

ORT 1604663 KTW

DECLARATION OF EASEMENTS, COVENANTS & RESTRICTIONS

"COORS PAVILION"
Albuquerque, New Mexico (Bernalillo County)
Coors Blvd & St. Joseph's

THIS DECLARATION OF EASEMENTS, COVENANTS and RESTRICTIONS (hereinafter, this "**Declaration**") is made as of the ____ day of December, 2016 ("**Effective Date**"), by **RED SHAMROCK INVESTMENTS, LLC**, a New Mexico limited liability company; **RED SHAMROCK 10, LLC**, a New Mexico limited liability company; and **RETAIL EQUITY DEVELOPMENT 6, LLC**, a New Mexico limited liability company (collectively hereinafter "**Declarant**").

RECITALS

- A. WHEREAS, Declarant is the owner in fee simple of that certain real property containing a total of approximately 21 acres, more or less, situated in the City of Albuquerque, in Bernalillo County, New Mexico and more particularly described on Exhibit A hereto (referred to hereinafter collectively as the "**Shopping Center**"), which Shopping Center is currently evidenced by the Existing Plat (as hereinafter defined); and
- B. WHEREAS, after the Effective Date of this Declaration, the Declarant desires to perform a subdivision platting action with respect to the Shopping Center to create a development to be entitled "**Coors Pavilion**" comprised of nine (9) separately platted parcels (each such Lot hereinafter may be referred to as a "**Lot**" or "**Lot 1**" through "**Lot 9**" respectively) and a copy of the "**Proposed Plat**" that Declarant intends to obtain approval for and record is attached hereto as Exhibit B (which Proposed Plat may change after the Effective Date hereof in order to obtain final approval thereof); and
- C. WHEREAS, the Declarant desires for Lot 1 to contain approximately 1.06 acres, more or less; Lot 2 to contain approximately 0.77 acres, more or less; Lot 3 to contain approximately 0.94 acres, more or less; Lot 4 to contain 1.12 acres, more or less; Lot 5, to contain approximately 0.707 acres, more or less; Lot 6, to contain approximately 1.108 acres, more or less; Lot 7, to contain approximately 1.35 acres, more or less; Lot 8, to contain approximately 7.17 acres more or less; and Lot 9, to contain approximately 7.01 acres, more or less; as shown on the draft site plan attached hereto as Exhibit C (hereinafter the "**Proposed Site Plan**"). It is understood that Declarant may change these proposed acreages and the Proposed Site Plan during the platting application to the City of Albuquerque and prior to recordation of the final plat; and
- D. WHEREAS, the Declarant desires to establish and impose certain restrictions, conditions, covenants and easements upon the Shopping Center pursuant to the recordation of this Declaration.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Declarant covenants as follows

TERMS

I. INCORPORATION. RECITALS A through D, and Exhibits A through F-2 attached hereto, are incorporated herein and made a part hereof.

II. DEFINITIONS. The following terms shall have the meanings specified below.

A. Access Driveway. The term "**Access Driveway**" shall mean the private vehicular access driveways as depicted and shown on the Proposed Site Plan attached as Exhibit C to this Declaration.

B. Access Improvements. The term "**Access Improvements**" shall mean the private roadway improvements, including any necessary public and private utilities to be constructed within and for the Access Driveway, as approved by the City (as hereinafter defined) and/or the County (as hereinafter defined), as applicable, in conjunction with the approval of the Proposed Plat, Proposed Site Plan, and Grading, Drainage and Utility Plans, as applicable.

C. County and City. The term "**County**" shall mean Bernalillo County, New Mexico. The term "**City**" shall mean the City of Albuquerque, a municipal corporation of the State of New Mexico.

D. Storm Water Pond. The term "**Storm Water Pond**" shall mean the shared water detention and/or retention area as proposed within Lot 9 as depicted and shown on the Proposed Site Plan. Provided however, in the event that the Declarant and the City of Albuquerque cooperate in the installation of a storm water pipe to be located across the west boundary of the Declarant Property then the Storm Water Pond may be rescinded and not constructed.

E. Grading, Drainage and Utility Plans. "**Grading, Drainage and Utility Plans**" shall mean the subdivision grading, drainage, and utility plans attached hereto as Exhibit D as same may be amended and as approved by the City, County and/or other governmental authority or agency as may be necessary to comply with applicable Governmental Requirements (including, without limitation, in conjunction with the approval of the Proposed Plat). The "**Grading, Drainage and Utility Improvements**" shall mean those Improvements (as hereinafter defined) constructed and installed in accordance with the Grading, Drainage and Utility Plans.

F. Governmental Requirements. "**Governmental Requirements**" shall mean all applicable laws, rules, regulations, codes, and ordinances, and all directives and orders of any governmental agency with jurisdiction over the Declarant Property (including the City and the County), as amended.

G. Common Use Area. The term "**Common Use Area**" means all those portions of the Development which shall be designated and improved for common use, including, without limitation: (i) the Access Driveway, (ii) the Access Improvements, (iii) the Monument Sign(s) (as hereinafter defined), (iv) the Storm Water Pond (or in the alternative, the City of Albuquerque storm water pipe proposed along the west boundary of the Declarant Property), and (v) the parking areas, sidewalks, landscaped areas and drive lanes, as the same exist or may exist,

from time to time, on each Lot.

H. Owner. The term "**Owner**", "**Owners**" or "**Lot Owner**" means the one or more Persons who or which own fee simple title to any of the Lots, and their respective assigns, grantees and successors in interest provided, however, so long as an entire Lot is leased to a single Occupant, such Occupant may, at the request of such Occupant or if designated as such by the Owner of such Lot, be appointed the entity to act as the Owner of such Lot and shall be responsible for the performance of the obligations, duties and payments that the Owner of said Lot would otherwise have hereunder. If two or more Persons are Owners as co-tenants of a single Lot, they shall be considered to constitute a single "Owner".

I. Improvements. The term "**Improvements**" shall include, without limitation, Buildings (as defined hereinbelow), roads, driveways, curb cuts, parking areas, fences, retaining walls, signs, utility or communication installations (whether above or underground), and any structure and excavation of any type or kind.

J. Lot. The term "**Lot**" and "**Lots**" shall mean the singular and plural, as applicable, of either Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8 or Lot 9.

K. Existing Plat. The term "**Existing Plat**" means that certain plat identified in Exhibit A.

L. Proportionate Share. "**Proportionate Share(s)**" means each Owner's proportionate share(s) of the Shopping Center with the numerator being the area of the Owner's Lot(s) and the denominator being the area of the Shopping Center.

M. Development. The term "**Development**" shall mean the development consisting of or to consist of Lot 1 through Lot 9 and the Improvements constructed or to be constructed thereon.

N. Monument Sign. See Article V(A) below.

O. Building. The term "**Building**" shall mean any enclosed structure placed, constructed or located within the Development, which for the purpose of this Declaration shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

P. Occupant. The term "**Occupant**" shall mean any Person from time to time entitled to the use and occupancy of any portion of the Shopping Center under an ownership right or any lease, sublease, license, concession or other similar agreement.

Q. Person. The term "**Person**" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.

III. PARCEL SUBDIVISION OR RECONFIGURATION AND IMPROVEMENTS;
MODIFICATION OF SITE PLAN.

Each Owner shall have the right to subdivide, reconfigure, and improve its Lot (including the Common Use Area), provided that: (i) the Access Improvements, and vehicular traffic flow are not adversely and materially affected in any manner; (ii) all Governmental Requirements with respect to parking are met on each Lot for that Owner's property; (iii) all other Governmental Requirements are complied with by the Owner; and (iv) the subdivision, reconfiguration, or Improvements (including but not limited to the height, size, location and use of Buildings) do not conflict with or violate any provision of this Declaration.

