Doc# 2015003615
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PERM R $25.00 M. Toulouse Oliver, Bernalillo County

AMAFCA

Parcel: NDC Embudo Channel
ZAP: H-17

ENCROACHMENT PERMIT AGREEMENT FOR IMPROVEMENTS WITHIN DRAINAGE AND SLOPE EASEMENTS

WHEREAS, the ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY ("AMAFCA") possesses a Drainage Easement, filed for public record in the Office of the County Clerk of Bernalillo County, New Mexico, on December 30, 1974, in Volume 975, Folio 107, and a Slope Easement, filed for public record in the Office of the County Clerk of Bernalillo County, New Mexico, on September 16, 1975, in Volume 440, Folio 226-227, within **Tract A-1-B-1, Acme Acres Subdivision**, as shown and designated on the following plats thereof:

> Plat of Right-of-Way Parcel B-1 AMAFCA North Diversion Channel Embudo Channel Drainage Right-of-Way Phase 3, filed for public record in the Office of the County Clerk of Bernalillo County, New Mexico, on January 10, 1997, in Volume 97C, Folio 17,
>
> Plat of Tracts A-1-B-1, A-1-B-2 and A-1-B-3, Acme Acres, filed for public record in the Office of the County Clerk of Bernalillo County, New Mexico, on October 26, 2001, in Book 2001C, Page 286; and

WHEREAS, said easements grant and convey to AMAFCA the right to prohibit the use of said lands for structures; and

WHEREAS, the owner of said lands, **Green Jeans LLC** ("OWNER"), desires to encroach into said AMAFCA easement areas and to construct thereon drive aisles, parking, curbs and a dumpster enclosure ("IMPROVEMENTS"); and

WHEREAS, AMAFCA has determined that the IMPROVEMENTS will not interfere with the function of the Embudo Channel or AMAFCA's maintenance activities.

NOW, THEREFORE, in return for the promises and covenants contained herein, AMAFCA hereby grants to OWNER, its successors and assigns, this Permit to encroach upon the AMAFCA easements and to construct, operate and maintain the IMPROVEMENTS shown on attached **Exhibit "A"**, subject to the following terms and conditions:

1. OWNER shall obtain AMAFCA's written approval for the following:
   a. Any changes to the approved construction plans.
   b. All future repair, modification, removal, or other activities affecting the completed IMPROVEMENTS.

2. AMAFCA shall have the authority to cause the installation of any of the IMPROVEMENTS to be stopped or to require the IMPROVEMENTS to be removed from the easement areas if the construction does not comply with the approved plans or if the IMPROVEMENTS are not maintained.

3. All construction, operation, maintenance, repair, relocation and removal of the IMPROVEMENTS shall be accomplished at OWNER'S sole expense and in such a manner as shown on the plans approved by AMAFCA. OWNER will be responsible for obtaining any additional permits as may be required.

4. OWNER shall maintain the IMPROVEMENTS as shown on the approved plans in good operating order. OWNER shall repair any damage which may occur to the IMPROVEMENTS in a timely manner.

5. OWNER shall indemnify and hold AMAFCA harmless from all claims or judgments for damages or injury to property or persons arising from the construction, operation, maintenance, relocation or removal of the IMPROVEMENTS and use of related equipment, and shall defend AMAFCA against any such claim. OWNER shall reimburse AMAFCA for all costs and expenses incurred by AMAFCA resulting from the installation, operation, maintenance or removal of the IMPROVEMENTS should such activities be required to prevent damage to AMAFCA or others. Determination of whether such damage is likely shall be by AMAFCA, which determination shall be reasonable. This agreement to indemnify shall not extend to liability, claims, damages, losses or expenses, including attorney's fees, arising out of: (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by AMAFCA, its agents or employees; or, (b) the giving of or the failure to give directions or instructions by AMAFCA, its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

6. Should OWNER fail to properly and timely maintain or repair IMPROVEMENTS after notice from AMAFCA, AMAFCA may terminate this Permit and all rights and privileges herein granted. AMAFCA will provide OWNER with thirty (30) days' notice of such intent to terminate. Should AMAFCA need to terminate this Permit for any other reason, AMAFCA will provide OWNER with at least six (6) months' notice of such.

7. If OWNER asserts that any AMAFCA action under this Permit is unreasonable, OWNER shall have the right to appeal to the AMAFCA Board of Directors.

8. This Permit shall be in full force and effect for thirty (30) years from the date of signature from AMAFCA and must be renewed upon expiration. The burden of timely renewal shall be on OWNER.

9. Nothing in this Permit shall be construed to create in any person or entity, other than AMAFCA and OWNER, any rights whatsoever, including, but not limited to, the rights of a third party beneficiary, nor to authorize any third party to maintain a suit or any other claim.

10. OWNER covenants and warrants that it is the owner in fee simple of the property and that it has a good and lawful right to enter into this Agreement.

The provisions hereof shall inure to the benefit of and bind the heirs, executors, administrators, successors, and assigns of the parties hereto.

Witness my hand and seal this 14 day of January, 2015.

TERMS AND CONDITIONS OF PERMIT AGREED TO AND ACKNOWLEDGED.

OWNER: Green Jeans, LLC

By: _____
Roy Solomon

Title: Manager

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY:

By: _____
Jerry M. Lovato, P.E., Executive Engineer

ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
)SS
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on January 14, 2015 by Roy Solomon as owner of Green Jeans, LLC, a New Mexico limited liability company, on behalf of said company.

My Commission Expires: 10-2-16

(SEAL)

Notary Public

OFFICIAL SEAL
Jeffrey S. Willis
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires 10-2-16

STATE OF NEW MEXICO)
)SS
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on January 14, 2015 by Jerry M. Lovato, Executive Engineer of the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico, on behalf of said political subdivision.

