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EASEMENTS
COVENANTS, CONDITIONS AND RESTRICTIONS

BY AND BETWEEN

LOWE'S HOME CENTERS, INC.,
ARMSTRONG CENTRAL UNSER BLVD., LLC,
AND
SANDIA PLAZA PARTNERS, LLC

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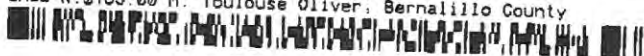


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EASEMENTS
COVENANTS, CONDITIONS AND RESTRICTIONS

THESE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "ECC&Rs"), are made and entered into as of the date of the last execution hereof, which date is the 18th day of September, 2008, by and between ARMSTRONG CENTRAL UNSER BLVD. LLC, a New Mexico limited liability company, ("**Developer**"), SANDIA PLAZA PARTNERS, LLC, a New Mexico limited liability company, ("**Sandia**") and LOWE'S HOME CENTERS, INC., a North Carolina corporation ("**Lowe's**") (the foregoing parties hereinafter collectively referred to as the "**Parties**");

W I T N E S S E T H:

WHEREAS, Lowe's is the owner of that certain tract of real property consisting of approximately 13.10 acres located in the City of Albuquerque, Bernalillo County, State of New Mexico as more particularly described on Schedule I attached hereto and made a part hereof for all purposes and shown on the site plan ("**Site Plan**") attached hereto as Exhibit A as Parcel 12 (the "**Lowe's Parcel**"); and

WHEREAS, Developer is the owner of certain tracts of real property located in City of Albuquerque, Bernalillo County, State of New Mexico, located contiguous with and adjacent to the Lowe's Parcel, which is more particularly described in Schedule II attached hereto and made a part hereof for all purposes and shown on the Site Plan as Parcels 1 through 6 inclusive, 8 through 11 inclusive, 13 and 14 (the "**Developer Parcels**"); and

WHEREAS, Sandia is the owner of a certain tract of real property located in the City of Albuquerque, Bernalillo County, State of New Mexico, located contiguous with and adjacent to the Lowe's Parcel, which is more particularly described in Schedule III attached hereto and made a part hereof for all purposes and shown on the Site Plan as Parcel 7 ("**the Sandia Parcel**"); and

WHEREAS, the Lowe's Parcel, the Sandia Parcel and the Developer Parcels are further designated on the Site Plan of the overall shopping center development.

NOW, THEREFORE, the Developer, Sandia and Lowe's hereby declare, agree, covenant and consent that all of the Parcels described on Schedule I, Schedule II and Schedule III shall be held, sold and conveyed subject to the following easements, restrictions, covenants and

conditions which are imposed on such Parcels to run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the described Parcels or any part thereof, their heirs, successors and assigns for the purpose of development and operation of the Parcels in an integrated shopping center and to protect the value of such respective Parcels. Further, in consideration of the premises, the agreements and the covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

BASIC DEFINITIONS

Section 1.1. **"Building"** shall mean the permanently enclosed structure(s) which has(have) been, will be or may be constructed within the Permissible Building Areas, but shall not include Common Area Improvements. For purposes of these ECC&Rs, "Building" shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

Section 1.2. **"Common Area"** shall mean all real property owned by the Parties for the common use and enjoyment of the Owners and their respective Permittees, including, without limitation, parking areas (provided there are no reciprocal parking easements), access drives and ingress and egress points, service drives, sidewalks and non-dedicated streets and shall consist of all portions of the Shopping Center not designated as Permissible Building Areas and all portions of any Permissible Building Area upon which no Building is currently constructed. Common Areas do not include drive up or drive through areas and facilities, loading docks, patio areas, or permanent outdoor sales areas.

Section 1.3. **"Common Area Improvements"** shall mean all improvements constructed from time to time within the Common Area and intended for common use and enjoyment which may include, without limitation, parking areas (provided there are no reciprocal parking easements), access drives, ingress and egress points, service drives, non-dedicated streets, lighting standards, sidewalks, landscaping, fixtures, and signage. The Common Area Improvements shown on the Site Plan require no further approval by any Owner.

Section 1.4. **"Consenting Owner"** shall mean and refer to the Owner of the Lowe's Parcel, and the Owner of Parcel 14; for so long as the Sandia Parcel is owned by Sandia or any

affiliate or successor company to Sandia, the Owner of the Sandia Parcel shall also be a Consenting Owner. The Parties intend that there shall be at most three (3) Consenting Owners for the Shopping Center consisting of only one Consenting Owner representing Parcel 14, only one Consenting Owner representing the Lowe's Parcel, and only one Consenting Owner representing the Sandia Parcel but only so long as Sandia or any affiliate or successor company to Sandia own the Sandia Parcel. In the event that the Lowe's Parcel, the Sandia Parcel or Parcel 14 are further subdivided, the current Consenting Owner shall designate the particular parcel of the subdivided Parcel whose Owner shall succeed as the Consenting Owner. Any time that the consent or approval of the Consenting Owners is required under these ECC&Rs, the unanimous consent or approval of all of the Consenting Owners must be obtained for any such consent or approval to be authorized and, unless otherwise specified, such consent shall not be unreasonably withheld, conditioned or delayed.

Section 1.5. **"Default Rate"** shall mean the rate of interest that is the lesser of (i) twelve percent (12%) per annum, compounded monthly, and (ii) the maximum rate allowed by applicable law.

Section 1.6. **"Improvement(s)"** shall mean Building(s) and other structures within a Permissible Building Area and Common Area Improvements.

Section 1.7. **"Maximum Square Footage"** shall mean and refer to the maximum square footage allowed for all Buildings contained within a single Permissible Building Area. The Maximum Square Footage for each Permissible Building Area is shown on the Site Plan. Any change to the Maximum Square Footage shown on the Site Plan shall be subject to the prior written consent of the Consenting Owners, which consent may be withheld in the sole discretion of each of the Consenting Owners and any such change shall be reflected in an amendment to these ECC&Rs.

Section 1.8. **"National or Regional Chain"** shall mean a retail business operating under the same name (and utilizing the same prototypical signage or prototypical building design as applicable) having at least forty (40) locations through the United States or having at least twenty (20) locations within the Albuquerque metropolitan area.

Section 1.9. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Parcel which is a part of the Shopping Center, as

hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.10. **"Parcel"** shall mean and refer to any parcel of land shown as a parcel or tract on the Site Plan. **"Outparcel"** shall mean and refer to the portions of the Developer Parcels and the Sandia Parcel labeled Outparcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13 on the Site Plan. Every Outparcel shall be a Parcel from the date of recording of a subdivision map showing the Outparcel, so that all references herein to Parcels shall apply with equal force to Outparcels; however, references to Outparcels shall be specific to Outparcels as herein defined.

Section 1.11. **"Permissible Building Area"** shall mean the area designated on the Site Plan within which a Building(s) may be constructed not to exceed the Maximum Square Footage. Any change to the Permissible Building Areas shown on the Site Plan shall be subject to the prior written consent of the Consenting Owners, which consent shall not be unreasonably withheld, conditioned or delayed provided that it shall not be unreasonable for a Consenting Owner to withhold consent if the Consenting Owner determines in its reasonable business judgment that the proposed change adversely affects visibility of its Building or signage, parking, or traffic or pedestrian flow. Any such change shall be reflected in an amendment to these ECC&Rs.

Section 1.12. **"Permittees"** shall mean Owners and their tenants and subtenants and the employees, occupants, contractors, customers, agents, licensees, guests, and invitees of an Owner, its tenants and subtenants.

Section 1.13. **"Shopping Center"** shall mean and refer to the Lowe's Parcel, the Sandia Parcel and the Developer Parcels as shown on the Site Plan, located in the City of Albuquerque, County of Bernalillo, State of New Mexico.

Section 1.14. **"Site Plan"** shall mean Exhibit A. The Site Plan consists of multiple pages; references to the Site Plan shall apply to the page of Exhibit A showing the feature or item described as being shown on the Site Plan.

