

Need exhibit a site plan drawing which will meet recording requirements.

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:

United Supermarkets, L.L.C.
250 Parkcenter Blvd.
Boise, ID 83706
Attn: Legal Department (#904)

(Space above this line for recorder's use only)

#904 – Albuquerque, NM

**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS ("**Declaration**") is made and entered into this ____ day of April, 2020 by and between **Red Shamrock 12, LLC**, a New Mexico limited liability company ("**Shamrock**") and **United Supermarkets, L.L.C.**, a Texas limited liability company ("**United**"). United and Shamrock, together with their respective successors and assigns, are hereinafter sometimes referred to each as an "**Owner**" and collectively "**Owners**".

Recitals:

A. United is the owner of that certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, more particularly described in **Schedule I** attached hereto and incorporated herein by this reference (the "**Supermarket Parcel**"). The Supermarket Parcel is also shown on **Exhibit A**, which exhibit is attached hereto and made a part hereof.

B. Shamrock is the owner of that certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, more particularly described in **Schedule II** attached hereto and incorporated herein by this reference (the "**Outparcel**"; the Supermarket Parcel and the Outparcel are hereinafter sometimes referred to each as a "**Parcel**" and collectively "**Parcels**"). The Outparcel is also shown on **Exhibit A**.

C. United and Shamrock desire to provide for certain rights of the Owners, grant of a non-exclusive vehicular access easement and to impose certain restrictions upon the Outparcel for the benefit of the Supermarket Parcel and the present and future owners thereof, on the terms and conditions hereinafter set forth.

D. The provisions of this Declaration shall be for the exclusive benefit of the Supermarket Parcel and the Outparcel and may not be enforced by the owner or occupant of any other property or enforced for the benefit of any other property.

Agreements:

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, United and Shamrock agree as follows:

1. BUILDING

1.1 Supermarket Building Location. All buildings and other structures located on the Supermarket Parcel may be reconfigured, relocated, expanded, reduced or otherwise modified, and additional buildings placed or constructed, anywhere on the Supermarket Parcel as determined by the Owner of the Supermarket Parcel in its sole and absolute discretion. Not more than one (1) building (which may include a shade structure for a patio) may be located on the Outparcel.

1.2 Parking. At all times, the Outparcel shall contain the number of parking spaces required by law (less any applicable parking credit allowed by the City of Albuquerque) for the building on the Outparcel and the proposed use thereof, without regard to the availability, if any, of parking on other Parcels. No rights to park on the Supermarket Parcel are granted under this Declaration for any purpose. Furthermore, employees of the businesses operated on the Outparcel are not granted rights to park on the Supermarket Parcel.

1.3 Construction Requirements. All staging for the Work 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 the Outparcel unless otherwise approved in writing by the Owner of the Supermarket Parcel.

2. EASEMENTS.

2.1 New Access Easement. The Owner of the Supermarket Parcel hereby grants to, for the benefit of, the Owner of the Outparcel, and its heirs, successors and assigns (including the tenants, and their agents, employees, guests and business invitees) a non-exclusive vehicular access easement (but not for parking) over and across that portion of Supermarket Parcel shown as "**New Access Easement**" on the attached **Exhibit A**. The New Access Easement shall be granted for the term of this Declaration and shall be subject to the rights of the Owner of the Supermarket Parcel (including its, employees, tenants, customers and invitees) to use and maintain the New Access Easement in any manner it so desires, so long as it does not materially block or interfere with the vehicular access to the Outparcel (provided that the temporary closure of the New Access Easement area may be required for reasonable maintenance and/or repair provided that written notice is provided to both parties at least 10 business days prior to the temporary closure and that the parties diligently complete the reasonable maintenance and/or repair in a timely manner so as to avoid any closures that may take place for the building located upon the Outparcel). The right for the Owner of the Outparcel, or its employees, customers, invitees or otherwise, to park on the Supermarket Parcel, is not granted under this Declaration.

