and restrictions contained in this Declaration; and

WHEREAS, Sierra Vista desires to impose easements, covenants and restrictions upon the Sierra Vista Parcel and the NMBT Parcel by this Declaration in order to accommodate the closing of the sale of the NMBT Parcel to NMBT, for the perpetual benefit of the owner of the Sierra Vista Parcel (the "Sierra Vista Parcel Owner") and the owner of the NMBT Parcel (the "NMBT Parcel Owner"). The Sierra Vista Parcel Owner and NMBT Parcel Owner are sometimes referred to collectively herein as the "Owners" or individually as an "Owner." The Sierra Vista Parcel and NMBT Parcel are sometimes referred to collectively herein as the "Parcels" or individually as a "Parcel."

**TERMS AND CONDITIONS**

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, the parties agree, as follows:

1. Easements for Ingress and Egress. Sierra Vista hereby declares and establishes perpetual, nonexclusive easements for ingress and egress of vehicular and pedestrian traffic over and across all access points, driveways, vehicular traffic lanes and drives now existing or established in the future over and across the Sierra Vista Parcel and the NMBT Parcel, as more particularly shown on Exhibit "B" attached hereto and made a part hereof. Notwithstanding the foregoing, it is not the intent of this Declaration to create driveway through the banking drive-up lanes designated in Exhibit "B" and it is explicitly declared that NMBT Parcel Owner shall have right of control to prevent vehicular traffic from passing through the designated banking drive-up lanes at its sole and absolute discretion. The Sierra Vista Parcel Owner shall have the right, its sole and absolute discretion, to relocate any access points, driveways, vehicular traffic lanes and drives now existing, except those marked as "Permanent Access" on Exhibit "B," provided that such relocation does not materially interfere with access to the business operated on the NMBT



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Parcel. The previous sentence shall not be construed as limiting any relocation of access points, driveways, vehicular traffic lanes or drives required by applicable law, rule, ordinance or court order.

2. Easement for Parking. Sierra Vista hereby declares and establishes perpetual, nonexclusive easements for parking motor vehicles by the officers, representatives, employees, customers and invitees over, across and upon the Sierra Vista Parcel and the NMBT Parcel in the spaces that are marked or designated for parking now existing as more particularly described on Exhibit "C" attached hereto and made a part hereof, or as established in the future. The Sierra Vista Parcel Owner shall have the right to change the location of parking spaces on the Sierra Vista Parcel; provided that (a) such changes do not reduce the parking on the Sierra Vista Parcel below the number designated in the zoning ordinances of the City of Albuquerque, and (b) the Sierra Vista Parcel Owner shall not relocate the parking spaces in the NMBT Preferred Parking Area (herein so called) designated in Exhibit "B," without the prior written consent of the owner of the NMBT Parcel. The previous sentence shall not be construed as limiting any reduction and/or relocation of parking spaces required by applicable law, rule, ordinance or court order.

3. Easement for Drainage. Sierra Vista hereby declares and establishes perpetual, nonexclusive easements for storm drainage and the discharge of water from the over and across the Sierra Vista Parcel and the NMBT Parcel, in those areas designated for ingress, egress, parking, drainage and/or ponding of drainage water now existing or established in the future.

4. Easement for Utilities. Sierra Vista hereby declares and establishes perpetual, nonexclusive easements for extension of utilities, including without limitation, electric, gas, cable, water and sanitary sewer, over, across and under the surface of the Sierra Vista Parcel, as more particularly described on Exhibit "D" attached hereto and made a part hereof. The NMBT Parcel Owner shall promptly restore or repair any and all improvements on the Sierra Vista Parcel which are removed, damaged or affected by the use of this easement for utilities serving the NMBT Parcel.

5. Temporary Construction Easement for Utilities. Sierra Vista hereby grants to the NMBT Parcel Owner and/or its contractors, for the benefit of the NMBT Parcel a temporary, nonexclusive easement only for ingress, egress, and construction over and across that portion of the Sierra Vista Parcel more particularly identified and described as the cross hatched area in Exhibit "E" and identified as a "Temporary Construction Easement." This Temporary Construction Easement shall be specifically for the purpose of constructing the installation of utilities and the construction of improvements on the NMBT Parcel. This easement shall terminate and expire according to its terms and without the necessity of any further action by the Sierra Vista Parcel Owner or the NMBT Parcel Owner on the date that the NMBT Parcel Owner completes construction of utilities and improvements for the benefit of or upon the NMBT Parcel, but in no event later than December 31, 2005. Notwithstanding the foregoing, the NMBT Parcel Owner (and its employees, agents and contractors) (a) shall at all times minimize any interference with access, traffic flow and parking on the Sierra Vista Parcel, and (b) during the period between November 15 and December 31, shall not cause any material disruption with access or traffic flow on the Sierra Vista Parcel and shall not block more than five (5) parking spaces for more than a twenty-four (24) hour period.