ARTICLE II

EASEMENTS

Section 2.1 Definitions and Documentation:

For the purposes of this Article II, the following will apply:

(A) An Owner granting an easement is called the "**Grantor**", it being intended that the grant shall thereby bind and include not only such Owner but also its successors and assigns.

(B) An Owner to whom the easement is granted is called the "**Grantee**", it being intended that the grant shall benefit and include not only such Owner but its successors, assigns, and Permittees; although not for the direct benefit of Permittees, the Grantee may permit from time to time its Permittees to use such easements; provided, however, that no such permission nor the division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of the creation of such easement.

(C) The term "**Utility Facilities**" means utility systems and utility facilities serving the Shopping Center such as the following: storm drainage, detention, retention and disposal facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and utility facilities installed under the provisions of these ECC&RS and as replacements thereto.

(D) The term "**Common Utility Facilities**" means Utility Facilities serving more than one (1) Owner.

(E) The term "**Separate Utility Facilities**" means Utility Facilities serving a single Owner (e.g., a lateral line).

(F) The word "**in**" with respect to an easement granted "**in**" a particular Parcel means, as the context may require, "**in**", "**to**", "**on**", "**over**", "**through**", "**upon**", "**across**", and "**under**", or any one or more of the foregoing.

(G) All easements granted herein are non-exclusive and are irrevocable and perpetual.

(H) All easements granted herein shall be easements appurtenant and not easements in gross.

(I) In the event an Owner transfers or conveys a portion of its Parcel, those easements granted under this Article II which benefit, bind, and burden the remainder of the Parcel not transferred or conveyed shall benefit, bind, and burden the portion of the Parcel so transferred or conveyed, and those easements granted under this Article II which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Parcel of which it was a part.

(J) All easements granted hereunder and herein shall exist by virtue of these ECC&Rs, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the reasonable request of an Owner, the other Owners shall sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Owners, which approval shall not be unreasonably withheld. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Owner to construct or maintain its Building(s) except as expressly provided in these ECC&Rs.

Section 2.2 Easements for Use of Common Area.

(A) Grant of Easement: Each Owner hereby grants to the other Owner(s) easements in the Common Area on its (Grantor's) Parcel for:

- (i) ingress to and egress from the Grantee's Parcel;
- (ii) the passage of vehicles;
- (iii) the passage and accommodation of pedestrians; and
- (iv) the doing of such other things as are expressly authorized or required to be done on the Common Area under these ECC&Rs.

(B) No Cross Parking: The Owners hereby specifically disclaim any intention to create any reciprocal parking easements between the Lowe's Parcel and any other Parcel in the Shopping Center.

(C) Design of the Common Areas:

(i) No Change Area: No change may be made to the layout and configuration of that portion of the Common Area shown on the Site Plan as the "No Change Area" without the consent of each of the Consenting Owners, which consent may be withheld in the sole discretion of each Consenting Owner.

(ii) Initial Development of the Common Areas: The Common Area Improvements depicted on the Site Plan are hereby deemed approved by the Consenting Owners.

(iii) Changes after Initial Development. Any Owner may add Common Areas and Common Area Improvements not shown on the Site Plan or make changes to the Common Area and the Common Area Improvements shown on the Site Plan on such Owner's Parcel and not included in the No Change Area, as such Owner determines in its sole discretion; provided, however, that the consent of each Consenting Owner shall be required for any change or addition that adversely impacts: (i) access to an Owner's Parcel (including changes and additions to entrances or exits that adversely affect access to an Owner's Parcel), (ii) vehicular traffic flow to any other Parcel in the Shopping Center (including changes or additions to curb cuts or the orientation of parking spaces or drive aisles that adversely affect traffic flow to any other Parcel in the Shopping Center), or (iii) visibility of any other Owner's building or any sign on which any other Owner has a right to display a sign panel, and such consent may be withheld in the sole discretion of each Consenting Owner. No change may (i) reduce parking spaces below the minimum required under these ECC&Rs, (ii) alter the location of free standing signs as provided in Section 4.3 of these ECC&Rs, or (iii) relocate utility facilities except as provided in Section 2.3 of these ECC&Rs. Notwithstanding the foregoing, no drive through or drive up window or lane may be added to or changed in the Common Areas without the consent of each of the Consenting Owners, which consent may be withheld in the sole discretion of each Consenting Owner.

(iv) Enjoyment and use of the Common Area easements granted by this Section 2.2 shall commence on the date the Common Area Improvements with respect to the Common Area in question are substantially complete.

(D) Common Area Sales and Displays: Notwithstanding the grant of easements under Section 2.2(A), sales and displays may be located within the Common Area but only as follows (and provided that the following activities are not in violation of any applicable law or ordinance):

(i) The Owner or occupant of the Lowe's Parcel may conduct parking lot sales, conduct other business and/or display merchandise in that portion of the Common Area (including the parking field) to the side of or in front of any Building on the Lowe's Parcel so long as such activity does not materially interfere with ingress and egress to the rest of the Shopping Center and is not in violation of any applicable law or ordinance.

(ii) The Owner or occupant of the Lowe's Parcel shall have the right, but not the obligation, to install and maintain a bank teller machine or similar kiosk type structure(s) on the sidewalks next to the Lowe's Building provided that the ATMs and kiosks are not drive up or drive through facilities.

(iii) The Owner or occupant of the Lowe's Parcel may display merchandise, conduct sidewalk sales and/or conduct other business on the sidewalks on the Lowe's Parcel. The Owner or occupant of the Lowe's Parcel may otherwise enclose and/or redesign its sidewalk areas without the need of obtaining any other Owner's consent. The Owner or occupants of the Developer Parcels and the Sandia Parcel may display merchandise, conduct sidewalk sales or other business on the sidewalks on their respective Parcels.

(iv) The Owner or occupant of the Lowe's Parcel may park vehicles or equipment in the parking field of the Lowe's Parcel in connection with the leasing of vehicles and/or equipment.

(v) Except as set forth herein, parking lot sales and/or other display or sale of merchandise in the Common Areas is not permitted in the Shopping Center.

(E) Easements for Access Drives: Each Owner hereby grants to the other Owner(s) easements for pedestrian and vehicular traffic in those drive aisles and access drives (not less than the widths therefor shown on the Site Plan) on its (Grantor's) Parcel which are shown on Site Plan as being within the "No Change Area" (hereinafter collectively referred to as the "Access Drives") for the purpose of providing ingress to and egress from the Grantee's Parcel and each of Central Avenue, SW, Unser Boulevard SW, 86th Street SW and Bridge Boulevard SW, together with the following rights and subject to the following restrictions and reservations:

(i) The use of the Access Drives by any person entitled to the use thereof shall be in common with all other such persons. The Access Drives and the land upon which they are located shall be considered in all respects part of the Common Area, and the improvements thereon shall be considered in all respects part of the Common Area Improvements; and

(ii) As further provided in Section 2.2(F) herein, Grantors of the easements for the Access Drives agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Drives, except to the extent

necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein.

(F) **General Provisions for Common Area Easements:**

(i) No barriers, fences, walls, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Shopping Center from time to time devoted to pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Owners of the rights and easements created by this Article II. In addition, each Owner may temporarily close or block traffic on its Parcel for the time necessary for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give fifteen (15) days written notice to each other Owner of its intention to do so and shall attempt to coordinate such closing with each other Owner, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction.

(ii) The easements granted under this Section 2.2 are limited to such portions of the Common Area of the Grantor's Parcel as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under these ECC&Rs, specifically including those portions of the Common Area shown on the Site Plan. Enjoyment and use of the Common Area easements granted by this Section 2.2 shall commence on the date the Common Area Improvements with respect to the Common Area in question are substantially completed.

(iii) Each Owner hereby reserves the right to eject from the Common Area on its Parcel any person not authorized to use the same.

(iv) The easements provided for in this Section 2.2 are subject to the rights to use and the restrictions on use of the Common Area provided for in these ECC&Rs.

