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**DECLARATION OF PROTECTIVE
COVENANTS, RESTRICTIONS AND GRANT OF EASEMENTS**

THIS DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made this ~~3rd~~ ^{3rd} day of November, 1994, by A. ROFFE BLACK and MARY J. BLACK, co-trustees of the ALBERT J. BLACK AND MARY J. BLACK REVOCABLE TRUST ("Trust").

WHEREAS, the Trust currently owns the property referred to as Tract G-2, Seven Bar Ranch, as shown on the plat entitled "Tracts O-1A, O-2A, O-1, G-2, M and a portion of Ellison Drive Easement (being a replat of Tracts O-1, O-2, G, B-9K, a portion of Ellison Drive Easement and unplatted lands of Seven-Bar Ranch, Seven-Bar Ranch), Seven-Bar Ranch, Bernalillo County, New Mexico", as filed and recorded with the office of the Bernalillo County Clerk on December 21, 1989, in Volume C40, Folio 77 (the "Premises"); and

WHEREAS, the Trust intends to sell, convey and/or lease Tracts G-2A thru G-2E ("Subtracts") to various separate entities as part of a general plan of developing the Premises; and

WHEREAS, PHILLIPS PETROLEUM COMPANY, a Delaware corporation ("Phillips"), APPLEBEE'S OF NEW MEXICO, INC., a New Mexico corporation ("Applebee's"), ERIC LAYTIN, a single man ("Brake Masters") and CENTRAL AVENUE PARTNERS, II, a New Mexico general partnership ("Payless") have entered into separate purchase agreements to purchase portions of the Premises from the Trust; and

WHEREAS, the Trust intends to record a subdivision plat which, among other things, will rename Tract G-2 as Tracts G-2A thru G-2E, Seven Bar Ranch (the "Replat") and therefore, all references to individual tracts herein will reflect the new name of the tracts; and

WHEREAS, the Trust desires to develop the Property for sale as an integrated development for the mutual benefit of each parcel of land comprising the Premises and, therefore, wishes to establish certain easements, covenants and restrictions on the Premises and/or portions thereof; and

WHEREAS, in order to preserve the quality and harmonious development of the Premises, the Trust desires to impose upon the Premises certain protective covenants, conditions and restrictions governing the parking, access, drainage, utilities, landscaping, lighting, signage and maintenance and use of the Premises and of the individual Subtracts to be sold, conveyed and/or leased by the Trust. The Premises and/or Subtracts shall be sold, conveyed and/or leased subject to these provisions.

NOW, THEREFORE, the Trust hereby certifies and declares that all of the Premises shall be owned, held, sold, leased, exchanged, conveyed, occupied, improved, maintained and used subject to the covenants, conditions and restrictions hereinafter set forth, all of which shall run with the right, title and/or interest in and to the Premises, and/or any part or parts thereof, and shall be binding upon and inure to the benefit of the present and all future owners of the Premises and/or any part or parts thereof.

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ARTICLE I
DEFINITIONS

The following terms shall have the meanings specified below.

1.01. **Building Areas**. The Building Areas in the Premises are the portions upon which buildings or other improvements are constructed on a Subtrast from time to time in accordance with approved plans and specifications approved by the City of Albuquerque and/or Bernalillo County, and shall consist of the area within or attached to the exterior surfaces of the exterior walls of any heated building or structure. The approximate locations of the original Building Areas, to the extent they are known at this time, are shown on the plan attached hereto as Exhibit "A".

1.02. **Common Areas**. The Common Area is all real property within the Premises except the Building Areas and the Limited Common Area; provided, those portions of the Building Areas upon which buildings are not constructed shall be deemed to be Common Areas until such time as the initial construction of buildings thereon commences. The Common Areas shall include, but not be limited to, parking lots, landscaping, lighting, curbs, sidewalks, drainage facilities, driveways and any other Common Area improvements as specifically designated and/or required by the City or the Subtrast Owners as Common Area for the common benefit of the project, excluding the Building Areas and the Limited Common Areas.

1.03. **Date Hereof**. The Date Hereof shall mean the date of acceptance of this Declaration by all parties hereto, as evidenced by the date of the signatures as provided on the signature page of this Declaration.

1.04. **Limited Common Area**. That portion of the Premises which is actually used for any loading facilities, truck tunnels and truck parking, turn-around and dock areas and ramps and all service areas shown on Exhibit "A" ("Service Areas"), drive-up lanes and drive-up facilities and/or delivery lanes to be constructed on the Premises and shall be for the exclusive use by the owner of the Subtrast on which such improvements are located and its customers, invitees, licensees, agents and employees.

1.05. **Majority Parties**. The "Majority Parties" shall mean those Parties who, collectively, have fee simple title to a total of 75% of the area of the Property.

1.06. **Occupant**. "Occupant" shall mean any person or legal entity from time to time entitled to the use and occupancy of any portion of a building in the Premises under an ownership right or any lease, sublease, license, concession or other similar agreement.

1.07. **Permittees**. "Permittees" shall mean the Subtrast Owners and all Occupants and their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees and concessionaires insofar as their activities relate to the intended use of the Premises.

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1.08. Sector Plan. "Sector Plan" shall mean the Seven Bar Ranch Neighborhood Sector Development Plan, April 1985, as approved by the City of Albuquerque and the County of Bernalillo.

1.09. Site Plan. "Site Plan" shall mean the Site Plan(s) for Subdivision and Site Plan(s) for Building Permit as approved by the City of Albuquerque, Bernalillo County, New Mexico.

1.10. Subtract. "Subtract" shall mean those tracts referred to as Tracts G-2A thru G-2E as shown on the replat for the subdivision and/or as further subdivided by subsequent replats.

1.11. Subtract Owner. The term "Subtract Owner" or "Subtract Owners" means the owner, or assigns of the Premises or the owners, or assigns of each Subtract and their respective assigns, grantees and successors in interest.

1.12. CAM Administrator. The term "CAM Administrator" shall mean the Subtract Owner responsible for the administration of the Common Area maintenance. This will be the Subtract Owner who owns the largest Subtract pursuant to the terms and provisions in Paragraph 8.01.

ARTICLE II CONSTRUCTION OBLIGATIONS

2.01. Construction Compatibility. In order to produce an architecturally compatible, unified Premises pursuant to the common general plan contemplated by this Declaration, and to comply with the Sector Plan regulations and City ordinances, each Subtract Owner agrees to consult with and obtain approval from the Seven Bar Ranch Development Review Committee and the City of Albuquerque concerning the design, color, treatment and exterior materials to be used in the construction and reconstruction of all buildings and structures on its respective Subtract and to consider the views of the other Subtract Owners with respect thereto. The design standards for the on-site improvements, including schematic parking layout, landscaped areas and driveways, shall be in accordance with the Sector Plan and all governmental approvals.

2.02. General Requirements

- (a) Compliance with Laws. Each Subtract Owner agrees that all construction activities performed by it within the Premises shall be performed in compliance with all laws, rules, regulations, orders and ordinances of the City of Albuquerque, Bernalillo County, State of New Mexico and federal governmental agencies, affecting improvements constructed within the Premises.

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- (b) Interference. Each Subcontract Owner agrees that its construction activities shall not:
- (i) cause any unreasonable increase in the cost of constructing improvements upon another Subcontract Owners' Subcontract;
 - (ii) unreasonably interfere with construction work being performed on any other part of the Premises;
 - (iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Premises by any other Subcontract Owner, its Occupants or its Permittees;
 - (iv) cause any other Subcontract Owner to be in violation of any law, rule, regulation, order or ordinance applicable to its Subcontract of the City of Albuquerque, Bernalillo County, State of New Mexico or federal governmental agencies, or any department or agency thereof.
- (c) General Construction Indemnity. Each Subcontract Owner agrees to defend, indemnify and hold harmless each and every other Subcontract Owner and the Trust from all claims, actions and proceedings and costs incurred (including reasonable attorneys' fees and costs of suit) which result from any accident, injury, loss or damage whatsoever occurring to any person or to the property of any person arising out of or resulting from the performance of any construction activities performed or authorized by such indemnifying Subcontract Owner. Any damage occurring to any portion of the Premises as a result of such construction work shall be the responsibility of the Subcontract Owner performing such construction work or causing such construction work to be performed and shall be repaired by such Subcontract Owner, at such Subcontract Owner's sole cost and expense, to the same condition as existed immediately prior to such work promptly upon the completion of such construction work.