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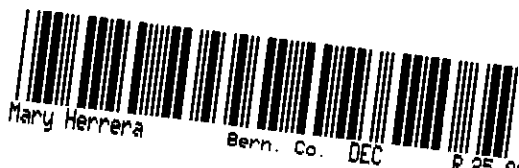
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6. Restrictions on Use.

A. Sierra Vista hereby declares and establishes the following use restriction (herein the "Financial Services Use Restriction") regarding the Sierra Vista Parcel: no portion of the Sierra Vista Parcel may be leased, rented, sold or used as a bank, savings and loan, credit union, or other financial institution, or for the purpose of engaging in the business of making mortgage loans (except the business of a mortgage broker), without the prior written consent of the owner of the NMBT Parcel. Notwithstanding the foregoing, the Financial Services Use Restriction shall not prohibit the installation and operation of automated teller machines inside buildings on the SVA Parcel, nor the operation of any of the following businesses on the SVA Parcel: (i) accounting or tax preparation services (for example, without limitation, "H&R Block"), (ii) check cashing services (for example, without limitation, "Cash Advance America"), (iii) auto title lenders (for example, without limitation, "New Mexico Title Loans", or (iv) money transfer services (for example, without limitation, "Western Union"). The Financial Services Use Restriction shall end and be of no further force, if, for a period of more than twelve (12) consecutive months, no full-service banking facility, bank, savings and loan, credit union, or other financial institution is operated on the NMBT Parcel, but specifically excluding any period during which such business operations are closed due to force majeure or any damage, destruction or renovation.

B. Sierra Vista hereby declares and establishes the following use restrictions regarding the NMBT Parcel: no portion of the NMBT Parcel may be leased, rented, sold or used as (i) a Mexican restaurant, or (ii) a restaurant selling or serving Chinese food and Chinese food in a buffet format, Japanese, Vietnamese, Thai, Mongolian, Cajun, Indian or Korean Foods, or (iii) a restaurant offering the take-out or delivery of Pizza in a space less than or equal to 2,000 square feet, (iv) a business for any non-retail purposes (repairs, alterations and office incidental to retailing, and banks and small loan offices, not being deemed non-retail), or (v) a business for any entertainment purposes, such as a bowling alley, skating rink, cinema, bar, nightclub, discotheque, amusement gallery, poolroom, health club, massage parlor, sporting event, sports or game facility, off-track betting club, or (vi) a business which sells or displays pornographic materials, or (vii) a business which sells or displays used merchandise or second hand goods, or (viii) a business which sells tires, automobile accessories or automobile service, or stores or dispenses automotive fuel.

7. Maintenance and Insurance. The Sierra Vista Parcel Owner shall be responsible for and bear all costs associated with the repair, maintenance, and insuring of the easements created by this Declaration located on the Sierra Vista Parcel, except for the NMBT Preferred Parking Area. The NMBT Parcel Owner shall be responsible for and bear all costs associated with the repair, maintenance, and insuring of the easements created by this Declaration located on the NMBT Parcel, and for the NMBT Preferred Parking Area on the Sierra Vista Parcel. The obligation to insure created hereby shall require the responsible party to maintain at its expense insurance against loss or liability in connection with bodily injury, death or property damage or destruction, occurring in or upon the parcel under one or more policies of public liability insurance having such limits of not less than (a) One Million Dollars (\$1,000,000.00) for bodily injury to or death of any one person during any one occurrence, and (b) Five Hundred Thousand Dollars (\$500,000.00) for property damage or destruction during any one occurrence.