Section 2.3 Easements for Utility Facilities:

(A) **Grant of Easement:** Each Owner hereby grants to the other Owner(s) perpetual easements to its (Grantor's) Parcel, except within such Owner's Permissible Building Area, for

the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Parcel of the Grantee.

(B) Installation, Repair and Maintenance:

(i) All Utility Facilities shall be underground if reasonably possible.

(ii) The location of any Utility Facilities shall be subject to the prior written consent of the Owner(s) across whose Parcel(s) the same are to be installed, which consent shall not be unreasonably withheld, conditioned or delayed.

(iii) The CAM Director (defined below) shall be responsible for the maintenance, operation, repair, replacement and removal of all Common Utility Facilities in accordance with Section 5.1 which shall be subject to reimbursement by each Owner in the Shopping Center of its pro rata share of the costs of such work. For purposes of this Section 2.3(B), each Owner's pro rata share shall be calculated by dividing the square footage of such Owner's land by the total square footage of all land of all Owners served by such Common Utility Facilities. The reimbursements will be invoiced and paid in accordance with the provisions of Section 5.1.

(iv) The Owner served by a Separate Utility Facility (i.e., the Owner whose Parcel is served by a separate lateral utility line) shall be responsible, at its cost, for the maintenance, operation, repair, replacement and removal of such Separate Utility Facility, regardless of whether the Separate Utility Facility is on that Owner's Parcel or on another Owner's Parcel pursuant to a grant of easement above.

(v) Any installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by a Grantee on a Grantor's Parcel or of Common Utility Facilities by CAM Director only after thirty (30) days advance notice to Grantor of the intention to do such work. However, in the case of an emergency (whereby either persons or property are in immediate danger of substantial damage and/or harm), any such work may be immediately performed after giving such advance notice to Grantor as is practicable and reasonable under the circumstances.

(vi) All installation, maintenance, repair and removal of Utility Facilities shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's Parcel which may

have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as existed prior to the commencement of any such work.

(vii) After the Building on the Lowe's Parcel has opened for business, no installation, repair or removal of Utility Facilities shall be carried on during the period from November 15th through the next succeeding January 15th, and April 1st through July 4th, or on any weekends except: (a) emergency repair work; or (b) work undertaken outside of the hours during which the Building on the Lowe's Parcel is open for business provided that any interruption of utility service to the Lowe's Parcel shall be coordinated with the Owner of the Lowe's Parcel. After the Building on the Sandia Parcel has opened for business, no installation, repair or removal of Utility Facilities shall be carried on during the period from January 1st through March 31st or on any weekends except: (a) emergency repair work; or (b) work undertaken outside the hours during which the Building on the Sandia Parcel is open for business provided that any interruption of utility service to the Sandia Parcel shall be coordinated with the Owner of the Sandia Parcel.

(C) Easements to Public Utilities. Any grant or other conveyance of an easement to a public utility, as Grantee, by a Grantor on its Parcel shall, without necessity of further recital in the conveyancing instrument, be deemed to include the following conditions, covenants and restrictions, in addition to the other provisions of Section 2.3, to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument.

- (i) The easement is non-exclusive;
- (ii) All Utility Facilities installed pursuant to the easement shall be underground, except for manholes and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed;
- (iii) The right to use the surface areas for the purposes allowed under these ECC&Rs is reserved;
- (iv) Grantor reserves the right to require Grantee to relocate its facilities (and vacate the easement) to another location on Grantor's Parcel, subject to the conveyance of a similar easement, all at Grantor's cost and expense;

(v) Grantee shall not, in its use or installation, interfere with other installations and easements in the area;

(vi) Grantee shall protect its Utility Facilities against uses of the surface made by Grantor and others;

(vii) Grantee shall make adequate provisions for the safety and convenience of all persons using the area;

(viii) Grantee, following installation or other work, shall replace and restore the areas and improvements to the condition in which they were immediately prior to performance of such installation and work;

(ix) Grantee shall defend, indemnify and hold harmless Grantor against all loss, liability, and costs (including reasonable attorneys' fees and reasonable attorneys' fees on appeal) which may result to Grantor from the negligent or willful wrongful act or omission of Grantee, its agents, employees and contractors; and

(x) Grantee shall not permit any claim, lien, or encumbrance to attach against Grantor's Parcel or any interest therein.

(D) Indemnification: The Grantee shall defend, indemnify and hold Grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal), incurred in connection with Grantee's use of the Utility Facilities easements under this Section 2.3, except to the extent occasioned by Grantor's negligent or willful wrongful act or omission to act.

(E) Grantee's Rights as to Utility Facilities:

(i) Use of Separate Utility Facilities: The Grantor of any easement for Separate Utility Facilities under this Section 2.3 may use the utility facilities installed pursuant to such easement; provided, however, that any increase in costs incurred in order to make such utility facilities adequate to serve Grantor's additional use shall be borne by such Grantor; and provided, further, that Grantor gives written notice within the time period called for under, and otherwise complies with, the requirements of Section 2.3(E)(ii).

(ii) Relocation of Utility Facilities on Grantor's Parcel: Except during the period from November 15th through the following January 15th and the period from April 1st through July 4th with respect to Utility Facilities serving the Lowe's Parcel and except during the

period from January 1st through March 31st with respect to Utility Facilities serving the Sandia Parcel, the Grantor of any easement under this Section 2.3 may relocate on its Parcel any Separate Utility Facilities or Common Utility Facilities installed thereon under any easement granted by it (provided that such relocation work may occur during the periods described above for (a) emergency repair work; or (b) work undertaken outside of the hours during which the Building on the Lowe's Parcel or the Sandia Parcel as applicable is open for business provided that any interruption of utility service to the Lowe's Parcel shall be coordinated with the Owner of the Lowe's Parcel and any interruption of utility service to the Sandia Parcel shall be coordinated with the Owner of the Sandia Parcel); provided, however, that such relocation:

(a) may be performed only after Grantor has given Grantee thirty (30) days' written notice of its intention to relocate such facilities;

(b) shall not interfere with or diminish the utility services to the Grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantee has been so notified under Subsection 2.3(E)(ii)(a)). Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interferences or diminutions, or both;

(c) shall not reduce or unreasonably impair the usefulness or function of the facilities in question;

(d) shall be located underground, if reasonably possible;

(e) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities or Separate Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee; and

(f) shall be performed in a manner that minimizes the disruption of business operations within the Shopping Center.

(iii) Limitation on Rights: Nothing herein shall be construed to grant any Owner the right to utilize, drain into, or otherwise alter natural water flow into any detention or retention facilities located on or exclusively serving any other Owner's Parcel.

Section 2.4 Drainage:

Each Owner hereby grants to the other Owners easements to use, maintain and repair any storm water drainage system (the "**Storm Drainage System**") now or hereafter located on any Parcel,

together with the right to discharge surface water runoff across portions of any Parcel in accordance with the design of the Storm Drainage System; provided, however, that use, maintenance and repair of any Utility Facilities for the Storm Drainage System shall comply with Section 2.2. All changes to the initial Storm Drainage Systems shall be subject to the prior written consent of the Owner of the Lowe's Parcel and the Owner of Lot 14, which consent shall not be unreasonably withheld, conditioned or delayed. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of an Owner's Improvements substantially as shown on the Site Plan (including, without limitation, Buildings, curbs, drives and paving) shall be permitted, provided that the same is in accordance with a drainage plan approved by the Owner of the Lowe's Parcel and the Owner of Lot 14 and which does not cause water to settle or pool within another Owner's Parcel.

Section 2.5 Construction Easements:

(A) Each Owner hereby grants to the other Owners temporary construction related easements in the Common Area of its (Grantor's) Parcel, and where appropriate and necessary in the Permissible Building Area on its (Grantor's) Parcel, but only prior to the commencement of construction by Grantor of Improvements on its own (Grantor's) Parcel, for the purpose of facilitating the initial construction of the Grantee Improvements contemplated within these ECC&Rs.