IV. USE OF PROPERTY and RESTRICTIONS ON USE OF PROPERTY.

A. Restrictions on Use of Property. The following uses shall not be permitted within the Development:

- (1) Any shooting range for guns and rifles.
- (2) Any sporting event auditorium;
- (3) An operation primarily used for an asphalt batching plant, bottling plant, foundry plant, ice plant, gravel removal activities, stone processing facilities, animal raising, poultry or rabbit live storage, killing or dressing, for the auction of livestock, concrete or cement products manufacturing, or sheet metal working;
- (4) Any mobile home park, trailer court, labor camp, junkyard, automotive dismantling yard or stockyard; provided, however, this prohibition shall not be applicable to the commercially reasonable and temporary use of construction trailers during periods of construction, reconstruction or maintenance;
- (5) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building located on the Property;
- (6) Any adult type book or video store or other establishment selling, displaying or exhibiting pornographic materials, nude or lewd acts, or providing adult type entertainment; provided, however, that this provision does not apply to traditional booksellers, such as Barnes & Noble, for example;
- (7) Any tattoo or body piercing parlor;
- (8) A flea market;
- (9) Any establishment selling or exhibiting drug related paraphernalia or which exhibits either live or by other means to any degree, nude dancers or wait staff;

B. Exclusive Uses. For so long as the tenants (or their successors, assigns or any subtenants thereof) set forth in Exhibit F are occupants or Owner of any Lot within the Shopping Center, no Owner (nor any occupant or licensee thereof) of any other Lot (or portion thereof) within the Shopping Center shall operate (or otherwise allow to operate) in the Shopping Center nor enter into any lease, license agreement or other similar agreement nor permit any premises in the Shopping Center (other than the subject Lot) nor otherwise transfer or allow a possessory interest in any Lot within the Shopping Center (or portion thereof) to be used for the respective exclusive uses set forth in Exhibit F.

V. MONUMENT SIGNS and BUILDING SIGNAGE. All signage at the Property shall be in accordance with all applicable Governmental Requirements.

A. Monument Sign. Declarant shall construct and erect one (1) multi-tenant monument sign at a location within Lot 6 as shown on the Proposed Site Plan ("**Monument Sign**"). If the City of Albuquerque approves and/or allows the Declarant to construct an additional multi-tenant monument sign on Lot 4 and Lot 7 then the Declarant shall construct and erect one (1) additional multi-tenant monument sign at a location within Lot 4 and Lot 7 (collectively "**Two Additional Monument Signs**").

B. Monument Sign Maintenance. The Monument Sign (and "Two Additional Monument Signs" if approved and/or allowed by the City) shall be maintained as set forth in Paragraph X(A)(2) below. The Owner of Lot 6 (and Lot 4 and Lot 7, if approved by City) hereby grants to the Owners and Occupants of the other Lots within the Shopping Center, and their respective employees, agents, representatives, contractors, licensees, invitees, successors and assigns, for the benefit of such Lots, respectively, a perpetual, non-exclusive and continuous easement on, over and across that portion of Lot 6 (and Lot 4 and Lot 7, if approved by the City) to install and maintain the respective sign panels attributable to the other Lots within the Shopping Center on the Monument Sign (and "Two Additional Monument Signs" if approved by the City) as provided in this Declaration (the "**Sign Easement**"). This Sign Easement is granted and may be used for the purposes of ingress to and egress from Lot 6 (and Lot 4 and Lot 7, if approved by the City) to the extent necessary to install, maintain, repair and/or replace the respective sign panels attributable to Each Lot within the Shopping Center.

C. Building Signage. Each Owner or Occupant shall be allowed to construct building signage in a first class manner and condition customary for comparable developments in the City and the greater Albuquerque, New Mexico area, provided that such signage shall comply with the Governmental Restrictions from the City and County.

VI. ACCESS DRIVEWAY

A. Access Driveway. The Access Driveway shall, pursuant to the easement set forth in Subparagraph C below, be used primarily for vehicular access, circulation, pedestrian traffic and the comfort and convenience of the Owners and their Occupants, customers, invitees, licensees, concessionaires and agents, and for service to and supply of the businesses operating on the Shopping Center. No barricade or other structure may be placed, erected or constructed within the Access Driveway except as shown on the Proposed Site Plan or as otherwise unanimously

approved in writing by the Owners or as may be required in order to comply with any applicable Governmental Requirements. Except as may be reasonably necessary in connection with the construction of the Improvements located or to be located on the Lots, from time to time, no barricade or other structure may be placed, erected or constructed within the drives located on any Lot, except as shown on the Proposed Site Plan or as otherwise unanimously approved in writing by the Owners or as may be required in order to comply with any applicable Governmental Requirements. Notwithstanding the foregoing, no barricade or other structure placed in the Access Driveway during construction on a Lot (or the Lots) may unreasonably interfere with the other Owner's construction and operation of its business on its Lot, as applicable.

B. Construction of Access Improvements and Other Improvements. Declarant shall, at its sole cost and expense, design and construct the Access Improvements and Storm Water Pond shown on the Proposed Site Plan, which Access Improvements and Storm Water Pond shall be constructed in compliance with all applicable Governmental Requirements. Provided however, in the event that the Declarant and the City of Albuquerque cooperate in the installation of a storm water pipe upon the west boundary of the Declarant Property then the Declarant shall NOT construct the Storm Water Pond. The Declarant shall, at its sole cost and expense, construct (or, if responsibility for construction has been allocated to a particular Occupant or Tenant under the terms of the lease between Declarant and such Occupant or Tenant, cause the applicable Occupant or Tenant to construct) the Buildings, drives, curbing, curb cuts, sidewalks, parking lots and other Improvements to be located on their respective Lots and as shown on the Proposed Site Plan in compliance with all applicable Governmental Requirements, and as set forth in their respective leases. It is understood by the Declarant (and each successive Owner of any Lot) that the Proposed Site Plan is only an educated guess as to how the Buildings may be constructed upon the Declarant Property and is subject to change as the project further develops and based upon review from the City of Albuquerque.

C. Grant of Ingress and Egress Easement - Access Driveway. Declarant (and each successive Owner of any Lot) does hereby declare, for the benefit of the other Owners and its Occupants, assigns, employees, agents, customers, guests, contractors, concessionaires, representatives, licensees and invitees, a perpetual non-exclusive and reciprocal easement and right-of-way for pedestrian and vehicular access, ingress and egress on, across and over the Access Driveway and Access Improvements, as same exist, or may exist, from time to time on any such Lot. Each Owner agrees not to obstruct or interfere with the free flow of pedestrian and vehicular traffic pursuant to the foregoing easements except for necessary and reasonable repair, maintenance, and improvement, and traffic regulation and control in compliance with Governmental Requirements and this Declaration. Each Owner agrees to maintain the Access Driveway and Access Improvements as it is located on its Lot.

D. Temporary Construction Easement. Declarant (and each successive Owner of any Lot), hereby grants, conveys and confirms unto the other Owners, and its employees, agents, contractors and licensees, a construction easement (the "**Construction Easement**") in, upon, under and across each Lot for (i) the construction of the Access Improvements pursuant to Paragraph VI(B) above, (ii) the construction of certain public and private utilities in the Shopping Center, (iii) the construction of the Grading, Drainage, and Utilities pursuant to Paragraph VIII(A) below, and (iv) any other related construction, grading, patching, and other work pursuant to this

Declaration. The Construction Easement shall automatically expire and be null and void upon the completion the work contemplated by the immediately preceding sentence. Prior to the use of any of the foregoing easements upon, under or across a Lot with completed Improvements, the benefited party shall notify the burdened Lot Owner and such parties shall meet and confer and develop a schedule reasonably acceptable to the burdened Lot Owner to minimize the interference to such Lot Owner's business operations as may be caused by such construction.