2.03. Mechanic's or Construction Lien. If, because of any act or omission (or alleged act or omission) of any Subcontract Owner, any mechanic's or construction lien shall be filed with respect to any portion of the Premises (whether or not such lien is valid or enforceable as such), such Subcontract Owner shall cause same to be discharged of record, or bonded, with respect to such portion of the Premises not owned by such Subcontract Owner, within thirty (30) days after being notified of the filing thereof; and such Subcontract Owner shall indemnify and save harmless all Subcontract Owners, all ground and underlying lessors and mortgagees from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees resulting therefrom. If such Subcontract Owner fails to comply with the foregoing, any other Subcontract Owner shall have the option of discharging or bonding any such lien, and if such option is exercised, the Subcontract Owner whose act or omission (or alleged act or omission) gave rise to the lien shall reimburse the Subcontract Owner who discharged or bonded such lien for all costs, expenses and other sums of money (including reasonable attorneys' fees) in connection therewith promptly upon demand.

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and such Subtract Owner shall have all rights with respect to the amounts owed to it, including, but not limited to, its rights under Paragraph 8.03 hereof.

ARTICLE III SIGNAGE

No exterior identification signs shall be allowed within the Premises except as approved by the appropriate governmental authority.

ARTICLE IV GENERAL RESTRICTIONS

No improvements may be built or maintained in the Common Area of the Premises other than those improvements set forth on the Site Plan, including, without limitation, landscaping, curbing, parking stalls, berms, etc., or as amended by one or more amendments to the Site Plan.

ARTICLE V USE RESTRICTIONS

5.01. Use in General. The Subtracts may be used for any lawful purpose. No illegal business or business which is in violation of any zoning law or ordinance will be allowed to function on the Subtracts. During the term of this Declaration, the Premises shall be used only for retail purposes, office, hotel, motel, automobile service station with carwash and convenience store, financial institution, entertainment, theater, restaurant, fitness center, automobile dealership and other uses commonly found in or in close proximity to a first-class development.

5.02. Prohibited Uses. Notwithstanding the foregoing, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Subtracts as follows:

- (a) Any public or private nuisance.
- (b) Any noise or sound that is objectionable due to intermittence, beat, frequency shrillness or loudness. Notwithstanding the foregoing, the operation of an automatic carwash shall be permitted in the Subtract.
- (c) Any excessive quantity of dust, dirt or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store.

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- (d) Any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks, excluding the sale and storage of gasoline.
- (e) Any assembly, manufacture, distillation, refining, smelting, agriculture or mining operations.
- (f) Any mobile home or trailer court, labor camp, junkyard, stock yard or animal raising. Notwithstanding the foregoing, pet shops shall be permitted within the Premises.
- (g) Any drilling for and/or removal of subsurface substances.
- (h) Any dumping of garbage or refuse, other than in enclosed, covered receptacles intended for such purpose.
- (i) Any veterinary hospital, mortuary or similar service establishment.
- (j) Any automobile body and fender repair work, except as incidental to a gas station use.
- (k) Any skating rink, bowling alley, bar (except incidental to restaurant use), discotheque, dance hall, amusement gallery, poolroom, massage parlor, off-track betting facility, racetrack, adult book stores or "x" rated adult cinemas, "peep shows", or operation of a business devoted primarily to providing entertainment or the sale of products of an obscene or pornographic nature.

5.03. Non-Interference With Common Area. The Common Area is intended for the non-exclusive use by the Occupants and Permittees of the Premises. In order to provide for the orderly development and operation of the Premises, no Occupant shall display, store or sell any merchandise or place portable signs or other objects in the Common Area; provided, however, this restriction shall not apply to, only if then permitted by law, by the Occupant, of: (i) the sidewalk areas adjacent to the Occupant's building for marketing, special promotion, and customer service purposes and for food sales by one vendor from a movable cart or kiosk (such as a hot dog cart or the like), and (ii) portions of the Service Area behind and adjacent to the Occupant's building for the staging of inventory. This restriction shall not apply to the short-term, seasonal sale of Christmas trees.

5.04. Exclusives. Notwithstanding anything contained in this Declaration to the contrary, each Occupant shall have the exclusive right to use (i) the sidewalk areas adjacent to its building located on its Subtract for marketing, special promotion, and customer service purposes and for food sales by one vendor from a movable cart or kiosk (such as a hot dog cart or the like), (ii) portions of the Service Area behind and adjacent to its building located its Subtract for the staging of inventory.

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**ARTICLE VI
EASEMENTS**

6.01. Ingress, Egress and Parking. The Trust hereby declares, grants and conveys for the benefit of the Subtract Owners, a non-exclusive easement appurtenant to each Subtract owned and/or leased by each party for ingress and egress by vehicular and pedestrian traffic and for vehicular parking, upon, over and across the Common Area, if any, within each Subtract covered by this Declaration. All easements referenced herein shall be subject to all restrictions imposed on such uses by this Declaration; provided, such easements shall not pertain to the construction and/or maintenance of utility lines, which shall be governed by the provisions in Paragraph 6.02 below. Additionally, all such easements shall be in accordance with the Site Plan and Replat as approved by the appropriate governmental authority and the appropriate utility company. Each future Subtract Owner, by taking title or by leasing its Subtract subject to this Declaration, shall be deemed to have granted such easement with respect to the Common Area, if any, on its Subtract to all other Subtract Owners and their Occupants. Such easement rights shall exist only during the term of the reservations, as well as other provisions contained in this Declaration:

(a) Except for situations specifically provided for in the following subparagraphs, or as set forth on the Site Plan, no fence or other barrier which would unreasonably prevent or obstruct the passage of pedestrian or vehicular travel for the purposes herein permitted shall be erected or permitted within or across the easement areas; provided, however, that the foregoing provisions shall not prohibit the installation of convenience facilities (such as mailboxes, public telephone, benches or public transportation shelters), landscaping, berms or planters, nor of curbing and other forms of traffic controls by Subtract Owner in accordance with governmental authority.

(b) In connection with any construction, reconstruction, repair or maintenance on its Subtract, each Subtract Owner reserves the right to create a temporary staging and/or storage area in the Common Area, if any, on its Subtract at such location as will not unreasonably interfere with access between such Subtract and the other areas of the Premises and public streets or roadways adjacent to the Premises.

→ **6.02. Utility Lines/Drainage.** The Trust hereby declares, grants and conveys, for the benefit of each Subtract Owner, non-exclusive easements appurtenant to the Subtract owned, under, through and across the Common Area of each Subtract for the installation, maintenance, repair and replacement of water drainage systems, flows or structures, water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, gas mains or other public utility facilities necessary for the orderly development and operation of the Common Area and each building in the Premises; provided that all such improvements and utilities shall be approved, in writing, by the appropriate governmental authority(s) and utility company(s); provided further that the rights granted pursuant to such easements shall at all times be exercised in such a manner as to cause the least interference with the normal operation of the development on the Premises; and provided further, except in an emergency, the right of any Subtract Owner to enter upon the Subtract of the other Subtract Owner for the exercise of any right pursuant to such easements shall be conditioned upon obtaining the prior written consent of such other Subtract Owner, which consent shall not unreasonably be withheld. Notwithstanding the

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foregoing, except in an emergency, repair and maintenance of these utilities and systems shall be prohibited between December 1 and December 30 of each year.