My Commission Expires:

OFFICIAL SEAL
Jeffrey S. Willis
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires 10-2-16

(SEAL)

Notary Public

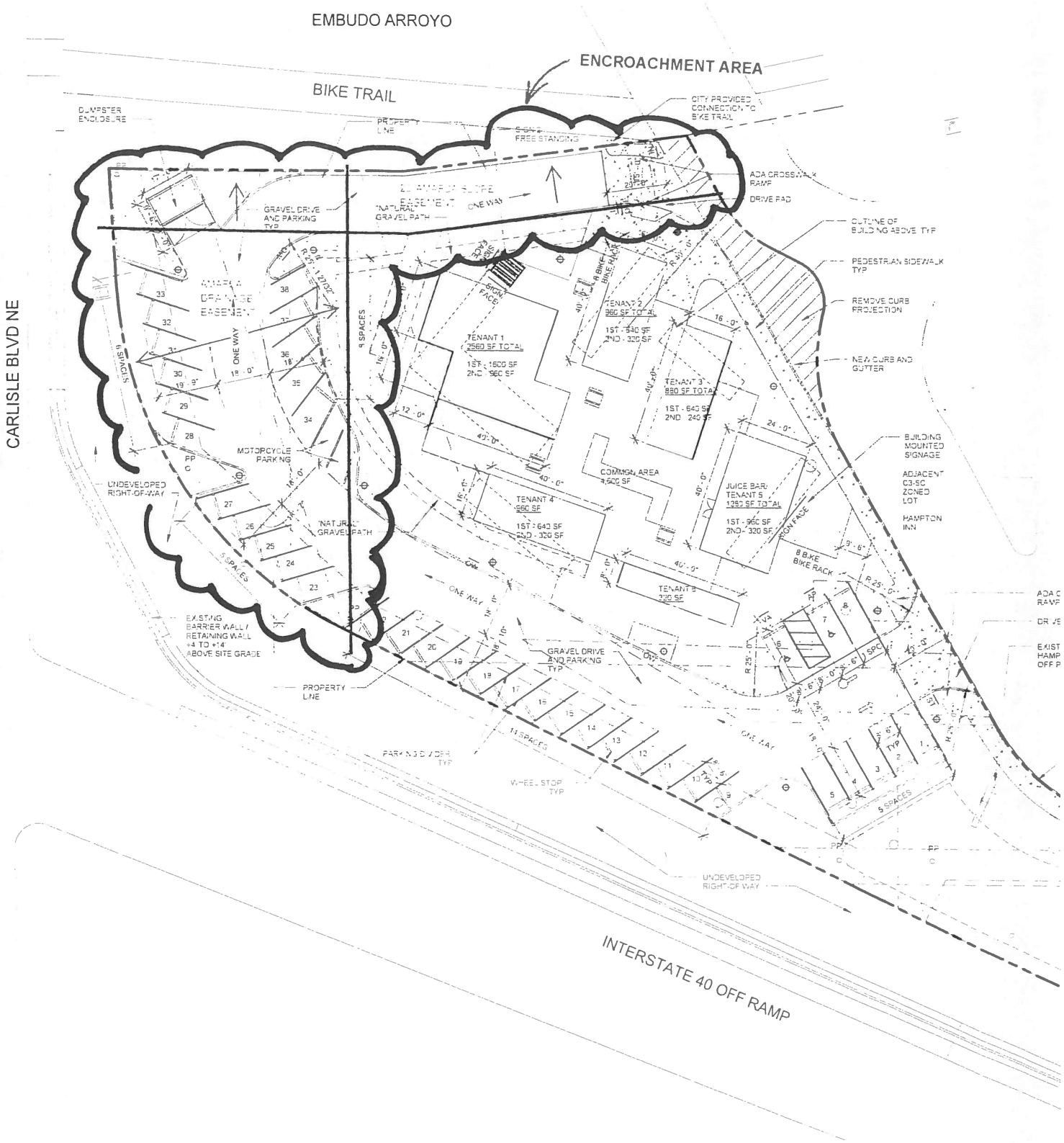
EMBUDO ARROYO
ENCROACHMENT AREA
BIKE TRAIL
CARLISLE BLVD NE
INTERSTATE 40 OFF RAMP
DUMPSTER ENCLOSURE
PROPERTY LINE
CITY PROVIDED CONNECTION TO BIKE TRAIL
FREE STANDING
ADA CROSSWALK RAMP
DRIVE PAD
GRAVEL DRIVE AND PARKING TYP
NATURAL GRAVEL PATH
ONE WAY
OUTLINE OF BUILDING ABOVE TYP
PEDESTRIAN SIDEWALK TYP
REMOVE CURB PROJECTION
NEW CURB AND GUTTER
BUILDING MOUNTED SIGNAGE
ADJACENT C3-SC ZONED LOT
HAMPTON INN
TENANT 1
2560 SF TOTAL
1ST - 1600 SF
2ND - 960 SF
TENANT 2
960 SF TOTAL
1ST - 640 SF
2ND - 320 SF
TENANT 3
880 SF TOTAL
1ST - 640 SF
2ND - 240 SF
TENANT 4
960 SF
1ST - 640 SF
2ND - 320 SF
TENANT 5
1280 SF TOTAL
1ST - 960 SF
2ND - 320 SF
TENANT 6
320 SF
COMMON AREA
4,500 SF
JUICE BAR
8 BIKE BIKE RACK
MOTORCYCLE PARKING
UNDEVELOPED RIGHT-OF-WAY
EXISTING BARRIER WALL / RETAINING WALL +4 TO +14 ABOVE SITE GRADE
9 SPACES
5 SPACES
14 SPACES
PARKING BUMPER TYP
WHEEL STOP TYP

EXHIBIT "A"