

## DECLARATION OF EASEMENT AND COVENANTS

THIS DECLARATION OF EASEMENT AND COVENANTS ("Declaration") made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by Berdel A. Boulanger and Terry Boulanger, Trustees of the Archuleta-Boulanger Trust dated December 12, 2003 ("Owner of Interior Lot") and Malone Investments LLC ("Owner of Corner Lot") and their respective designees hereinafter collectively referred to as "Declarants".

### WITNESSETH:

Whereas, Owner of Interior Lot is the owner of certain real estate in the City of Albuquerque, County of Bernalillo, and State of New Mexico as more particularly described in Exhibit A attached hereto and made a part hereof ("Interior Lot");

Whereas, Owner of Corner Lot is the owner of certain real estate in the City of Albuquerque, County of Bernalillo, and State of New Mexico as more particularly described in Exhibit B attached hereto and made a part hereof ("Corner Lot");

Whereas, Owner of Interior Lot intends to sell Interior Lot to a buyer that will demolish improvements on Interior Lot and redevelop Interior Lot (collectively, the "Redevelopment");

Whereas, Declarants desire to establish certain rights and servitudes over the Interior Lot property and the Corner Lot property in order to provide cross access between the two properties for the betterment of both parcels and respective businesses on these parcels. The Interior Lot and the Corner Lot may be referred to as "The Lots" within this document. The recorded owner of a property may be referred to generally as "Owner" within this document. The portion of the cross access located on the Corner Lot is depicted on Exhibit C attached hereto and made a part hereof (the "Corner Lot Easement").

### THE AGREEMENT

1. Cross access. Declarants hereby establish nonexclusive easements for ingress and egress by vehicular and pedestrian traffic upon, over and across (a) the Corner Lot Easement, and (b) any driveway that may now or hereafter exist on the Interior Lot from time to time, for access to and from each of the structures now or hereafter located on The Lots (collectively, the "Easements"). No Declarant will construct or maintain, or permit to be constructed or maintained, any barrier, curb, fence or other temporary or permanent structure or improvement along the common boundary of the Lots that would eliminate or materially adversely affect the ingress and egress of vehicular and pedestrian traffic upon, over and across the Easements.

2. Not a shared parking agreement. Each Declarant agrees to maintain the number of parking spaces on its Lot to satisfy the parking ratio requirements prescribed by applicable law(s) for the permitted use on such Lot. This Declaration does not provide for shared parking between The Lots. Notwithstanding the foregoing, the Owner of the Interior Lot has no obligation to construct parking spaces on the Interior Lot until such time as the Redevelopment occurs.

3. No gift, dedication, or prescriptive easement. Nothing herein shall create a gift of dedication of any portion of The Lots to general public. Notwithstanding any other provision hereof to the contrary, each Owner periodically may restrict ingress and egress on its Lot in order to prevent a prescriptive easement from arising by continued public use of same; provided that no Owner may restrict ingress and egress over the Easements without thirty (30) days written notice and the prior written consent of the other Owner. Any restriction on ingress or egress shall be limited to the minimum time period necessary to prevent the creation of a prescriptive easement and shall occur at such times as to have minimum effect on the construction or operation of the Lots. The foregoing restrictions in this paragraph will not apply during the construction of the Redevelopment.

4. Maintenance and upkeep of the cross access. Each Owner shall be responsible for the repair and upkeep of the improvements located within the portion of the Easements located on such Owner's Lot, which repair, and upkeep shall be performed in a workmanlike, diligent and efficient manner and shall include:

- (a) maintenance, repair, and if needed replacement of paved surfaces in a level and smooth condition, free of potholes, with the type of material as originally used or a substitute equal in quality;
- (b) removal of all trash and debris and washing or sweeping required;
- (c) removal of snow and ice from paved surfaces and sidewalks;

The costs associated with the repairs, maintenance, and replacement of the paved surfaces of the Corner Lot Easement will be shared equally (50/50) between the Owner of the Interior Lot and Owner of the Corner Lot.

Prior to performing any work on the Corner Lot Easement, the Owner of the Corner Lot will notify the Owner of the Interior Lot of the cost of the proposed work and the manner in which such work will be performed so that the business being operated on the Interior Lot is not adversely affected. The Owner of the Corner Lot shall invoice the Owner of the Interior Lot (assuming that the Owner of the Corner Lot will be taking action to repair/maintain the Corner Lot Easement), and include a description of work performed, within 30-days of such repairs and maintenance. Owner of the Interior Lot agrees to pay Owner of the Corner Lot promptly, within 30 days of receipt of invoice, for the completed repairs.