VII. PUBLIC AND PRIVATE UTILITIES. Declarant shall, at its sole cost and expense, construct (or, if responsibility for construction has been allocated to a particular Occupant under the terms of the lease between Declarant and such Occupant, cause the applicable Occupant to construct) the private and public utilities on their respective Lots in compliance with the Proposed Site Plan and Grading, Drainage and Utility Plans, as applicable, which Improvements shall be constructed in compliance with all Governmental Requirements and as set forth in their respective leases.

VIII. GRADING, DRAINAGE AND UTILITIES

A. Construction of Grading and Drainage. Declarant shall, at its sole cost and expense, construct (or, if responsibility for construction has been allocated to a particular Occupant under the terms of the lease between Declarant and such Occupant, cause the applicable Occupant to construct) the Grading, Drainage, and Utility Improvements on the respective Lots in compliance with the Grading, Drainage and Utility Plans, which Improvements shall be constructed in compliance with all Governmental Requirements and in accordance with their respective leases as the case may be.

B. Grant of Storm Drainage Easement. Declarant (and each successive Owner of any Lot) does hereby declare, for the benefit of the other Lot(s) in the Shopping Center and the Owner(s) of said Lot(s) and its or their respective successors in interest, Occupants, employees, agents, customers, licensees and invitees and for the benefit of the Lot(s) owned by each such grantee, a non-exclusive easement appurtenant to each Lot owned by each grantee for the transmission and flow of storm water drainage upon, over and across all Lots to reach the Storm Water Pond (or in the alternative, the City of Albuquerque storm water pipe proposed to be installed along the west boundary of the Declarant Property) in accordance with and as shown on the Grading, Drainage and Utility Plans (as may be amended) and/or on the Proposed Plat (as may be amended) (as applicable, the "**Drainage Easement**"). This may be referred to as the "**Drainage Easement**" or the "**Cross Lot Drainage Easement**". The Declarant acknowledges that the purpose of the Drainage Easement(s) is to effectuate the Grading, Drainage and Utility Plans. Upon the construction of Improvements on any Lot, the Drainage Easement shall automatically terminate and be released for that portion of such Lot upon which the Improvements are constructed, to the extent necessary due to such Improvements' displacement of drainage waters; provided, however, in order to effect such termination and release, the Owner of such Lot must procure an amendment to the approved Grading, Drainage and Utility Plans, if necessary, to accommodate the flow of drainage waters displaced by such building. The Owners agree to execute documents and take actions reasonably necessary to release such Owner's interest in the Drainage Easement so that neither easement interferes with the use of the Property, or any building or other Improvement constructed on or to be constructed on the Property.

C. Grading and Drainage. Each Owner (or, if responsibility has been allocated pursuant to the terms of a lease between Declarant and its Occupant, its respective Occupant) shall maintain its Lot, and any Improvements constructed thereon, including maintenance of the grade of the Lot and any permanent or temporary drainage Improvements constructed thereon in such a manner as to comply with the Grading, Drainage and Utility Plans (as may be amended). Each Owner shall indemnify and hold the other Owners (or respective Occupants) harmless from loss, claims, damages or liabilities resulting from the indemnifying Owner's (or applicable Occupant's) failure to maintain its Lot in conformity with the Grading, Drainage and Utility Plans (as may be amended); provided, however, in no event shall any Owner be liable for any loss, claim, damage, or liability resulting from the other Owner's gross negligence or willful misconduct.

IX. PARKING

A. Parking Requirements. Each Owner shall independently satisfy any applicable Governmental Requirements with respect to parking on such Owner's Lot. Prior to commencing construction of Improvements, each Lot Owner shall ensure that such Owner's construction and site plans provide its respective separately platted Lot sufficient parking spaces (including handicap) to accommodate the applicable Governmental Requirements for such Owner's intended use.

B. Grant of Private Non-Exclusive Cross Parking Easement. Declarant (and each successive Owner of any Lot) does hereby declare, for the benefit of the other Lot(s) in the Shopping Center and the Owner(s) of said Lot(s) and their respective successors in interest, Occupants, employees, agents, customers, licensees and invitees and for the benefit of the Lot(s) owned by each such grantee, a perpetual non-exclusive and reciprocal easement for parking on and over the parking areas, as the same exist or may exist, from time to time, on Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9. In accordance with Article X below, each Owner shall be responsible for (with no contribution from the adjacent Lot Owner, except as expressly set forth in this Declaration) (i) the cleaning, maintenance, snow removal and repair of the individual parking stalls or parking lot located on such Owner's Lot, and (ii) ensuring adequate parking lot lighting for the individual parking stalls or parking lot located on such Owner's Lot.

X. MAINTENANCE OF COMMON USE AREA.

A. Maintenance.

(1) Except as provided below with respect to the Monument Sign (and Additional Monument Signs, if approved by City) or as otherwise expressly provided in this Declaration, each Owner shall maintain and repair, at such Owner's sole cost and expense, such Owner's Lot, including the portions of the Common Use Area, located on such Owner's Lot(s).

(2) The Owner of the Lot upon which the Monument Sign (and Additional Monument Signs, if approved by City) is located (referred to herein as the "**Burdened Owner**") shall maintain and repair the Monument Sign and the Burdened Owner's Sign Panel in a timely manner and keep same in a first class manner and condition customary for comparable

developments in the City and the greater Albuquerque, New Mexico area; provided, however, the other Owners who have sign panels on a Monument Sign shall install, maintain and repair their respective sign panels in a timely manner (including lamp replacement) and keep same in a first class manner and condition customary for comparable developments in the City and the greater Albuquerque, New Mexico area (and such Owners and Occupants shall have an easement from the Burdened Owner to the extent reasonably necessary for such installation, maintenance and repair; provided, however, such Owner's installation, maintenance and repair of its sign panel shall not materially adversely affect the other sign panels on such Monument Sign (and Additional Monument Signs, if approved by City), the Monument Sign (and Additional Monument Signs, if approved by City) itself or the utilities serving such Monument Sign, or any ingress, egress, parking, or other rights granted to the Owners under this Declaration. No Owner shall perform (or cause to be performed) installation, work, maintenance or other repair with respect to its sign panel on a Monument Sign on another Owner's Lot until such Owner has (i) delivered written notice to the Owner of the Lot on which the Monument Sign (and Additional Monument Signs, if approved by City) is located (or the applicable Occupant of such Lot), of its intent to perform (or cause to be performed) such installation, work, maintenance or other repair, (ii) provided insurance evidence requested by and reasonably satisfactory to the Owner of the Lot on which the Monument Sign (and Additional Monument Signs, if approved by City) is located, in connection with such work, (iii) delivered to the Owner of the Lot on which the Monument Sign is located, plans and specifications approved by the applicable governmental authority, if applicable, as to such installation, maintenance, repair, reconstruction and/or replacement, and (iv) received the written approval of such anticipated work from the Owner of the Lot on which the Monument Sign is located. All maintenance, repair, reconstruction and/or replacement by any Owner shall be performed in a good and workmanlike, prompt and diligent manner and so as to minimize to the extent commercially reasonable any interference with the business operations of the Owner of the Lot on which the Monument Sign is located.

(a) A portion of the sums reasonably expended by the Burdened Owner for maintenance and repair of the Monument Sign (and Additional Monument Signs, if approved by City) on its Lot (i.e., all costs associated with the operation, maintenance, management, repair and replacement of the Monument Sign (except for the costs attributable to the supply, installation, repair, and maintenance and replacements of the Burdened Owner's sign panel) including, without limitation: (i) costs of any utilities consumed by the Monument Sign; (ii) taxes attributable to the Monument Sign; (iii) costs of repair to, and maintenance and replacements of, the Monument Sign; and (iv) costs of insurance premiums incurred for all insurance carried by the Burdened Owner, in its sole but reasonable discretion, in respect of the Monument Sign), shall be payable by the other Owners maintaining sign panels on such Monument Sign according to the relative area such Owner's sign panel occupies on such Monument Sign. Reimbursement of said costs to the Burdened Owner shall be paid by the other Owner(s) to the Burdened Owner annually within thirty (30) days after Burdened Owner has provided the other Owner(s) with reasonable evidence of the amounts incurred.