2.2 Maintenance Easement. The Owner of the Outparcel and the Owner of the Supermarket Parcel mutually grant to each other, 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 mutual benefit of the Owner of the Outparcel and the Owner of the Supermarket Parcel, a nonexclusive perpetual easement over and across that portion of the New Easement Area located on the grantors'

Parcel for the purpose of protecting the New Easement Area and operating or performing any maintenance, repairs, resurfacing or replacements pursuant to this Declaration.

2.3 Maintenance of Trash Enclosure. The Owner of the Outparcel and the Owner of the Supermarket Parcel mutually agree that the Owner of the Outparcel shall be responsible for any repairs to the asphalt located on the Supermarket Parcel as a result of damage caused upon the Supermarket Parcel from the use of the Trash Enclosure located on the Outparcel as shown on Exhibit A. In the event that the Owner of the Supermarket Parcel determines that such repairs are necessary or desirable, it shall make written demand upon the Owner of the Outparcel to submit plans and specifications to the Owner of the Supermarket Parcel for approval, and upon such approval, the Owner of the Outparcel shall expeditiously perform such repairs. All such repairs shall be completed by and at the sole cost and expense of the Owner of the Outparcel within thirty (30) days of plan approval by the Owner of the Supermarket Parcel. Under no circumstance shall any liens for labor or materials be recorded or levied against the Supermarket Parcel for such repairs by the Owner of the Outparcel. If the Owner of the Outparcel fails to repair the asphalt as required hereunder in Section 2.3, the Owner of the Supermarket Parcel, may complete all or a portion of such asphalt repair work as is necessary, in which event the Owner of the Outparcel shall pay to the Owner of the Supermarket Parcel, all sums expended by Owner of the Supermarket Parcel to complete such work, plus interest thereon (at 1.5% per month, 18% per annum) commencing from the date that the Owner of the Supermarket Parcel incurs such expense until repayment ("Self-Help Remedy"). Reimbursement of the costs of such asphalt repair work shall be paid by the Owner of the Outparcel within thirty (30) days after the Owner of the Supermarket Parcel has provided the other Owner of the Outparcel with reasonable evidence of the amounts incurred in connection with such work. In the event, that the Owner of the Outparcel fails to reimburse the Owner of the Supermarket Parcel within the 30 day period, the Owner of the Supermarket Parcel may also file a lien against the Outparcel until such reimbursement (plus accrued interest) is paid in full.

3. RESTRICTIONS.

3.1 Grocery and Drug Restrictions. The Outparcel shall not be used or occupied (a) as a supermarket (which shall be defined as any store or department containing more than 500 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption), drug store, or any combination thereof; (b) as a bakery or delicatessen; (c) for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; (d) for the sale of alcoholic beverages for off-premises consumption; (e) as a cigarette or smoke shop or any other store the primary business of which is to sell tobacco products and/or accessories; (f) for the sale or offer for sale of any pharmaceutical products requiring dispensation through a pharmacy or the services of a registered or licensed pharmacist. The aforesaid restrictions shall not be deemed to prohibit (i) the operation of a convenience store selling non-perishable foods and alcoholic beverages for off-premises consumption, so long as such convenience store is operated in connection with the operation of a retail fuel facility, does not operate a bakery or deli, or sell fresh or frozen meats, fish, poultry or produce, and does not derive more than 25% of their gross sales from the sale of alcoholic beverages or (ii) the operation of a free standing "fast food" restaurant, such as, but not limited to, Chipotle Mexican Grill, Wendy's, Dutch Bros. coffee, McDonald's, Raising Canes, Burger King, Carl's Jr., or Subway Sandwiches with drive-thru. Any drive-thru located on the Outparcel shall be architecturally and aesthetically compatible with the remainder of the shopping center and (ii) the improvements and drive-thru do not impair or obstruct the orderly flow of vehicular

traffic through the Supermarket Parcel, provided however the Site Plan for the Outparcel (attached as Exhibit ____) is hereby approved as meeting the requirements contained in Section 3.1 hereinabove).