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8. Running Benefits and Burdens with the Land. All provisions of this Declaration which create a benefit in favor of or impose a burden upon the Sierra Vista Parcel or the NMBT Parcel shall run with the land and shall be binding upon and inure to the benefit of the assigns, successors in interest and/or the transferees of the Sierra Vista Parcel Owner and the NMBT Parcel Owner, according and subject to the terms and conditions hereof.

9. Attorney's Fees; Enforcement. Either party may enforce this instrument by legal action and should it prevail in such litigation it shall recover as part of its reasonable costs and reasonable attorney's fee. The easements, covenants and restrictions created and granted herein shall be enforceable by suit for specific performance and injunctive relief, in addition to any other remedy provided by law or equity.

10. Notice. Sierra Vista's address is 1001 Bridgeway, PMB 170, Sausalito, California, 94965, Attn: Patrick Wabl, and NMBT's address is PO Box 1048, Albuquerque, New Mexico 87103, Attn: Greg Leyendecker. Either party may give written notice of change of address with the other. All notices shall be sent by U.S. Mail, Certified, Return Receipt Requested to the addresses provided for in this paragraph and shall be deemed given upon receipt or refusal.

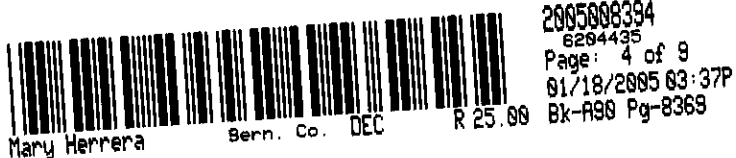
11. No Modification. Neither the location, configuration and/or scope of the easements described in this Declaration shall be materially modified or amended, from what is shown on the attached exhibits, without the prior written consent of the party benefited thereby, which consent shall not be unreasonably withheld, conditioned or delayed. This Declaration may be modified by written instrument executed by each of the Owners of the Parcels, or such portion or portions thereof as are affected by such modification. The consent of tenants of the Parcels, or any portion thereof, shall not be required for such modification to be effective.

12. NMBT Construction and Alterations. The owner of the NMBT Parcel shall not make or allow to be made any new construction or substantial alteration of improvements on the NMBT Parcel without the prior written consent of the owner of the Sierra Vista Parcel as to the design and plans therefor, which consent shall not be unreasonably withheld, delayed or conditioned.

13. Purpose; No Public Dedication. In no event shall any of the rights and easements hereby created benefit or be an appurtenance to any property that is now or hereafter owned by or dedicated to any government or governmental authority, for public road right-of-way purposes; nor shall any of the rights and easements hereby created benefit or be exercisable by the general public.

14. Compliance with Laws. Any easement provided hereunder shall be subject to compliance with all laws, ordinances and regulations as may be applicable for continuous operation of the businesses located on the parcels affected hereby. The Owners shall comply with all laws, ordinances, regulations and other governmental requirements with respect such owner's parcel

15. Indemnification. Each Owner (an "Indemnifying Owner") shall defend, in the event of litigation, indemnify, and save harmless the other Owner (the "Indemnified Owner"), and such Owner's successors in interest, heirs, grantees, devisees and assignees, tenants, licensees, invitees and agents, from and against (a) any and all claims for injury or death to persons or damage to or loss of property arising out of or alleged to have arisen out of or occasioned by the construction,



use, operation and maintenance by the Indemnifying Owner of the buildings, improvements, structures, parking areas, utilities, driveways, sidewalks and landscaped areas on the Indemnifying Owner's Parcel, except to the extent that such damage or injury shall have been due to the negligence or intentional act of an Indemnified Owner, or its respective successors, devisees, assignees, agents, tenants, licensees or invitees, and (b) any and all loss, cost, damage, claim or liability suffered by the Indemnified Owner arising out of the noncompliance by the Indemnifying Owner with laws, ordinances, regulations, or other governmental requirements with respect such Indemnifying Owner's Parcel.

IN WITNESS HEREOF, the Sierra Vista, declarant hereunder, has executed this document effective the 12<sup>th</sup> day of January, 2005.