(b) If any Owner fails to maintain and repair its sign panel as required hereunder, the Burdened Owner may complete all or a portion of such work as is necessary for the Burdened Owner to maintain the Monument Sign (and Additional Monument Signs, if approved by City) as required in this Declaration. In such event, the Owner failing to

maintain and repair its sign panel shall pay to the Burdened Owner all sums expended by the Burdened Owner to complete such work, plus interest thereon at a rate per annum equal to the Default Rate (as hereinafter defined), from the date the Burdened Owner incurs such expense until repayment. Reimbursement of the Burdened Owner for the costs of such work shall be paid by the other Owner(s) to Burdened Owner within thirty (30) days after Burdened Owner has provided the other Owner(s) with reasonable evidence of the amounts incurred in connection with such work. Any Owner who fails to timely reimburse in accordance with the foregoing shall be a Defaulting Owner as defined herein, and the Burdened Owner shall be a Non-Defaulting Owner as defined herein, who shall be entitled to all rights of a Non-Defaulting Owner as set forth herein.

(c) The Burdened Owner shall be solely responsible for: (i) reasonably insuring (in coverage amounts and types to be determined by the Burdened Owner in its sole but reasonable discretion) the Monument Sign located on its Lot at its sole cost and expense; and (ii) the cost of all reasonably necessary repairs, maintenance and replacements to the Monument Sign located on its Lot or any Improvements located on its Lot attributable to the supply, installation, operation, maintenance, repair, or replacement of such Monument Sign. Any party performing or causing to be performed installation, maintenance, repair and/or replacement with respect to a sign panel on a Monument Sign (and Additional Monument Signs, if approved by City) must use a sign vendor designated in writing by Burdened Owner or otherwise approved by the Burdened Owner in writing. Each Owner who is not a Burdened Owner with respect to a particular Monument Sign hereby agrees to indemnify and hold harmless the Burdened Owner from any and all loss, costs and reasonable expenses (including reasonable attorney's fees) arising from the indemnifying Owner's (and/or its employees', agents', representatives', contractors', licensees' and invitees') use of the Sign Easement and its sign panel (including any liens of contractors, subcontractors, subsubcontractors, mechanics, laborers, and materialmen and all other items of like character incurred in connection therewith), excepting therefrom any damage caused by the gross negligence or willful acts of the Burdened Owner, its agents, Occupants and/or employees.

(3) Except as otherwise provided in this Declaration, each Owner shall be responsible for the maintenance and repair of the Common Use Area located on such Owner's Lot, and shall keep same at all times in a first class manner and condition customary for comparable developments in the City and the greater Albuquerque, New Mexico area. In the event improvements located within the Common Use Area of any Lot, including but not limited to the Access Driveway, Access Improvements, the Monument Sign, shared utility lines and parking areas, are destroyed or damaged, the Owner of such Lot shall promptly restore or replace such improvements to the condition prior to the date of such damage or destruction.

(4) Maintenance and repair shall include, but not be limited to the following:

(a) Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability (including without limitation repaving and restriping when reasonably necessary);

(b) Removing all papers, debris, filth, refuse, snow and ice thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair, and replacing any reasonably necessary and appropriate directional signs, markers and lines;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(e) Maintaining all landscaped areas and repairing automatic sprinkler systems or water lines and making replacements of shrubs and other landscaping as is reasonably necessary; and

(f) Maintaining and repairing any and all Common Use Area walls, Common Use Area storm drains, sewers and other service installations within the Common Use Area.

B. Emergency. Notwithstanding anything to the contrary, in the event that any circumstance shall occur which an Owner reasonably and in good faith believes: (i) is or may be threatening to the safety of person(s) or property; or (ii) requires repairs or alterations to assure the continued reasonable use of the Common Use Areas or to comply with any applicable legal or insurance requirements (as applicable, an “**Emergency**”), then the Owner shall take such action and cause such things to be done as the Owner reasonably and in good faith believes necessary (including the expenditure of funds whether approved or not by the other Owners). The Owner shall inform the other Owners of any Emergency as soon as practicable. If practicable, the Owner shall obtain the prior approval of the other Owners for any action in response to an Emergency. Reimbursement of the Owner taking action in an Emergency (in accordance with this subparagraph) for commercially reasonable costs incurred by such Owner in connection therewith shall be paid by the Owner of the Lot benefitting from said action within thirty (30) days after the Owner requesting reimbursement has provided the other Owner reasonable evidence of the amounts incurred in connection with such work. An Owner who fails to timely reimburse in accordance with the foregoing shall be a Defaulting Owner as defined below, and the Owner who took the Emergency action shall be a Non-Defaulting Owner as defined herein, who shall be entitled to all rights of a Non-Defaulting Owner as set forth herein.

XI. LIABILITY INSURANCE; INDEMNIFICATION.

A. General Coverage and Limits.

(1) Each Lot Owner shall maintain or cause to be maintained so called “causes of loss, special form” replacement cost fire and extended coverage insurance (including vandalism and malicious mischief insurance, earthquake insurance, and flood insurance) on the portion(s) of the Common Use Area located on such Owner’s Lot in such amounts as such Lot Owner’s mortgagee(s) shall require, or if no mortgagee exists, then in such amounts as are commercially reasonable for a development of the size and quality of the Development.

(2) Each Owner agrees to maintain or cause to be maintained insurance against property damage and public liability arising by reason of occurrences on or about such Owner's Lot by maintaining a policy or policies of commercial general liability insurance, including, if such Lot is leased to another party, contractual liability coverage insuring against the tort liabilities assumed under such lease agreement, with combined single limits of **not less than** One Million Five Hundred Thousand Dollars (\$1,500,000.00) in respect of any one occurrence and Two and a Half Million Dollars (\$2,500,000.00) for bodily injury and property damage.

(3) Each Lot Owner shall and, subject to the terms of the lease between an Owner and its Occupant, shall cause any Occupant or licensee of such Owner's Lot to (a) subscribe to the workers' compensation law in the State of New Mexico, and (b) maintain (at such party's sole cost and expense) workers' compensation and employers' liability insurance covering all of its employees as required of a subscriber to the relevant statutes in the State of New Mexico.

B. Insurance and Subrogation.

(1) It is agreed that the insurance coverages provided for herein may be maintained pursuant to master policies of insurance covering other operations and/or locations of the applicable party obtaining said insurance and/or its corporate affiliates. All insurance policies required to be maintained hereunder shall be with responsible insurance companies, authorized to do business in the State of New Mexico if required by law, shall have a general policy holder's rating of not less than A-, Class VII as rated in the most current "Best's" Insurance Reports. Except for workers' compensation policies, all policies of insurance required under this Article shall contain a provision that the insurance company will give each Owner ten (10) days advance written notice prior to cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. Each Owner shall deliver to the other a statement from the applicable insurer that such insurance insures the performance by the Owner insured thereunder of the indemnity agreements to limits not less than those specified in this Article.

(2) Nothing herein shall be construed from prohibiting an Owner from self-insuring for such insurance coverage provided for herein under a self-insurance program established on its own or under a policy in common with other affiliated entities, provided that such Owner or such Owner's parent entity is a publicly traded company with a market capitalization equal to or greater than \$50,000,000.00, or a privately held company with a net worth equal to or greater than \$50,000,000.00.