3.2 Special Use Restrictions. No part of the Outparcel shall be used as a bar, tavern, cocktail lounge; adult book or adult video store; hotel or motel; warehouse; animal kennel; for parking of mobile homes, RVs or trailers or as a mobile home or RV park or trailer court; 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 or manufacturing purposes; for any bankruptcy sales or going out of business sales; as a dollar store (which shall be defined as any store primarily devoted to the deep discount retail sale of general merchandise and/or food for off-premises consumption including, without limitation, single price point retailers such as All-a-Dollar, 99 Cents Only, Family dollar, Greenbacks, Dollar General and Big Lots); and for any use which creates a nuisance or materially increases fire, explosion or radioactive hazards on any Parcel. The aforesaid restrictions shall not be deemed to prohibit the sale of beer and wine from a Chipotle restaurant (or other restaurant user) upon the Outparcel. It is expressly understood that a Chipotle restaurant does not create a nuisance, as described within Section 3.2 herein.

4. NO RIGHTS IN PUBLIC/THIRD PARTY BENEFICIARIES. Nothing contained in this Declaration shall be construed as creating any rights in the general public or as dedicating for public use any portion of the New Access Easement, the Supermarket Parcel or the Outparcel. This Declaration is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto (provided however, the tenants and subtenants of the Supermarket Parcel and Outparcel may rely upon this Declaration).

5. REMEDIES. In the event of a breach of any of the terms or provisions of this Declaration, and subject to the terms herein, the non-defaulting party shall be entitled to exercise any and all available remedies at law or in equity for full and adequate relief from such breach, which remedies shall be cumulative. In the event of any violation or threatened violation by any person of any of the provisions of this Declaration, any or all of the parties shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration nor provide by law or equity. Except as expressly provided herein for defaults of the Owner of the Outparcel or Owner of the Supermarket Parcel in no event shall any default or breach under this Declaration entitle the Owner of the Outparcel or Owner of the Supermarket Parcel to seek or to enforce the cancellation, rescission, or termination in whole or in part of this Declaration or of any of the easements or use restrictions herein granted. Upon default under this Declaration by the Owner of the Outparcel, the Owner of the Supermarket Parcel, following thirty (30) days written notice of such default, may, in its sole discretion, pursue the "Self-Help Remedy" articulated in Section 2.3 hereinabove, and/or other remedies at law or equity.

6. TERM. The easements, covenants, conditions, and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the County Recorder where the Parcels are located and shall remain in full force and effect for a period of sixty-five (65) years from and after said date of recordation (the "**Primary Term**"), and the easements granted in this Declaration shall continue in perpetuity, unless this Declaration is modified, amended, canceled, or terminated by the written consent of all then record Owners of the Supermarket Parcel and the Outparcel in accordance with Section 7.3 of this Declaration. Notwithstanding the foregoing, upon the expiration of the Primary Term, the term of 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 expiration of the Primary Period or Extension Period then in effect, any party delivers to the other parties written notice of termination, in which event, the Declaration shall automatically expire at the end of the Primary Term or Extension Period then in effect.

7. MISCELLANEOUS.

7.1 Notices. Any notice to be given by any party under this Declaration shall be given in writing and delivered in person, or by reputable nationwide overnight courier (e.g., Federal Express), or forwarded by certified or registered mail, postage prepaid, return receipt requested, at the address indicated below, unless the party giving such notice has been notified, in writing, of a change of address:

Supermarket Parcel Owner: United Supermarkets, L.L.C.
250 Parkcenter Blvd.
Boise, Idaho 83706
Attn: Legal Department (#904)

Outparcel Owner: Red Shamrock 12, LLC
8220 San Pedro NE Suite 500
Albuquerque NM 87113
Tel: 505 998 9094
Attn: Josh Skarsgard

Any such notice shall be deemed effective on the date on which such notice is delivered, if notice is given by personal delivery or overnight courier, or if notice is sent through the United States mail, on the date of actual delivery as shown by the addressee's receipt or upon the expiration of three (3) days following the date of mailing, whichever first occurs.