Repairs after Redevelopment. The Owner of the Interior Lot plans to redevelop the interior lot at a future date. The Owner of the Interior Lot agrees to pay all (100%) of the costs for any repair, maintenance or replacement of the paved surfaces on the Corner Lot that are damaged due to construction of the redevelopment improvements on the Interior Lot, including damage caused by equipment traffic using the Corner Lot Easement. Such payment/reimbursement to the Owner of the Corner Lot will be made within 30 days of Owner of the Interior Lot receipt of statement for repairs.

5. Indemnification. Each Owner (the "Indemnifying Owner") hereby agrees to defend, indemnify and hold harmless the other Owner and other Owner's tenant(s) (the "Indemnified Owner") from and against all demands, claims, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same, for injury to person, loss of life or damage to property (a) occurring on the indemnifying Owner's Lot, except if caused by the gross negligence or willful act or omission in whole or in part of the Indemnified Owner or the tenant(s), employees, contractors or agents of the Indemnified Owner, or (b) occurring on the Indemnified Owner's Lot if caused by the sole negligence,

willful act or omission of the Indemnifying Owner or the tenants of the Indemnifying Owner or the employees, contractors or agents of such Indemnifying Owner or its tenant(s).

6. Damage or destruction. If any part of the improvements on either of The Lots is destroyed or damaged by fire or other casualty, the Owner of the affected Lot, at its sole expense, as soon as commercially reasonable shall clear and restore such area. The restoration may be by rebuilding the improvements, or by demolishing the improvements and clearing any debris from the applicable Lot; provided, however that the Owner of the affected Lot will, at all times, maintain the portion of the Easements located on its Lot so as to allow uninterrupted access on and over the Easements.

7. Condemnation. If any part of The Lots is condemned, the Owner of the affected Lot, at its sole expense, as soon as commercially reasonable shall restore the improvements located on the Easements as much as practicable to provide the same approximate configuration, size, and location of the driveways located on the Easements to allow for the continued use of the Easements. Any award on account of a condemnation on The Lots first shall be used in the restoration of the same, and any claim to the award made by a Lot Owner or its tenant or licensee shall be expressly subject and subordinate to its use in such restoration. The term, "condemnation" as used herein shall include all conveyances made in anticipation or lieu of an actual taking.

8. Breach by an Owner. Should an Owner breach any of its obligations hereunder and such breach continue for a period of thirty (30) days after receipt of written notice, the other Owner shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior written notice to the other Owner, and further provide that no notice is required should the breach create an emergency or interfere with use of a Lot. All expenses required to cure the breach shall be paid by the defaulting Owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses. Notwithstanding the foregoing, no Owner shall be entitled to unilaterally terminate this Declaration based on a breach or default or for any other reason, it being the intention of the parties that the Easements will be perpetual unless this Declaration is modified or terminated by all Owners.

9. Consent required to modify Declaration. No part of this Declaration may be terminated, amended or modified without the prior written consent of all the Declarants, which consent must be evidenced by a recorded instrument executed by all Owners.

10. No partnership. This Declaration shall not create an association, partnership, joint venture, or a principal and agency relationship between the Declarants.

11. Notices. All notices and other communications given pursuant to this Declaration shall be in writing and shall be (i) mailed by first class United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the addresses specified below, (ii) hand delivered to the intended address; (iii) sent by a nationally recognized courier service that provides a receipt for delivery such as Federal Express, United Parcel Service, or U.S. Postal Service Express Mail. All notices shall be effective upon delivery to the address of the addressee. The parties hereto may change their respective addresses by giving notice thereof to the other in conformity with this provision.

Address and contact information of Interior Lot Owner:

Berdel Boulanger, Trustee

Archuleta-Boulanger Trust  
14108 Mesita Cliff Rd NE  
Albuquerque, NM 87112

Address and contact information of Corner Lot Owner:

Chris Malone, President  
Malone Investments LLC  
5512 Luna del Oro Ct. NE  
Albuquerque, NM 87111

12. Duration. All of the provisions hereof shall run with the land and will remain in effect until such time that this Declaration is terminated by all Owners by recorded instrument.

13. Entire agreement. This Declaration contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

14. Binding Effect. This Declaration inures to the benefit of and is binding on the Declarants and their successors and runs with the land.

In witness whereof Declarants have executed this Declaration as of the day and year first above written.

Declarant:

\_\_\_\_\_  
Berdel Boulanger, Trustee of the Archuleta-Boulanger  
Trust dated December 12, 2003

\_\_\_\_\_  
Terry Boulanger, Trustee of the Archuleta-Boulanger  
Trust dated December 12, 2003

Declarant:

Malone Investments LLC

By: \_\_\_\_\_  
Chris R. Malone, Managing Member

**THE STATE OF NEW MEXICO NOTARY ACKNOWLEDGEMENT**

THE STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

This instrument was acknowledgement before on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name(s) of person(s)).