All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be, to the extent reasonably possible, installed and maintained below the ground level or surface of such easements. In the event any Subtrac Owner deems it to be necessary to cause the installation of any utility line across the Common Area of the other Subtrac or Subtracs subsequent to the initial paving and improving thereof, the Subtrac Owner of the Subtrac on which such improvements are to be made agrees not to unreasonably withhold the grant of consent herein required; provided, however, that in no event will such installation be permitted if it would unreasonably interfere with the normal operation of any business on the Premises or the quiet enjoyment of the Premises or easements thereon by the Subtrac Owner or their successor and/or assigns.

Notwithstanding the terms of any such consent, in the event any Subtrac Owner, in exercising the foregoing granted rights, disturbs or otherwise damages any portion of the Common Area improvements, such Subtrac Owner shall expeditiously prosecute to completion the utility work, and at its sole expense, shall immediately restore and repair the Common Area improvements to their condition prior to the commencement of construction. In the event that it should be necessary to grant any of the foregoing easements and rights to the local utility companies as a condition of their providing or continuing service, such rights shall be granted so long as the Subtrac Owner deems the terms and conditions of such grant to be reasonable and necessary.

6.03. Parking Restrictions. No persons, other than customers, employees and invitees of the Occupants of the Premises, shall be permitted to park in the Common Areas, unless the Subtrac Owner of the respective Subtrac gives prior written approval thereof.

ARTICLE VII INSURANCE PROVISIONS

7.01. Insurance. Each Subtrac Owner agrees to maintain, or cause to be maintained, liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Common Area within its Subtrac with a "Combined Single Limit" (covering bodily injury liability and property damage) of not less than One Million Dollars (\$1,000,000.00). Such insurance may be in the form of blanket liability coverage applicable to the Subtrac Owner's Subtrac and other property owned or occupied by the Subtrac Owner or the party carrying such insurance coverage (or the responsible parent, subsidiary or affiliated companies of such Subtrac Owner or party). Such Subtrac Owner or party may insure, in whole or in part, under any plan of self-insurance, which such Subtrac Owner or party (or the parent, subsidiary or affiliated companies of such Subtrac Owner or party) may, from time to time, have in force and effect, provided it shall have a net worth of more than Fifty Million Dollars (\$50,000,000.00). Each Subtrac Owner shall, upon request, provide the other Subtrac Owners with evidence of such coverage and a description of any plan of self-insurance being used together with a certification not less frequently than annually that such self-insuring Subtrac Owner maintains a program of self-insurance which shall include professionally issued financial statements evidencing

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compliance with the net worth requirement described above. Each Subtract Owner as Indemnitor shall indemnify, defend and hold harmless all other Subtract Owners from all claims, demands, liabilities, losses, costs and expenses with respect to the negligent and/or wrongful acts or omissions of the indemnifying Subtract Owner relating to construction, restriction, maintenance, use, operation, occupancy and/or management of any part of the Premises and/or with respect to the use by the indemnifying Subtract Owner and its tenants and Permittees of the easements granted in Article VI. Such indemnity shall not apply to the extent of any loss or claim due to or arising from the negligent or wrongful acts or omissions of the indemnified party.

ARTICLE VIII
MAINTENANCE PROVISIONS: COMMON AREA ADMINISTRATION

8.01. **CAM Administrator.** Commencing with the completion of all of the Common Area Improvements to any two (2) Subtracts, as called for by the Development Agreement, and continuing thereafter until changed by agreement or notice, as provided hereinafter, CAM Administrator shall maintain the Common Area at all times in good and clean condition and repair, which maintenance shall include, but not be limited to the following:

- (a) Maintaining the asphalt surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
- (b) Removing ice, snow, papers, debris, filth and refuse, as soon as practically possible, and thoroughly sweeping the Common Area to the extent reasonably necessary to keep it in a clean and orderly condition;
- (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
- (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
- (e) Maintaining all landscaped areas and repairing automatic landscape sprinkler systems or water lines and making replacements of shrubs and other landscaping as is necessary; and
- (f) Maintaining and repairing any and all walls, common storm drains, all drainage ponds and appurtenances, utility lines, sewers and other services which are necessary for the operation of the buildings and improvements within the Premises.

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8.02. Insurance. In addition to the foregoing, the CAM Administrator shall provide general public liability insurance to all persons who now or hereafter own or hold portions of the Premises or building space within the Premises or any leasehold estate or other interest therein as their respective interests may appear (provided that the CAM Administrator is notified in writing of such interest), against claims for personal injury, death or property damage occurring in, upon or about the Common Area and the streets and sidewalks adjacent to the Premises. Such insurance shall be written with an insurer licensed to do business in the State of New Mexico, and the Subtract Owners shall be named insureds on the insurance policy. The limits of liability of all such insurance shall be not less than One Million Dollars (\$1,000,000.00) for total claims for any one occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) with respect to damage to property; or in lieu of such coverage, a combined single limit (covering bodily injury and property damage liability) with a limit of not less than One Million Dollars (\$1,000,000.00). Such insurance shall not be subject to any deductible unless first approved in writing by the Subtract Owners. The CAM Administrator shall furnish the Subtract Owners with a certificate or, upon request, the policy, evidencing such insurance. The policies of such insurance shall provide that the insurance shall not be changed or canceled without the giving of twenty (20) days' written notice of the holders of such insurance and the holders of such certificates.

8.03. Lighting. The artificial lighting for the Common Area shall remain on during ordinary hours of business (except in daylight hours), which is agreed to mean that period during which Majority Parties (computed through a comparison of square footage of buildings actually constructed on the Subtracts) on the Premises are open for business. The CAM Administrator will cause the lighting of the Common Area located upon their respective Subtracts to be metered separately along with the metering for the electrical use of each Subtract Owner's buildings. The utility costs of lighting the Common Area on each Subtract shall be borne by the owner of each such Subtract and shall not be included as an expense of Common Area Maintenance as provided herein.

8.04. Authority and Term of CAM Administrator. The Subtract Owners hereby recognize and approve the appointment of the Trust as CAM Administrator. As of the date on which any two (2) Subtracts' Common Area improvements in the Premises are completed, as called for by this Agreement, and in such capacity and consistent with this Agreement, the Trust, its successors or assigns, shall have and is hereby given the full right and authority of operation, control and maintenance of the entire Common Area in the manner set forth above in Paragraph 8.01. Such right and authority of the Trust shall continue until Tract G-2A is sold and/or another Subtract Owner holds an interest in a Subtract larger than the Subtract held in interest by the Trust, at which time the CAM Administrator position shall be held by the interest holder of the largest Subtract. Anything to the contrary notwithstanding, the Trust shall have the right, as its option, and upon giving ninety (90) days' prior written notice to all Subtract Owners and tenants of the Premises, to terminate its function as CAM Administrator; whereupon a new CAM Administrator shall then be appointed with the approval of the Majority Parties. Such new CAM Administrator after so appointed shall have full right and authority of operation, control and maintenance of the entire Common Area in the manner set forth herein. In the event the Majority Parties are unable to agree upon a new CAM Administrator or otherwise fail to make such an appointment, then the provisions of Paragraph 11 shall apply.

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8.05. Reimbursement of the CAM Administrator. The CAM Administrator is hereby authorized to contract for and pay for all of the items enumerated as maintenance and insurance expenses herein. The CAM Administrator shall be reimbursed for the reasonable expenses directly incurred in performing such services. The CAM Administrator agrees to keep the expenses of such maintenance at a reasonable minimum. The CAM Administrator shall be entitled to receive, in addition to the reimbursement for costs and expenses, a ten percent (10%) administration fee for the general maintenance duties which shall be considered a Common Area expense.