7.2 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation contained in this Declaration, the prevailing party shall be entitled to recovery from the unsuccessful party its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

7.3 Amendment. The parties agree that this Declaration may be terminated, modified, or amended only by the written consent of all record Owners of the Supermarket Parcel and the Outparcel. Any such termination, modification, or amendment of this Declaration shall be evidenced by a document that has been fully executed and acknowledged by all such Owners and recorded in the official records of the County Recorder of the County in which the Parcels are located.

7.4 Consents. Wherever in this Declaration the consent or approval of a party is required, unless otherwise expressly provided in this Declaration, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the Section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The failure of a party to give such consent or approval, or specific grounds for disapproval, within thirty (30) days following the date such notice is effective in accordance with Section 7.1 of this Declaration shall be deemed to constitute such party's consent or approval to the matter which is the subject of such request.

7.5 No Waiver. No waiver of any default of any obligation by any party to this Declaration shall be implied from any omission by the other party to take any action with respect to such default.

7.6 No Agency. Nothing in this Declaration shall be deemed or construed by any third party or by any third person to create the relationship of principal or agent or of limited or general partners or of joint venturers or of any other association between the Owner of the Supermarket Parcel and the Owner of the Outparcel.

7.7 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth in this Declaration, shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold, or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives. However, no easement, covenant, condition, restriction, or other right or benefit accruing under this Declaration in favor of any Parcel shall be assignable, transferable, or otherwise delegable to or for the benefit of neighboring real property that is not a Parcel hereunder (for example, the Owner of the Supermarket Parcel shall have no right to assign the easement for vehicular access over the New Easement Area of the Outparcel arising under this Declaration in favor of other real property in the vicinity of Parcels).

7.8 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent Owner of such Parcel, shall accept such deed or contract upon the subject to each and all of the easements, covenants, conditions, restrictions, and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent and agree to and with all other parties, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee, whereupon the grantor of such property shall be released from such obligations and agreement thereafter arising in respect of such property.

7.9 Severability. Each provision of this Declaration and the application thereof to the Supermarket Parcel and the Outparcel are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained in this Declaration shall be held to be invalid or to be unenforceable or not to run with the land, such holding, shall not affect the validity or enforceability of the remainder of this Declaration. In the event of the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

7.10 Time of Essence. Time is of the essence of this Declaration.

7.11 Entire Agreement. This Declaration contains the complete understanding and agreement of the parties with respect to all matters referred to in this Declaration, and all prior representations, negotiations, and understandings are superseded by this Declaration.

7.12 Estoppel Certificate. Each party, upon the written request of another party, shall execute, acknowledge, and deliver, without charge and within thirty (30) days following such request, an estoppel certificate certifying that this Declaration is in full force and effect, that no

party is in default under this Declaration (or stating such default(s), if any are claimed) and setting forth such other information as may reasonably be requested and is true and correct.

7.13 Subordinate Declarations. Nothing contained in this Declaration shall be deemed to prohibit the recording by a party of additional easements, covenants, conditions, or restrictions applicable to such party's Parcel only, so long as the same are subordinate to this Declaration and not in conflict with this Declaration. This Declaration shall be subject to any recorded agreement which affects the Supermarket Parcel or the Outparcel, respectively (collectively, the "**Recorded Documents**"). To the extent of any inconsistency between the provision of this Declaration and any Recorded Documents, the more restrictive provision shall apply.

7.14 Governing Law and Jurisdiction. The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Declaration. The parties irrevocably consent to jurisdiction and venue in the State in which the Parcels are located and agree not to attempt to remove or transfer any action properly commenced in the State in which the Parcels are located.

7.15 Consideration. Owner of Outparcel shall pay the Owner of the Supermarket Parcel the sum of fifty thousand dollars (\$50,000), which sum shall be paid to the Owner of the Supermarket at such time the Declaration is delivered to the Owner of the Supermarket Parcel for execution and prior to delivery to the Owner of the Outparcel and recording, as consideration for the rights, easements and obligations provided herein. Additionally, the Owner of the Outparcel shall reimburse the Owner of the Supermarket Parcel for all legal fees reasonably incurred in the review of this Declaration and acknowledges that legal counsel for the Owner of the Supermarket does not represent the Owner of the Outparcel.

7.16 Legal Description of the Easement Area. The Owner of Outparcel shall pay for the engineer or surveyor to provide a legal description of the Easement Area attached herein as **Schedule III**.

[Signatures located on the following pages]

Does Shamrock have a lender ?

CONSENT AND SUBORDINATION

_____, ("Lender"), as the beneficiary under that certain Deed of Trust, recorded _____, as Instrument No. _____, in the official records of Bernalillo County, New Mexico (the "Mortgage"). Lender hereby consents to and approves this Declaration of Easements, Covenants, Conditions and Restrictions ("**Declaration**") to which this Consent and Subordination is attached and hereby acknowledges and agrees that the Mortgage and any other security instruments securing Lender's loan on the property encumbered by this Declaration shall be subordinate to, and subject to, the terms and conditions of this Declaration.

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, that he executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said trust, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

Notary Public in and for the
State of _____
Residing at _____

EXHIBIT A

Site plan

Call outs:

Supermarket Parcel

Outparcel

New Access Easement

Trash Enclosure

Easement Area

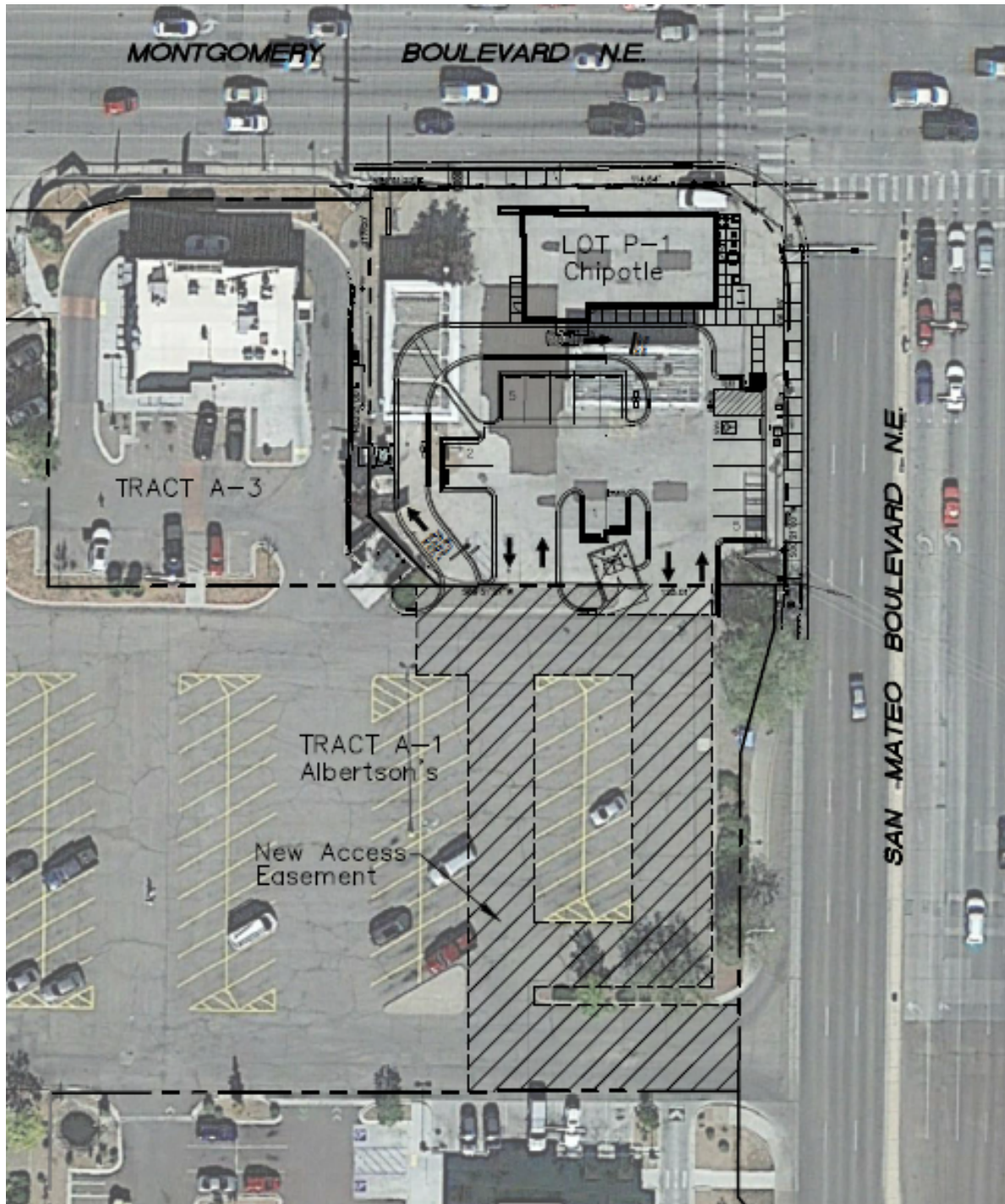


EXHIBIT 'A'

Schedule I

Legal Description of the Supermarket Parcel

Tracts A-1 and A-4, Block A, Vista Grande Addition, Unit One, Albuquerque, New Mexico, as the same are shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 12, 1989, in Plat Book C40, page 14:

LESS AND EXCEPTING the following tract of land:

A certain tract of land situate in the Northeast 1/4 of Section 2, T 10N, R 3 E, N.M.P.M., Bernalillo County, New Mexico, being a portion of Tract A of Vista Grande Addition, Unit One as the same is shown and designated on the plat filed in the office of the County Clerk of Bernalillo County, New Mexico on November 30, 1977 and being more particularly described as follows:

BEGINNING at the southwest corner of the tract herein described, whence the southwest corner of said Tract A, bears S. 56 deg. 34' 30" W., 439.36 feet, and from said beginning point running thence;

N. 00 deg. 18' 55" W., 60.00 feet to the northwest corner of the tract herein described; thence, N. 89 deg. 41' 05" E., 166.67 feet to the northeast corner of the tract herein described; thence, S. 00 deg. 18' 55" E., 60.00 feet to the southeast corner of the tract herein described; thence, S. 89 deg. 51' 05" W., 166.67 feet to the point and place of beginning.

Together with the rights set forth in that certain Declaration of Restrictions and Grant of Easements recorded in Book Misc. 573, page 575, as Document No. 7774436 and Book Misc. 742, page 840, as Document No. 7996157 and that certain Shared Parking Agreement recorded in Book A99, page 774 as document number 2005-091053, records of Bernalillo County, New Mexico, subject to all the terms and conditions therein.

Schedule II

Legal Description of the Outparcel

Lot lettered "P-1" in Block "A" VISTA GRANDE ADDITION, to the City of Albuquerque, New Mexico, situated in Section 2, T. 10 N., R. 3 E., N.M.P.M., Bernalillo County, New Mexico, as the same is shown and designated on said plat filed in the office of the County Clerk of Bernalillo County, New Mexico on January 21, 1986, in Map Book C-35, page 140.

[Please provide vesting deed and a copy of the plat or survey of the property]

Schedule III

Legal Description and drawing of the Easement Area

[Need to provide prior to document execution for review.]

EXHIBIT C