\_\_\_\_\_  
Notary Public Signature

Print \_\_\_\_\_

Title of Office: \_\_\_\_\_

THE STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

This instrument was acknowledgement before on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name(s) of person(s)).

\_\_\_\_\_  
Notary Public Signature

Print \_\_\_\_\_

Title of Office: \_\_\_\_\_

THE STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

This instrument was acknowledgement before on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name(s) of person(s)).

\_\_\_\_\_  
Notary Public Signature

Print \_\_\_\_\_

Title of Office: \_\_\_\_\_

**Exhibit A**  
**Legal Description of Interior Lot**

Lot numbered/lettered One-B-One-B (1-B-1-B) in Block numbered Thirty-nine-B (39-B) of Dale J. Bellamah's Princess Jeanne Park, an Addition to the City of Albuquerque, New Mexico, as the same is shown and designated on the replat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on October 26, 1979, in Plat Book C15, page 168.

**Exhibit B**  
**Legal Description of Corner Lot**

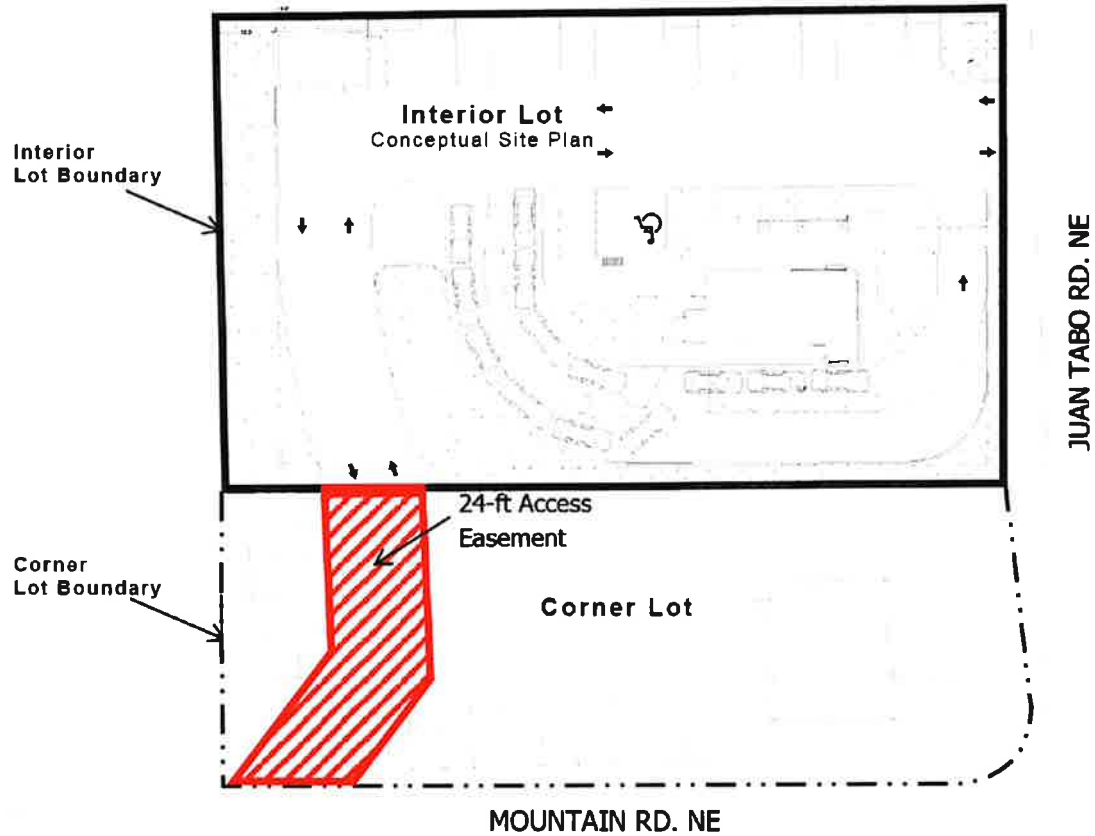
Lot numbered Two-A (2A) in Block numbered Thirty-Nine-B (39-B) of Dale J. Bellamah's PRINCESS JEANNE PARK, an Addition to the City of Albuquerque, New Mexico, as the same is shown and designated on the Plat thereof filed in the Office of the County Clerk of Bernalillo County, New Mexico on October 31, 1990 in Plat Volume 90C, folio 272.

## Exhibit C

### EXHIBIT

**Interior Lot:**

**Legal Description:** LOT 1-B-1-B BLK 39-B REPLAT OF LOT 1-B-1 BLK 39-B DALE J BELLAMAH'S PRINCESS JEANNE PARK CONT 0.698 AC;



**Corner Lot:**

**Legal Description:** LOT 2A BLK 39B DALE J BELLAMAHS PRINCESS JEANNE PARK CONT 15 490 SQ FT M/L:

