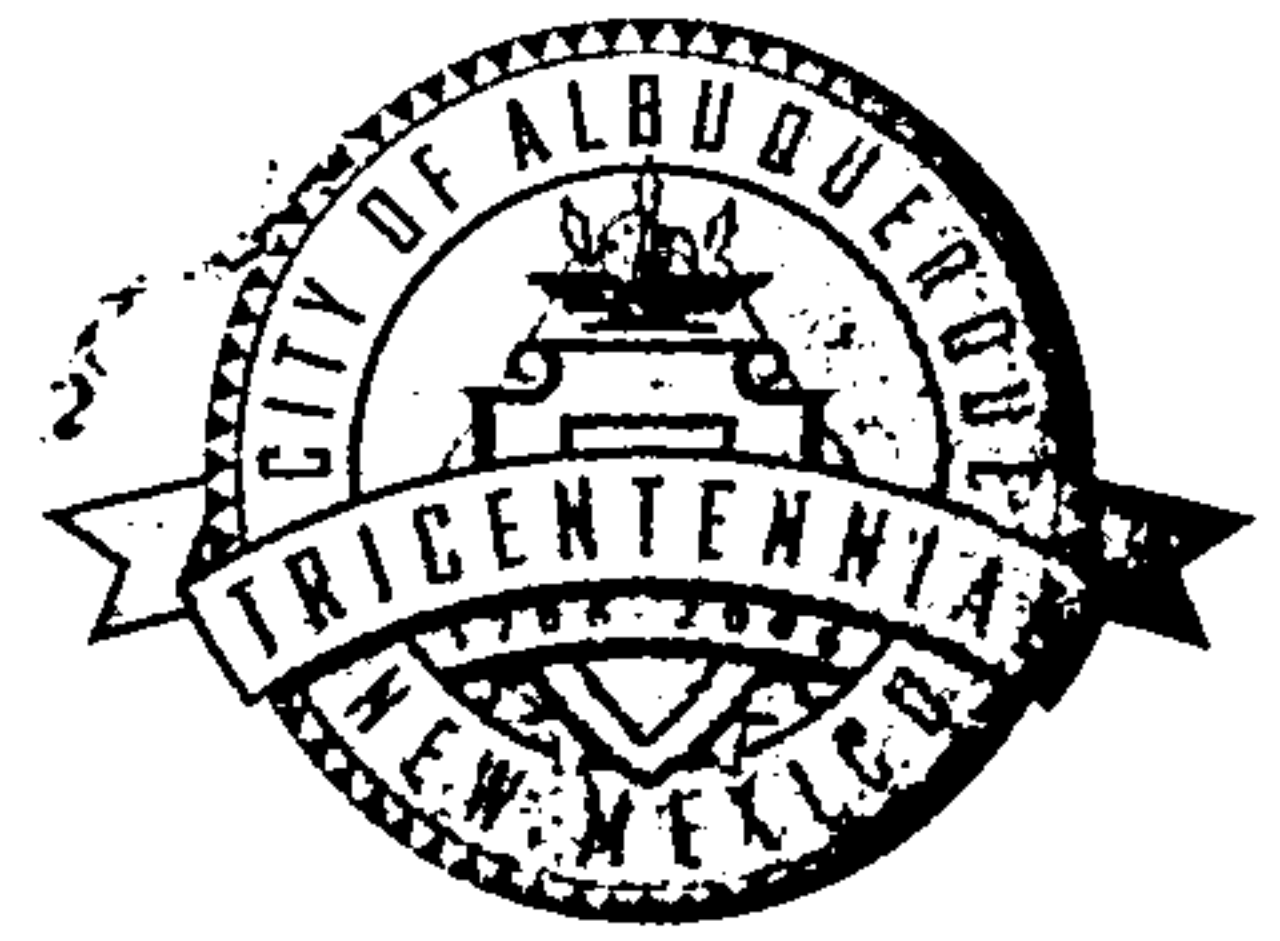


CITY OF ALBUQUERQUE



**Planning Department
Transportation Development Services Section**

February 5, 2008

Mario Juarez-Infante, P.E.
4900 Lang Ave. NW
Albuquerque, NM 87109

Re: Certification Submittal for Final Building Certificate of Occupancy for
Starbucks at Academy & Tramway, [E-22 / D018A]
12251 Academy NE
Engineer's Stamp Dated 01/28/08

Dear Mr. Juarez-Infante:

The TCL / Letter of Certification submitted on February 4, 2008 is sufficient for acceptance by this office for final Certificate of Occupancy (C.O.). Notification has been made to the Building and Safety Section.

Sincerely,


Nilo E. Salgado-Fernandez, P.E.
Senior Traffic Engineer
Development and Building Services
Planning Department

c: Engineer
Hydrology file
CO Clerk

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

CITY OF ALBUQUERQUE



**Planning Department
Transportation Development Services Section**

January 30, 2008

Mario G. Juarez-Infante, P.E.,
Wilson & Company Inc. E&A
4900 Lang Ave. NW
Albuquerque, NM 87109

Re: Approval of Temporary Certificate of Occupancy (C.O.) for
Starbucks at Academy & Tramway, [E-22 / D018A]
12251 Academy NE
Engineer's Stamp Dated 01/28/08

Dear Mr. Juarez-Infante:

Based on the information provided on your submittal dated January 29, 2008, the above referenced project is approved for a 90-day Temporary C.O.

A Temporary C.O. has been issued allowing the outstanding Approved Site (need to provide the approved site that the project was constructed) issue to be completed within this time period. When these remaining issues have been fully completed, are in substantial compliance, and a final Certification for Transportation has been resubmitted to the City's Hydrology office for approval, a Permanent C.O. will be issued.

The Certification package for Final C.O. must include an **exact** copy of the approved TCL, or signed off D.R.B. Site Plan, which is in each of the two City Permit Plan Sets—the contractor's City field set and the City's plan set in the basement of the Plaza Del Sol building. Package also must include a letter of certification on designer's letterhead-stamped with his seal, signed, and dated. Submit package along with fully completed Drainage Information Sheet to front counter personnel for log in and evaluation by Transportation.

If you have any questions, please call me at 924-3620.

Sincerely,



Niló E. Salgado-Fernandez, P.E.
Senior Traffic Engineer
Development and Building Services
Planning Department

c: Engineer
Hydrology file
CO Clerk

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

DRAINAGE AND TRANSPORTATION INFORMATION SHEET

(REV. 1/28/2003)

PROJECT TITLE: Starbucks at Academy & Tramway ZONE MAP/DRG. FILE#: ~~E-22~~ E-22/D018A

DRB#: _____ EPC#: _____ WORK ORDER #: _____

LEGAL DESCRIPTION: M-1-A-3 Tanoan Properties

CITY ADDRESS: Albuquerque, NM

ENGINEERING FIRM: Wilson & Company Inc., E&A CONTACT: Mario Juarez-Infante, PE

ADDRESS: 4900 Lang Ave. NW PHONE: (505) 348-4064

CITY, STATE: Albuquerque, NM ZIP CODE: 87109

OWNER: CAN-AM RETAIL PARTNERS CONTACT: Bernie Weiner

ADDRESS: 2525 E Camelback Rd. PHONE: _____

CITY, STATE: Phoenix, AZ ZIP CODE: 85016

ARCHITECT: Design Plus CONTACT: Manny Juarez

ADDRESS: 2415 Princeton Dr. NE, Suite G-2 PHONE: 843-7587

CITY, STATE: Albuquerque, NM ZIP CODE: 87107

SURVEYOR: Wilson & Company Inc., E&A CONTACT: Scott Croshaw

ADDRESS: 4900 Lang Ave. NW PHONE: 348-4000

CITY, STATE: Albuquerque, NM ZIP CODE: 87109

CONTRACTOR: - CONTACT: -

ADDRESS: - PHONE: -

CITY, STATE: - ZIP CODE: -

CHECK TYPE OF SUBMITTAL:

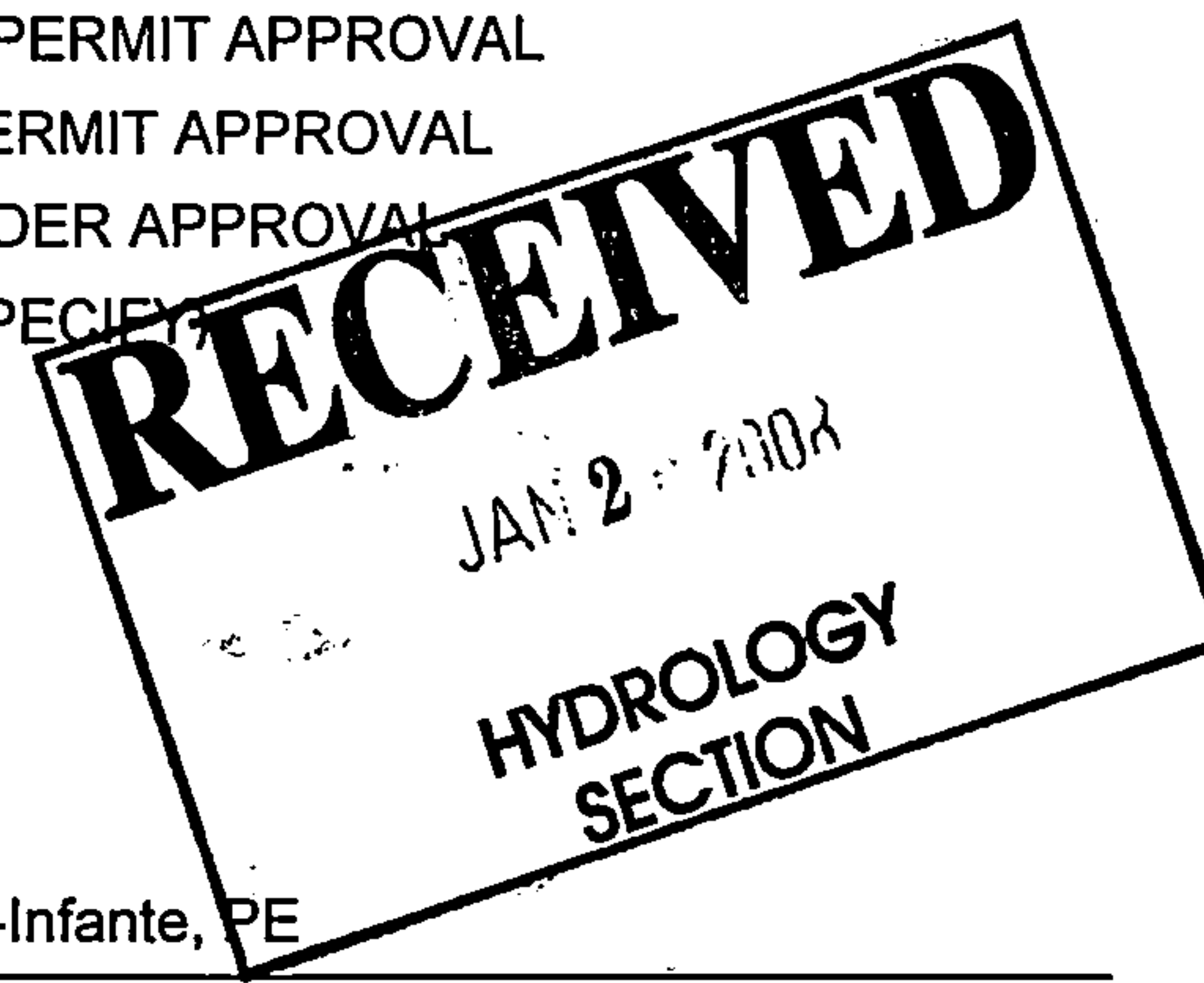
CHECK TYPE OF APPROVAL SOUGHT:

- DRAINAGE REPORT
- DRAINAGE PLAN 1st SUBMITTAL, REQUIRES TCL OR EQUAL
- CONCEPTUAL GRADING & DRAINAGE PLAN
- GRADING PLAN
- EROSION CONTROL PLAN
- ENGINEERS CERTIFICATION (HYDROLOGY)
- CLOMR/LOMR
- TRAFFIC CIRCULATION LAYOUT (TCL)
- ENGINEERS CERTIFICATION (TCL)
- ENGINEERS CERTIFICATION (DRB, APPR. SITE PLAN)
- OTHER

- SIA / FINANCIAL GUARANTEE RELEASE
- PRELIMINARY PLAT APPROVAL
- S. DEV. PLAN FOR SUB'D. APPROVAL
- S. DEV. PLAN FOR BLDG. PERMIT APPROVAL
- SECTOR PLAN APPROVAL
- FINAL PLAT APPROVAL
- FOUNDATION PERMIT APPROVAL
- BUILDING PERMIT APPROVAL
- CERTIFICATION OF OCCUPANCY (PERM.)
- CERTIFICATION OF OCCUPANCY (TEMP.)
- GRADING PERMIT APPROVAL
- PAVING PERMIT APPROVAL
- WORK ORDER APPROVAL
- OTHER (SPECIFY _____)

WAS A PRE-DESIGN CONFERENCE ATTENDED:

- YES
- NO



Date Submitted: January 29, 2008 By: Mario Juarez-Infante, PE

Requests for approvals of Site Development Plans and/or Subdivision Plats shall be accompanied by a drainage submittal. The particular nature, location and scope of the proposed development defines the degree of drainage detail. One or more of the following levels of submittal may be required based on the following:

1. **Conceptual Grading and Drainage Plan:** Required for approval of Site Development Plans greater than five
2. **Drainage Plans:** Required for building permits, grading permits, paving permits and site plans less than five (5)
3. **Drainage Report:** Required for subdivisions containing more than ten (10) lots or constituting five (5) acres or more.

CITY OF ALBUQUERQUE



December 12, 2007

Mario Juarez-Infante, P.E.
Wilson & Company, Inc.
4900 Lang Ave. NW
Albuquerque, NM 87109

**Re: Starbucks @ Academy & Tramway, 12251 Academy NE,
Approval of Permanent Certificate of Occupancy (C.O.)
Engineer's Stamp dated 04/26/07 (E-22/D018A)
Approved Engineer's Stamp date 7-101-07
Certification dated 11/19/07**

Based upon the information provided in your submittal received 12/11/07, the above referenced certification is approved for release of Permanent Certificate of Occupancy by Hydrology.

If you have any questions, you can contact me at 924-3982.

Sincerely,

Timothy Sims
Plan Checker, Hydrology
Development and Building Services

C: CO Clerk-Katrina Sigala
File

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

CITY OF ALBUQUERQUE



July 16, 2007

Mario G. Juarez-Infante, P.E.
Wilson & Company, Inc.
4900 Lang Ave. NW
Albuquerque, NM 87109

**Re: Starbucks, Academy and Tramway, Grading and Drainage Plan
Engineer's Stamp dated 7-10-07 (E22/D18A)**

Dear Mr. Juarez-Infante,

Based upon the information provided in your submittal dated 7-16-07, the above referenced plan is approved for Building Permit. Please attach a copy of this approved plan to the construction sets prior to sign-off by Hydrology.

P.O. Box 1293

This is the plan to certify for release of Certificate of Occupancy.

If you have any questions you can contact me at 924-3695.