8.06. Billing for Expenses. The Sub tract Owners of each developed Sub tract shall be billed in an amount estimated (ADD) monthly for their pro rata share of all expenses incurred by the CAM Administrator in maintaining the Common Area as provided above, with the first billing date being the first day of the first full calendar month following the date of the completion of the Common Area improvements. The proportionate share of the total Common Area expenses to be borne by each of the Sub tract Owners of developed Sub tracts for any year shall be based upon the Sub tract Areas set forth below:

<u>Parcel</u>	<u>Initial Owner</u>	<u>Sub tract Area</u>
One	Phillips	1.1232 acres
Two	Applebee's	1.2858 acres
Three	Brake Masters	.5089 acres
Four	Payless	.8200 acres
Five	Trust or assigns	6.1323 acres

The Sub tract Owners shall reimburse the CAM Administrator within fifteen (15) days after receipt of a billing, together with copies of such documents as may reasonably be required to substantiate the billing.

Any Party may examine and audit the accounts and bills for Common Area expenses at any reasonable time.

8.07. Effect on Sale by Party. If any Sub tract Owner in the Premises sells all or a part of the Sub tract owned by it, other than to perfect a sale and leaseback (or other similar financing) of such property, then, from and after the date of sale, such Sub tract Owner shall have no further obligation under this Declaration with respect to such Sub tract sold; provided, however, the selling Sub tract owner shall remain liable for obligations incurred prior to the sale. All conveyances of all or any portion of the Premises subsequent to the Date Hereof shall recite that they are subject to the terms and provisions of this Declaration.

8.08. Default in Payment of Expenses

- (a) In the event any Sub tract Owner fails or refuses at any time to pay when due its share of the maintenance and insurance expenses as set forth above, then legal action may be instituted against the defaulting Sub tract Owner for reimbursement, plus interest at the rate of interest equal to the then-published "Prime Rate" of Citibank, N.A., plus five percent (5%), or the

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Highest rate permitted by law, whichever is lower ("Interest Rate") from the due date thereof until date of payment. Furthermore, the other Subcontract Owners shall have a lien on the Subcontract of the defaulting Subcontract Owner for such amount in default, which amount shall bear interest at the Interest Rate from the due date until paid, provided that if there be a good-faith dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on any Party's Subcontract until such dispute is settled by final court decree or mutual agreement.

- (b) In addition, any non-defaulting Subcontract Owner may correct any default for and on behalf of any defaulting Subcontract Owner, the cost of which, together with interest at the Interest Rate, shall be immediately due and payable. If not paid, the Subcontract Owner correcting the same shall have a lien on the Subcontract of the defaulting Subcontract Owner for such amount in default, which amount shall bear interest at the Interest Rate from the due date until paid.
- (c) In addition to the foregoing, if any Subcontract Owner defaults under this Declaration, any other Subcontract Owner may institute legal action against the defaulting Subcontract Owner for specific performance, declaratory relief, damages, or any other available legal remedy. In addition to recovery of the sum so expended on behalf of the defaulting Subcontract Owner, the prevailing Subcontract Owner shall be entitled to receive from the losing Subcontract Owner such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing Subcontract Owner in any such action.

8.09. Lien for Expenses. The liens provided above may be filed for record by the curing Subcontract Owner or CAM Administrator as a claim of lien against the Subcontract of the defaulting Subcontract Owner in the same manner and with the same priority as a mechanics' lien in the jurisdiction in which the Premises is located.

8.10. Right to Maintain Subcontract Separately. Any Subcontract Owner, at any time and from time to time, upon at least ninety (90) days' prior notice to the CAM Administrator and the other Subcontract Owners, may elect to assume the obligations of the CAM Administrator to maintain and repair such Subcontract Owner's portion of the Common Area, except for repaving, landscaping watering systems, maintaining the drainage ponds and appurtenances and other costs which cannot be practicably segregated or allocated between the Subcontracts, which costs shall continue to be proportionately paid for by each Subcontract Owner pursuant to the formula in Paragraphs 8.05 and 8.06 of this Declaration. In the event of such an assumption by any Subcontract Owner, such Subcontract Owner agrees to maintain and repair its portion of the Common Area at its sole cost and expense, in a manner and at a level of quality at least comparable to that of the CAM Administrator, and to assume all duties, obligations and covenants to the same extent and same manner as if there were no CAM Administrator as set forth in Paragraphs 8.04 and 8.11 hereof. Any Subcontract Owner may also elect to terminate its obligations to maintain and repair its own portion of the Common Area by giving at least ninety (90) days' prior notice to the CAM

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Administrator, in which event the CAM Administrator agrees to resume its duties as outlined above in this Declaration, and the Subtract Owner so electing agrees to pay for its pro rata share of costs pursuant to the formula in Paragraphs 8.05 and 8.06 of this Declaration, subject to the same late penalties and ten percent (10%) fee to the CAM Administrator.

8.11. Responsibility if No CAM Administrator. In the event there should at any time cease to be a CAM Administrator as provided in this Declaration, each Subtract Owner in the Premises shall be responsible for the maintenance, insurance and lighting of its own Subtract according to the standards and limits of insurance herein enumerated. Each Subtract Owner shall promptly notify the other Subtract Owners of any asserted claim with respect to which a Subtract Owner is or may be indemnified against hereunder and shall deliver to such Party copies of process and pleadings. The Subtract owners each, on behalf of their respective insurance companies insuring against any such loss, waive any right of subrogation it may have against the other Subtract Owners, and each Subtract Owner shall procure from such insurers under all policies of such insurance coverage a waiver of all rights of subrogation which the insurers might otherwise have under such policies. The indemnity provisions of this Article shall not apply to damage or destruction or property which is owned by any Subtract Owner. If any Subtract Owner fails to perform such obligation, such failure shall constitute a default, in which case the other Subtract Owners may cause the performance of such obligations and bill the defaulting Subtract Owner for the expenses incurred. In the event the defaulting Subtract Owner fails to repay such expenses, the applicable provisions and remedies of Paragraphs 8.08 and 8.09 above shall apply.

8.12. Rules and Regulations. Subject to the Majority Parties' written approval, the CAM Administrator may make rules and regulations which shall control the use and operation of the Common Area. Such rules and regulations shall be those which are necessary or desirable to provide for the most effective, economical and fair use and enjoyment of the facilities and which do not unduly favor or prejudice the Subtract Owners or tenants of all or any part of the Premises in the use of such facilities. Such rules and regulations may be amended from time to time and may include, but shall not be limited to, requirements that owners and occupants of the Building Area require employees to restrict their parking to one or more portions of the Common Area or restrict them from any parking within the Premises.

8.13. Sidewalks. The cleaning of the sidewalks immediately adjacent to the buildings on the Premises shall be the responsibility of the Subtract Owner of all of any Subtract, which walks are to be kept available for use by the general public at all times, but the maintenance and repair of which shall be done by the CAM Administrator. If the Subtract Owner fails to keep such sidewalks in a clean, sanitary and usable condition as herein provided, the CAM Administrator may, but shall not be obligated to, after written notice to the Subtract Owner, place such sidewalks in proper condition and the amount paid by the CAM Administrator to accomplish this shall be billed to and paid by the defaulting Subtract Owner on demand. In the event of a failure to repay, the applicable provisions and remedies of Paragraphs 8.08 and 8.09 shall apply.

9041

8.14. Trash Services. Trash services are not included in the Common Area maintenance services, but are to be the sole responsibility of each respective Sub tract Owner.

**ARTICLE IX
MISCELLANEOUS**

9.01. Notices. Any notice, payment, demand, offer or communication required or permitted to be given by any provision of this Declaration shall be deemed to have been sufficiently given or served for all purposes if personally delivered, sent by registered or certified mail, postage and charges prepaid, or by Federal Express or other reputable overnight courier or delivery service, addressed as follows:

THE TRUST: Mary J. Black and A. Rolfe Black, Co-Trustees of the
Albert J. Black and Mary J. Black Revocable Trust
c/o Las Collinas Realty and Development Co.
10200 Corrales Road, N.W., Suite B-3
Albuquerque, New Mexico 87114

with a copy to: Stanley N. Hatch, Esq.
Hatch, Allen & Shepherd, P.A.
P.O. Box 30488
Albuquerque, New Mexico 87190-0488

PHILLIPS PETROLEUM COMPANY: Phillips Petroleum Company
500 South Taylor -- Suite 1100
Amarillo, Texas 79101-2442
Attn: Property Taxes, Real Estate & Claims

APPLEBEE'S OF NEW MEXICO, INC.: Robert T. Steinkamp
Applebee's of New Mexico, Inc.
4551 W. 107th Street, Suite 100
Overland Park, Kansas 66207

ERIC LAYTON: Brake Masters Systems, Inc.
917 North Swan
Tucson, Arizona 85711

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Any such notice shall be deemed to be given (i) on the date of personal service upon the person to whom the notice is addressed or if such person is not available the date such notice is left at the address of the person to whom it is directed, (ii) three (3) days after the date the notice is deposited with the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, and (iii) on the date the notice is delivered by a reputable professional courier service to the address of the person to whom it is directed, provided it is sent prepaid.

9.02. Breach - Effect on Mortgage and Right to Cure. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith, but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any owner of any portion of the premises, or any part thereof, who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale; provided, however, that any such owner who acquires title by foreclosure or trustee's sale shall take title free of any liens created or provided for hereunder, though otherwise subject to the provisions hereof. Notwithstanding any other provision in this Declaration for notices of default, the mortgagee of any Subtract Owner in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Declaration; provided, however, that said mortgagee shall have, prior to the time of the default, notified the Subtract Owner giving said notice of default of the mortgagee's interest and mailing address. In the event that any notice shall be given of the default of a Subtract Owner and such defaulting Subtract Owner has failed to cure or commence to cure such default as provided in this Declaration then and in that event the Subtract Owner giving such notice of default covenants to give such mortgagee (which has previously given the above stated notice to such Subtract Owner) under any mortgage affecting the Tract of the defaulting Subtract Owner an additional notice given in the manner provided above, that the defaulting Subtract Owner has failed to cure such default and such mortgagee shall have thirty (30) days after said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, diligently to commence curing within such time and diligently pursue such cure to completion within a reasonable time thereafter. Giving of any notice of default or the failure to deliver a copy to any mortgagee shall in no event create any liability on the part of the Subtract Owner so declaring a default.

9.03. Effect on Third Parties. Except for Paragraph 9.02 which is for the benefit of mortgagees, the rights, privileges, or immunities conferred hereunder are for the benefit of the Subtract Owners and not for any third party.

9.04. Assignment. The Trust and each Subtract Owner, without consent from the other Subtract Owners, shall have the right to assign all of its rights, responsibilities and obligations set forth in this Declaration to another party.

9.05. Governing Law. This Declaration and the obligations of the Subtract Owner hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of New Mexico.

9013

9.06. Release. If a Subtract Owner shall sell, transfer or assign its entire Subtract or its interest therein, it shall, except as provided in this Declaration, be released from its unaccrued obligations hereunder from and after the date of such sale, transfer or assignment.

9.07. Duration of Declaration. This Declaration shall remain in effect for a period fifty-five (55) years from the date of the Declaration is recorded, after which time they shall be automatically renewed for ten year periods unless the Majority Parties elect in writing not to so renew and shall expressly terminate these covenants by written instrument, recorded in the public records of the county in which the Premises are located.

9.08. Realty. Each Subtract Owner shall pay, or cause to be paid prior to delinquency all real estate taxes and assessments which may be levied, assessed or charged by any public authority against such Subtract Owner's Subtract, the improvements thereon or any other part thereof. In the event a Subtract Owner shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property) to be excessive or illegal, such Subtract Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this section shall require such Subtract Owner to pay any such real estate tax or assessment as long as (a) no other Subtract Owner's Subtract would be immediately affected by such failure to pay (or bond); and (b) the amount of validity thereof shall be contested in good faith. If the failure to pay (or bond) such tax would affect another Subtract Owner's Subtract, such other Subtract Owner shall have the right to pay such tax and shall have a lien on the nonpaying Subtract Owner's Subtract for the amount so paid until reimbursed for such payment. Any such lien shall be subject to, and junior to, and shall in no way impair or defeat the lien or charge of any mortgagee.

9.09. Binding Effect. All of the limitations, covenants, conditions, easements and restrictions contained herein shall attach to and run with each Subtract and shall benefit or be binding upon the successors and assigns of the respective Subtract Owners. This Declaration and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitude in favor of said Subtracts and any portion thereof. In the event of any conflict between this Declaration and that certain Development Agreement dated October 11, 1994 ("Development Agreement"), and as it may be amended in the future, then the provisions, agreements and declarations contained in this Declaration shall prevail.

9.10. Estoppel Certificate. Any Party may, in connection with the financing, sale or transfer of such Subtract Owner's Subtract, deliver written notice to the other Subtract Owners requesting such Subtract Owner to certify in writing that to the best knowledge of the certifying Subtract Owner, the requesting Subtract Owner is not in default in the performance of its obligations under this Declaration, or if in default, to describe the nature and amount of the defaults. Each Subtract Owner receiving such request shall execute and return such certificate within thirty (30) days following the receipt thereof. The Subtract Owners acknowledge that such certificate may be relied upon by third parties designated in the request by the Subtract Owner requesting such certificate.

90131

IN WITNESS WHEREOF, this Declaration is executed on the date above.

DECLARANT:**THE ALBERT J. BLACK AND MARY J.
BLACK REVOCABLE TRUST**By: Mary J. Black
Mary J. Black, co-trusteeBy: A. Rolfe Black
A. Rolfe Black, co-trusteeSTATE OF NEW MEXICO)
COUNTY OF BERNALILLO)This instrument was acknowledged before me on November 3, 1994, by Mary J. Black as co-trustee of the Albert J. Black and Mary J. Black Revocable Trust.Walter J. Merino
Notary Public
My Commission Expires: June 14, 1997STATE OF NEW MEXICO)
COUNTY OF BERNALILLO)This instrument was acknowledged before me on November 3, 1994, by A. Rolfe Black as co-trustee of the Albert J. Black and Mary J. Black Revocable Trust.Walter J. Merino
Notary Public
My Commission Expires: June 14, 1997STATE OF NEW MEXICO
COUNTY OF BERNALILLO

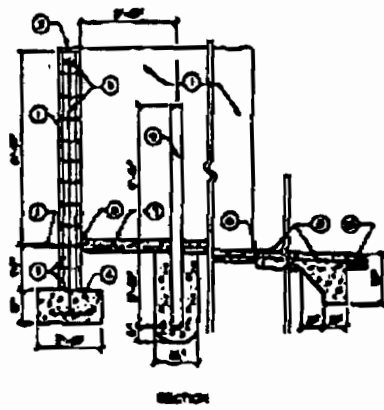
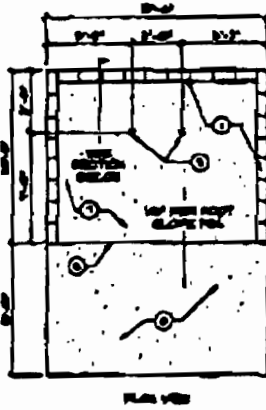
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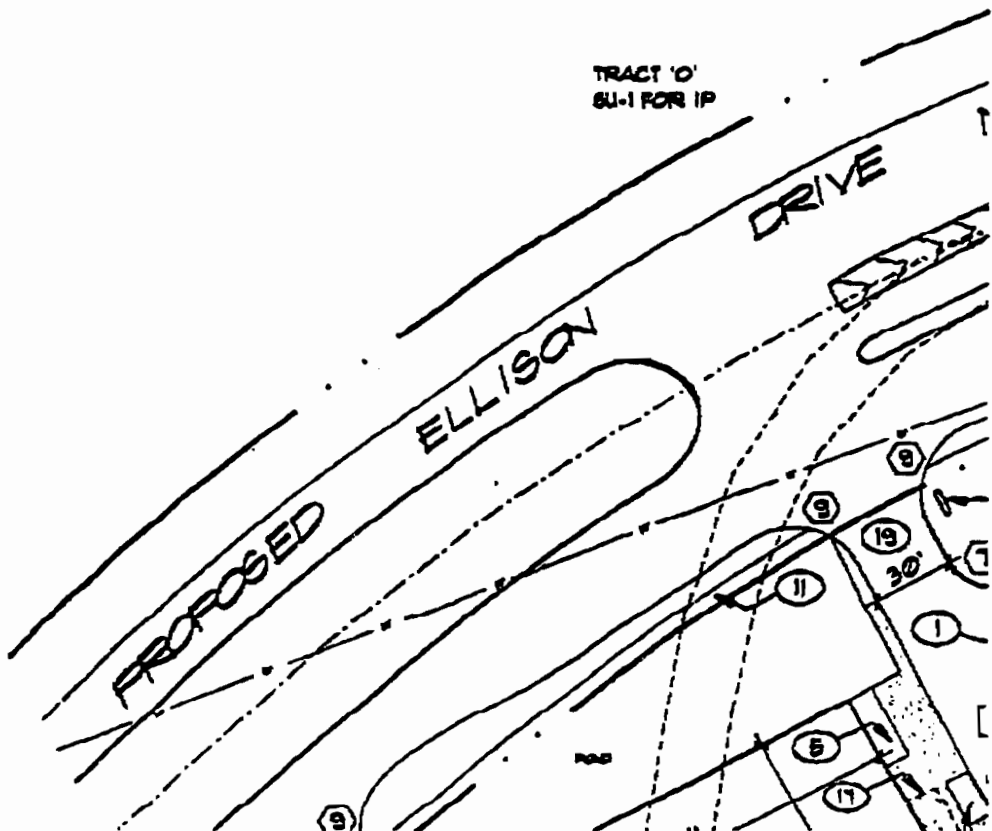
9045

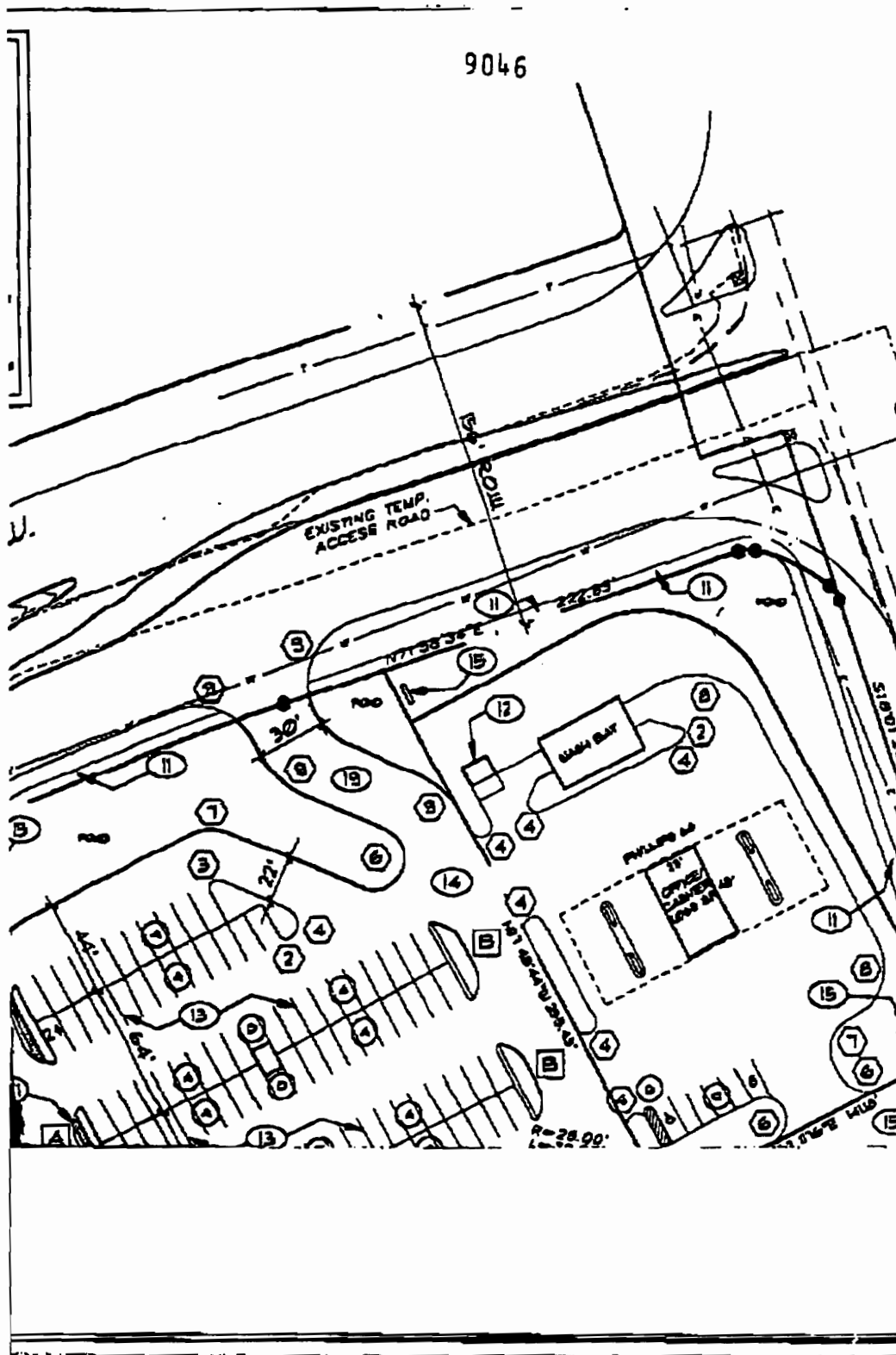
REFUSE ENCLOSURE



- NOTES**
1. SEE DRAWING 9045 FOR DETAILS OF CONCRETE FOUNDATION.
 2. SEE DRAWING 9045 FOR DETAILS OF CONCRETE FOUNDATION.
 3. SEE DRAWING 9045 FOR DETAILS OF CONCRETE FOUNDATION.
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 9. SEE DRAWING 9045 FOR DETAILS OF CONCRETE FOUNDATION.
 10. SEE DRAWING 9045 FOR DETAILS OF CONCRETE FOUNDATION.

TRACT 'O'
SU-1 FOR IP





9047

	<p>CURB DETAILS</p> <p><input type="checkbox"/> A</p> <p><input type="checkbox"/> B</p> <p>2' 4" 2' 2" 2' 2" 15' R 2' R 2' R</p> <p>2' 2" CONCRETE WALK</p> <p>NOT TO SCALE</p>	<p>SIGNATURE BLOCK</p> <p>I CERTIFY THAT THIS PLAN AND THIS PLAN IS CONFORMANCE WITH ENVIRONMENTAL PLANNING</p> <p>PLANNING DIRECTOR APPROVED AS TO THE</p> <p>TRAFFIC ENGINEER</p> <p>AMAPCA</p> <p>PARKS & RECREATION</p> <p>CITY ENGINEER</p> <p>WATER RESOURCES</p> <p>NEW MEXICO UTILITIES</p>
	<p>PARKING TYPES</p> <p>A B C</p> <p>20' 20' 20'</p> <p>D</p> <p>10' 10' 10' 10' 10' 10' 10' 10'</p> <p>INDICATED VAN</p>	
	<p>CAL PARKING LIGHT</p> <p>SHOE BOX FIXTURE</p>	

EXHIBIT "A"

DATE
 WITH THE SPECIFIC
 ID BY THE
 SIGN ON

DATE
 ELEMENTS

DATE

DATE

DATE

DATE

DATE

DATE



CONC. SIDEWALK
 10'

NOT TO SCALE



LOCATION & LEGAL DESCRIPTION

TRACT G2A SEVEN BAR RANCH, SOUTHWEST 1/4
 CORNER PROPOSED ELLISON DRIVE NW. AND
 NM STATE HIGHWAY NO. 528

ZONING: SU-1 FOR IP USES
 ACREAGE: 9.87 AC ±
 ZONE ATLAS: Z-A-14

BUILDING AREA AND
PARKING CALCULATIONS

		REQUIRED CARS
MEGAFOODS	52,640 SF.	+ 200 = 264
PHILLIPS 66	1,005 SF.	+ 200 = 6
APPLEBEES	5,432 SF/150 SEATS	+ 4 = 49
BREAKMASTER	4,160 SF.	+ 200 = 21
PAYLESS	4,420 SF.	+ 200 = 23

TOTAL SF. 67,118 SF. REQUIRED CARS 362
 LESS 10% BUS CREDIT -36

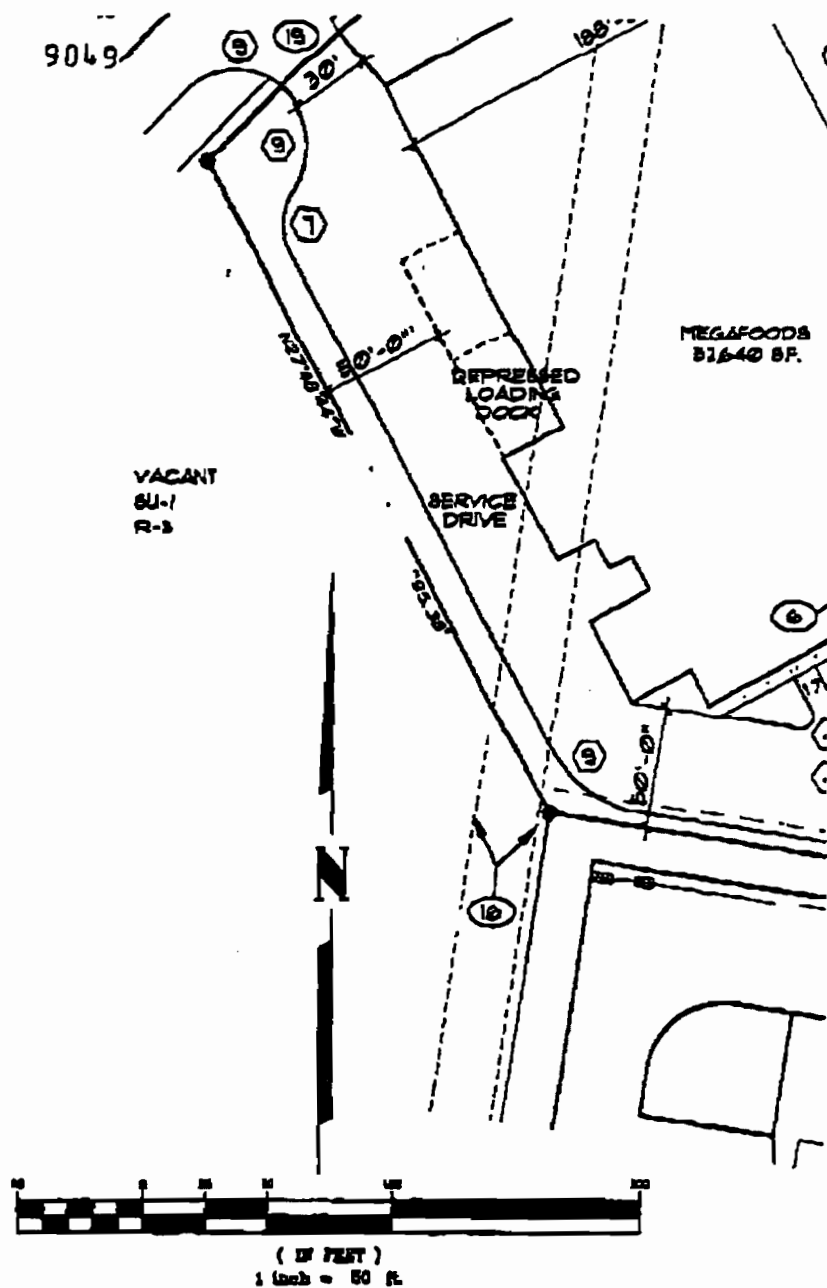
REQUIRED PARKING SPACES 326
 PROVIDED SPACES 437

LANDSCAPE CALCULATIONS

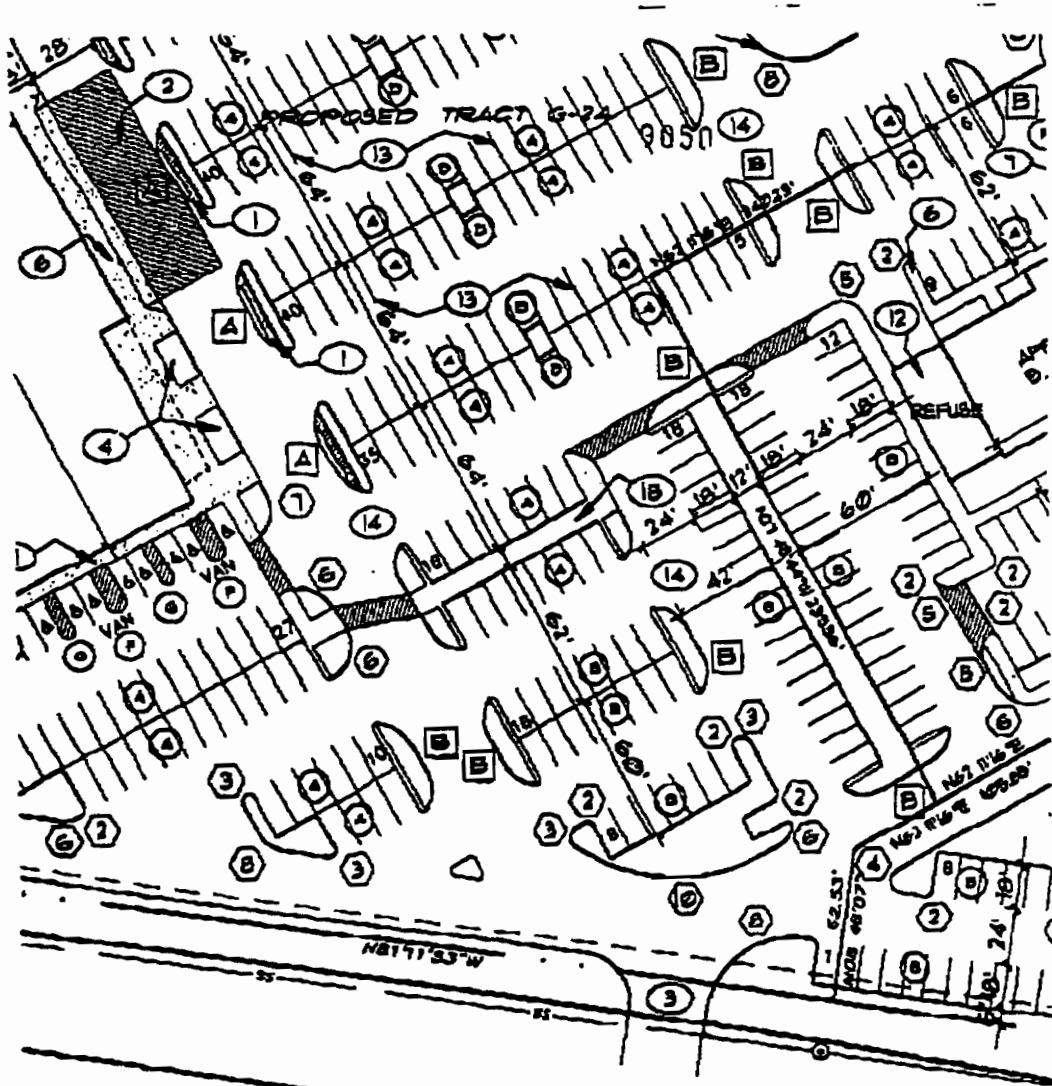
429,937 TOTAL LAND
 -68,753 LESS BUILDING 68
 361,184 SF. X 19% = 64,117 SF. REQUIRED
 76,400 SF. PROVIDED (21%)

KEYED NOTES

1. CART CORRAL.
2. STRIPED CROSSWALK.
3. POSSIBLE CROSS-SITE CONNECTION.
4. 20' X 10' PLANTER IN WALK.
5. 30' X 10' PLANTER IN WALK.
6. CONCRETE SIDEWALK.
7. ALL WALKS AT HC PARKING FLUSH WITH HC ACCESS. ALL HC PARKING STALLS TO HAVE PAINTED SYMBOL AND POLE MOUNTED SIGN. VAN SPACES TO BE IDENTIFIED.
8. 10' PROPOSED TELEPHONE EASEMENT.
9. 10' PROPOSED FNM EASEMENT.
10. 12' PROPOSED FUTURE ROW LAND.

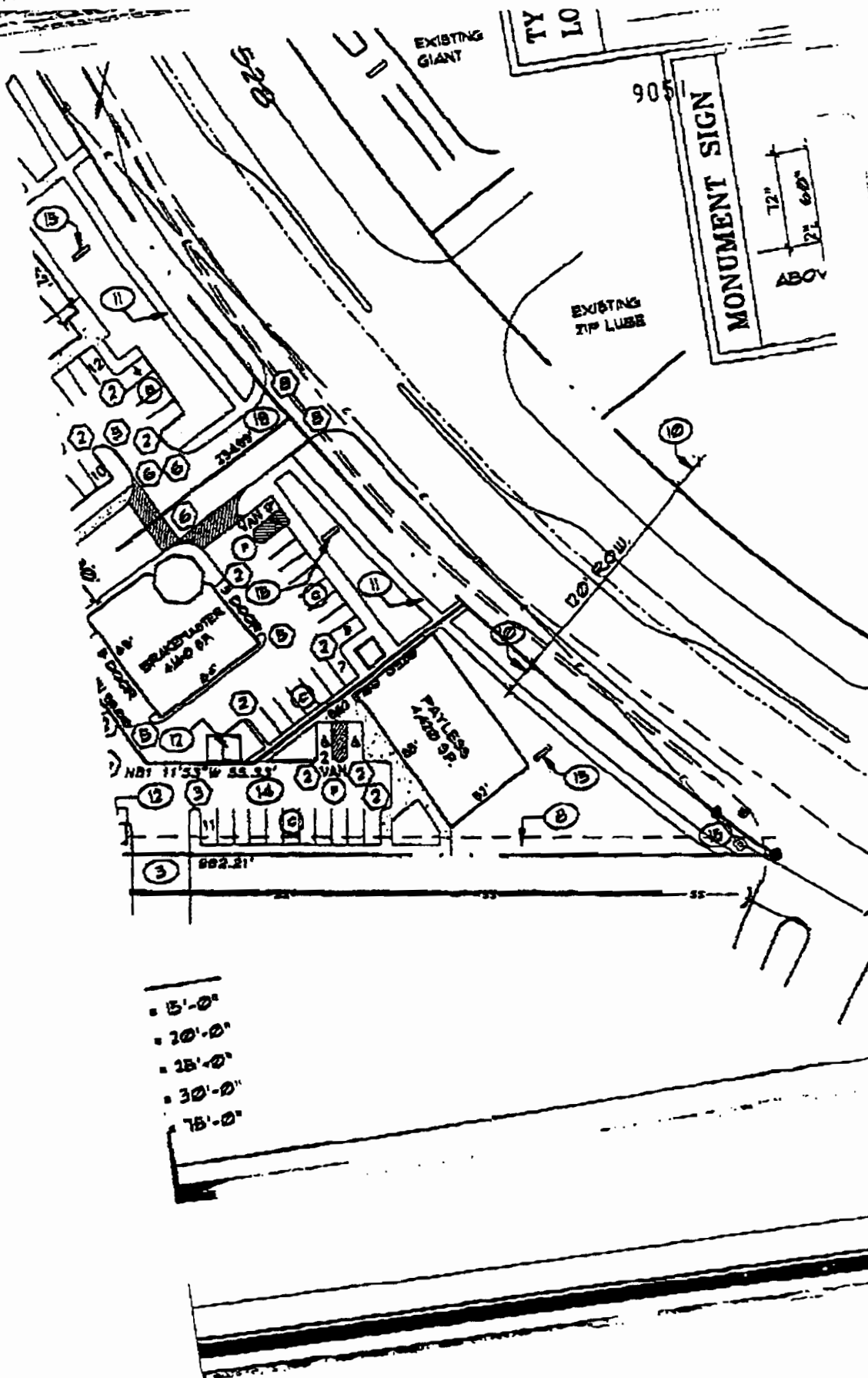


SITE PLAN FOR SUBDIVISION
AND BUILDING PERMIT



○ RADIUS INFORMATICS

- | | |
|-------------------|---|
| ① RADIUS = 1'-0" | ⑥ |
| ② RADIUS = 2'-0" | ⑦ |
| ③ RADIUS = 3'-0" | ⑧ |
| ④ RADIUS = 5'-0" | ⑨ |
| ⑤ RADIUS = 10'-0" | ⑩ |



NOT TO SCALE

GRADE

NOT TO SCALE

9052

11. LANDSCAPED BASEMENT.
12. 6' PUBLIC SIDEWALK IN ROW, • PROPERTY LINE.
13. REFUSE LOCATION TO CITY OF ALB. STANDARD.
14. STRIPING.
15. ASPHALT PAVING.
16. TYPICAL MONUMENT SIGN (DOUBLE SIDED)
50 SF. EACH SIDE INTERNALLY ILLUMINATED
SEE DETAIL (7 REQUIRED) PHILLIPS SIGN WILL
BE USED FOR PRICE OF FUEL WITH CHANGABLE
LETTERS. PLASTIC FACE SIGN IN FRAME TO
MATCH BASIC GRAY BUILDING COLOR.
17. EXISTING ACCESS BASEMENT TO BE VACATED.
18. BIKE RACK (10 BIKES).
19. 10' PEDESTRIAN ACCESS WAY.
20. 30' DRIVE WIDTH.

VICINITY MAP

N.T.S.

TRACT G2-A
SEVEN BAR

WALPHART

HARRIS

Job title

TRACT G2-A
7-BAR RANCH
ALBUQUERQUE, NEW MEXICO

PROJECT MANAGER

GEORGE RAINHART

Job no

83027

date

4/18/84

sheet title

SITE PLAN

by

TBY

de la Torre • Rainhart, p.a.
architects
north town office park
7601 academy rd. n.e., building 2 / suite 200
albuquerque n.m. 87109 • 505-626-9611

sheet- 1

C1

of- 3

8-62A

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OF THE ARCHITECT AND IS NOT TO BE
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