(3) All insurance required hereunder shall include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived herein. Each Owner hereby waives any and every claim which arises or may arise in its favor and against the other, its partners, owners, officers, directors, employees, agents and Occupants for any and all loss of, or damage to, and of its property located within or upon, or constituting a part of, the Property, which loss or damage is covered by valid and collectible fire and extended coverage, general liability, liquor liability or worker's compensation insurance policies, to the extent that such loss or damage is recoverable thereunder.

C. Indemnification. Each Owner hereby agrees to indemnify, defend and save the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person or property and occurring on its own Lot, except to the extent caused by the negligence or intentional misconduct of the other Owner. Each Owner shall promptly notify the other Owner of any asserted claim with respect to which such Owner is or may be indemnified against hereunder and shall deliver to such Owner copies of process and pleadings.

XII. TAXES. Each Owner and its respective successors and assigns shall pay direct to the County Treasurer when due, the real property taxes and other special taxes and assessments assessed against the Lot owned by such Owner, including the portion of the Common Use Area owned by such Owner. If an Owner is contesting by judicial or administrative proceedings the validity of any such tax or assessment, said Owner will nonetheless pay the tax and at its election designate such payment as being made under protest.

XIII. EMINENT DOMAIN.

A. Owner's Right to Award. Nothing herein shall be construed to give an Owner any interest in any award or payment made to the other Owner(s) in connection with any exercise of eminent domain, inverse condemnation, or transfer in lieu thereof affecting said other Owner(s) Lot or give the public or any government any rights in the Property. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Use Area located within the Property, the award attributable to the land and Improvements of such portion of the Common Use Area shall be payable only to the Owner in fee thereof and no claim thereon shall be made by the Owners of any other portion of the Common Use Area, except to the extent of the other Owner's claim is for damages for loss of access.

B. Collateral Claims. All other Owners of the Common Use Area may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and Improvements taken from another Owner.

C. Occupant's Claim. Nothing herein shall prevent an Occupant from making a claim against an Owner pursuant to the provisions of any lease between such Occupant and Owner for all or a portion of any such award or payment.

XIV. CONSTRUCTION OF IMPROVEMENTS. Staging for construction of Improvements or the replacement, alteration or expansion (to the extent permitted under this Declaration) of any Improvements located in the Development including, without limitation, the location of any temporary buildings or construction sheds/trailers, the storage of building materials, and the parking of construction vehicles and equipment shall: (a) be located solely on the constructing Owner's Lot; and (b) be located in such a way that it will not interfere with the use of the Common Use Areas on any other Lot, including but not limited to the Access Improvements and the Monument Sign. All construction upon the Lots shall: (i) be in a first class manner and condition customary for comparable developments in the City and the greater Albuquerque, New Mexico area and in accordance with all Governmental Requirements and this Declaration, and (ii) be prosecuted with reasonable commercial diligence and minimizing

disruption of the other Owners, Lots or occupants thereof.

XV. ESTOPPEL. Within fifteen (15) business days after written demand is delivered to the Declarant by any Owner, for so long as the Declarant owns any of the Property, the Declarant shall provide any Owner with an estoppel certificate executed by an officer of the Declarant and acknowledged, certifying with respect to any Lot owned by said Owner, that as of the date thereof (i) setting forth whether Declarant is aware of any default by the Owner thereof, and (ii) setting forth any approvals that the Declarant has granted to the Owner of the Lot and (iii) if, to the Declarant's knowledge, any Improvements upon the Lot do not comply with this Declaration, the certificate shall also (a) identify the non-complying Improvements and work and (b) set forth with particularity the cause or causes for such noncompliance. Any purchaser from the Owner, or mortgagee or other encumbrance shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Declarant, and all Owners and such purchaser, and mortgagee.

XVI. GENERAL PROVISIONS.

A. Inurement. This instrument and the easements, covenants, restrictions, benefits and obligations created hereby shall inure to the benefit of and be binding upon each Owner and its successors and assigns; provided, however, that if an Owner conveys any portion or all of its interest in any Lot owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Declaration as it had in connection with the property conveyed by it, and provided further, that no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance. Likewise the Declarant, at such time as they own no property in the Development shall be released and discharged from any and all further obligations under this Declaration as it had in connection with the property conveyed by it, and provided further, that no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

B. Duration. Except as otherwise provided herein, this Declaration, including but not limited to the easements contained herein, shall remain in full force and effect in perpetuity. In the event that this Declaration shall terminate for any reason, the easements referred to in Sections V, VI, VIII, IX or elsewhere in this Declaration which are specified as being perpetual shall continue in full force and effect in perpetuity.

C. Injunctive Relief, Cumulative Remedies and Damages. Any remedies provided for in this Declaration are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity and shall include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Declaration and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

D. Enforcement; Right to Cure.

(1) In the event an Owner fails to perform its obligations hereunder, then

any other Owner (the **"Non-Defaulting Owner"**) shall have the right to serve written notice of such failure or refusal on the Owner who has failed to so perform, cooperate or pay (the **"Defaulting Owner"**). If the Defaulting Owner fails to cure such default within ten (10) days after receipt of such notice from the Non-Defaulting Owner (provided that if such default cannot reasonably be cured within such 10-day period, then the Defaulting Owner shall have such additional period of time as may be reasonably required within which to cure such default so long as the Defaulting Owner has commenced such cure within the foregoing 10-day period, if such commencement is commercially reasonable under the circumstances, and the Defaulting Owner thereafter diligently pursues such cure to completion), then the Non-Defaulting Owner (and its employees, agents or contractors) shall have the right to enter upon the Defaulting Owner's Lot for the purpose of undertaking the subject maintenance or repair at its own instance, and to make written demand upon the Defaulting Owner for the entire expense incurred. If the Defaulting Owner's efforts will result in cure extending beyond ninety (90) days, provided that the Non-Defaulting Owner has not commenced to cure as provided above, the Defaulting Owner shall notify the Non-Defaulting Owner in writing prior to the expiration of such 90-day period and provide reasonable detail showing cure efforts to date and the details of Defaulting Owner's plan to cure the default. Failure of Defaulting Owner to provide such notice shall constitute a waiver by Defaulting Owner of the right to extend the cure period beyond ninety (90) days.

(2) For purposes of the rights and remedies set forth below, the term **"Defaulting Owner"** shall also apply to an Owner who fails or refuses after written demand to pay the entire expense incurred by the Non-Defaulting Owner for performance of the Defaulting Owner's obligations hereunder, and to an Owner who fails or refuses to pay its taxes pursuant to Article XII hereof, and the term **"Non-Defaulting Owner"** shall also apply to the Owner who makes demand upon the Defaulting Owner for such payment(s).

(3) Within ten (10) days of written demand thereof (including providing reasonable evidence of such costs, if applicable) the Defaulting Owner shall reimburse the Non-Defaulting Owner for any sum reasonably expended by the Non-Defaulting Owner for the maintenance and repair, taxes or other cost or expense incurred by Non-Defaulting Owner pursuant to this Declaration, or the Defaulting Owner's taxes, together with interest thereon at the rate of Twelve Percent (12%) per annum (or if a lesser amount, the maximum rate of interest allowed by law, the **"Default Rate"**), and if such reimbursement is not paid within said ten (10) days, the Non-Defaulting Owner shall be entitled to file suit to recover such amounts, as well as interest as provided above and reasonable costs of collection, including without limitation, reasonable attorneys' fees, expenses and costs of court.