Albuquerque

New Mexico 87103

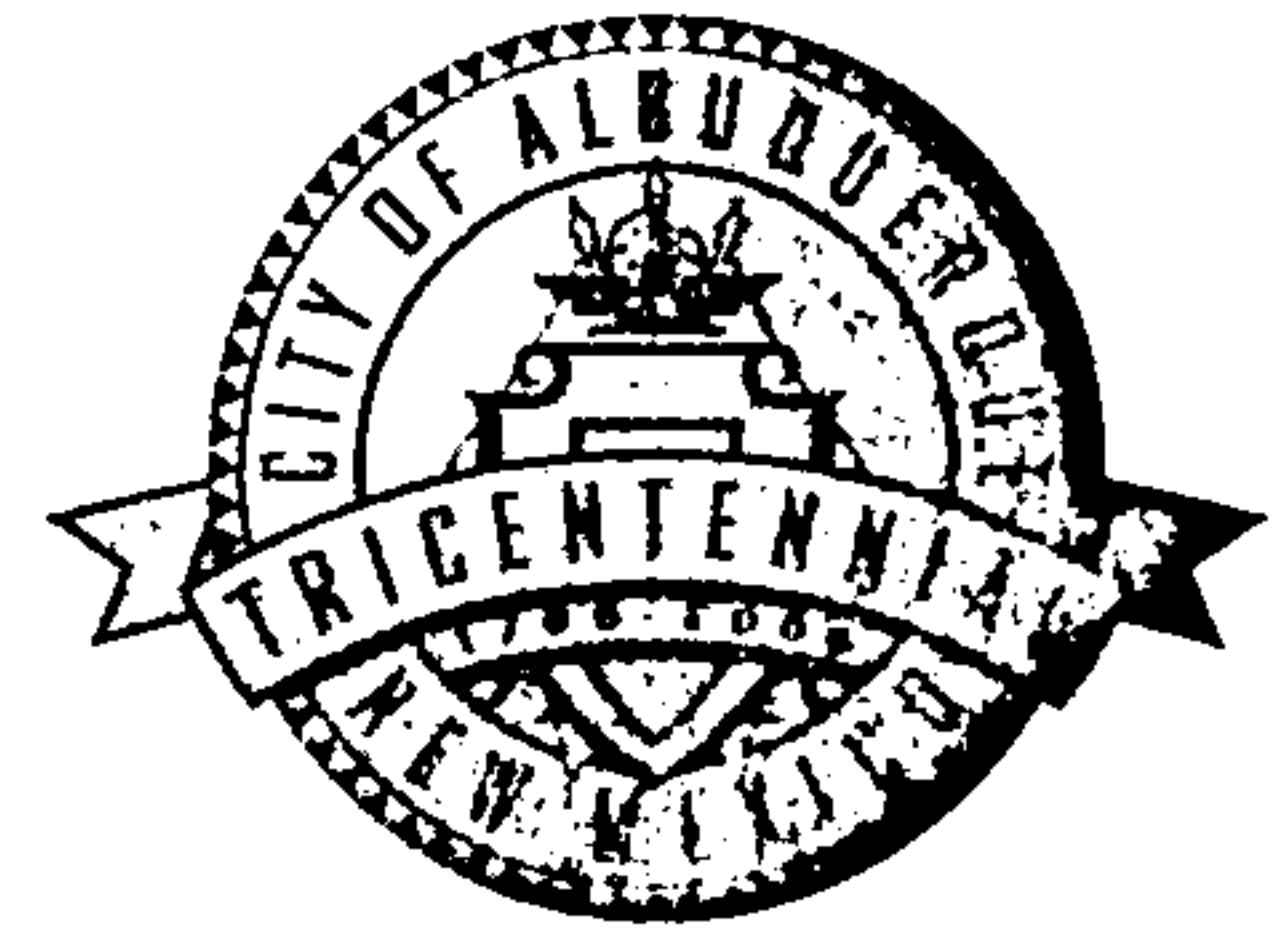
www.cabq.gov

Sincerely,

Curtis A. Cherne, P.E.
Engineering Associate, Planning Dept.
Development and Building Services

C: file

CITY OF ALBUQUERQUE



April 18, 2007

Mario G. Juarez-Infante, P.E.
Wilson & Company, Inc.
4900 Lang Ave. NW
Albuquerque, NM 87109

**Re: Starbucks, Academy and Tramway, Grading and Drainage Plan
Engineer's Stamp dated 4-16-07 (E22/D18A)**

Dear Mr. Juarez-Infante,

Based upon the information provided in your submittal dated 4-17-07, the above referenced plan is approved for Building Permit. Please attach a copy of this approved plan to the construction sets prior to sign-off by Hydrology.

P.O. Box 1293

Also, prior to Certificate of Occupancy release, Engineer Certification per the DPM checklist will be required.

Albuquerque

If you have any questions you can contact me at 924-3695.

New Mexico 87103

Sincerely,

A handwritten signature in cursive script, appearing to read 'Curtis A. Cherne'.

Curtis A. Cherne, E.I.
Engineering Associate, Planning Dept.
Development and Building Services

www.cabq.gov

C: file

STARBUCKS AT ACADEMY AND TRAMWAY

Master Grading & Drainage

Drainage Report

Site Location: The Starbucks will be located just west of the intersection of Tramway Boulevard and Academy Road. The proposed development will be a new building with civil site improvements. These improvements include a parking lot which will include paving, curb & gutter, and sidewalk.

Methodology: Section 22.2 of City of Albuquerque DPM was followed to calculate the design volume. The charts and formulas in Part A were followed using the 100-year frequency 6-hour rainfall as the design storm. The site is located in Zone 4 as determined from Table A-1. The total storm volume was calculated as per section A.5. The peak discharge was calculated as per section A.6.

Existing Conditions: The drainage from the site flows in an east to west direction parallel to Academy Road. Basin 101 encompasses the entire site.

Existing volumetric runoff and peak discharge quantities are as shown below:

Table 1 – Existing Conditions							
		Treatment					
Basin	Area (ac)	A (%)	B (%)	C (%)	D (%)	V ₃₆₀ (ac-ft)	Q _p (cfs)
101	0.48	0	0	75	25	0.070	1.973
Total	.048			75	25	0.070	1.973

Table 1 - provides a breakdown of existing volumetric runoff and peak discharge of the site.

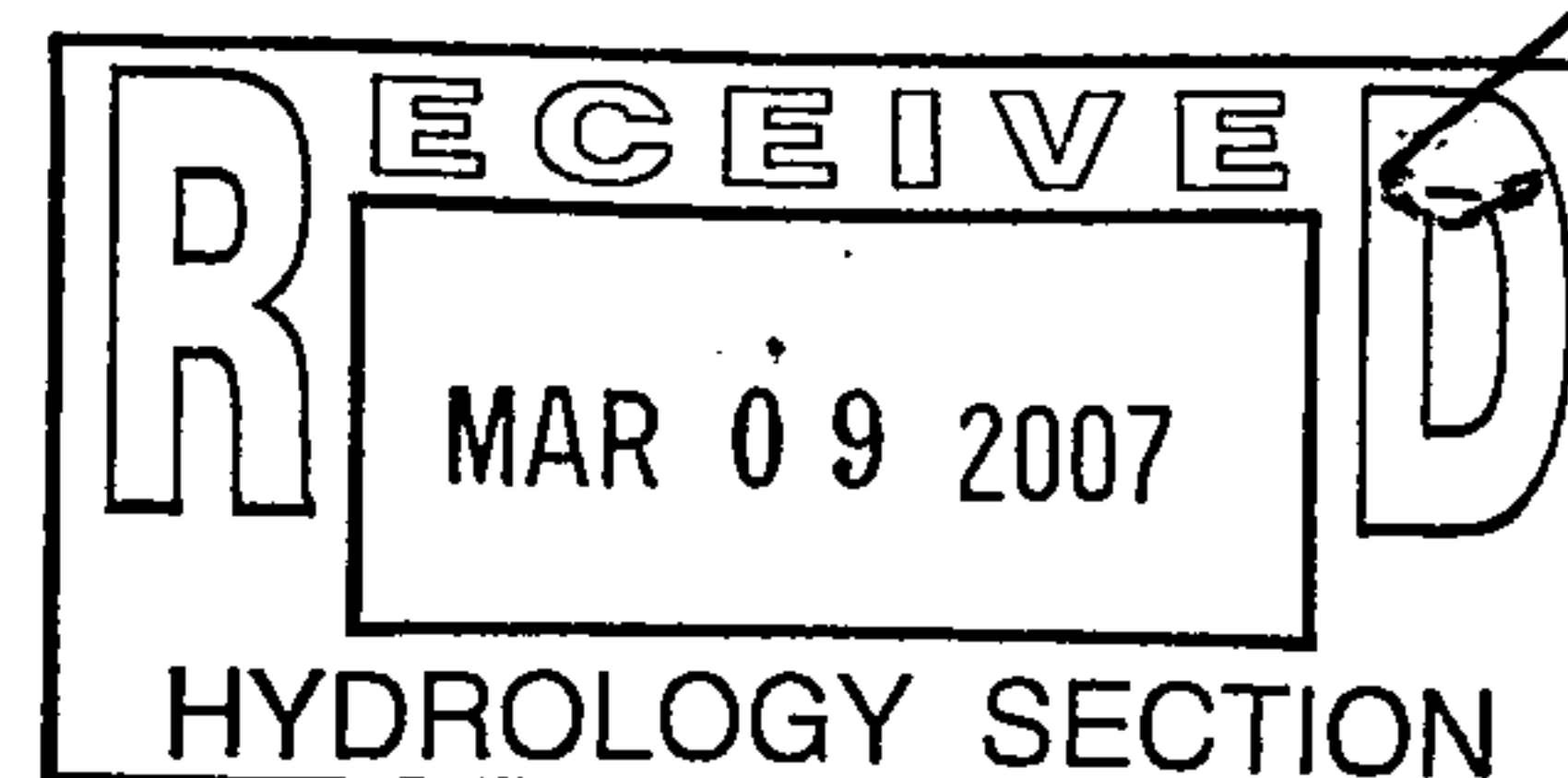
Proposed Conditions: The proposed improvements keep the flow direction in a east to west flow. The proposed basin remained the same as the existing. Basin 201 will continue to drain into existing parking lot.

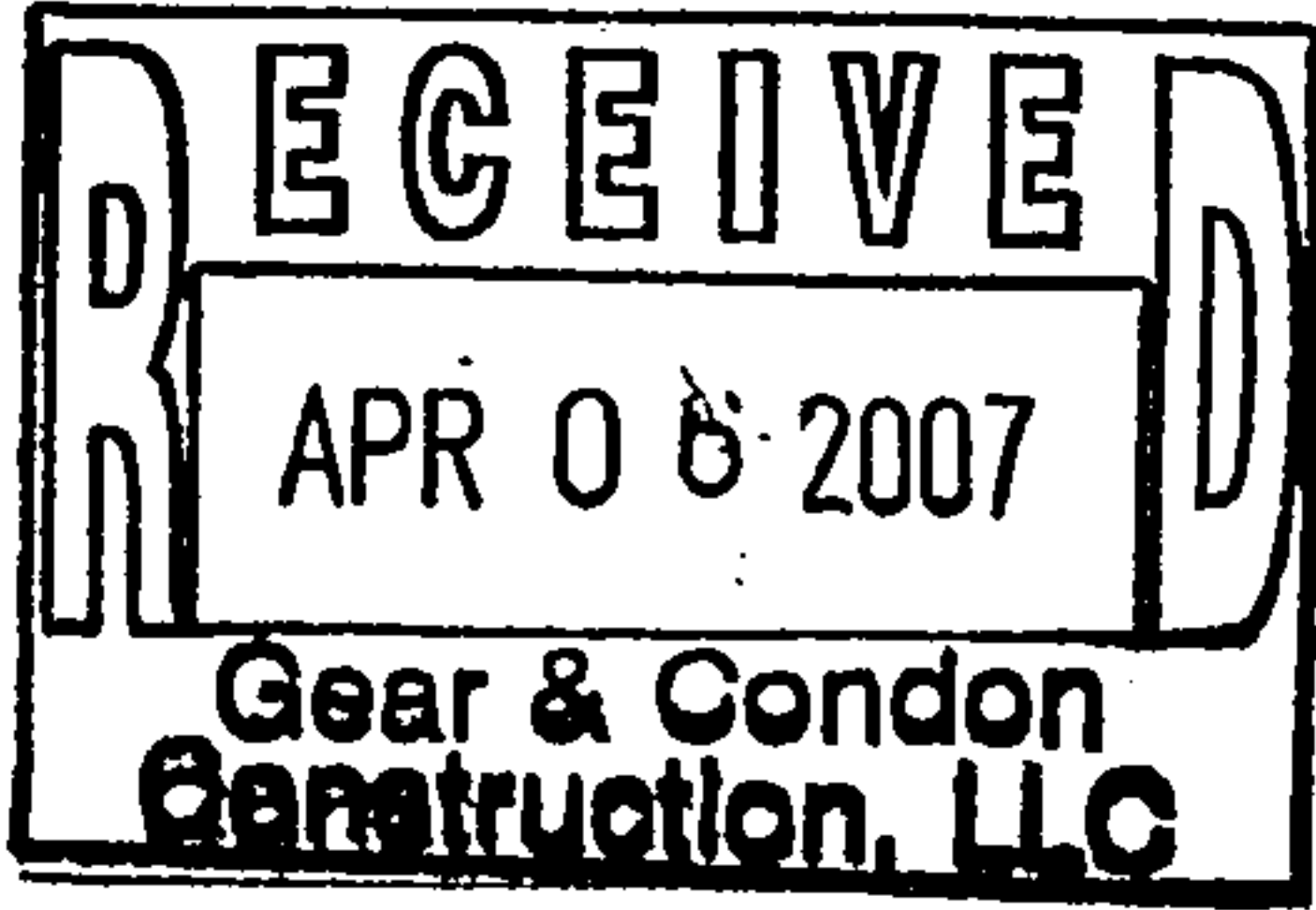
Proposed volumetric runoff and peak discharge quantities are as shown below:

Table 1 – Proposed Conditions							
		Treatment					
Basin	Area (ac)	A (%)	B (%)	C (%)	D (%)	V ₃₆₀ (ac-ft)	Q ₁₀₀ (cfs)
201	0.48	0	10	0	90	.099	2.409
Total	0.48		10		90	.099	2.409

Table 1 - provides a breakdown of existing volumetric runoff and peak discharge of the site.

Conclusion: In conclusion, comparing existing conditions to proposed there will be an increase of approximately 0.436 cfs or 22% more drainage into the existing parking lot. The increase in peak discharge will not significantly impact the flow into downstream structures.





Recording Requested and
When Recorded Return to:

Meuleman Mollerup LLP
Attn: Mike Baldner
960 Broadway, Suite 500
Boise, ID 83706

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

#939 Tramway & Academy
Albuquerque, NM

FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

FIRST AMENDMENT TO DECLARATION OF
RESTRICTIONS AND GRANT OF EASEMENTS

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("First Amendment") is entered into this 18th day of July, 2006, between Can-Am Development Albuquerque LLC, a New Mexico limited liability company ("First Party") and American Stores Properties LLC, a Delaware limited liability company, successor by merger to American Stores Properties, Inc., a Delaware corporation ("American Stores").

RECITALS

A. The parties hereto previously entered into that certain Declaration of Restrictions and Grant of Easements dated April 30, 2003, recorded as Document No. 2003075575 in the records of Bernalillo, State of New Mexico. At that time, First Party owned Parcels 1 and 4 and American Stores owned Parcels 2 and 3. As shown on Exhibit A and more particularly described on Schedule I attached hereto and incorporated herein, First Party has since acquired Parcel 3 and the parties desire to amend the Declaration of Restrictions and Grant of Easements as set forth below. All capitalized terms herein shall have the same meanings as those set forth in the Declaration of Restrictions and Grant of Easements and in the event of a conflict between the Declaration of Restrictions and Grant of Easements and this First Amendment, the terms of this First Amendment shall control.

AGREEMENT

1. The last sentence of Section 1.1(b) shall be deleted and the following substituted therefore:

As to Parcel 2, all those areas on Parcel 2 which are from time to time covered by a building or other commercial structure, which building area may be reconfigured, relocated, expanded, reduced or otherwise modified by the Owner of Parcel 2 in its sole and absolute discretion, subject to the terms and conditions contained in this Declaration. As to Parcel 3, all those areas within the Building Envelope shown on Exhibit A which are from time to time covered by a building or other commercial structure, which building area may be reconfigured, relocated, expanded, reduced or otherwise modified only with the prior written consent of the Owner of Parcel 2; provided the total ground floor area for any such building on Parcel 3 shall not exceed 6,800 square feet.

2. The first sentence of Section 1.2 shall be deleted and the following substituted therefore:

First Party is the Owner of Parcels 1, 3 and 4, and American Stores is the Owner of Parcel 2.

3. Section 2.1 shall be revised to delete the first three sentences and replace them with the following:

All buildings and other structures [except those permitted in Section 2.2(a) below] on Parcels 1, 3 and 4 shall be placed or constructed only in the Building Area and/or Building Envelope. Notwithstanding the designation of Building Area for Parcel 2 as set forth in Exhibit A, buildings located on Parcel 2 may be reconfigured, relocated, expanded, reduced or otherwise modified, and additional buildings placed or constructed anywhere on Parcel 2 as determined by the Owner of Parcel, as the case may be, in its sole and absolute discretion. Not more than one building may be located on Parcels 3 and 4 and the ground floor area of the buildings on Parcels 1 and 4 shall not exceed the maximum square footage assigned on Exhibit A to such Parcel, and the ground floor area of the building on Parcel 3 shall not exceed 6,800 square feet.

4. The second, third and fourth sentence of Section 2.26 shall be deleted and the following substituted therefor:

All portions of the Building Area and/or Building Envelope on Parcels 1, 3 and 4 which cannot be used for buildings, or which are not covered by a building, shall be developed as improved Common Area by the Owners of Parcels 1, 3 and 4 at said owners sole cost and expense in accordance with the site plan approved by the Consenting Owner (in accordance with the procedures for approval set forth in Section 2.3(a) hereof) prior to the development of the pertinent Common Area improvements on Parcels 1, 3 and 4. The Common Area improvement work on Parcels 1, 3 and 4 shall be completed by the Owner thereof prior to the occupancy of any building constructed or placed on such parcels. Once any Common Area improvement work has been commenced on Parcels 1, 3 and 4, the Owner of such parcel shall diligently prosecute such work to completion.