**DECLARANT:**

**SIERRA VISTA ASSOCIATES, LLC**  
an Arizona limited liability company

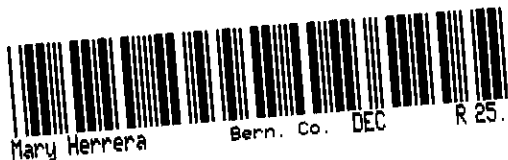
By: [Signature]  
Its: President of Managing Member

STATE OF California )  
 ) ss.  
COUNTY OF Marin )

This instrument was acknowledged before me on January 12, 2005, by Martín Shore, President of of Sierra Vista Associates, LLC, an Arizona limited liability company. Managing Member

[Signature]  
Notary Public

My Commission Expires:  
3-22-2006



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MONTGOMERY BOULEVARD NE  
(100' PUBLICLY DEDICATED RIGHT-OF-WAY)

EUBANK BOULEVARD NE  
(100' PUBLICLY DEDICATED RIGHT-OF-WAY)

# Sierra Vista Parcel

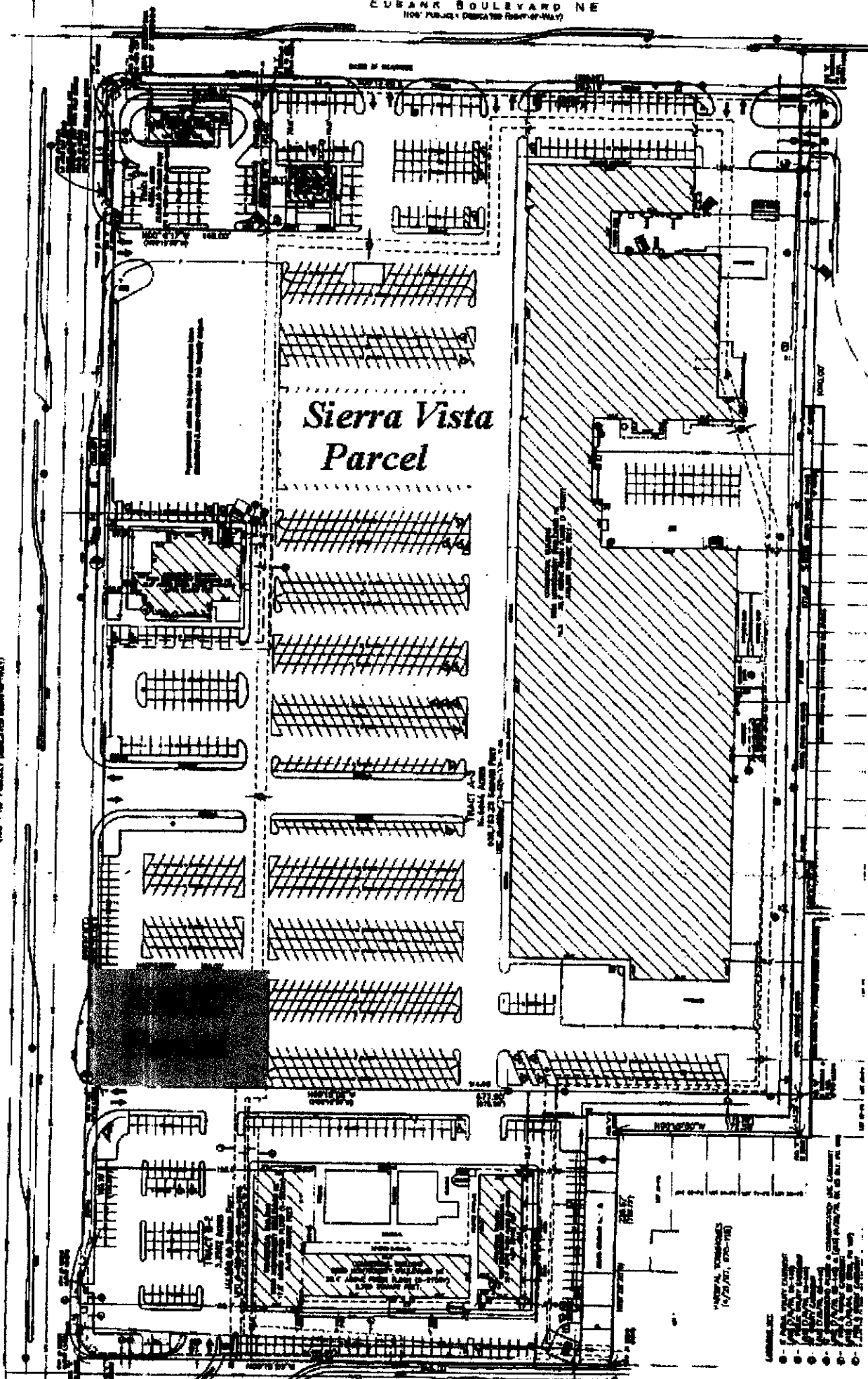
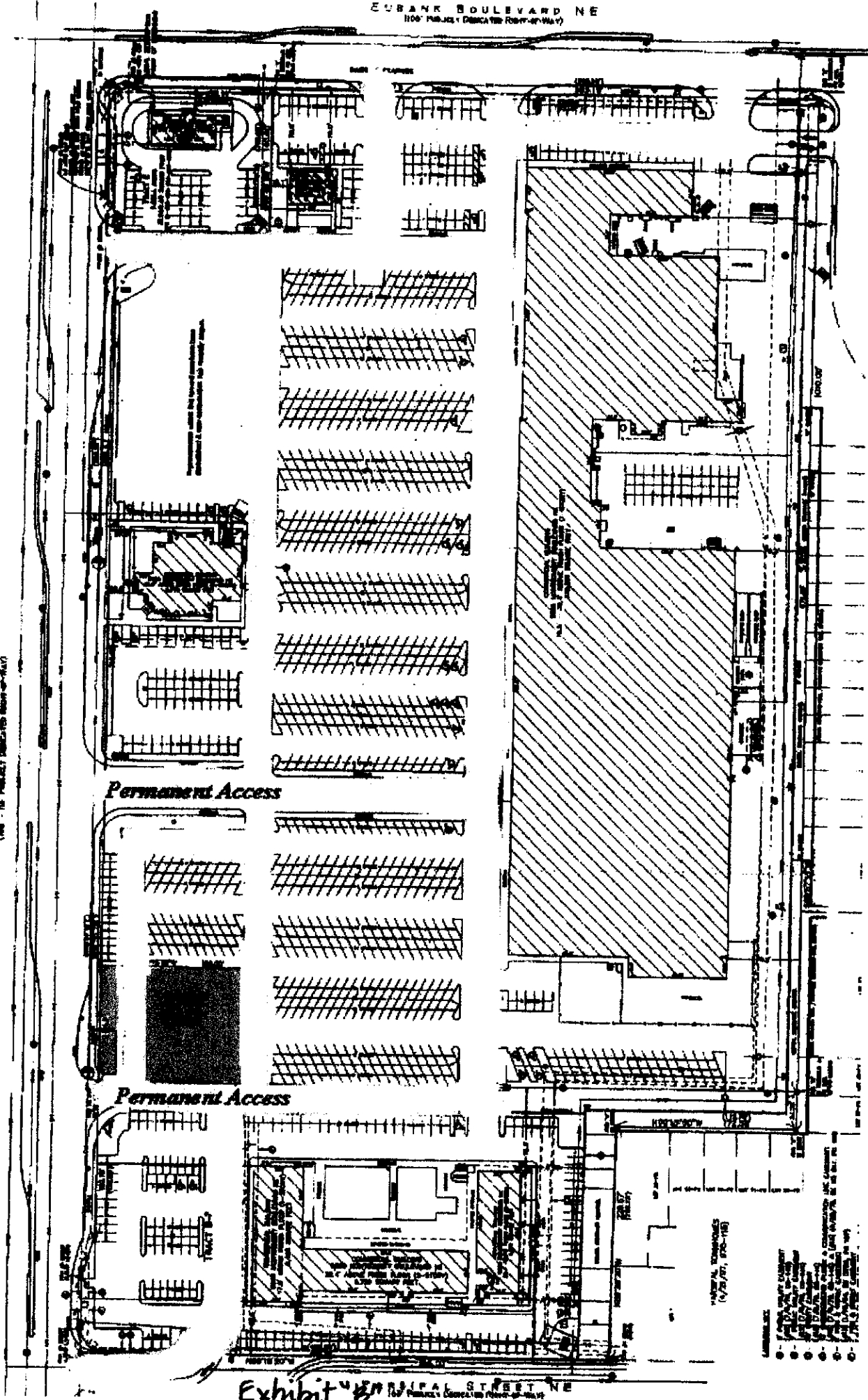


Exhibit "A" RISPAL STREET NE  
(10' PUBLICLY DEDICATED RIGHT-OF-WAY)

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MONTGOMERY BOULEVARD NE  
(100' R/W PARCELS DEDICATED Right-of-Way)



Permanent Access

Permanent Access

Exhibit B





MONTGOMERY BOULEVARD NE  
(100' PUBLICLY DEDICATED RIGHT-OF-WAY)

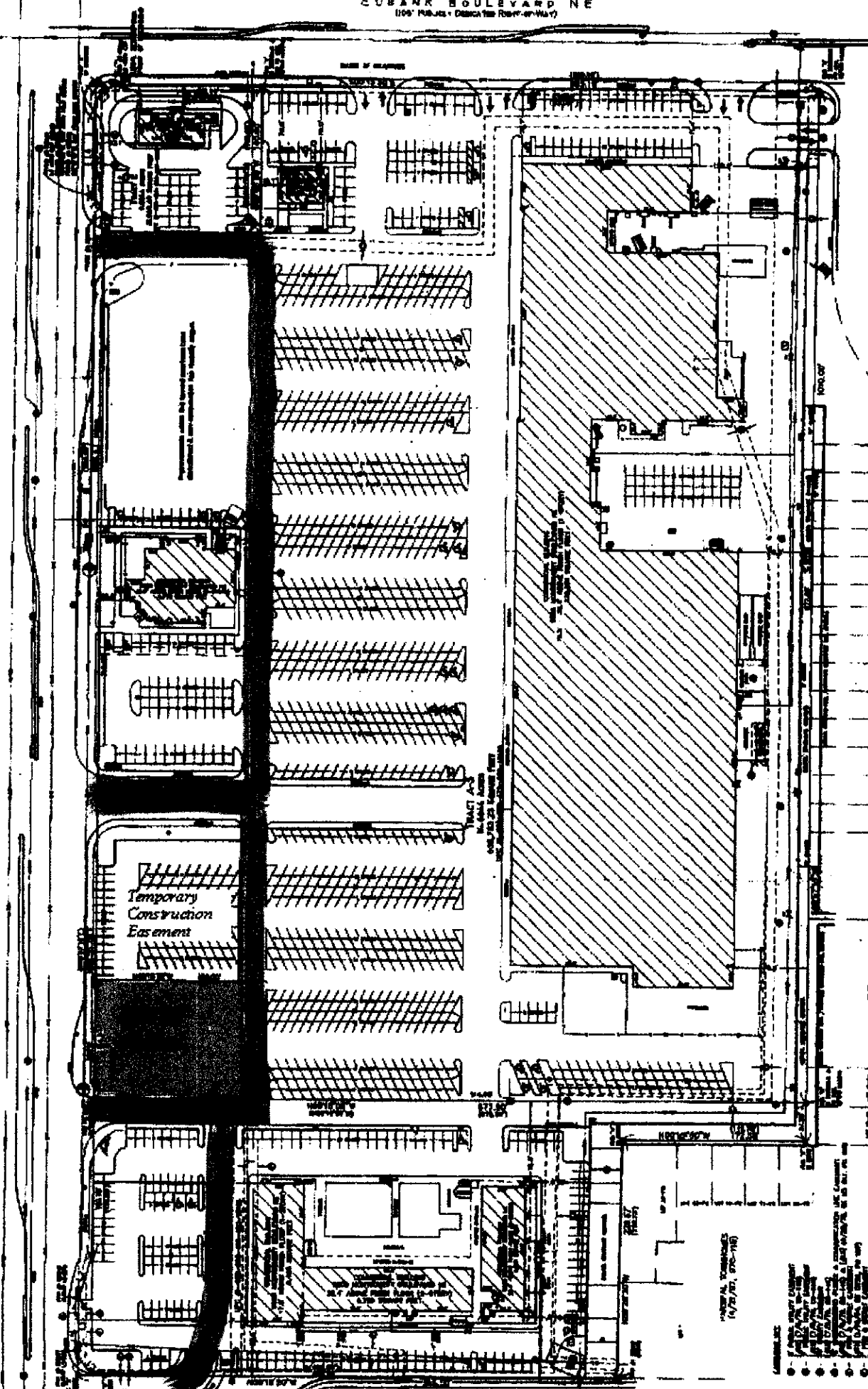


Exhibit "D"

PARISH STREET NE  
(100' PUBLICLY DEDICATED RIGHT-OF-WAY)