(4) Any claim of a Non-Defaulting Owner for reimbursement, together with interest accrued thereon and collection costs, shall constitute a personal obligation and liability of the Defaulting Owner and shall be secured by an equitable charge and lien on the Lot of the Defaulting Owner and all Improvements located thereon. Such lien shall attach and be effective from the date of recording of the Lien Notice hereinafter described. Upon such recording, such lien shall be superior and prior to all other liens encumbering the subject Lot, except that such lien shall not be prior and superior to any mortgages or deeds of trust of record prior to the recording of such Lien Notice, or any renewal, extension or modification (including increases) of previously recorded mortgages or deeds of trust; and any purchaser at any foreclosure sale, as well

as any grantee by deed in lieu of foreclosure under any such mortgage or deed of trust shall take title subject only to liens accruing pursuant to this section after the date of such foreclosure sale or conveyance in lieu of foreclosure. To evidence a lien accruing pursuant to this section, the Non-Defaulting Owner shall prepare a written notice (a "**Lien Notice**") setting forth: (i) the amount owing and a brief statement of the nature thereof; (ii) the Lot to which the payment(s) relate; (iii) the name of the Owner or reputed Owner who owns the subject Lot; and (iv) reference to this Declaration as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by the Non-Defaulting Owner desiring to file the same and shall be recorded in the real estate records in San Juan County, New Mexico. A copy of such Lien Notice shall be mailed to the Defaulting Owner within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon the Lot to which the lien attached in like manner as a mortgage on real property is judicially foreclosed under the laws of the State of New Mexico. In any foreclosure, the Lot being foreclosed shall also be charged with the obligation to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice, as provided herein, and all reasonable costs, expenses and attorneys' fees in connection with the foreclosure.

(5) If any Non-Defaulting Owner shall provide notice of default to a Defaulting Owner pursuant to this Article XIII, such Non-Defaulting Owner shall provide a copy of such notice to any and all tenants of the Defaulting Owner's property concurrently therewith, and said tenant(s) shall have the right, but not the obligation, to pay to cure said default and seek reimbursement or remedy from the Defaulting Owner of the Lot as may be permitted under the Lease or otherwise under this Declaration or applicable law.

XIV. MODIFICATION. Except as otherwise provided in this Article XIV, this Declaration may not be modified or terminated in any respect whatsoever or rescinded, in whole or in part, except with the consent of Owners owning a majority area of the Property (based on Proportionate Share) coupled with an approval from the Declarant (if the Declarant owns any Property), and then only by written instrument duly executed and acknowledged by such Owners. No such amendment shall impair a written approval of plans granted by the Declarant. NOTE: A "majority area of the Property" shall be defined as a collection of Owner(s) that meets or exceed 10.6 acres of ownership within the 21 acre Shopping Center.

XV. NOT A PUBLIC DEDICATION. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public purposes whatsoever (including but not limited to any easement or access rights to any governmental authority for public road right-of-way purposes), it being the intention of the Owners that this Declaration shall be strictly limited to and for the purpose herein expressed.

XVI. BREACH SHALL NOT PERMIT TERMINATION. No breach of this Declaration shall entitle an Owner to cancel, rescind or otherwise terminate this Declaration, but such limitations 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.

XVII. ATTORNEYS' FEES. In the event that legal proceedings are brought or commenced to enforce any of the terms of this Declaration against either or other party with an

interest in the Property, the successful party in such action shall then be entitled to receive and shall receive from the defaulting Owner or party reasonable attorneys' fees and costs of litigation incurred.

XVIII. NOTICES. Any notice required or permitted to be given regarding this Declaration by one party to another will be in writing and the same will be given and be deemed to have been delivered, served and given, (i) if delivered via courier (including "overnight delivery services), when actually delivered to the address specified below, (ii) if mailed, two (2) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the Person to whom notice is given at the address specified below.

DECLARANT: Retail Equity Development 6, LLC
Red Shamrock 10, LLC
Red Shamrock Investments, LLC
Attn: Mr. Josh Skarsgard
8220 San Pedro NE Suite 500
Albuquerque, NM 87113
Phone 505 262 2323

The person and the place to which notices are to be mailed may be changed by an Owner by written notice to the other Owners.

XVIII. GENERAL ACCESS RIGHTS. Notwithstanding anything in this Declaration to the contrary:

A. With the exception of the Access Driveway and the Access Improvements, each Owner shall each have the right to close any portion of such Owner's Lot for a reasonable period of time to the extent required (i) by any Governmental Requirement to prevent prescriptive rights from accruing as to such Lot, and (ii) for necessary construction, maintenance and repair of any Improvements located on their respective Lots, in the manner and to the extent permitted and provided herein;

B. An Owner may erect curbs or other barriers to traffic between the Lots, including but not limited to differences in grade levels, only to the extent that such curbs or other barriers will not unreasonably interfere with or restrict (i) direct access to and between the Lots by the Owners and their employees, customers, licensees and invitees or (ii) the Access Driveway and/or Access Improvements;

C. An Owner may erect Buildings and other Improvements on the portion of the Lots owned by that Owner only to the extent that (i) the Buildings comply with Sections IV(A), (B) and (C) of this Declaration and (ii) the Buildings and other Improvements will not unreasonably interfere with the use of and access to the Common Use Area on such portion of the Lots by the other Owners and their Occupants, agents, employees, contractors, customers, licensees and invitees, and

D. The points of pedestrian and vehicular access, ingress and egress, between, on and/or along the common boundary line(s) of the Lots may not be modified and/or relocated by either Owner without the prior written consent of the other Owners, such consent not to be unreasonably withheld, conditioned and/or delayed.

XIX. MISCELLANEOUS.

A. Compliance with Laws. This Declaration, including without limitation all easements, restrictions, obligations and covenants provided hereunder, shall be subject to Governmental Requirements.

B. Binding Effect; Running with the Land. All the easements and covenants set forth in this Declaration are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the Owners, and their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

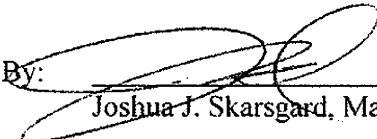
C. New Mexico Statutory Indemnity Limitation. To the extent, if at all, any indemnity, hold harmless or other provision of this Declaration is invalidated pursuant to the terms of Section 56-7-1 NMSA 1978, as amended, the remaining indemnity, hold harmless and other provisions shall remain in full force and effect.

[SIGNATURES ON SUBSEQUENT PAGE]

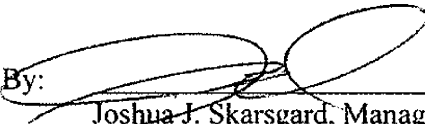
IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

DECLARANT:

RED SHAMROCK INVESTMENTS, LLC,
a New Mexico limited liability company

By: 
Joshua J. Skarsgard, Managing Member

RED SHAMROCK 10, LLC,
a New Mexico limited liability company


By: 
Joshua J. Skarsgard, Managing Member

RETAIL EQUITY DEVELOPMENT 6, LLC,
a New Mexico limited liability company

By: 
Joshua J. Skarsgard, Manager

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was duly acknowledged before me this 7th day of December, 2016, by Joshua J. Skarsgard, in his capacity as Managing Member of Red Shamrock Investments, LLC, a New Mexico limited liability company; Managing Member of Red Shamrock 10, a New Mexico limited liability company; and Manager of Retail Equity Development 6, LLC, a New Mexico limited liability company, on behalf of said limited liability companies.