5. Paragraph 2.2(c) shall be amended to add the following sentence: Notwithstanding anything contained herein to the contrary, the Consenting Owner shall have the right to withhold its approval to the submittals referenced therein in its sole and absolute discretion in regard to Parcel 3 if the Consenting Owner determines that (i) the number of parking spaces to be constructed and maintained on Parcel 3 is less than that required by law for all buildings on such Parcel (and the proposed use thereof) to be "self-parked" (which determination shall be made without regard to availability, if any, of parking on other parcels or variances that could be granted by any governmental authority having jurisdiction), or (ii) the number of parking spaces to be constructed and maintained on Parcel 3 is less than five (5) parking spaces for each 1,000 square feet of floor area used for retail purposes and/or ten (10) parking spaces for each 1,000 square feet of floor area used for restaurant or office purposes.

6. Paragraph 2.3(a) shall be modified to provide that Parcel 3 shall bear the same obligations of Parcels 1 and 4 as set forth therein.

7. Paragraph 2.3(c) shall be modified by deleting the first sentence and replacing it with the following:

All buildings on Parcels 1, 3 and 4 shall be single-story and shall not exceed twenty-one (21) feet in height (including mechanical fixtures and equipment and screening for same) without the prior written consent of Consenting Owner, which may be granted or withheld in its sole discretion.

8. Paragraph 2.3(d) shall be modified to state: "The Owners of Parcels 1, 3 and 4 shall maintain or cause to be maintained the exterior of any building located on Parcels 1, 3 and 4 in a quality and condition comparable to that of first-class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities located on Parcels 1, 3 and 4 shall be attractively screened from view from the parking areas."

9. Paragraph 2.4(a) shall be modified to impose the same obligations upon Parcel 3 that are imposed upon Parcels 1 and 4 set forth therein.

10. Section 2.5 shall be modified to impose the same obligations upon Parcel 3 that are imposed upon Parcels 1 and 4 set forth therein.

11. Paragraph 4.3(a) shall be modified by deleting the first three sentences thereof and replacing them with the following:

Subject to governmental approval, and provided it does not adversely affect the installation and use of the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2, the Owners of Parcels 1, 3 and 4 shall have the right to erect one (1) free-standing monument sign on Parcels 1, 3 or 4 respectively, in the location shown as "Pad Sign" on Exhibit A. In the case of Parcel 3, the Pad Sign shall be permitted in the location to be approved by the Consenting Owner in the exercise of its reasonable discretion. The Pad Sign on Parcel 1, 3 or 4 shall not exceed eight (8) feet in height and shall not have fifty (50) square feet of sign facia per side without the prior written consent of the Consenting Owner, which consent may be granted or withheld in its sole discretion. The Pad Sign shall display only the designation of the Owner or occupants of Parcel 1, 3 or 4, respectively.

12. Paragraph 4.3(a) shall also be modified by deleting the last sentence thereof and replacing it with the following:

Nothing contained herein shall be deemed to restrict in any manner whatsoever the right of the Owner or occupant of Parcel 2 to construct free-standing monument or pylon signs on its Parcel in locations determined in its sole and absolute discretion.

13. Paragraph 4.3(b) shall be modified to impose the same obligations and restrictions on Parcel 3 as those set forth therein for Parcels 1 and 4.

14. Section 4.4 shall be modified to state as follows:

Sales. No portion of the Common Area located within Parcel 1, 3 or 4, except sidewalks, shall be used for the sale or display of merchandise. The sale of merchandise by the Owner or occupant of Parcel 2 shall be permitted anywhere on the Common Area located within said Parcel.

15. Section 5.1 shall be modified to impose the same restrictions on Parcel 3 as the restrictions set forth for Parcels 1 and 4 therein.

16. Section 5.2 shall be modified to impose the same restrictions on Parcel 3 as the restrictions set forth for Parcels 1 and 4 therein.

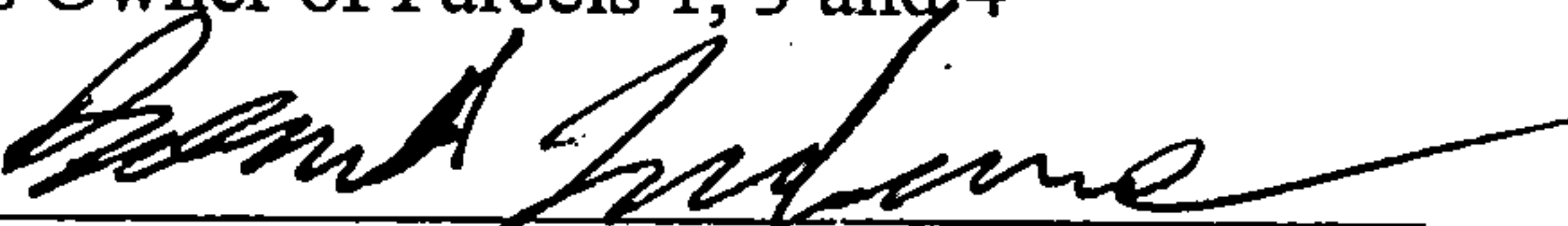
17. Section 5.4 shall be modified to impose the same restrictions on Parcel 3 as the restrictions set forth for Parcels 1 and 4 therein.

18. Section 5.5 shall be modified to impose the same restrictions on Parcel 3 as the restrictions set forth for Parcels 1 and 4 therein.

EXECUTED as of the date first written above.

FIRST PARTY:

CAN-AM Development Albuquerque LLC,
a New Mexico limited liability company
as Owner of Parcels 1, 3 and 4



By: Bernard M. Weiner
Its: Managing Partner

AMERICAN STORES:

American Stores Properties LLC,
a Delaware limited liability company
as Owner of Parcel 2



By: Rick Navarro
Its: Manager

#939 Tramway & Academy
Albuquerque, NM
4/8/03

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

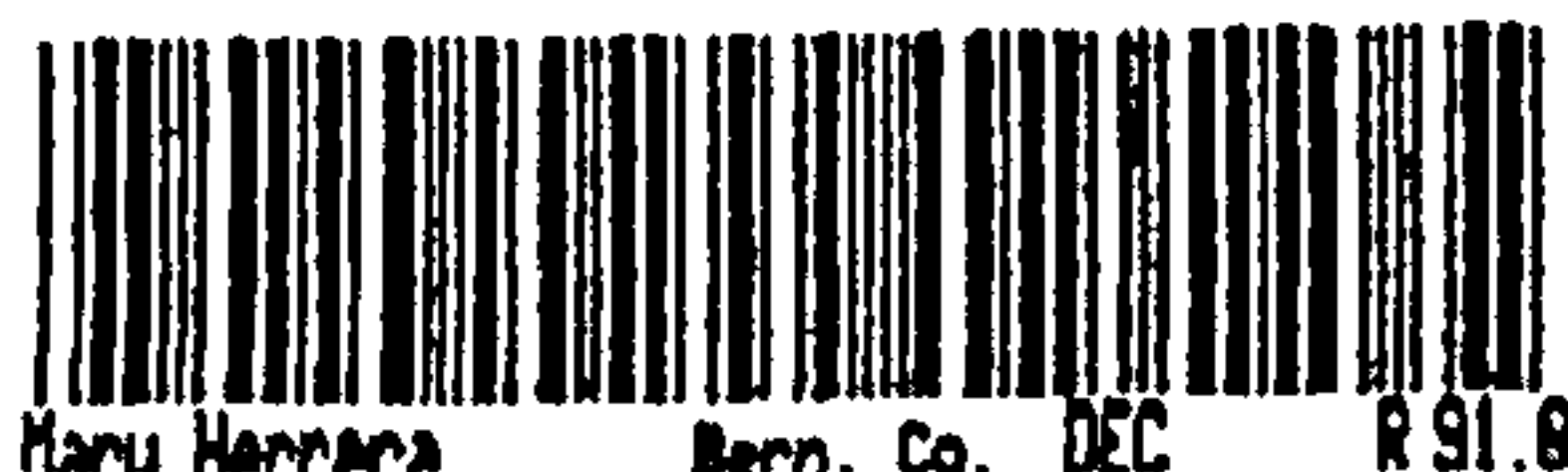
THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the 30th day of April, 2003, by and between Can Am Development Albuquerque LLC, a New Mexico limited liability company ("First Party") and American Stores Properties, Inc., a Delaware corporation ("American Stores").

1. PRELIMINARY.

1.1 Definitions.

(a) "American Stores": American Stores Properties, Inc., a Delaware corporation, together with any corporation succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof, and whose current address is 250 Parkcenter Boulevard, Post Office Box 20, Boise, Idaho 83726.

(b) "Building Area": As to Parcels 1 and 4, that portion of Parcel 1 or 4 shown as Building Area on Exhibit "A" attached hereto and incorporated herein by this reference, which is from time to time covered by a building or other commercial structure. Buildings may be located (or relocated) anywhere within the Building Area on Parcel 1 or 4 provided the total ground floor area of any such building (or all buildings if more than one is expressly allowed) constructed within such Building Area does not exceed the maximum square footage shown on Exhibit "A" for such Building Area. As to Parcels 2 and 3, all those areas on Parcels 2 and 3 which are from time to time covered by a building or other commercial structure,



Maru Herrera

Bern. Co. DEC

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which Building Areas may be reconfigured, relocated, expanded, reduced or otherwise modified by the Owner of Parcel 2 or 3, as the case may be, in its sole and absolute discretion, subject to the terms and conditions contained in this Declaration.

(c) **"Building Envelope"**: That portion of Parcel 3, which is within the area enclosed by the Building Envelope Lines shown on Exhibit "A".

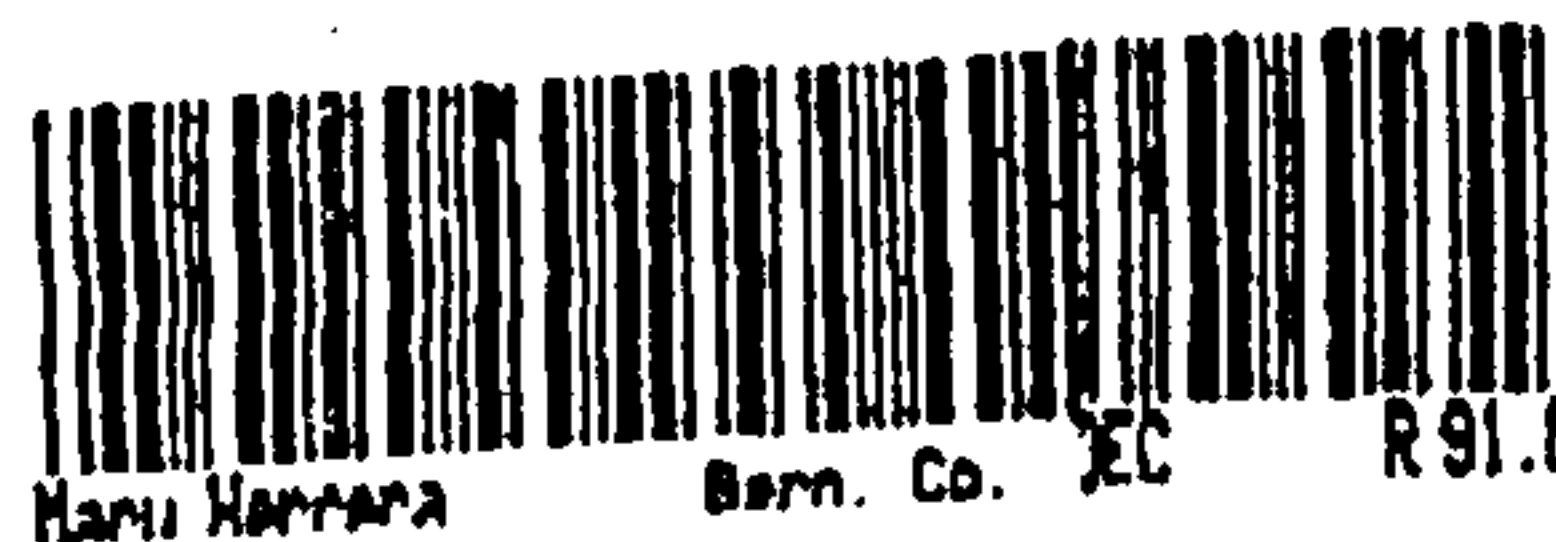
(d) **"Common Area"**: All those areas on each Parcel which are not Building Area, together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for buildings. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

(e) **"Consenting Owner"**: The Owner of Parcel 2; provided, however, that in the event the Owner of Parcel 2 sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof so long as it is the Prime Lessee of said Parcel.

(f) **Intentionally deleted.**

(g) **"First Party"**: Can Am Development Albuquerque LLC, a New Mexico limited liability company, whose address is 2930 E. Camelback Road, Suite 170, Phoenix, Arizona 85016.

(h) **"floor area"**: The total number of square feet of floor space in a building whether or not actually occupied including basement, subterranean, balcony and mezzanine space. Floor area shall be measured from the exterior line of the exterior walls and from the



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center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

(i) **"Fuel Facilities"**: Fuel islands, fuel island canopies and the area thereunder, fuel pumps, fuel storage tanks, piping, tank filling ports, compressed air islands, trash receptacles, air hoses, water hoses, vacuums, signs, safety equipment, access ports, and other structures or equipment associated with selling and dispensing of gasoline, motor fuel and/or other non-packaged petroleum products (collectively, "Petroleum") on Parcel 3. Fuel Facilities shall not be deemed Common Area or Service Facilities.

(j) **"Lienholder"**: Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

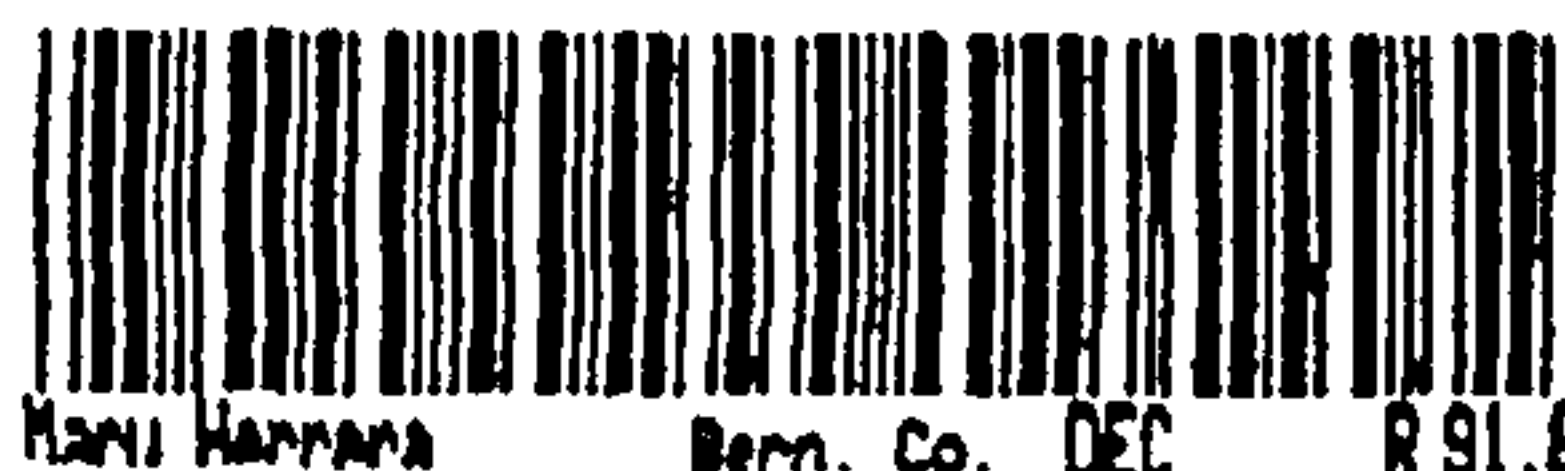
(k) **"Owner"**: The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns.

(l) **"Parcel"**: Parcel 1, 2, 3 or 4, as shown on Exhibit "A" and more particularly described in Schedule I attached hereto and incorporated herein by this reference.

(m) **"Parcel Area"**: The total square footage of land contained within a Parcel.

(n) **"person"**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other forms of business or legal entity.

(o) **"Prime Lessee"**: An Owner of a Parcel who sells said Parcel (whether or not such sale includes any buildings or improvements located thereon) to an unaffiliated third party and thereafter enters into a lease (including a ground lease) for said Parcel with such third



MARI HARRARA

Bern. Co. DEC

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party or its lessee or sublessee. Prime Lessee includes the successors and assigns of said Prime Lessee but does not include the sublessees, licensees or concessionaires of said Prime Lessee.

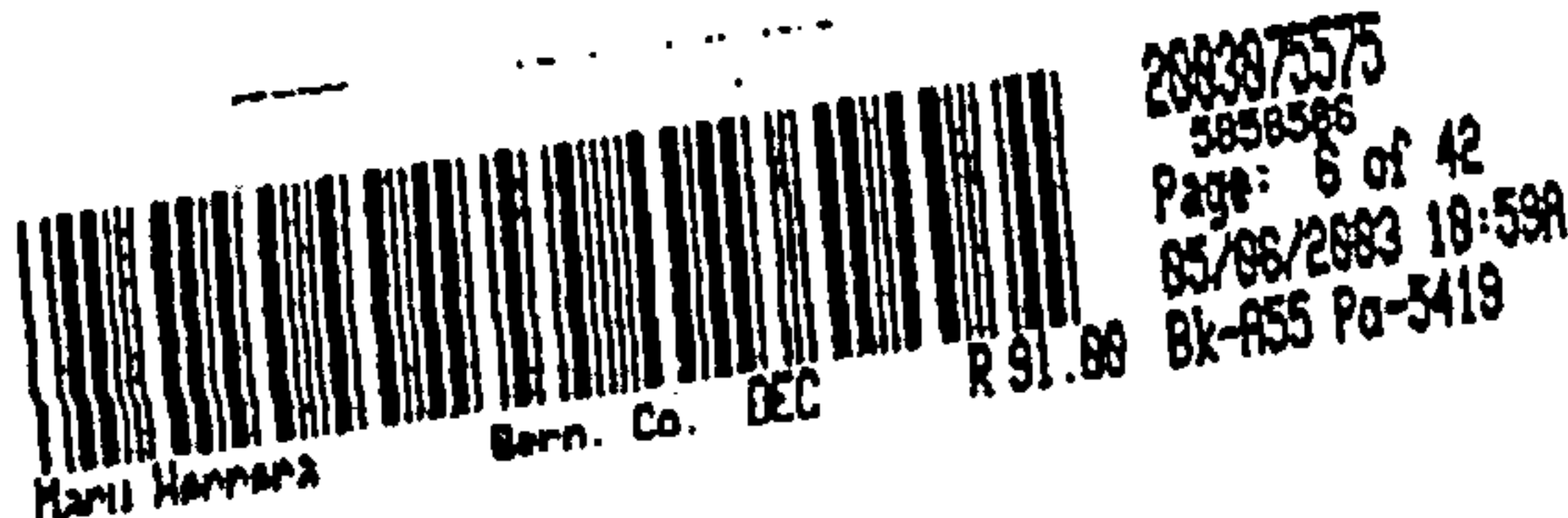
(p) "Restrictions": The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(q) "Service Facilities": Loading docks, trash enclosures and compactors, exterior coolers, electrical and refrigeration facilities, bottle storage areas and other similar service facilities.

(r) "Shopping Center": Parcels 1, 2, 3 and 4, collectively.

(s) "Utility Lines": "Utility Lines" shall mean those facilities and systems for transmissions of utility services, including, but not limited to, stormwater drainage and storage systems or structures or both; fire protection, irrigation and domestic water mains; lift stations; sewer lines and systems; fire and landscape water sprinkler systems; telephone, communication lines, pneumatic tube systems; electrical conduits or systems, gas mains and other public or private utilities. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to more than one Parcel. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to only one Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a single building shall be considered a Separate Utility Line.

1.2 Parties. First Party is the Owner of Parcels 1 and 4, and American Stores is the Owner of Parcels 2 and 3. The Parcels are located at the southeast corner of the intersection of Tennyson Avenue and Academy Road in the City of Albuquerque, County of Bernalillo, State of



New Mexico as shown on Exhibit "A" and more particularly described in Schedule I attached hereto.

2. BUILDING AND COMMON AREA DEVELOPMENT.

2.1 **Building Location.** All buildings and other structures (except those permitted in Section 2.2(a) below) on Parcels 1 and 4 shall be placed or constructed only in the Building Area. Notwithstanding the designation of Building Area for Parcel 2 and Building Envelope for Parcel 3 as set forth on Exhibit "A," buildings located on Parcels 2 and 3 may be reconfigured, relocated, expanded, reduced or otherwise modified, and additional buildings placed or constructed, anywhere on Parcels 2 and 3 as determined by the Owner of Parcel 2 or 3, as the case may be, in its sole and absolute discretion. Not more than one (1) building may be located on Parcel 4, and the ground floor area of the buildings on Parcel 1 and Parcel 4 shall not exceed the maximum square footage assigned on Exhibit "A" to such Parcel. Canopies, eaves and roof overhangs (including columns or posts supporting same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Area. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All Building Areas and Building Envelopes on which buildings are not under construction on the date of this Declaration shall be covered by a one inch asphalt dust cap and kept weed free and clean at the Owner's sole expense until such time as buildings are constructed thereon, except to the extent such requirement is waived in writing by the Consenting Owner with respect to specific Building Areas or Building Envelopes identified in such written waiver. Once construction of any building on Parcel 1 or 4 has been commenced, the Owner of such Parcel shall diligently



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prosecute such construction to completion. The Consenting Owner hereby agrees to cooperate with the Owner of Parcel 1, at no cost to the Consenting Owner, to obtain a lot split of Parcel 1 (the "Lot Split") subject to the provisions of this section and to all applicable and necessary governmental regulations and approvals. The Parties anticipate that the effect of such Lot Split would be to divide Parcel 1 between the 9,440 square foot Retail Building area and the proposed mini-storage Building Area, as shown on Exhibit "A." If the Owner of Parcel 1 pursues the Lot Split, the Owner of Parcel 1 shall obtain, at its sole cost and expense, all necessary amendments (and required consents which may be required from lienholders or other persons) to this Declaration and to the Common Area Maintenance Agreement as necessitated by the revised Parcel configuration or as required by the Consenting Owner. As a condition to any such Lot Split, the Consenting Owner may impose use restrictions and parking requirements on the new resulting parcel created by the Lot Split; provided that, unless the restrictions currently applicable to Parcel 1 are expressly revoked in writing or are made the subject of a written amendment executed by the persons whose signatures are required to amend this Declaration, all Restrictions on Parcel 1 set forth in this Declaration shall continue to apply to both parcels resulting from the Lot Split, and the Owners of the resulting parcels shall each be deemed an Owner hereunder (with a single combined vote, divided proportionately between them based on Parcel area) on matters subject to vote under this Declaration. In no event shall the Consenting Owner be required to consent to an increase in Building Area on Parcel 1. Furthermore nothing in this Section shall be construed as an obligation by Consenting Owner to execute any amendment. Unless the definition of "Parcel 1" is amended concurrently with the Lot Split, references to Parcel 1 hereunder shall continue to apply to all real property and improvements



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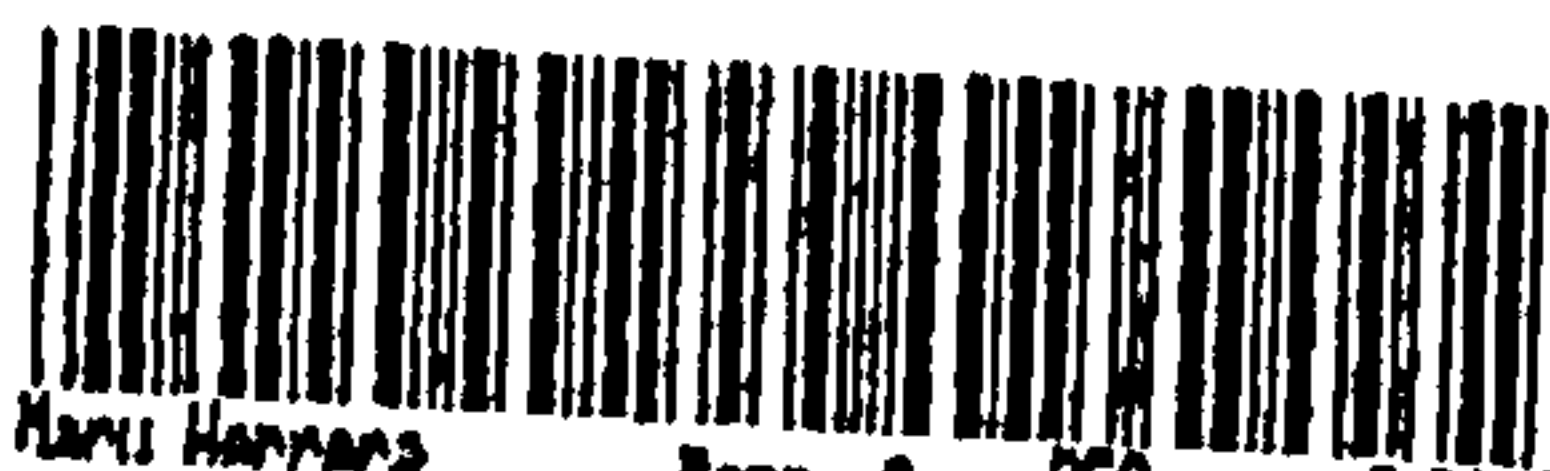
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which were considered part of the original Parcel 1. Notwithstanding the foregoing, the Consenting Owner may refuse to execute documents accomplishing the Lot Split if the Lot Split, in Consenting Owner's sole and absolute discretion, (a) alters the Building Areas as shown on Exhibit "A"; or (b) the use restrictions applicable to Parcel 1 as Parcel 1 was originally configured; or (c) the parking Restrictions imposed on Parcel 1. The owner of Parcel 1 agrees that such changes (a) through (c) are material and, by their nature, significantly alter the parties' rights and obligations under this Declaration, to a greater extent than is intended by the provisions of this section.

2.2 Common Area.

(a) The Common Area is hereby reserved for the sole and exclusive use of all Owners of the Shopping Center, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. The Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, recycle centers, Utility Lines, cart corrals, Fuel Facilities and Service Facilities and for no other purpose unless otherwise specifically provided in this Declaration. No buildings or structures not approved in writing by the Consenting Owner shall be placed or constructed in the Common Area except pylon, monument and directional signs (as provided in Section 4.3), paving, bumper guards or curbs, landscape planters, lighting standards, perimeter walls and fences, utility pads and equipment, recycle centers, cart corrals, sidewalks, Fuel Facilities and, to the extent that they are located, and do not impede access, to the rear or sides of buildings, Service Facilities.



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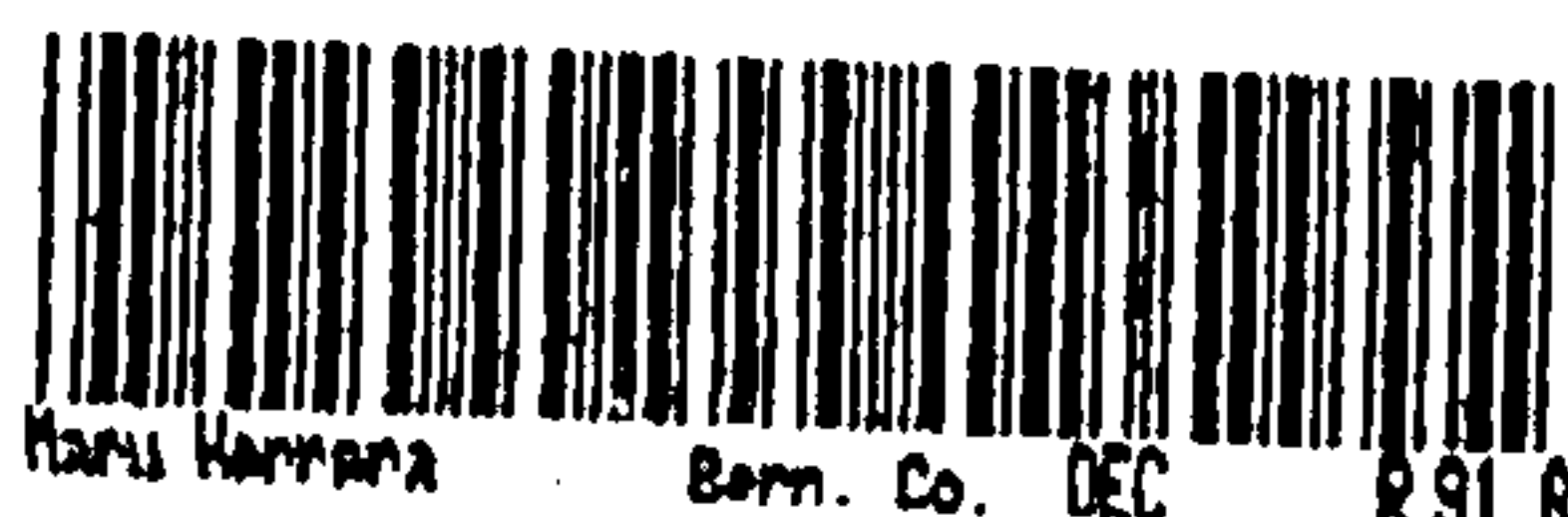
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(b) The Common Area shall be kept and maintained as provided for in the Common Area Maintenance Agreement encumbering the Shopping Center. All portions of the Building Area on Parcels 1 and 4 which cannot be used for buildings or which are not covered by a building shall be developed as improved Common Area by the Owners of Parcels 1 and 4, at said Owner's sole cost and expense, in accordance with a site plan approved by the Consenting Owner (in accordance with the procedure for approval set forth in Section 2.3(a) hereof) prior to the development of the pertinent Common Area improvements on Parcels 1 and 4. The Common Area improvement work on all of Parcels 1 and 4 shall be completed by the Owner thereof prior to the occupancy of any building constructed or placed on such Parcel. Once any Common Area improvement work has been commenced on Parcels 1 and 4, the Owner of such Parcel shall diligently prosecute such work to completion. From and after the initial construction thereof, the sizes and arrangements of the Common Area improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be changed without the prior written consent of the Consenting Owner.

(c) Notwithstanding anything in this Declaration to the contrary, the Consenting Owner may withhold its approval, in its sole and absolute discretion, to any and all Common Area or building plans and specifications submitted to it for approval (as required by Sections 2.2 and 2.3(a) hereof) in regard to Parcels 1 and 4, if said Consenting Owner determines that (i) the number of parking spaces to be constructed on Parcels 1 and 4 is less than that required by law for all buildings on any such Parcel (and the proposed use thereof) to be "self-parked" (which determination shall be made without regard to the availability, if any, of parking



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on other Parcels or variances that could be granted by any governmental authority having jurisdiction); or (ii) the number of parking spaces to be constructed and maintained on Parcel 1, if a portion of such Parcel is not used for a mini-storage, is less than (A) five (5) parking spaces for each 1,000 square feet of floor area used for retail purposes, and (B) ten (10) parking spaces for each 1,000 square feet of floor area used for restaurant or office purposes; or (iii) the number of parking spaces to be constructed and maintained on Parcel 4 is less than ten (10) parking spaces for each 1,000 square feet of floor area used for restaurant.

2.3 Type and Design of Building.

(a) Each building on Parcel 1 or 4, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with the building on Parcel 2. No building may be constructed on Parcel 1 or 4 nor the exterior of any existing building on Parcel 1 or 4 be changed in any way (including, without limitation, signs and color) without the prior written approval of the Consenting Owner as to the location within the Building Area and the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified. Before the construction of any building or any modification of an existing building which requires approval is commenced, sufficient information shall be sent by the Owners of Parcel 1 or 4 to the Consenting Owner to enable the Consenting Owner to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with the building on Parcel 2. Except as provided in Section 2.2(c) and 2.3(d), the Consenting Owner may not arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is architecturally and aesthetically



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compatible and harmonious with the building on Parcel 2 and complies with all other provisions of this Declaration. The Consenting Owner must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the Consenting Owner rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such Consenting Owner shall be deemed to have approved the same provided that, when the approval was sought, the one seeking the approval stated in writing to the Consenting Owner that, if a disapproval with explanation is not made within the thirty (30) day period, approval will then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) Every building on Parcel 1 shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the structural integrity or fire rating of any other building in the Shopping Center. No building on Parcel 4 shall be built in such a manner as not to adversely affect the fire rating of any building built upon any other Parcel.

(c) All buildings on Parcels 1 and 4 shall be single story and shall not exceed twenty-one (21) feet in height (including mechanical fixtures and equipment and screening for same) without the prior written consent of the Consenting Owner which may be granted or withheld in its sole discretion. No mezzanine or basement shall be used for the sale or display of merchandise. Notwithstanding the foregoing, the Owner of Parcel 1 may construct a two story



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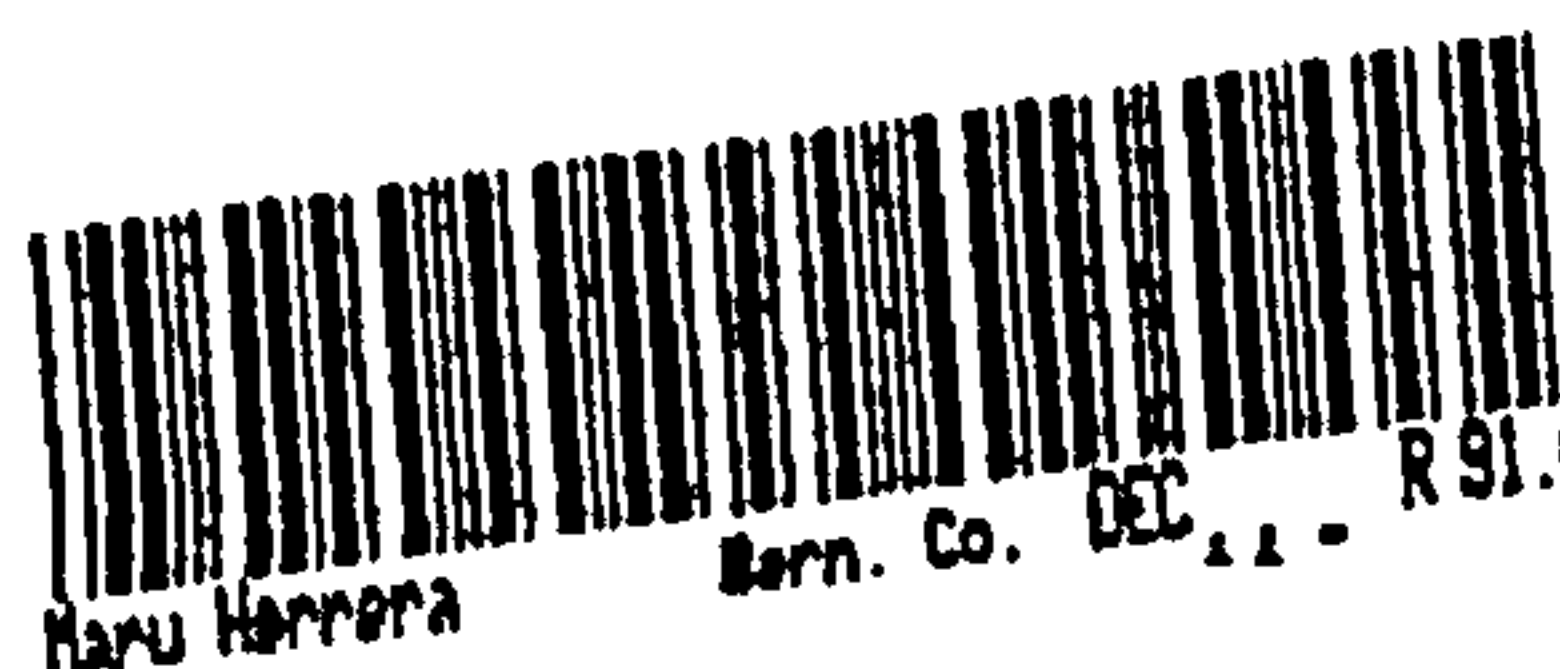
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mini-storage thereon, which shall not exceed thirty-five (35) feet in height (including mechanical fixtures and equipment and screening for same), with the prior written consent of the Consenting Owner. Additionally, notwithstanding anything to the contrary, the building on Parcel 1 shall be allowed a single architectural feature not to exceed thirty (30) feet in height.

(d) The Owners of Parcels 1 and 4 shall maintain or cause to be maintained the exterior of any building located on Parcels 1 and 4 in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities located on Parcels 1 and 4 shall be attractively screened from view from the parking areas.

(e) In the event a portion of Parcel 1 is used as a mini-storage, the Owner of Parcel 1 shall take all necessary steps to insure that the following conditions are satisfied and that the mini-storage use is harmonious with the Shopping Center: (i) no outdoor storage may occur on Parcel 1; (ii) all parking of vehicles and all loading or unloading associated with the mini-storage use shall be restricted to the northeast corner of Parcel 1 to the back of the buildings located thereon; (iii) the mini-storage is attractively screened from view from the parking areas; and (iv) the flow of traffic and ingress and egress access to the Shopping Center shall not be impeded by the mini-storage use, except for access to the rear of Parcel 2 due to the construction and maintenance of a gate partitioning the mini-storage from the rest of Parcel 1; provided, however, that the Owner of Parcel 2 shall always have full access to the Utility Box Easement as set forth in Section 3.7 hereof.

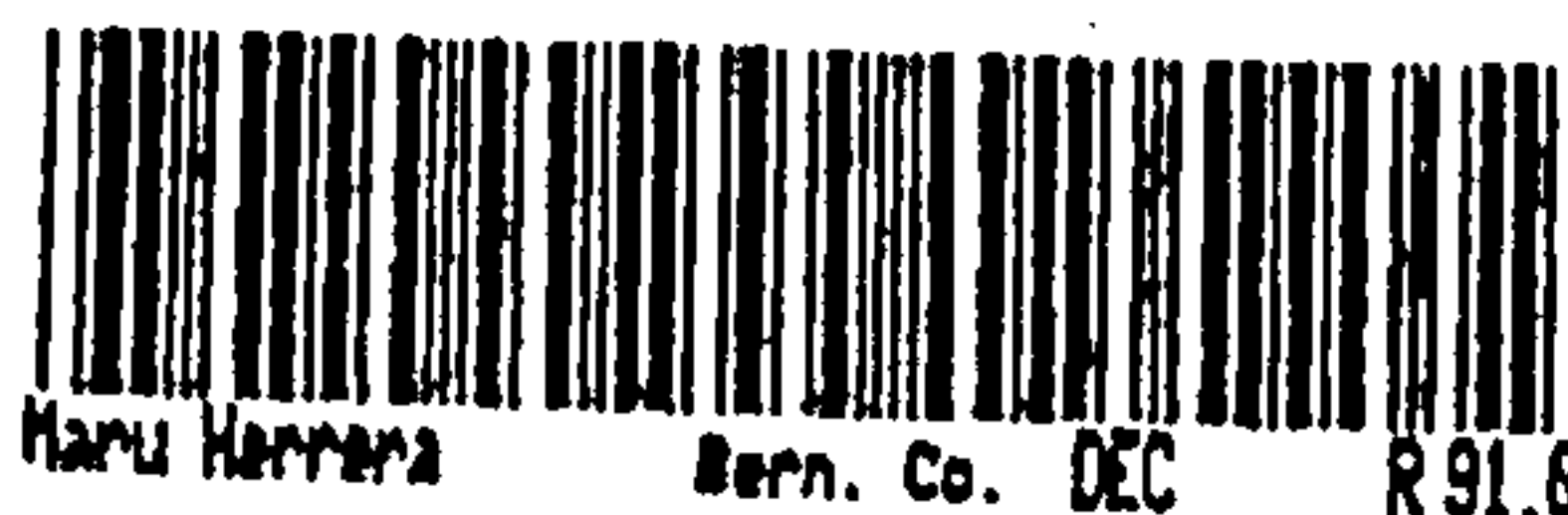


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2.4 Construction Requirements.

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located on Parcels 1 and 4 shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. All staging for the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located on Parcel 1 or 4 including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to Parcel 1 or 4 exclusive of the Permanent Drive. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, improvements, signs, Utility Lines and Common Area damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in Section 2.4(a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall,



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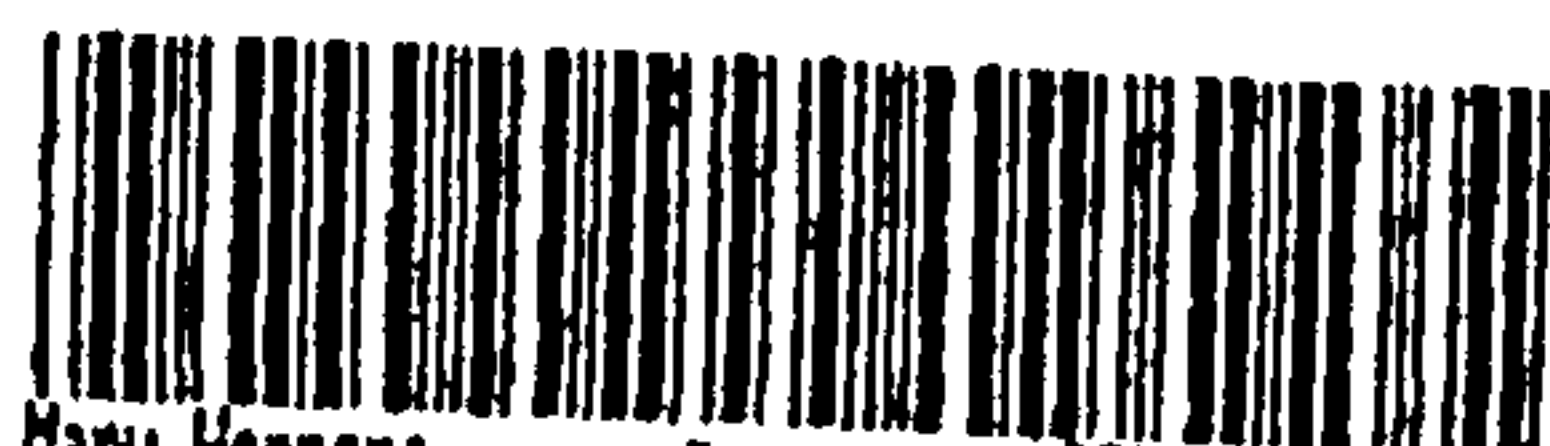
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within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Owner or Prime Lessee of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the Shopping Center from any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees. Any Contracting Party (except the Owner or Prime Lessee of Parcel 2) who causes the construction, maintenance, repair, replacement, alteration or expansion of any Common Area improvements located in the Shopping Center shall cause the contractor performing such work (the "Site Contractor") to obtain insurance meeting the requirements of Exhibit "B" attached hereto and incorporated herein by this reference.

(c) The parties acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, improvements, signs, Utility Lines and Common Area located in the Shopping Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in



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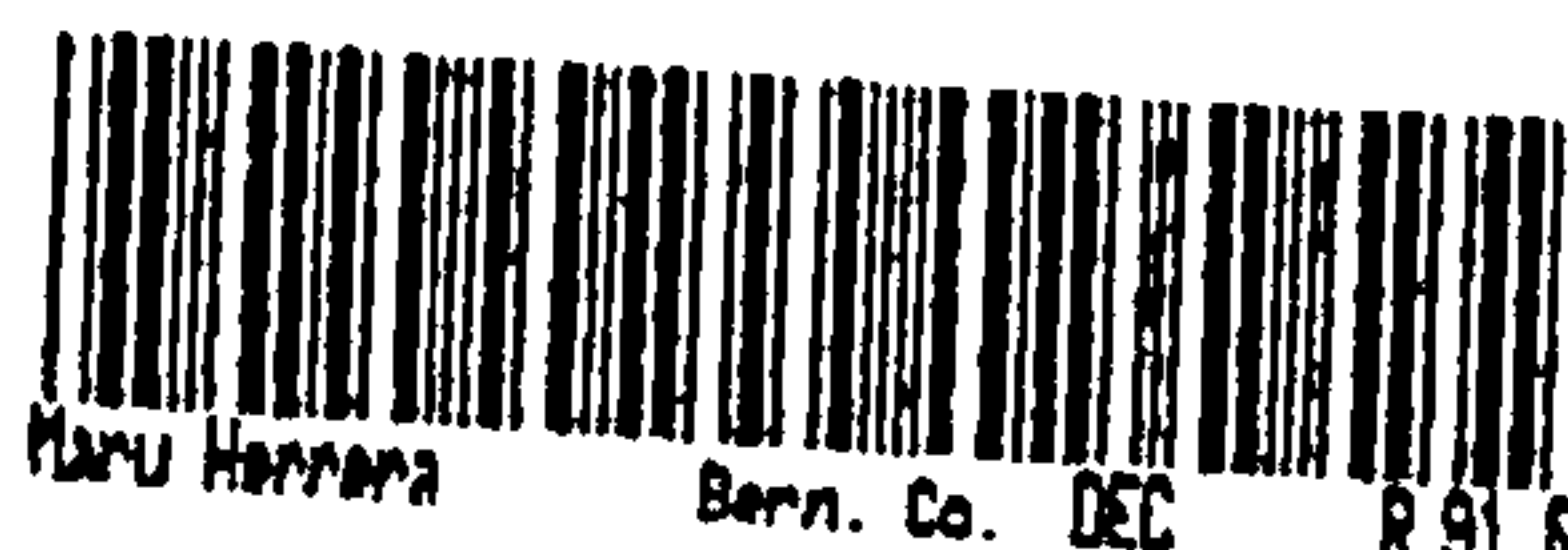
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such a manner as to minimize any interference with the use of the improved Common Area or with the normal operation of any business in the Shopping Center.

2.5 Casualty and Condemnation. In the event all or any portion of any building on Parcel 1 or 4 is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on Parcel 1 or 4 on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect drainage or Utility Lines of the Shopping Center or any portion thereof, shall be covered by a one inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

3. EASEMENTS.

3.1 Ingress, Egress and Parking. Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Facilities or drive-up or drive-through customer service facilities. The reciprocal rights of ingress and egress set forth in this Section

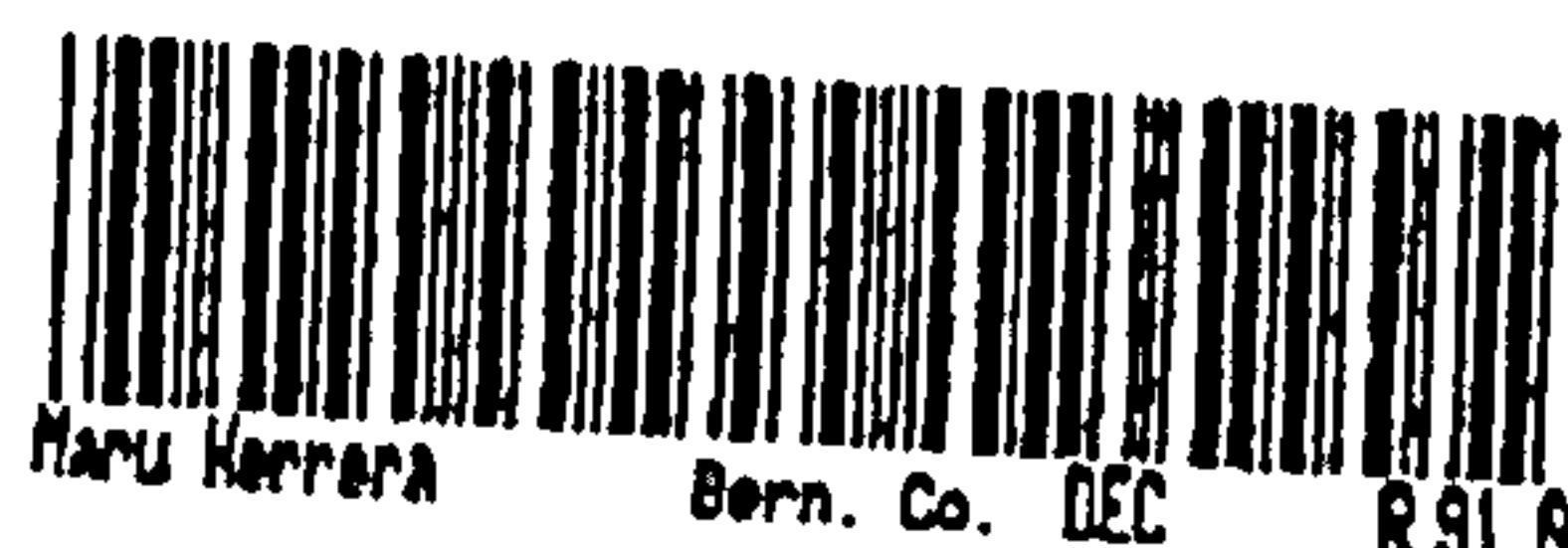


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3.1 shall apply to the Common Area for each Parcel as such area shall be increased pursuant to Section 2.2 above.

3.2 Utility Lines.

(a) Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual nonexclusive easement under, through and across that portion of the Common Area located on the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of Utility Lines. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other Utility Lines as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such Utility Lines shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Shopping Center. The grantee(s) shall be responsible for and shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Lines, shall repair to the original specifications any damage to buildings, improvements, signs, Utility Lines or Common Area resulting from such use and shall provide as-built plans for all such Utility Lines to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of same. All costs associated with the installation, operation, maintenance repair and replacement of Separate Utility Lines shall be borne solely by the Owner of the Parcel served thereby. All costs associated with the installation, operation,



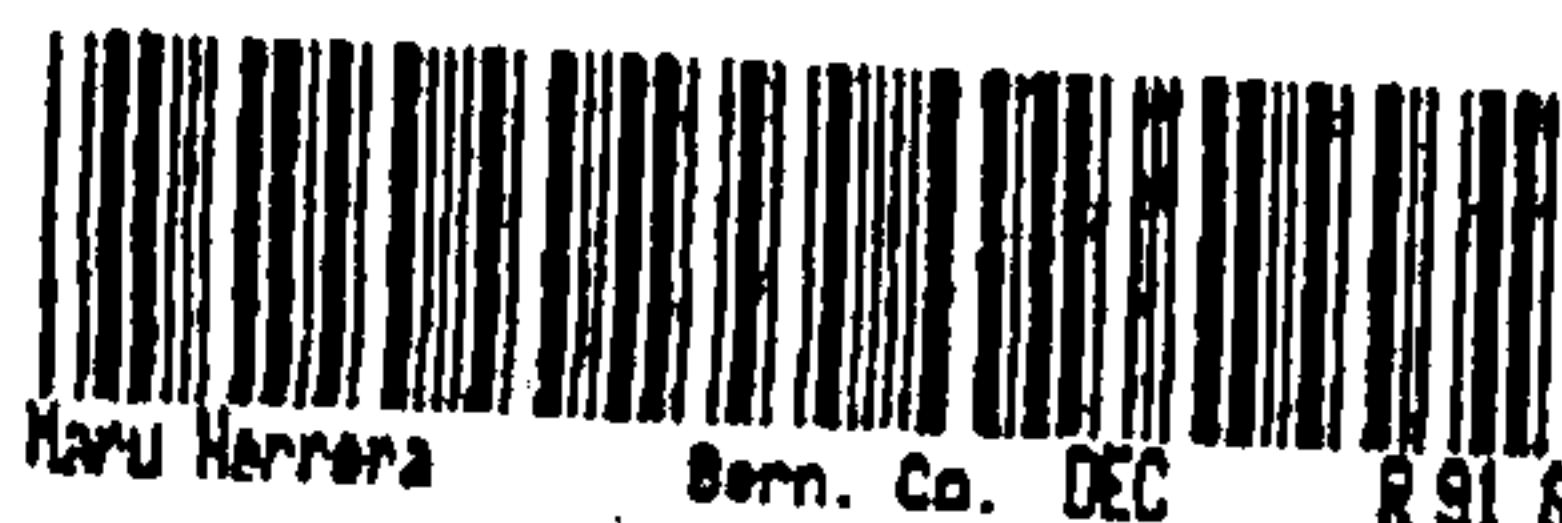
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maintenance repair and replacement of Common Utility Lines shall be allocated among the Owners of the Parcels served thereby in proportion to the Parcel Area of such Parcel. The installation, operation, maintenance, repair and replacement of Common Utility Lines may be performed by the Owner of any Parcel served thereby.

(b) At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Line installed pursuant to the foregoing grant of easement which is then located on such Owner's Parcel, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (ii) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Line, (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Line, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(c) Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the Utility Lines described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.


3.3 Signs. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual easement under, through



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and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 of this Declaration and all Utility Lines appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, operation, maintenance, repair and replacement of its free-standing signs and appurtenant facilities and Utility Lines, shall repair to the original specifications any damage to the buildings, improvements, signs, Utility Lines or Common Area resulting from such use and shall provide as-built plans for all such facilities and Utility Lines to the Owners of all Parcels upon which such facilities and Utility Lines are located within thirty (30) days after the date of completion of construction of same.

3.4 Building Encroachments. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, an easement for any portion of any building or structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s); provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. Notwithstanding the foregoing, such encroachment shall not impede access to the Shopping Center or encroach upon the Permanent Drive (as defined in Section 3.5 below). The easements granted in this Section 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

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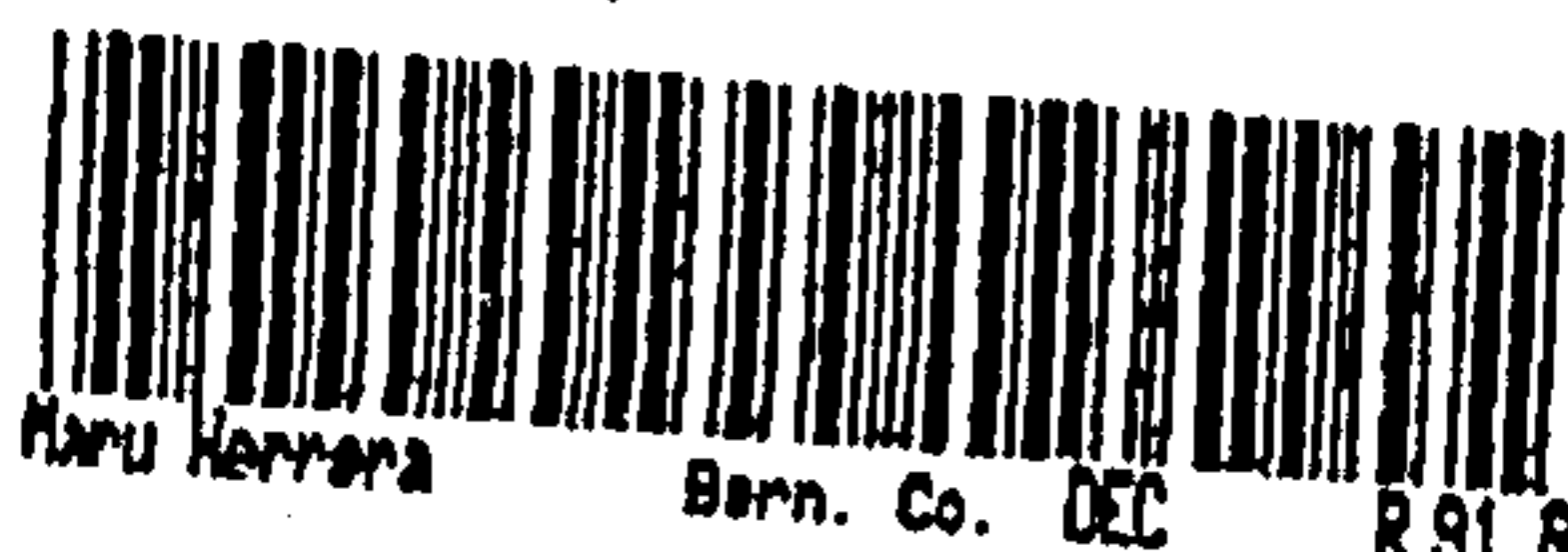
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3.5 **Permanent Drive.** Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on the grantor's Parcel(s) shown on Exhibit "A" as "Permanent Drive" running from Academy Road N.E. to Tennyson Ave. N.E. and more particularly described in Schedule II attached hereto and incorporated herein by this reference.

3.6 **Maintenance Easement.** Each Owner, as grantor, hereby grants to the other Owners, their respective employees, agents, and contractors, as grantee, an easement over and across that portion of the Common Area located on the grantors' Parcel for the purpose of protecting the Common Area and operating or performing any maintenance, repairs, resurfacing or replacements pursuant to Section 3.2(a) or 4.4 hereof.

3.7 **Utility Box Easement.** The Owner of Parcel 1, as grantor, hereby grants to the Owner of Parcel 2, their respective employees, agents, and contractors, as grantee, an easement over and across that portion marked as "Utility Easement" on Exhibit "A" for purposes of operating or performing any maintenance, repairs, resurfacing or replacements of the utility transformers located therein. The Owner of Parcel 1 shall in no way impede the Owner of Parcel 2's access to and shall not build on any portion marked "Utility Easement" on the Site Plan on Exhibit "A" and more particularly described on Schedule III attached hereto and incorporated herein by reference.



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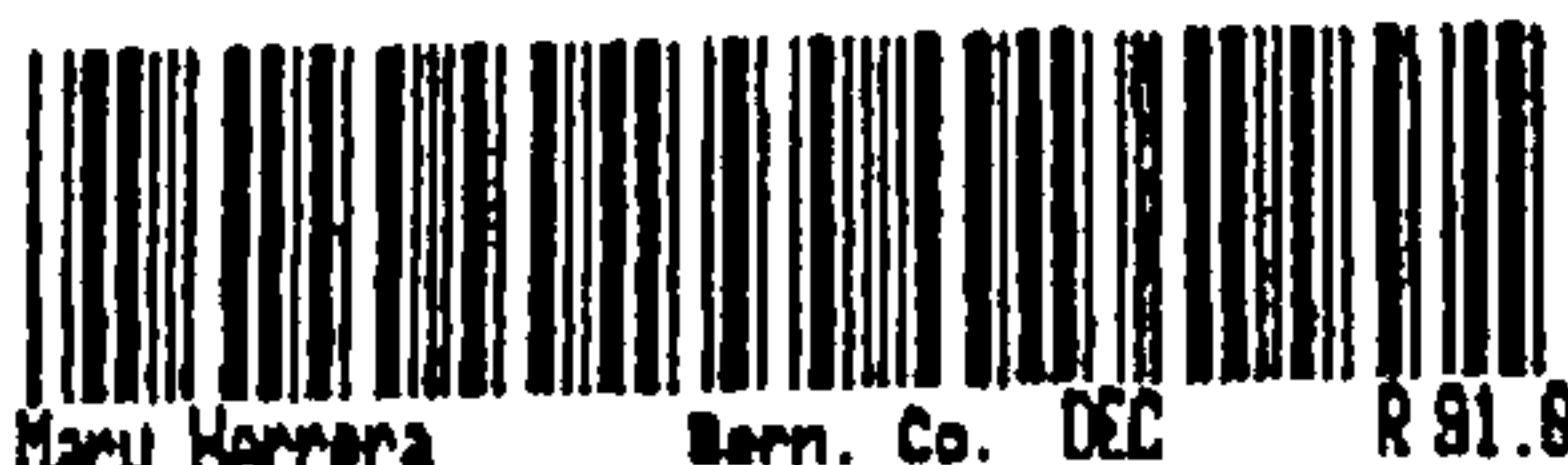
4. OPERATION OF COMMON AREA.

4.1 Parking. There shall be no charge for parking in the Common Area without the prior written consent of the Consenting Owner or unless otherwise required by law.

4.2 Employee Parking. Anything in this Declaration to the contrary notwithstanding, areas to be used for motor vehicle parking by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time with the prior written consent of the Consenting Owner. In the event employee parking areas are designated as provided herein, then employees of any Owner or occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees park within two hundred (200) feet of the front of any building located on Parcel 2. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Shopping Center.

4.3 Signs.

(a) Subject to governmental approval, and provided it does not adversely affect the installation and use of the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2 or 3, the Owners of Parcels 1 and 4 shall have the right to erect one (1) free-standing monument sign on Parcel 1 or 4, respectively, in the location shown as "Pad Sign" on Exhibit "A." The Pad Sign on Parcel 1 or 4 shall not exceed eight (8) feet in height and shall not have more than fifty (50) square feet of sign fascia per side without the prior written consent of the Consenting Owner, which consent may be granted or withheld in its sole discretion. Pad Sign shall display the designation of the Owner or occupant of Parcel 1 or 4, respectively. The cost of operating, constructing, installing, maintaining, repairing and



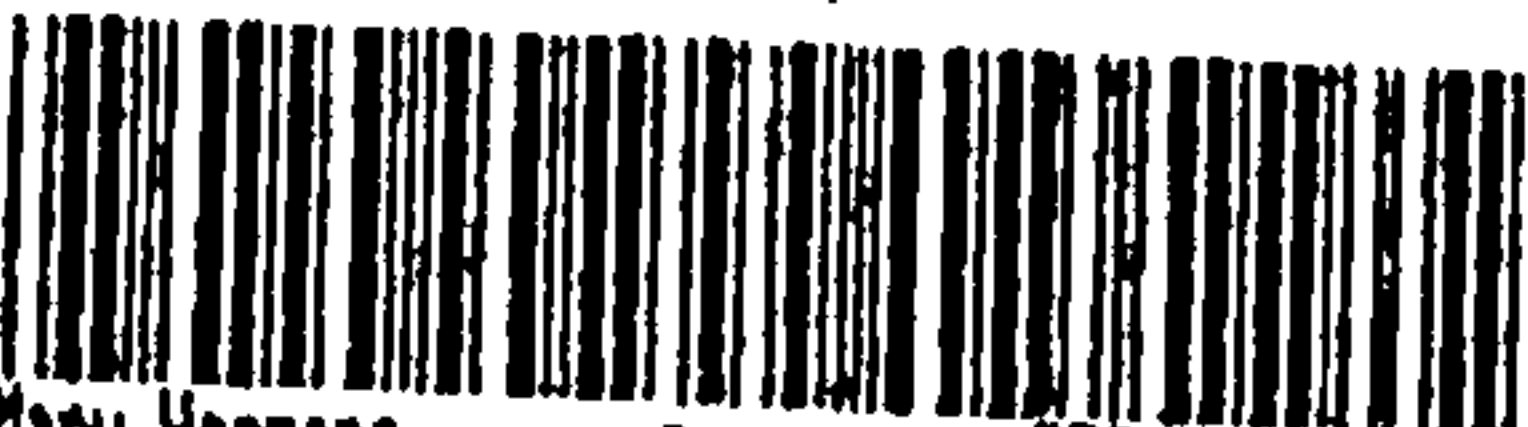
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replacing said Pad Sign structure shall be paid by the Owner of the Parcel displaying the designation on the Pad Sign. The design and location of the Pad Sign structure and sign fascia used thereon shall be subject to the approval of the Consenting Owner, in accordance with the procedure for approval set forth at Section 2.3(a) hereof. Nothing contained herein shall be deemed to restrict in any manner whatsoever the right of the Owner or occupant of Parcel 2 or 3 to construct free-standing monument or pylon sign(s) on its respective Parcel in location(s) determined in its sole and absolute discretion.

(b) There shall be no other signs on Parcel 1 or 4, except directional signs and signs on buildings, without the prior written consent of the Consenting Owner which consent may be granted or withheld in its sole discretion. All exterior building signs on Parcel 1 or 4 shall be restricted to identification of the business or service located or provided therein. No exterior building sign on Parcel 1 or 4 shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface. No exterior building or free-standing sign on Parcel 1 or 4 shall utilize flashing, moving or audible lights or appurtenances.

4.4 Protection of Common Areas. The Owner or Prime Lessee of Parcel 2 shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Area from using the Common Area for ingress, egress and parking. Such steps may include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Shopping Center, except along the common boundary line of any Parcel with any other Parcel.

4.5 Sales. No portion of the Common Area located within Parcel 1 or 4, except sidewalks, shall be used for the sale or display of merchandise. The sale of merchandise by the


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Owner or occupant of Parcel 2 or Parcel 3 shall be permitted anywhere on the Common Area located within said Parcel.

5. RESTRICTIONS ON USE.

5.1 Food and Drug Restrictions. No part of Parcel 1 or 4 shall be used as a supermarket (which shall be defined as any store or department containing at least 1,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); as a bakery or delicatessen; for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; as a cigarette or smoke shop or any other store the primary business of which is to sell tobacco products and/or accessories; for the sale of alcoholic beverages for off-premises consumption; or for the sale or offer for sale of any ethical pharmaceutical products requiring the services of a registered pharmacist. No part of Parcel 1 or 4 may be used for a "Convenience Store," as hereinafter defined, or for the sale of Petroleum. A "Convenience Store" is herein defined as a self-contained area or building primarily devoted to the sale of any or all of the following items: food, beverages, grocery items, Petroleum, tobacco and/or carwashes, as they may be operated from time to time. By way of example only, stores such as "7-Eleven" and "Circle K" are considered to be "Convenience Stores" under the foregoing definition.

5.2 Shopping Center Restrictions. No part of Parcel 1 or 4 shall be used as a bar, tavern, cocktail lounge, adult book store, adult video store or other adult entertainment business, automotive maintenance or repair facility, warehouse, car wash, entertainment or recreational facility, training or educational facility; for the renting, leasing or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer; or for industrial



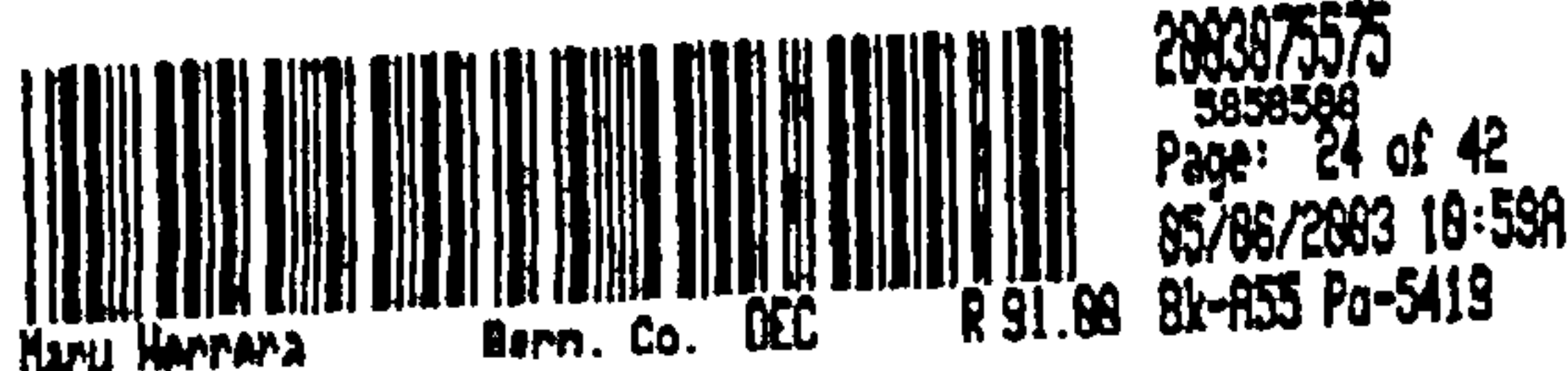
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purposes. For the purpose of this Declaration, the phrase "entertainment or recreational facility" shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, dance hall, billiard or pool hall, massage parlor, game parlor or video arcade (which shall be defined as any store containing more than four [4] electronic games). The phrase "training or educational facility" shall include, without limitation, a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to customers.

5.3 Location Restrictions. Parcel 4 may be used as a restaurant or as a medical, dental, professional or business office; provided, however, the total floor area of all restaurant, medical, dental, professional or business offices located on Parcel 4 shall not exceed 5,000 square feet and any such single restaurant, medical, dental, professional or business office use shall not exceed 2,500 square feet provided such Parcel can self-park in accordance with Section 2.3(c).

Parcel 1 may be used as a restaurant or as a medical, dental, professional or business office; provided, however, the total floor area of all restaurants and medical, dental, professional and business offices located on Parcel 1 shall not exceed 1,200 square feet provided such Parcel can self-park in accordance with Section 2.3(c) hereof. No mini-storage use shall be allowed on Parcels 1 and 4 except that a portion of Parcel 1, as shown on Exhibit A, may be used as a mini-storage as long as no leasing of motorized vehicles or trailers is associated with said mini-storage and said mini-storage is used as retail only and not as self-storage for the Owner of Parcel 1.

5.4 Drive-up and Drive-through Facilities. No restaurant, bank or other facility featuring vehicular drive-up or drive-through customer service facilities shall be located on



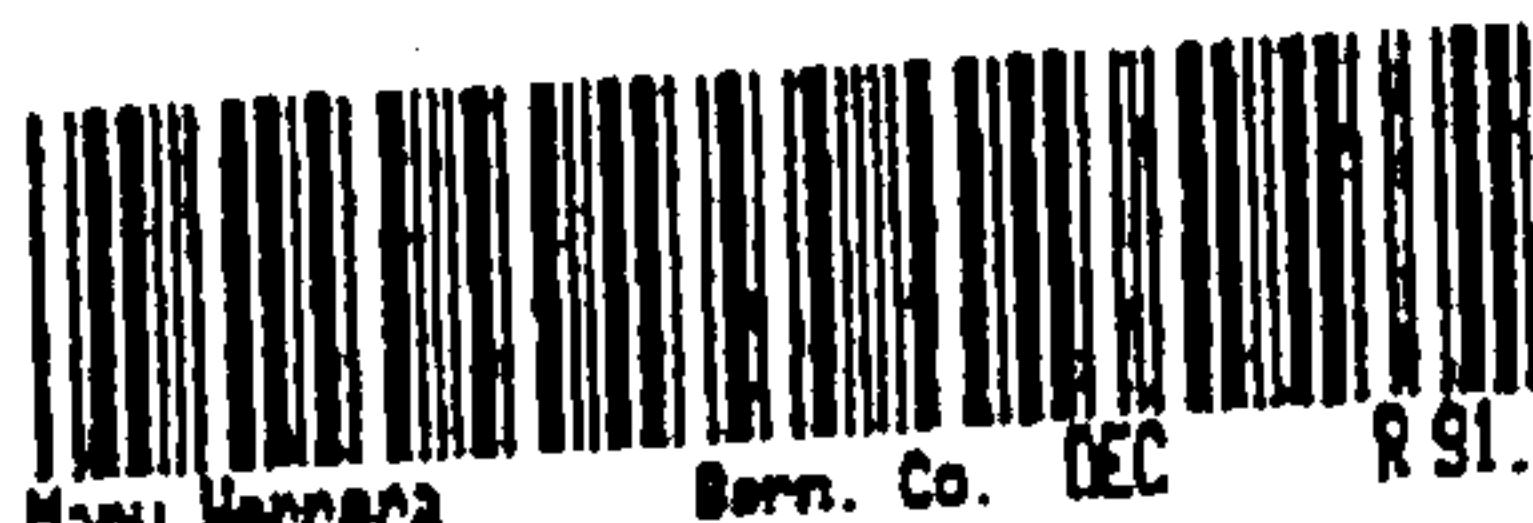
Parcel 1 or 4 unless the Consenting Owner has first given its written consent, which shall not be unreasonably withheld, as to the location, parking and drive lanes of such facility.

5.5 Mall Restrictions. There shall be no open or enclosed malls on Parcel 1 or 4 unless the Consenting Owner has first given its written consent, which shall not be unreasonably withheld, to the location of the entrance to such mall.

6. GENERAL PROVISIONS.

6.1 Covenants Run With the Land. Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

6.2 Successors and Assigns. This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

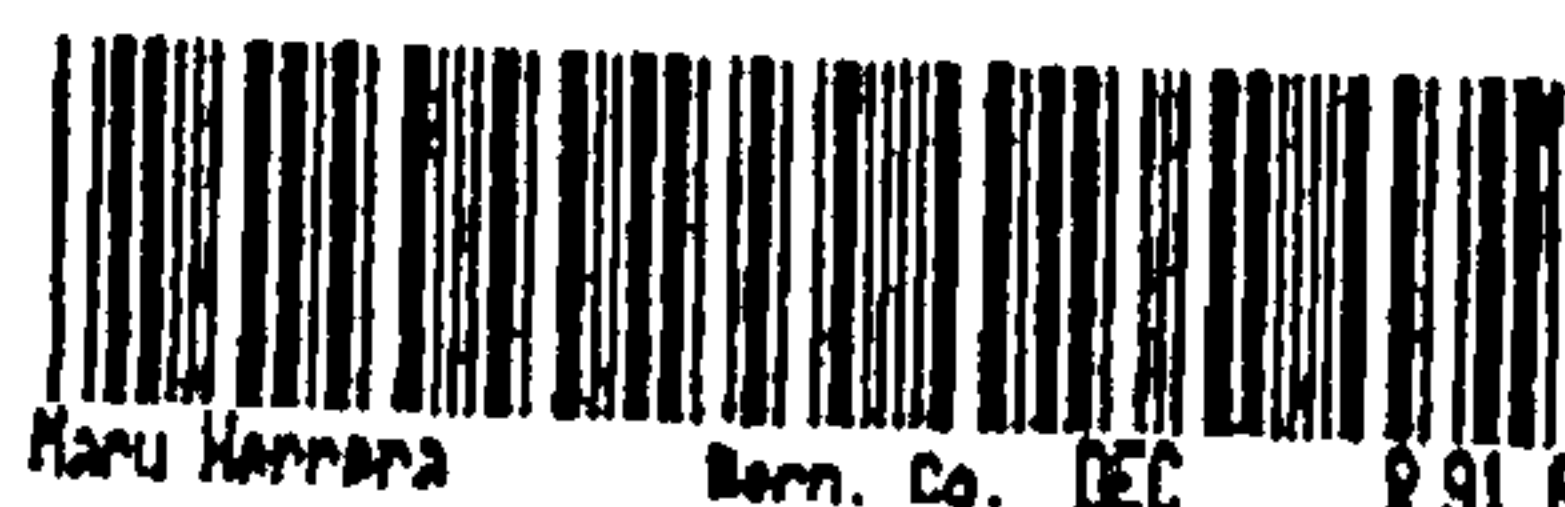


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6.3 **Duration.** Except for the perpetual easements set forth in Section 3 hereof, the term of this Declaration shall be for sixty-five (65) years from the date hereof (the "Primary Period"). Upon the expiration of the Primary Period, this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of the expiration of the Primary Period or Extension Period then in effect, an Owner delivers to the other Owners in the Shopping Center written notice of termination, in which event, the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect.

6.4 **Injunctive Relief.** In the event of any violation or threatened violation by any person of any of the Restrictions contained in this Declaration, any or all of the Owners and Prime Lessees of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Such injunctive relief shall include, but is not limited to, enjoining all use of a mini-storage on Parcel 1 for any violations hereunder or a failure of the Owner of Parcel 1 to operate the mini-storage in a manner harmonious with the Shopping Center as required by this Declaration. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

6.5 **Modification and Termination.** This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners and Prime Lessees of the Parcels containing eighty percent (80%) of the total square footage of Parcel Area in the Shopping Center at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the required Owners and Prime Lessees and recorded in the office of the recorder of the county in which the Shopping

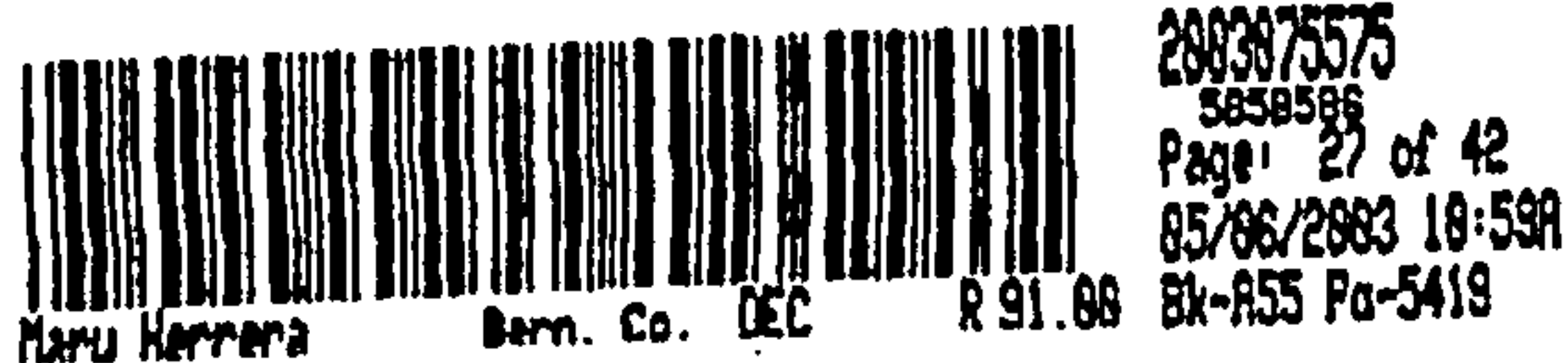


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Center is located. No modification or termination of this Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

6.6 **Method of Approval.** Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Parcel shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Parcel shall agree among themselves and designate in writing to the Owners and Prime Lessees of each of the other Parcels a single person who is entitled to cast the vote for that Parcel. If the Owners of any such Parcel cannot agree who shall be entitled to cast the single vote of that Parcel, or if the Owners fail to designate the single person who is entitled to cast the vote for that Parcel within thirty (30) days after receipt of request for same from any other Owner or Prime Lessee, then that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary and the total square footage of Building Area in said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 6.5. Except as otherwise set forth in Section 6.5, in the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Declaration to the contrary notwithstanding.

6.7 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.



6.8 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

6.9 Default.

(a) A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from any Owner or Prime Lessee specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

(b) In the event the defaulting party has defaulted in the payment of money to the Owner or Prime Lessee of Parcel 2, the Owner or Prime Lessee of Parcel 2, in addition to other remedies provided by law, shall be entitled to interest on such amount at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate two percent (2%) above the prime rate as published in the Wall Street Journal commencing on the date such payment was due

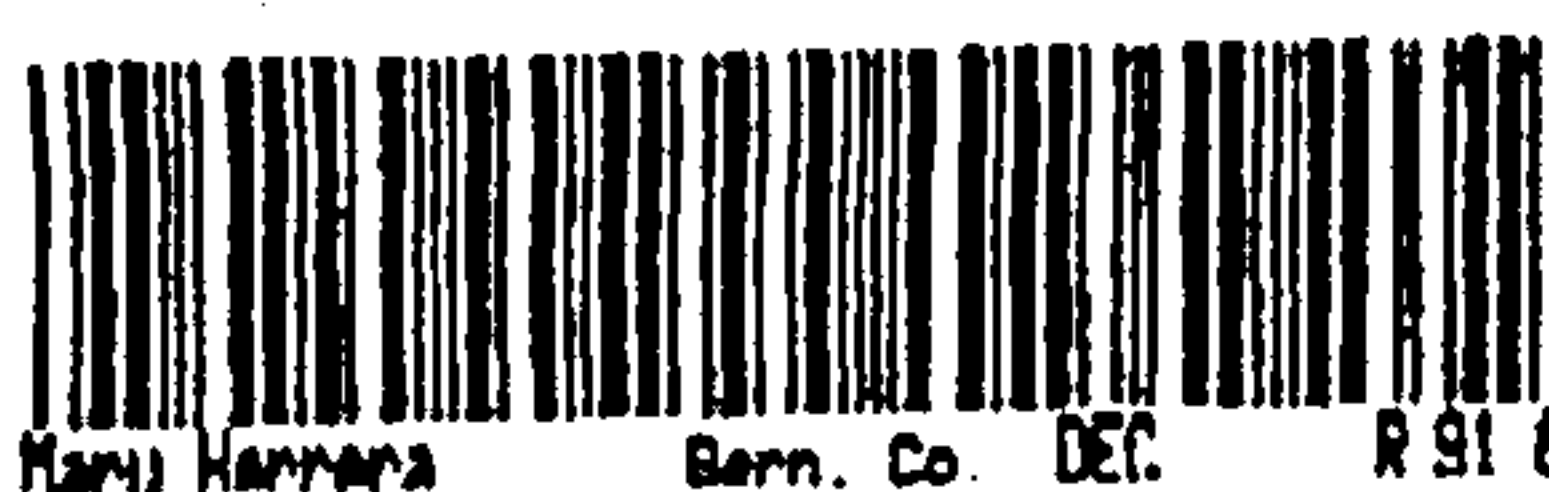


pursuant to this Declaration until paid in full and the Owner or Prime Lessee of Parcel 2 shall be entitled to a lien against the Parcel of the defaulting party for the amount of such unpaid amount plus interest. Such lien shall only be effective when filed for record by the Owner or Prime Lessee of Parcel 2 as a claim of lien against the Parcel of the defaulting party in the office of the recorder of the county in which the Shopping Center is located, signed and verified, which shall contain at least:

- (i) An itemized statement of all amounts due and payable pursuant hereto;
- (ii) A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien; and
- (iii) The name of the Owner or reputed Owner of the property which is the subject of the lien.

The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the Owner or Prime Lessee of Parcel 2 and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

(c) Failure of the Owner of Parcel 1 to operate the mini-storage in compliance with Section 2.3(e) hereof or to operate the mini-storage in a manner which is harmonious with the Shopping Center shall be deemed a default hereunder. Upon such default, the Owner of Parcel 2 may send notice to the Owner of Parcel 1 notifying the Owner of Parcel 1 of such violation ("Violation Notice"). If the Owner of Parcel 1 fails to correct such violation within



twenty (20) days of receipt of such Violation Notice, the Owner of Parcel 1 shall be assessed a fee in the amount of \$100.00 per day. Such assessment shall become an obligation of the Owner of Parcel 1 and the Owner or Prime Lessee of Parcel 2 shall be entitled to a lien against Parcel 1 and such lien shall bear interest at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate two percent (2%) above the prime rate as published in the Wall Street Journal commencing on the date such payment was due pursuant to this Declaration until paid in full. The lien, when so established shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the Owner or Prime Lessee of Parcel 2 and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction. In addition to the remedy set forth in this section, the Owner or Prime Lessee of Parcel 2 shall be entitled to all other remedies as set forth in this Declaration.

6.10 Notices.

(a) All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charges prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. All notices to American Stores and First Party shall be sent to the person and address set forth below:



American Stores: American Stores Properties, Inc.
c/o Albertson's, Inc.
250 Parkcenter Boulevard
P.O. Box 20
Boise, ID 83726
Attn: Legal Department

First Party: Can Am Development Albuquerque LLC
2930 E. Camelback Road, Suite 135
Phoenix, AZ 85016
Attn: Bernard Weiner

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 6.10(a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

6.11 Waiver. The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions contained herein by the same or any other person.



6.12 **Attorneys' Fees.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' and paralegal's fees (including its reasonable costs and attorneys' and paralegal's fees on any appeal).

6.13 **Sale & Sale-leaseback Purchaser.** Notwithstanding anything to the contrary contained in this Declaration, it is expressly agreed that in the event an Owner sells its Parcel (whether or not such sale includes any buildings or improvements located thereon) to an unaffiliated third party and thereafter enters into a lease (including a ground lease) for such Parcel with such third party or its lessee or sublessee (such third party is hereinafter referred to collectively as the "Prime Lessor"), so long as said Prime Lessee is in possession of the property the parties hereto shall look solely to said Prime Lessee (and said Prime Lessee shall be liable therefor) for the performance of any obligations either the Prime Lessee or the Prime Lessor shall have under this Declaration and the Prime Lessor shall be relieved of any obligation for the performance of or liability for the Restrictions set forth herein relating to either the Prime Lessee or its Parcel.

6.14 **Severability.** If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.



Mari Herrera

Barr. Co.

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6.15 **Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

6.16 **Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

6.17 **Captions and Headings.** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

6.18 **Entire Agreement.** This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

6.19 **Construction.** In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

6.20 **Joint and Several Obligations.** In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

6.21 **Recordation.** This Declaration shall be recorded in the office of the recorder of the county in which the Shopping Center is located.



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6.22 Nonmerger. Ownership of more than one Parcel by the same Owner shall not result in the merger of the dominant and servient estates of such Owner created by this Declaration.

EXECUTED as of the day and year first above written.

FIRST PARTY:

Can Am Development Albuquerque LLC,
a New Mexico limited liability company

By: 

Bernard Weiner

Its: Bernard Weiner
managing member

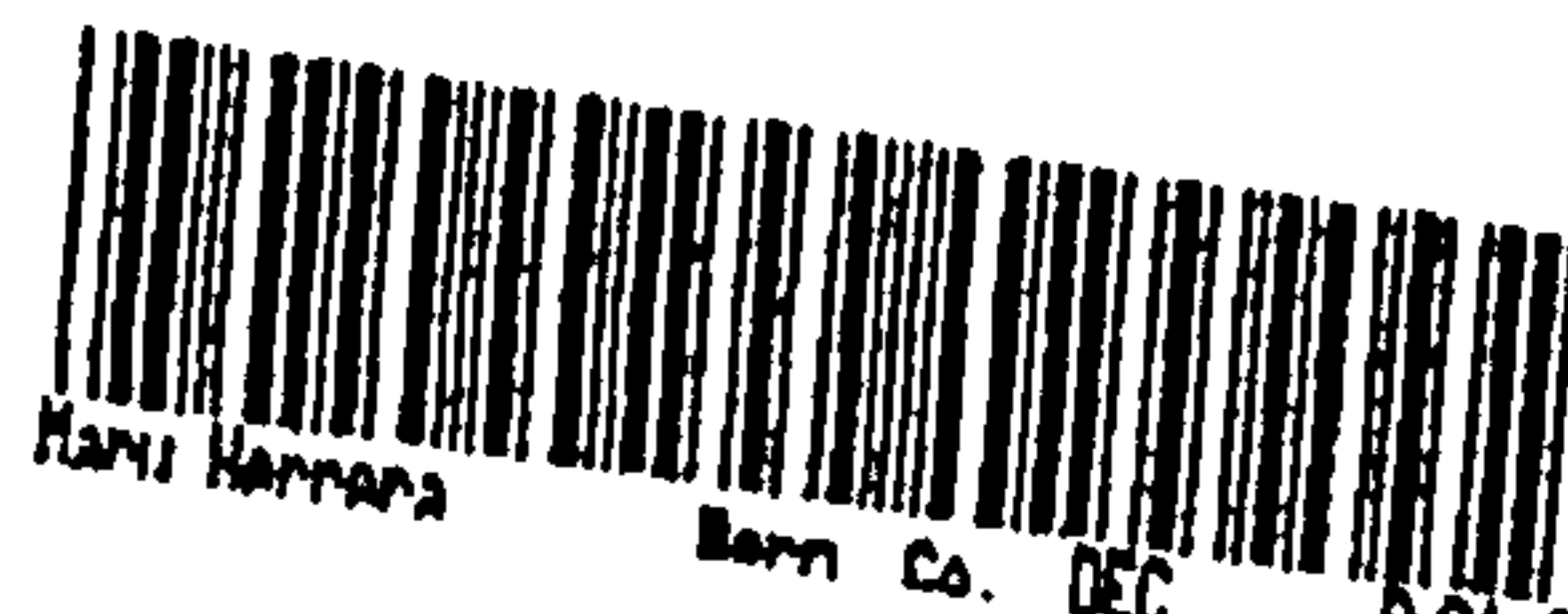
AMERICAN STORES:

American Stores Properties, Inc.,
a Delaware corporation

By: 

C. Lee Mumford

Vice President *HTPLK*

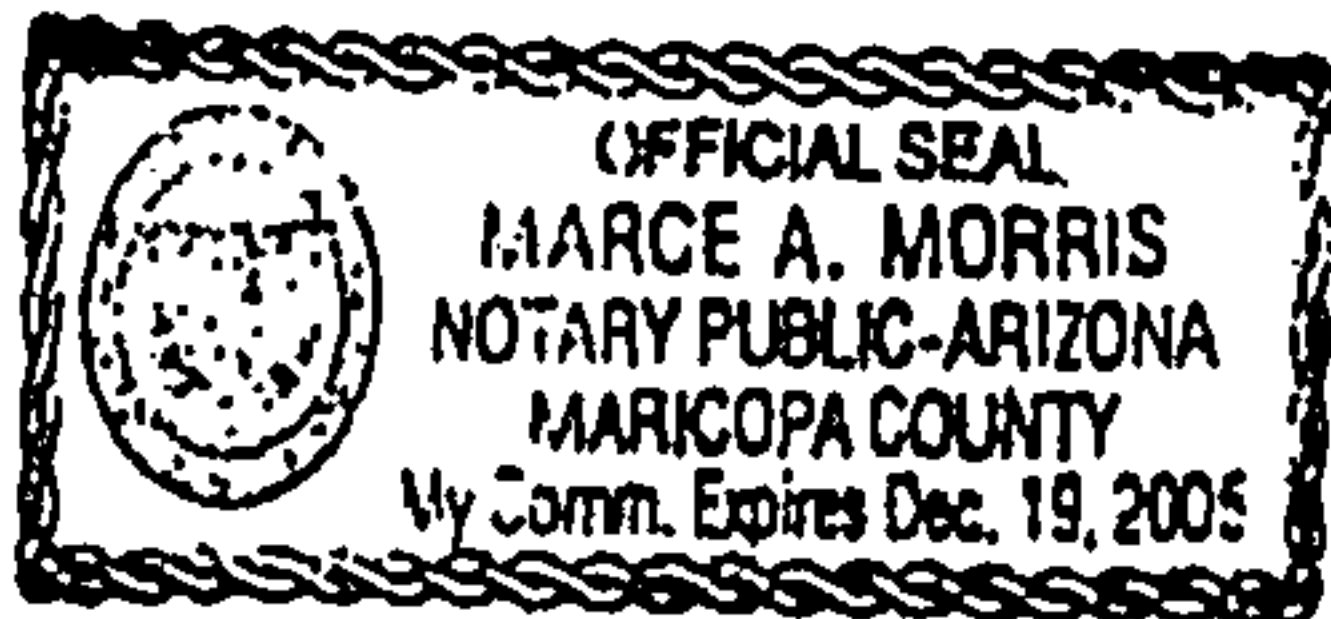


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STATE OF ARIZONA
County of Maricopa) ss

On this 30th day of April, 2003, before me, MARCE A. MORRIS,
a Notary Public in and for said State, personally appeared Bernard Weiner, known or identified
to me to be [one of the members/one of the managers/ the manager] of the limited liability
company of Can Am Development Albuquerque LLC, and [one of the members/one of the
managers/the manager] who subscribed said company name to the foregoing instrument, and
acknowledged to me that he executed the same in said company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year in this certificate first above written.

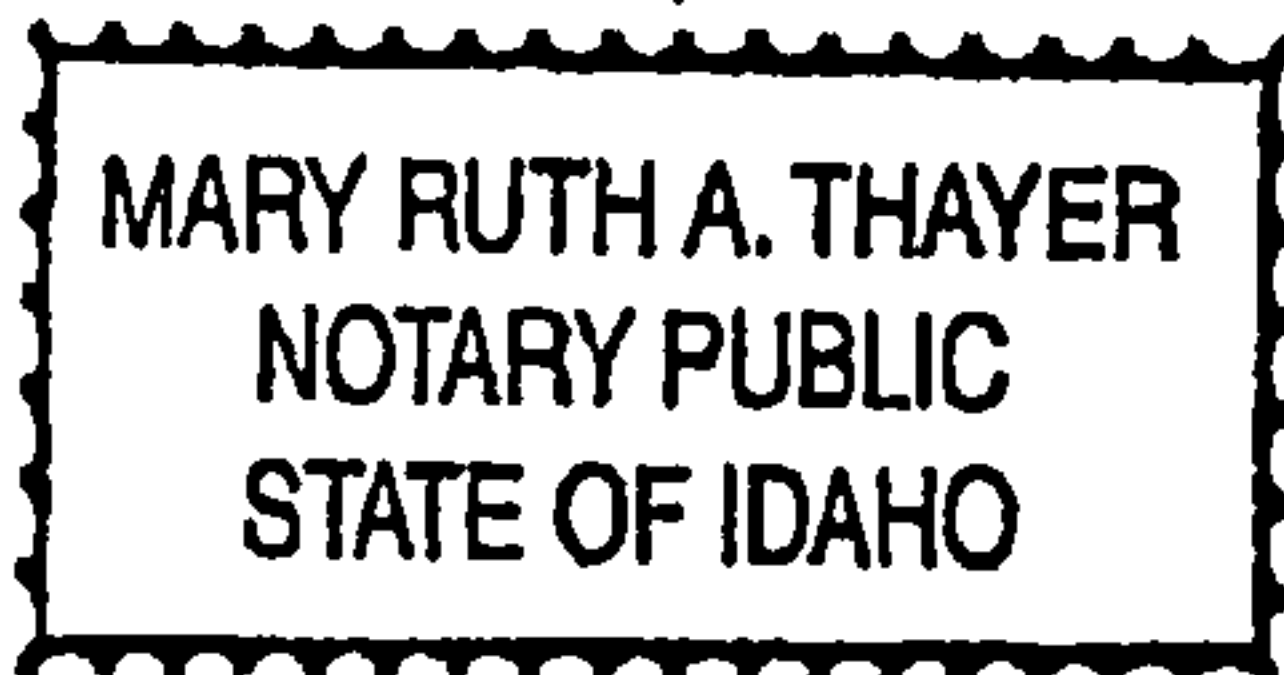


MARCE A. MORRIS
Notary Public for Maricopa County, AZ
Residing at PHOENIX, AZ
My commission expires 12/19/05

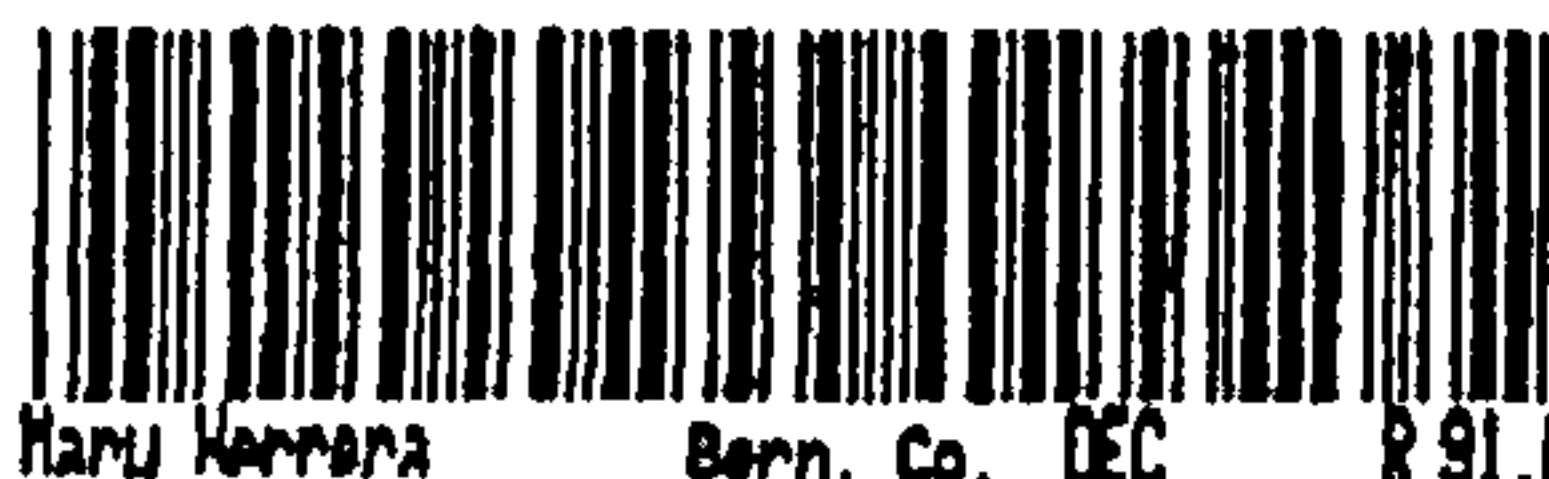
STATE OF IDAHO)
County of Ada) ss.

On this 21st day of April, 2003, before me, MARY RUTH A. THAYER,
a Notary Public in and for said State, personally appeared C. Lee Mumford, known or identified
to me to be the Vice President of American Stores Properties, Inc., the corporation that
executed the within instrument or the person who executed the instrument on behalf of said
corporation, and acknowledged to me that such corporation executed the same.

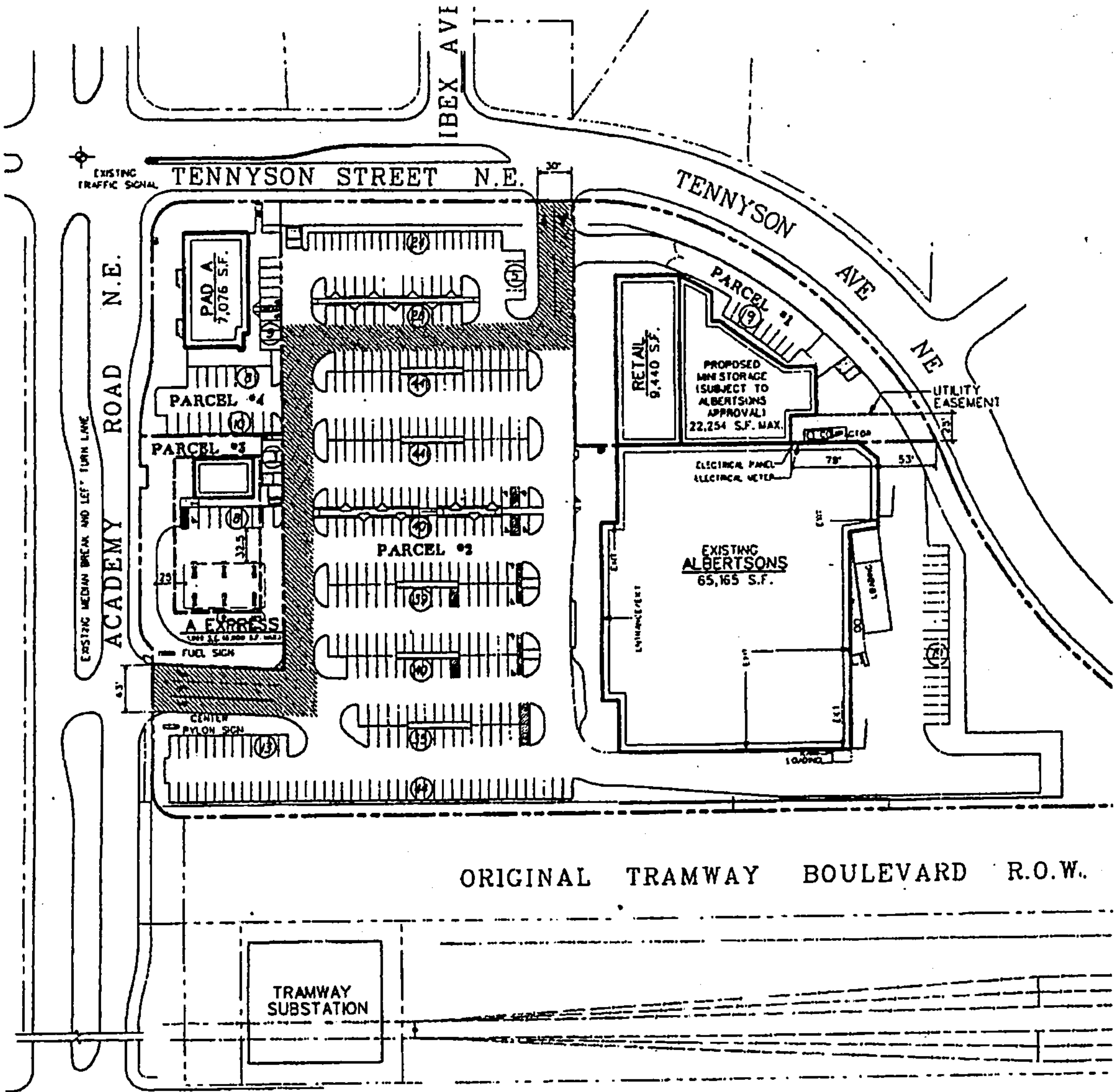
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year in this certificate first above written.



Mary Ruth A. Thayer
Notary Public for Idaho
Residing at Caldwell, ID
My commission expires Oct. 15, 2005



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