Notary Public

My commission expires: 7/7/20



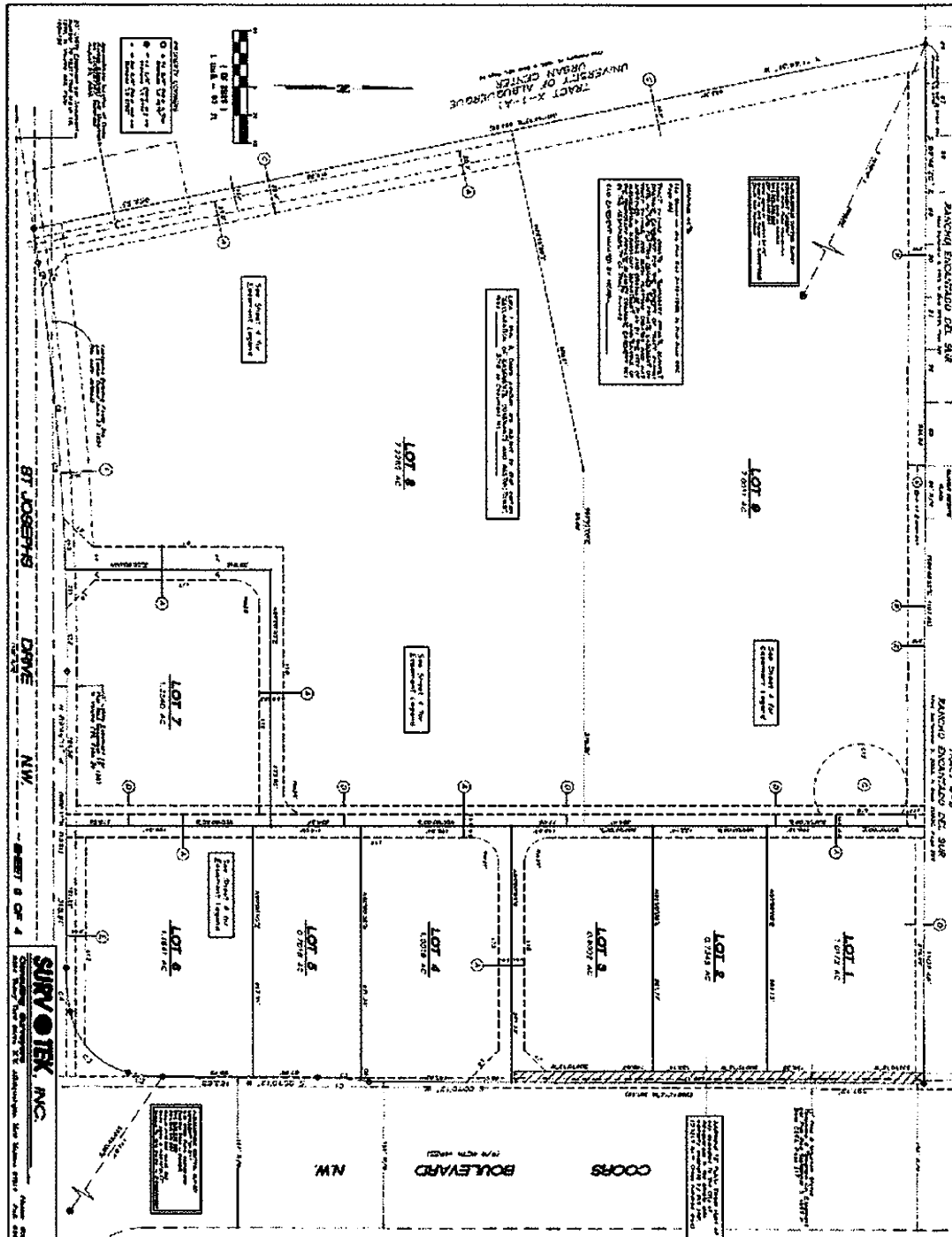
OFFICIAL SEAL
MELISSA J BROWN
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires _____

EXHIBIT A

LEGAL DESCRIPTION OF THE DECLARANT PROPERTY (Existing Plat)

Tract X-1-A2, University of Albuquerque Urban Center as the same is shown and designated on the plat entitled "PLAT OF TRACTS X-1-A1 & X-1-A2, UNIVERSITY OF ALBUQUERQUE URBAN CENTER, ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO", filed in the office of the County Clerk of Bernalillo County, New Mexico, on March 12, 1998, in Plat Book 98C, page 68.

EXHIBIT B **PROPOSED PLAT**



PROPOSED SITE PLAN



EXHIBIT D

GRADING, DRAINAGE AND UTILITY PLANS

(Note: the Grading Plan is subject to change if City of Albuquerque and Declarant cooperate in the installation of a storm water pipe across the western boundary of Declarant Property).

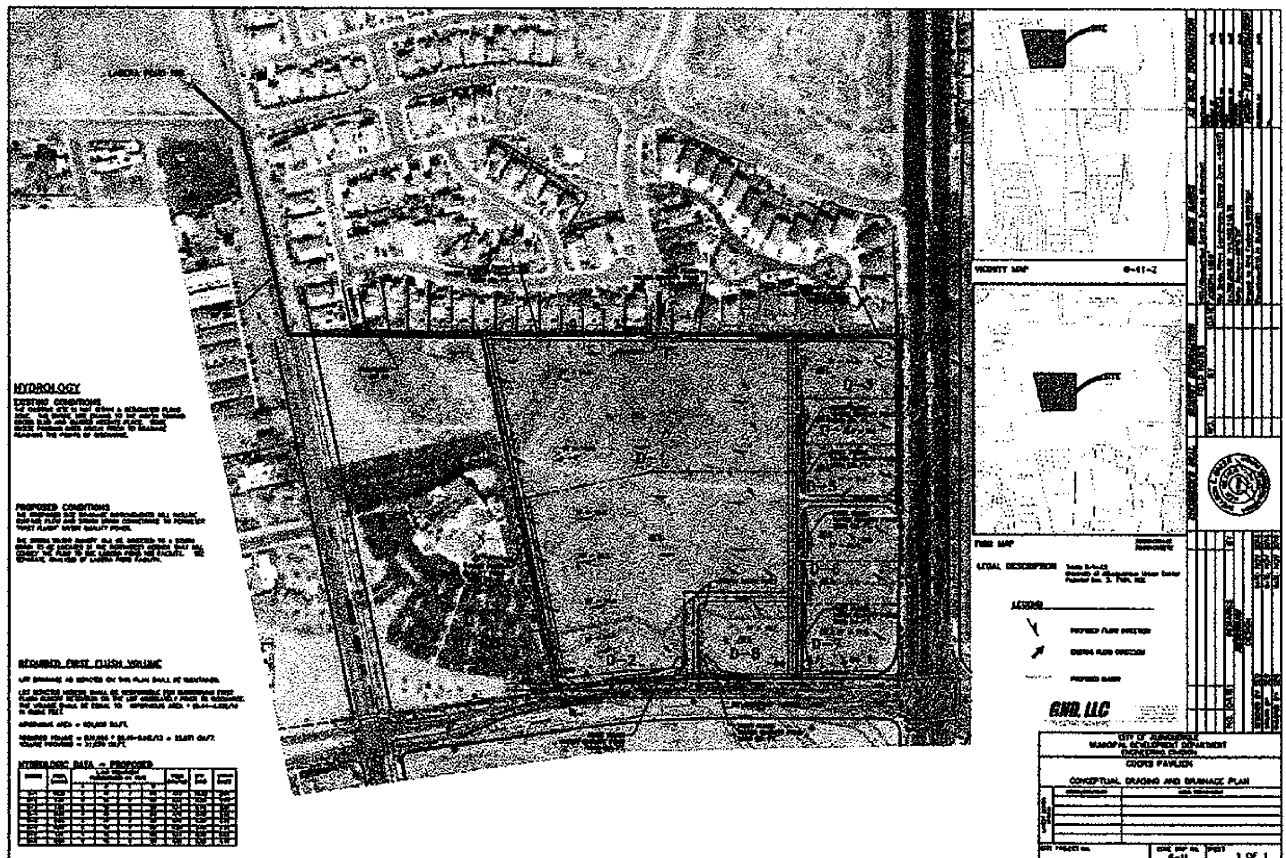


EXHIBIT E

MONUMENT SIGN ELEVATIONS

****Please note the following elevations are pending approval by the City of Albuquerque and have not yet been approved. Should the following elevations not be approved by the City of Albuquerque, this Declaratoin shall be amended to reflect the approved monument signage.****

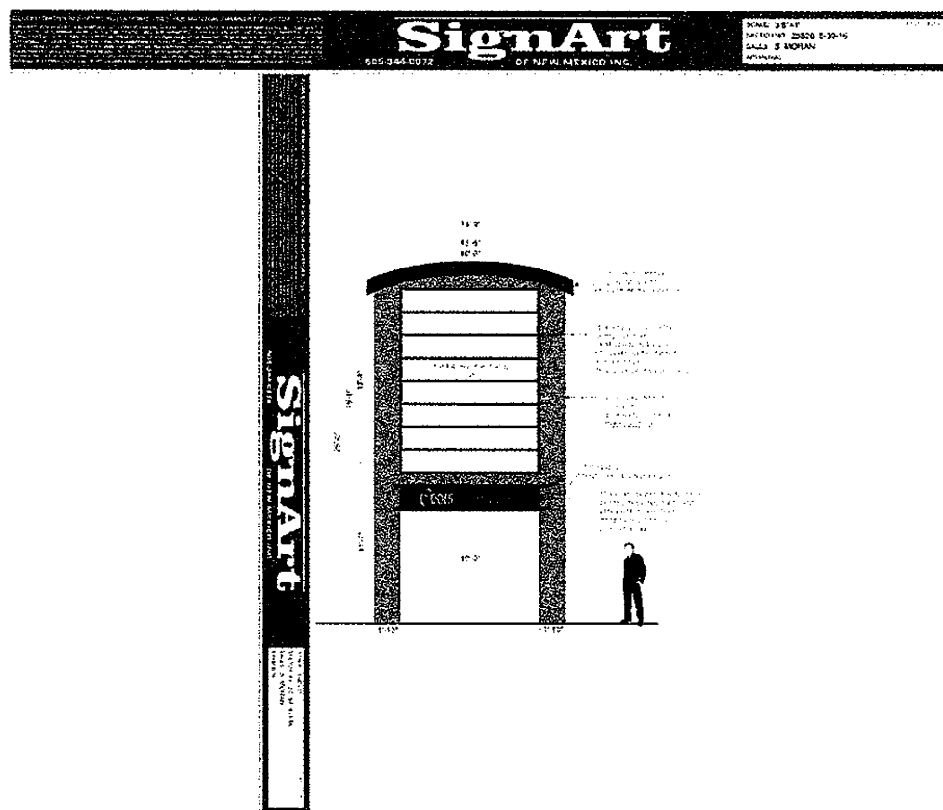
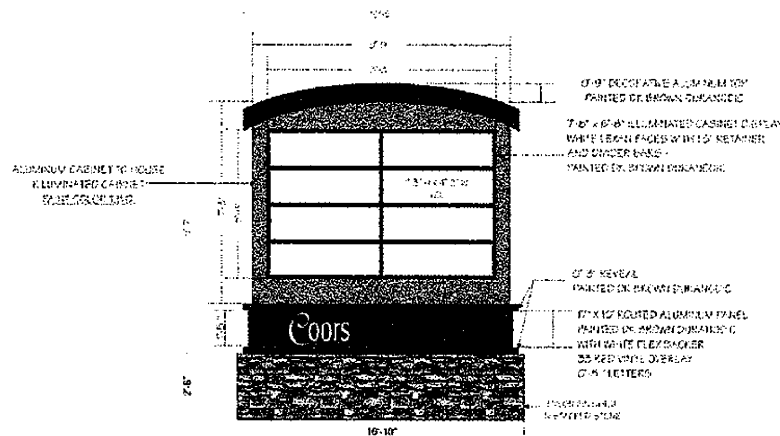


EXHIBIT F

EXCLUSIVE USES

Blake's Lotaburger:

For so long as Blake's Lotaburger is a tenant in the Shopping Center, Blake's Lotaburger shall have the exclusive right within the Shopping Center to have an Occupant whose primary business sales comes from the sale of hamburgers.

Verizon:

For so long as Verizon is a tenant in the Shopping Center, Verizon shall have the exclusive right within the Shopping Center to operate a retail store selling communication equipment and services in the Shopping Center. This exclusive use shall not apply to the sale of cellular phone accessories if the sale of cellular phone accessories constitutes less than three percent (3%) of the retail store's total sales.

Panera:

For so long as Panera is a tenant in the Shopping Center, Panera shall have the exclusive right within the Shopping Center to sell bagels, "bakery-style" baked goods (e.g., without limitation, cookies, muffins, scones, breads, etc.), salads, sandwiches, soups, blended beverages (excluding ice cream shakes and ice cream), coffee, and. The foregoing notwithstanding, Panera's exclusive use right shall not prohibit (a) a grocery store, (b) any full-service, sit-down restaurant with table-side ordering via wait staff, (c) the sale of any of the above-described items as an ancillary part of the occupant's business, with sales of such items not exceeding twenty percent (20%) in the aggregate of gross sales of such business, or (d) Starbucks, Chick-fil-A, or Blake's Lotaburger (including their respective successors operating under the same tradename) (all of whom are herein expressly waived from this Exclusive Use provision). Without limiting the foregoing and for purposes of further description, Tenant's exclusive use right shall prohibit the following: (i) bakeries and bakery restaurants (e.g., without limitation, Corner Bakery); (ii) delis and deli restaurants (e.g., without limitation, Jason's Deli); (iii) sandwich restaurants (e.g., without limitation, Subway, Jersey Mike's, Quizno's, Jimmy Johns, Potbelly, and Firehouse); and (iv) a bagel shop (e.g., without limitation, Einstein's Bagels). Furthermore, Tenant's exclusive use right shall **not** prohibit the following: (1) chicken sandwich style restaurants (e.g., without limitation, Chick-fil-a and Raising Canes); (2) hot dog restaurants (e.g., without limitation, Wienerschnitzel); (3) hamburger restaurants (e.g., without limitation, Wendy's, McDonald's, Burger King, Freddy's, Blake's Lotaburger, Red Robin, In N Out Burger, and Five Guys Burgers); (4) roast beef sandwich restaurants (e.g., without limitation, Arby's); (5) Mexican-style restaurants that serve burritos, tacos, quesadillas, or breakfast burritos (e.g., without limitation, Taco Bell, Qdoba, Del Taco, Taco Bueno, El Pollo Loco, Charritos, Sadies, El Pinto, and Little Anitas); (6) Asian-style restaurants (e.g., without limitation, Panda Express and Pei Wei); (7) pizza restaurants (e.g., without limitation, Pizza Hut, Dominos, Wise Pies, Pizza 9, Dion's, Il Vicino, Papa John's, and Papa

Murphy's); or (8) ice cream, frozen yogurt, gelato, milkshake, or shaved ice blended beverage shops (e.g., without limitation, Dairy Queen, Baskin Robins, TCBY, U Swirl Yogurt, Menchie's, and Bahama Bucks).

Starbucks:

For so long as Starbucks is a tenant in the Shopping Center, Starbucks shall have the exclusive right within the Shopping Center to sell (a) whole or ground coffee beans, (b) espresso, espresso-based drinks or coffee-based drinks, (c) tea or tea-based drinks, (d) brewed coffee, or (e) blended beverages. Notwithstanding the foregoing exclusive use, other tenants may sell brewed coffee or brewed tea which is neither (i) gourmet nor (ii) brand identified. For purposes of this document, "gourmet" shall be defined as: (a) beverages made using Arabica beans or (b) sourced from a gourmet coffee or tea brand such as Coffee Bean & Tea Leaf, Intelligentsia, Peets, Caribou or similar branding. For purposes of this document, "brand identified" shall mean beverages advertised or marketed within the applicable retail space using a brand name or served in a brand-identified cup. In addition, other tenants may sell pre-bottled tea or pre-bottled tea-based beverages.