(B) With respect to any Parcels on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Shopping Center or any public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property or in accordance with a grading plan approved by the Grantor, which approval shall not be unreasonably withheld, conditioned or delayed.

(C) The location and use of all temporary construction easements under this Section 2.5 shall be subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.

(D) Each Grantee agrees to pay the Grantor any additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by Grantor which may arise on account of or due to Grantee's exercise of its temporary construction easement rights under this Section 2.5. Each Grantee further agrees to use due care in the

exercise of the rights granted under this Section 2.5 and, in the event the exercise of the rights granted under this Section 2.5 requires Grantee to enter upon the Parcel of Grantor, to first obtain the consent of Grantor as to the specific activities, methods and timing in the exercise of such rights so as to avoid cost or damage to Grantor.

(E) Each Owner covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the Building(s) or other Improvements of any other Owner, and shall not interfere with or interrupt the business operations conducted by any other Owner in the Shopping Center. Furthermore, once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Parcel, the Sandia Parcel or any Common Area access, egress and service drives to the Lowe's Parcel or the Sandia Parcel, no construction traffic shall use any portion of the Lowe's Parcel, the Sandia Parcel or the Main Access Drive (as shown on the Site Plan) provided that the Owner of the Lowe's Parcel may utilize the portion of the Main Access Drive located on its Parcel and the Owner of the Sandia Parcel may utilize the portion of the Main Access Drive located on its Parcel. In addition, each Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed in the exercise by Grantee of the temporary construction easements granted under this Section 2.5 and shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of Grantee's exercise of said temporary construction easements, except to the extent occasioned by Grantor's grossly negligent or wrongful acts or omissions.

(F) Grantee's Improvements made within such temporary construction easements shall, for purposes of cost allocation due to maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under these ECC&Rs, be deemed to be part of the Grantee's Parcel and Building and shall be deemed not to be part of the Grantor's Parcel or Building for such purposes.

(G) Except as reasonably necessary for and during the construction of any Building, no structure of a temporary character shall be erected or allowed to remain on any Parcel.

Section 2.6 Sign Easement:

The Owners of the Parcels on which a Center Sign is located (as shown in the Sign Criteria) hereby grant to the other Owners entitled under Section 4.3 of these ECC&Rs to display a sign panel on the Center Sign(s), an easement for maintenance, repair and replacement of such sign panel.

Section 2.7 Cure Right Easements:

Each Owner hereby grants to the Consenting Owners an easement and license to enter upon its Parcel for the purpose of exercising the cure rights provided under Article V of these ECC&Rs. Each Grantee of the easements granted under this Section 2.7 shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of Grantee's use of said easements, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act. The duration of the easements granted under this Section shall be coterminous with the respective provisions of the ECC&RS which give the Grantee the right or the obligation to perform the work described in this Section 2.7.

ARTICLE III

USE RESTRICTIONS

Section 3.1 Permitted Uses:

Every Parcel shall be used only for financial institutions, service shops (including fitness centers, gyms, or health clubs subject to Section 3.3(A)(iv) and Section 3.6), Retail Offices, retail stores selling retail merchandise normally carried in other shopping centers and restaurants with less than thirty (30%) percent of gross revenues from alcoholic beverage sales (except as provided in Section 3.3(A)(i) below), all as subject to the further restrictions of this Article III. "**Retail Offices**" shall mean offices of the type customarily found in retail shopping centers for use primarily with customers or clients including, without limitation, insurance offices, real estate offices, banks and financial institutions, travel agents, chiropractors, physical therapists, dentists, and accounting and tax services, but shall not include educational or training facilities or medical offices (except as expressly provided in Section 3.3(A)(x) below). No Retail Office use shall exceed 5,000 square feet and the total of all Retail Office use in the portion of the Shopping Center east of the furthest west entrance to the Shopping Center from West Central Avenue (the

“West Entrance” as marked on the Site Plan) shall not exceed 10,000 square feet and the total of all Retail Office use in the Shopping Center shall not exceed 20,000 square feet (provided that 5,000 square feet of Retail Office use shall be allocated to the exclusive use of the Sandia Parcel (so that no more than 5,000 square feet of Retail Office use is permitted on the Developer Parcels east of the West Entrance after taking into account the 5,000 square feet allocated to the Sandia Parcel and no more than 15,000 square feet of Retail Office use is permitted within all of the Developer Parcels in the Shopping Center after taking into account the 5,000 square feet allocated to the Sandia Parcel) and provided further that the square footage for one (1) bank or financial institution shall be exempted from the limitations set forth above (so that its square footage would not be included in the totals for the Retail Office use east of the West Entrance or for the Shopping Center as a whole)).

Section 3.2 Nuisances:

No Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations. Nothing shall be done on any Parcel which is a public nuisance to the community.

Section 3.3 Use Restrictions:

(A) During the term of these ECC&Rs no portion of the Shopping Center may be used for any of the following purposes without the prior written consent of the Consenting Owners which consent may be withheld in the sole discretion of a Consenting Owner:

(i) A liquor store, or a tavern, bar, nightclub, cocktail lounge, discotheque, dance hall, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than thirty (30%) percent of the restaurant's gross revenues provided that this provision will not prohibit a National or Regional Chain restaurant concept (such as a Chili's, or TGIFriday's) so long as the food sales for such National or Regional Chain restaurants are at least sixty (60%) percent of the restaurant's gross revenues. Notwithstanding the foregoing, there may be one (1) upscale specialty wine store located west of the most western entrance from Central Avenue (the “West Entrance”) provided that such store meets each of the following: (a) has sales of not more than fifteen percent (15%) of its total gross sales attributable to specialty beers and not more than five percent (5%) of its total gross sales

attributable to sale of alcoholic beverages other than wine and beer; (b) no exterior or window signs using neon or moving lights or advertising brands or prices shall be visible from the Common Areas; (c) must close on or before 11:00 p.m.; and (d) must be a first class operation such as BevMo (aka Beverages & More) or Total Wine & More as operated on the date of these ECC&Rs.

(ii) A bowling alley, billiards parlor, bingo parlor, arcade, game room or other amusement center (provided, however, that one (1) pool table and up to five (5) video or game machines shall be allowed as incidental to an otherwise permitted restaurant use and further provided that gaming equipment used in connection with an interactive fitness or exergame system such as XRKade utilized in an otherwise permitted fitness center or gymnasium use shall be permitted on the Sandia Parcel).

(iii) A theater (motion picture or live performance).

(iv) A health club, gymnasium or spa except that: (A) a health club, gymnasium, fitness center or health and wellness center (which may offer spa treatment) may be operated on Parcel 7 provided that: (1) the main customer entrances to the building face east for any portion the Building that extends to the south half of Parcel 7; and (2) that Parcel 7 provide at least ninety-five percent (95%) of the parking spaces shown on the Site Plan for Parcel 7 and (B) a day spa not to exceed five thousand (5,000) square feet of floor area may be located any where more than three hundred (300) feet from the Lowe's Parcel.

(v) A service station, automotive repair shop or truck stop; provided that the following shall be permitted:

(a) One (1) gas station without service bays or repair services operated in conjunction with a convenience store may be permitted on one (1) Parcel within the Shopping Center which Parcel shall be limited to Parcels 1, 2, or 11 provided that: (a) it is operated as part of a National or Regional Chain; (b) that any underground storage tank is removed if the station has not been operated for a period greater than one (1) year; (c) that it complies with all local, state and federal storage and disposal regulations, rules, laws and ordinances regarding petroleum products, chemicals and wastewater and relating to the construction, installation and operation of such facility; (d) that it have in place and functioning at all times adequate facilities and programs for monitoring and preventing the release of petroleum products and/or chemicals including a

functioning oil/water separator system (or other type scrubber) to pre-treat any and all sewer discharge reasonably acceptable to the Owner of the Lowe's Parcel to prevent the flow of petroleum products, chemicals, or untreated wastewater into the sanitary sewer or storm water drainage systems of the Shopping Center and provide to the Owner of the Lowe's Parcel documentation evidencing a thorough and comprehensive plan to service the aforementioned pre-treatment system; (e) the operator of the gas station and Owner of the Parcel on which the gas station is located indemnify the other Owners for any liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising out of the operation of such gas station (except to the extent caused by the negligence or intentional misconduct of the indemnitee); and (f) with respect to Parcel 11, that for each pump there shall be stacking sufficient for three (3) cars within Parcel 11 such that cars do not stack into the No Change Area.

(b) One (1) tire store (such as an NTB, Discount Tire, or Goodyear) on one (1) Parcel within the Shopping Center which Parcel shall be limited to Parcels 1, 2, 10 or the west three hundred (300) feet of Parcel 14 provided that: (1) the business is operated as part of a National or Regional Chain; (2) that there is no outdoor storage or display of equipment, goods or materials and that no vehicles are parked outside overnight; (3) that service bays are oriented so that they do not face the main customer doors for the Building on the Lowe's Parcel and no part of the Lowe's Parcel or the Sandia Parcel is used in the operation of such business; and (4) that the operation complies with all local, state and federal storage and disposal regulations, rules, laws and ordinances.

(vi) A flea market, open air market, tent sale or pawn shop.

(vii) A training or educational facility (including, without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers; provided that such restriction shall not prohibit the incidental use of an otherwise permitted business for training or classes, such as "how to" classes taught in conjunction with the sale of retail items from an otherwise permitted retail use).

(viii) A child day care facility except on Parcel 1 which is fully fenced and with such safeguards as will insure that children attending the facility are not permitted to walk in the drive aisles, access drives or parking areas in the Shopping Center and further provided that there

shall be no overnight parking of vehicles at the facility and further provided that this provision shall not prohibit any child activity or monitoring service provided as an incidental service to customers or clients of an otherwise permitted business (such as a child supervision provided to clients of the fitness center).

(ix) A car wash, except that a full service car wash shall be permitted on an Outparcel where the same shall have constructed and shall use sanitary sewer, water and storm water drainage lines entirely separate from those utilized by the Lowe's Parcel.

(x) A medical clinic or medical office (provided that this shall not restrict dental, chiropractic, optometrist or optician offices which shall be permitted Retail Offices; in addition, this restriction shall not prohibit an in-store clinic as part of a CVS or Walgreen's operation or prohibit a physical therapist office on the Sandia Parcel).

(xi) A storage or mini-warehouse facility.

(xii) An establishment for the sale of automobiles, trucks, mobile homes, boats or recreational motor vehicles.

(xiii) A dry cleaning plant, central laundry or laundromat except that this restriction shall not prohibit: (a) a drop off and pick up facility where dry cleaning and laundry is performed offsite; and/or (b) a drop-off and pickup facility where nominal cleaning services are provided on-site or a business that performs on-site cleaning services for only non-commercial customers who drop off their laundry at this location provided that: (1) the business is not greater than 3,000 square feet; and (2) the business does not use perchloroethylene or any other chemical or substance that is considered to be hazardous or toxic under any state, federal or local environmental laws and that uses sanitary sewer lines that are entirely separate from those utilized by the Lowe's Parcel and the Sandia Parcel.

(xiv) A hotel or motel.

(xv) Governmental offices.

(B) During the term of these ECC&Rs no portion of the Shopping Center may at any time be used for any of the following uses whatsoever:

(i) An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or

activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts) provided, however, that such prohibition shall not exclude incidental sales of adult items by a regional or national chain general interest bookstore or regional or national chain general interest video rental store in the same manner as offered in the majority of such chain's stores and properly screened from children.

(ii) A massage parlor, provided, however, that this restriction shall not prohibit: (a) massages provided as an incidental service performed by licensed massage therapists in connection with the health club, gymnasium, fitness center and/or health and wellness center or day spa allowed under (A)(iv) above; or (b) a first class massage therapy facility operated as part of a National or Regional Chain, not to exceed three thousand (3,000) square feet of floor area and located west of the West Entrance.

(iii) A skating rink.

(iv) A mortuary, crematorium or funeral home.

(v) A mobile home or trailer court, labor camp, junkyard or stockyard.

(vi) A land fill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage.

(vii) A telephone call center.

(viii) A gambling establishment or betting parlor.

(ix) Veterinary hospital or animal raising or keeping facilities except as part of a national or regional chain pet or pet supply store.

(x) Assembling, manufacturing, industrial, distilling, refining or smelting facility.

Section 3.4 Exclusive Use Restriction for the Benefit of the Lowe's Parcel:

(A) No portion of the Shopping Center other than the Lowe's Parcel may be used for the following purposes:

(i) A hardware store or center containing more than 5,000 square feet of floor area.

(ii) An appliance, home electronics and/or lighting store or center containing more than 5,000 square feet of floor area (provided that this restriction shall not prohibit the

operation of an Office Depot, Staples, OfficeMax, Best Buy, Circuit City or Radio Shack, as such retail facilities are currently being operated and merchandised with appliances, home electronics and lighting in excess of 5,000 square feet of floor area and shall not prohibit the operation of a home theater specialty realtor with electronics in excess of 5,000 square feet of floor area).

(iii) A nursery and/or lawn and garden store or center containing more than 3,000 square feet of floor area (including any outdoor areas).

(iv) A paint store or center, wall paper store or center, tile store or center, flooring store or center, carpeting store or center, and/or home décor store or center containing more than 4,000 square feet of floor area.

(v) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply.

(B) These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (A)(i) through (A)(v) when such space exceeds the limitations of subparagraphs (A)(i) through (A)(v).

(C) Notwithstanding anything to the contrary in Section 3.4, in the event a retail and/or warehouse home improvement center, lumber yard, building materials supply center, hardware store, lawn and garden store, appliance, home electronics and/or lighting store, and/or paint, wall paper, tile, flooring, carpeting and/or décor store or center is not operated in any portion of the Lowe's Parcel for a period in excess of three (3) consecutive years (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Parcel), the exclusives stated in Section 3.4 shall be of no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall re-open a store on any portion of the Lowe's Parcel for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if such uses were begun during such time as the above exclusive use restrictions were of no force and/or effect.

Section 3.5 Proprietary Rights of Lowe's:

Any owner, occupant or person owning, leasing or otherwise making use of any portion of the Shopping Center shall be deemed, by virtue of accepting such ownership, leasehold interest or making such use, to have covenanted and agreed that (i) the trade names, trademarks, service marks (including, without limitation, all logos, emblems, designs or designating words or names) utilized by Lowe's or its affiliated companies, in connection with the Shopping Center or the conduct of its business thereat are registered and/or the proprietary property of Lowe's or its affiliates, (ii) except as provided below, no usage of those marks or names will be made in naming or referring to any activity within or without the Shopping Center and (iii) no usage of such marks or names shall be made without the prior written consent of Lowe's and Lowe's legal counsel, which consent Lowe's may withhold in its sole discretion. Lowe's reserves the right to require any person or entity to whom it may grant a written right to use a given name or mark to enter into a formal written license agreement with Lowe's and to charge a fee or royalty therefor.

Section 3.6 Exclusive Use Restriction for the Benefit of the Sandia Parcel:

(A) No portion of the Shopping Center other than the Sandia Parcel may be used for any of the following:

- (i) A health club, gymnasium, fitness center, weight lifting, exercise or aerobics facility;
- (ii) An athletic facility;
- (iii) A health and wellness center;
- (iv) A yoga center;
- (v) Personal training, sports training or athletic training services;
- (vi) Physical therapy services or offices;
- (vii) Exergame or interactive fitness facility;
- (viii) A fitness center or gymnasium similar to those operated by Defined Fitness, New Mexico Sports and Wellness, 24 Hours Fitness, Liberty Gym, Anytime Fitness, Gold's Gym, Curves, The Sports Clubs, Urban Active, Bally Total Fitness, Pur Fitness, Cardinal Fitness, Parisi Speed School, The Training Sensation, Inc., Absolute Results Personal Training Gym, Designer Bodies, The Training Sensation, and Conditioned by Kelly Tekin.

(B) The foregoing shall not prohibit any exercise equipment made available only to employees of an otherwise permitted use in the Shopping Center and shall not prohibit the sale of health or wellness products or athletic gear or clothing from a retailer in the Shopping Center.

(C) Notwithstanding anything to the contrary in Section 3.6, in the event a health club, gymnasium, fitness center or health and wellness center is not operated in any portion of the Sandia Parcel for a period in excess of three (3) consecutive years (excluding temporary closing due to alterations, casualty, condemnation or other unavoidable delays beyond the reasonable control of the Owner of the Sandia Parcel), the exclusives stated in Section 3.6 shall be of no further force and/or effect until such time as the Owner of the Sandia Parcel or its successors, assigns or tenants shall re-open a health club, gymnasium, fitness center or health and wellness center on any portion of the Sandia Parcel for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if such uses were begun during such time as the above exclusive use restrictions were of no force and/or effect (but only if such uses were approved in writing by the Consenting Owners as expressly required in Section 3.3(A)(iv) for any property other than the Sandia Parcel).

ARTICLE IV

GENERAL CONSTRUCTION & DEVELOPMENT

Section 4.1 Development Parameters:

(A) Permissible Building Areas: All Buildings must be constructed within a Permissible Building Area. No Building can exceed the Maximum Square Footage shown for each Permissible Building Area on the Site Plan. No building, structure or improvements (other than Common Area Improvements) shall be erected or maintained outside of a Permissible Building Area. The Permissible Building Areas and Maximum Square Footages as shown on the Site Plan cannot be changed without the prior written consents as required under Section 1.7 and Section 1.11, which changes shall be reflected in an amendment to these ECC&Rs.

(B) Parking Requirements. Each of the portions of the Developer Parcels and Sandia Parcel shown as "parking zones" on the Site Plan, shall be self-supporting with respect to parking and shall each contain not less than ten (10.0) paved full size automobile parking spaces per each 1,000 square feet of building floor area for restaurant use (including fast food restaurant use) and five (5.0) paved full size automobile parking spaces for each 1,000 square feet of building floor

area for any other permitted use, constructed thereon, or the number of parking spaces required by applicable law, whichever is greater. The Lowe's Parcel shall contain no fewer than 410 parking spaces. To be self-supporting, the parking spaces must be located within such parking zone so that parking spaces available on other parking zones (or within the Lowe's Parcel) or available through easements with other parking zones (or within the Lowe's Parcel) cannot be counted in meeting the requirements of this Section.

(C) Fire Protection: All improvements within the Shopping Center shall be constructed in compliance with all applicable federal, state, and local building codes with respect to fire protection. There shall be sixty (60) feet of open space on which no buildings or structures may be constructed around the Permissible Building Area on the Lowe's Parcel as shown on the Site Plan such that the Building on the Lowe's Parcel maintains an unlimited area classification for fire protection purposes. Notwithstanding anything else to the contrary in these ECC&Rs, no Owner shall seek a building permit for a Building within sixty (60) feet of the Permissible Building Area on the Lowe's Parcel as shown on the Site Plan without the prior written consent of the Owner of the Lowe's Parcel, which the Owner of the Lowe's Parcel may withhold in its sole discretion.

(D) Condition Prior to Construction: After the Building on the Lowe's Parcel has initially opened for business or the Building on the Sandia Parcel has opened for business whichever is first, each Parcel (not currently under construction) shall be kept neat, orderly, planted in grass (or seeded for grass and irrigated so that grass actually sprouts and grows) or native landscape (but not weeds) and trimmed (or improved as Common Area) until improved and constructed.

Section 4.2 Building Design:

(A) Harmony. All structures (including Common Area Improvements such as lighting) erected within the Shopping Center shall be architecturally harmonious (including, without limitation, harmonious colors, materials and designs). The Consenting Owners shall cooperate in creating a reasonably harmonious exterior appearance for the Buildings and Improvements to be constructed by them within the Shopping Center, acknowledging however that the Owner of the Lowe's Parcel may construct improvements similar to its current prototypical store building and improvements as modified to meet Governmental Requirements.

Specifically, the initial design and appearance of the Buildings and Improvements on the Lowe's Parcel and any changes to or replacements of the Buildings and Improvements on the Lowe's Parcel that the Owner of the Lowe's Parcel may deem appropriate for consistency with changes in the design and appearance of its then current prototypical stores as modified to meet Governmental Requirements do not require the consent of any other Owner. In addition and notwithstanding the foregoing: (a) the Owner of the Sandia Parcel may construct Buildings on the Sandia Parcel provided that the design of such Buildings are reasonably architecturally harmonious with the Shopping Center and conform to the other requirements of these ECC&Rs (including height limitations), as approved by applicable governmental authorities without the consent of any other Owner; and (b) so long as Parcel 9 is used as a National or Regional Chain drug store, the design of the Buildings on Parcel 9 shall not require the consent of any other Owner provided that they are reasonably architecturally harmonious with the Shopping Center and conform to the other requirements of these ECC&Rs (including height limitations), as approved by applicable governmental authorities, however, if Parcel 9 is not initially used as, or ceases to be used as, a National or Regional Chain drug store, then any future modifications and alterations or new construction on Parcel 9 shall require the approval of the Consenting Owners as provided above. All Buildings within the Shopping Center shall be single story.

(B) Approvals Except as provided in Section 4.2(A), no buildings or structures shall be erected or allowed to remain on any Parcel unless architectural renderings (depicting the exterior elevations of all sides, materials, colors and dimensions), a foundation plan and a site plan (collectively, the "Plans") for such structure have been approved in writing by the Consenting Owners, which approval shall not be unreasonably withheld, conditioned or delayed. A complete set of the proposed Plans shall be presented to and approved in writing by the Consenting Owners prior to commencing clearing, grading, or construction of a building of any kind on any Parcel. Upon completion of the Building foundation, an actual field survey of the foundation shall be presented to the Consenting Owners to ensure that it has been constructed in accordance with the Plans. All Improvements shall comply with the Plans as approved by the Consenting Owners unless changes are approved in writing by the Consenting Owners. The right to make inspections necessary to assure compliance is reserved to the Consenting Owners. After initial construction of Buildings and other Improvements, except as provided in Section 4.2(A),

no Owner shall make alterations that will substantially change the exterior of its Buildings without the consent of the Consenting Owners, such consents not to be unreasonably withheld, conditioned or delayed. The Consenting Owners shall have thirty (30) days after receipt of the Plans to approve or object to the proposed Plans. If no Consenting Owner objects to the Plans within such thirty (30) day period, then the Plans shall be deemed approved but only if the request for approval of the Plans states in all capital letters that failure to object to the Plans within thirty (30) days shall be deemed approval.

(C) Construction Timing. Weather permitting, all paving and landscaping will be finished upon completion of the Building, but in no event shall it be installed later than ninety (90) days after the Building is occupied. Subject to force majeure, total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year.

Section 4.3 Pylon or Monument Signage:

(A) There shall be six (6) multiple occupant pylon signs (each a "**Center Sign**") located in the areas shown on the sign criteria attached as Exhibit B hereto (the "**Sign Criteria**") to be used for the advertising of Owners, tenants or occupants of the Shopping Center. The design, height, size and number of sign panels on each Center Sign shall conform to the Sign Criteria. All consent and approval rights provided to the Owner of the Developer Parcels under the Sign Criteria shall not be unreasonably withheld, conditioned or delayed and shall be assigned only to such Owner's successor in interest in the Shopping Center (in the event of any conflict, such party shall be the Consenting Owner for the Developer Parcels).

(B) The Owner of the Lowe's Parcel shall be entitled to have and maintain a sign panel ("**Lowe's Sign Panel(s)**") in the top and most prominent position on both sides of Center Sign B and Center Sign D1 as shown on the Sign Criteria. The Owner of the Lowe's Parcel shall also be permitted to attach signs to the exterior of the Building on the Lowe's Parcel ("**Lowe's Building Signs**"). Provided that Lowe's Sign Panels and Lowe's Building Signs meet the size, location and materials requirements of the Sign Criteria, Lowe's Sign Panels shall be of colors, design and content as required by the Owner of the Lowe's Parcel's own visual sign standards and the Owner of the Developer Parcels hereby approves of all such signs for the Lowe's Parcel.

(C) Single occupant monument signs ("**Monument Sign**") may be located at the location(s) shown on the Sign Criteria and may be used by any occupant of the Parcel on which it is located. Each Monument Sign shall conform to the requirements of the Sign Criteria. The location or height of any Monument Sign that deviates from the Sign Criteria shall be subject to the prior written consent of the Consenting Owners.

(D) In addition to the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3' 3" in height.

(E) There shall be no other free standing signs allowed in the Center.

Section 4.4 Outparcel Development:

Any Outparcel sold or developed within Shopping Center will only be developed under the following guidelines:

(A) So long as the Building constructed on Parcel 9 is initially used as a National or Regional Chain drug store, the Building shall not exceed 26 feet in height, as measured from the finished elevation of the portion of the parking area located next to the Building, provided that architectural features measuring not more than 20% of the length of the fascia on any side of the Building may extend no taller than 30 feet in height, as measured from the finished elevation of the portion of the parking area located next to the Building; if the Building is initially constructed or reconstructed for a use other than a National or Regional Drug Store, then the new Building design shall conform to the building heights required of the other Outparcels below. The Building constructed on Parcel 7 shall not exceed 35 feet in height, as measured from the finished elevation of the portion of the parking area located next to the Building, provided that architectural features measuring not more than 20% of the length of the fascia on any side of the Building may extend no taller than 40 feet in height, as measured from the finished elevation of the portion of the parking area located next to the Building. Any Building constructed on any other Outparcels other than Parcel 9 and Parcel 7 as provided above shall not exceed 24 feet in height, as measured from the finished elevation of the portion of the parking area located next to the Building, provided that architectural features measuring not more than 20% of the length of the fascia on any side of the Building, may extend no taller than 27 feet in height as measured from the finished elevation of the portion of the parking area located next to the Building.

(B) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to the Consenting Owners;

(C) No rooftop signs shall be erected on any building constructed on any Outparcel.

(D) Any Owner or other party purchasing or leasing from Developer and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the Utility Facilities, as described in Section 2.3 of these ECC&Rs, serving the Shopping Center and the Outparcel which is caused by such Owner or party, to the extent the Outparcel benefits from any of the Utility Facilities serving the Shopping Center and the Outparcel.

(E) The foregoing restrictions and agreements are imposed on each of the Outparcels for the benefit of the entire Shopping Center. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon each of the Outparcels and any person who may from time to time own, lease, or otherwise have an interest in any of the Outparcels.

Section 4.5 Performance of Construction Work Generally:

All construction, alteration or repair work ("**Work**") undertaken by an Owner after the Building on the Lowe's Parcel has opened for business or the Building on the Sandia Parcel has opened for business, whichever occurs first, shall be prosecuted, after the commencement of such construction, with reasonable commercial diligence, subject to delays or interruptions caused by strikes, lockouts or labor disputes, inability to obtain labor or materials or reasonable substitutes therefor, acts of God, governmental action, condemnation, unusually severe weather conditions for the area, civil commotion, war or terrorism or fire or other casualty or other conditions beyond the reasonable control, other than financial, of such Owner or occupant (provided, however, that this provision shall not supercede any obligations between Developer and Lowe's pursuant to any separate development agreement). The person or entity undertaking such Work shall: (i) pay all costs and expenses associated with such Work; (ii) take necessary measures to minimize disruption and inconvenience caused by such Work; (iii) make adequate provisions for the safety and convenience of the Owners and their Permittees; (iv) control dust, noise and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area; (v) repair any and all damage which may be caused by or result from such Work; (vi) restore all affected portions

of any Parcel to a condition equal to or better than the condition existing prior to beginning such Work; (vii) indemnify and hold harmless all other Owners in the Shopping Center against any mechanics liens for such Work, particularly as to Common Areas; and (viii) obtain all necessary governmental approvals. Such Work shall not unreasonably interfere with the business operations on any other Parcel and shall not block or impede the Shopping Center ingress or egress from public streets. The party performing such Work shall limit all construction work and staging areas to its own Parcel and not encroach on any Common Areas on any other Parcel and shall not utilize parking areas of any other Parcel unless giving written permission by the Owner of the Parcel to be so encroached upon, used or utilized. In connection with Work performed within the Permissible Building Areas of the constructing Owner, incidental encroachment upon the Common Area of the party performing such work may occur in the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of such Common Area, if such encroachment is kept within reasonable requirements of such Work expeditiously pursued. For construction purposes, the Common Areas may be utilized: (a) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with such Work (but each Owner performing Work shall, to the extent reasonably possible and subject to Section 2.5, limit such access to its own Parcel) and (b) temporary storage and parking on the constructing Owner's Parcel of materials and vehicles in connection with such Work. All such Work for which a license is granted above (i) which will be performed by an Owner on another Owner's Parcel (subject to Section 2.5), or (ii) which would adversely affect the ingress and egress to the Shopping Center, the availability of parking and/or circulation of traffic in the Shopping Center, or the operation and supply of common utility facilities to or in the Shopping Center shall be undertaken only after giving the other Owners thirty (30) days prior written notice of the Work to be undertaken, and the scope, nature, duration, location and extent of the Work. Such notice shall include any plans and specifications for the Work ("**Approved Plans**"). No such Work shall be performed in the No Change Areas without the prior written consent of the Owner of the Lowe's Parcel, such consent not to be unreasonably withheld, conditioned or delayed. In the event of any emergency involving an immediate and imminent threat of substantial harm or injury to persons or property, only such notice as may be reasonable under the circumstance shall be required.

Section 4.6 Compliance in Construction:

All work which an Owner undertakes on a Parcel shall comply with the Approved Plans, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations, including procurement of all license and permits required for such Work. The consent by a Consenting Owner of any such Work or Approved Plans, under any provisions of these ECC&Rs, shall not constitute any assumption of responsibility for the accuracy, sufficiency or propriety of such Work or Plans, nor shall such consent constitute a representation or warranty that such Work or Plans will be economic to construct or will comply with law.

Section 4.7 Construction Insurance.

(A) Prior to commencing any construction activities within the Shopping Center, each Owner/Occupant shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverage set forth below:

(i) Worker's Compensation and Employer's Liability Insurance. The general contractor and each of its subcontractors shall carry workers' compensation and employer's liability coverage as outlined below

(a) Worker's compensation insurance as required by any applicable law or regulation with statutory limits.

(b) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

(ii) Commercial General Liability Insurance. Commercial General Liability insurance covering all operations by or on behalf of the general contractor and any subcontractors, which shall include the following minimum limits of liability:

- (a) \$2,000,000 each occurrence for bodily injury, death and property damage;
- (b) \$5,000,000 per project aggregate for products and completed operations (which shall be maintained for a three (3) year period following final completion of work); and
- (c) \$5,000,000 per project general aggregate.

The commercial general liability policy shall include coverage for contractual liability and shall be endorsed to include coverage for Explosion, Collapse and Underground (XCU) hazard, if

applicable. If the commercial general liability policy does not provide for per project aggregate limits as required herein, then the insuring party shall carry coverage sufficient to bring the aggregate limits for the general aggregate and the products/completed operations aggregate to not less than \$10,000,000 each (may include excess liability coverage).

(d) Automobile Liability Insurance. Automobile liability insurance covering any auto with minimum combined single limit of \$1,000,000 for bodily injury, death and property damage. The general contractor shall require each of its subcontractors to maintain automobile liability insurance covering any auto with minimum combined single limit of \$1,000,000 for bodily injury, death and property damage.

(B) If the construction activity involves the use of another Parcel, then the Owner and mortgagee of such Parcel shall each be additional insured(s) under the commercial general liability required herein and such insurance shall provide that the insurance shall not be canceled without endeavoring to provide thirty (30) days prior written notice to the additional insureds. If such insurance is canceled or expires, then the constructing party shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. Each Owner or occupant, as the case may be, shall supply or cause its general contractor to supply each Owner with certificates with respect to all insurance required by this Section.

(C) All insurance required herein shall be procured from companies authorized to do business in the United States and shall be rated by A.M. Best at not less than A-/VII. The commercial general liability insurance may be provided under (i) an individual policy covering this location with per project minimum limits of \$2,000,000 per occurrence and aggregate limits of \$5,000,000 each general aggregate and products/completed operations aggregate, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such party (provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$10,000,000, then such insuring party shall also maintain excess liability coverage necessary to establish a total aggregate limit of \$10,000,000 each for the general aggregate and the products/completed operations aggregate, (iii) a plan of self-insurance, provided that any party so self-insuring notifies the other parties of its intent to self-insure and agrees that upon request it shall deliver to such other parties each calendar year a

copy of its annual report that is audited by an independent certified public accountant which discloses that such party (as to Lowe's such party shall consist of Lowe's and its parent corporation) has a net worth in excess of \$200,000,000 as determined by generally accepted accounting principles consistently applied, provided that Lowe's shall deliver the annual report of its parent corporation audited by an independent certified public accountant (or directions on how that annual report may be obtained over the internet) which discloses that Lowe's in combination with its parent corporation has a net worth in excess of \$200,000,000 as determined by generally accepted accounting principles consistently applied, or (iv) a combination of any of the foregoing insurance programs. To the extent of any deductible carried by a party, such party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$250,000 unless (a) such party complies with the requirements regarding self-insurance pursuant to (iii) above or (b) such party has a net worth in excess of \$200,000,000 as determined by generally accepted accounting principles. Each party agrees to furnish to any party requesting in writing the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such party is in full force and effect.

(D) The insurance required above shall provide that except with respect to the limits of insurance, the coverage applies separately to each insured against whom claim is made or suit is brought and contains no crossclaim exclusions. All insurance required pursuant to this Section 4.7 shall be written on an occurrence form utilizing the most current ISO policy form (or equivalent).

Section 4.8 Damage and Destruction:

In the event of the destruction or damage to any extent to any Buildings or Improvements in the Shopping Center, the affected Owner shall either: (1) commence and pursue with commercially reasonable diligence completion of the repair or restoration of such Building or Improvement, or (2) within ninety (90) days after the destruction or damage, level such Building or Improvement, remove the debris and keep the Parcel neat, orderly, planted in grass and mowed/trimmed (or otherwise treated for dust and weed control) until subsequently improved, constructed upon and operated and so that the Parcel is in a clean, orderly, sightly and safe condition (provided that such Owner repairs and restores any No Change Area on such Owner's property). In the event

any Building, structure or other Improvement on an Outparcel shall be damaged or destroyed by any fire or other casualty, the Owner, lessee or user of the Outparcel shall within ninety (90) days of such damage or destruction (a) commence to repair and/or reconstruct such improvements to the condition required by this Section and pursue completion with commercially reasonable diligence; or (b) level such Building or improvement, remove the debris from the Outparcel and keep the Outparcel neat, orderly, planted in grass and mowed/trimmed until subsequently improved, constructed upon and operated.

ARTICLE V

MAINTENANCE, TAXES AND INSURANCE

Section 5.1 Maintenance:

Each Owner hereto shall maintain at its cost the Building(s) and the Common Areas on its Parcel in good order and condition and state of repair in accordance with the standards of first class shopping center operation including (but not limited to) sweeping and removal of trash, litter and refuse, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair of lighting standards and signs. Each Owner covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its Buildings clean; will maintain its Buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed; and will keep the Common Areas on its Parcel clear of accumulations of ice and snow. The maintenance and repair of the Buildings and Improvements on each Parcel shall be of such a character that their appearance will be that of a unified shopping center and, accordingly, the Owners agree to cooperate with each other in good faith with respect to said maintenance and repair and, to the extent reasonably possible, coordinate such repair and maintenance.

(A) Shared Maintenance: Notwithstanding the obligation of each Owner to maintain the Common Areas on such Owner's Parcel, the Owner of Parcel 14 (the "CAM Director") shall

maintain or cause a management company to maintain the following Common Area Improvements: (a) the Access Drives and associated Common Area Improvements within the No Change Area; (b) the Detention Pond shown on the Site Plan; (c) the landscaping shown as "Peripheral Landscaping" on the Site Plan; and (d) the Center Signs (collectively, the "Shared Cost Improvements").

(i) The CAM Director shall maintain the Shared Cost Improvements in accordance with the standards set forth in this Section 5.1 and all applicable regulations and ordinances (including associated improvements such as curb, gutter, lighting, landscaping and irrigation).

(ii) Each Owner shall reimburse the CAM Director a pro rata share of the reasonable out of pocket costs incurred in performing such maintenance. Each Owner's pro rata share of the costs of maintaining and operating the Center Signs shall be calculated as the ratio of the total square footage of an Owner's sign panel divided by the total square footage of all sign panels including any Shopping Center designation on such Center Sign. Each Owner's pro rata share of the remaining costs incurred by the CAM Director under Section 5.1(A) shall be calculated as the ratio of the total square footage of land on such Owner's Parcel divided by the total square footage of land in the Shopping Center.

(iii) By November 1 of each calendar year, the CAM Director shall prepare a budget ("Budget") for the following calendar year. The Budget shall be subject to the written approval of the Consenting Owners. If the Consenting Owners are unable to agree upon the scope of the items set forth in the Budget by December 15 of the calendar year, then the CAM Director shall continue to provide the services provided under the prior year's Budget. If the Consenting Owners are unable to agree upon the cost to be included in a Budget, then the CAM Director shall submit such disputed work item to bid by at least three (3) bidders reasonably acceptable to the Consenting Owners and the lowest bid shall be used for the Budget.

(iv) All reimbursements from each Owner must be made within thirty (30) days of receipt of an invoice with reasonable documentation of the costs. Alternatively, the CAM Director may invoice each Owner 1/12th of that Owner's pro rata share of costs shown on the Budget to be paid on the 1st of each calendar month provided that within sixty (60) days after the end of each calendar year, the CAM Director shall provide a reconciliation between the

amounts invoiced and the amounts spent by the CAM Director and any overpayment shall be credited against the next payment due from such Owner to the CAM Director and the amount of any underpayment shall be due within thirty (30) days after the Owner's receipt of the reconciliation and reasonable backup information documenting the shortfall. In either case, the amounts billed to each Owner shall not exceed the amount in the Budget for such Owner's pro rata share without the prior written approval of the Consenting Owners.

(v) Each Owner shall have the right to audit the books and records of the CAM Director as they apply to the obligations described in this Section 5.1(A) only for a period of two years following the end of any calendar year during which the CAM Director provided maintenance in the Shopping Center. In the event that an audit reveals that the CAM Director had overcharged an Owner by more than five percent (5%), then the CAM Director shall be liable for the reasonable out of pocket expenses incurred by such Owner in conducting the audit up to a cap of \$3,000.

(B) Lighting: Each Owner shall cause the Common Area on its Parcel to be adequately lit for at least the hours between 5:00 a.m. and 11:00 p.m.

Section 5.2 Failure in Performing Maintenance Responsibilities:

In the event that the CAM Director fails to maintain any portion of the Shared Cost Improvements, which failure continues for a period of fifteen (15) days after receipt of written notice thereof specifying the particulars of such failure, such failure shall constitute a breach under the ECC&Rs and then any Consenting Owner (the "**Curing Party**") may thereafter perform such maintenance obligations in addition to such Owner's other remedies. In the event that an Owner fails or defaults in its maintenance obligations as set forth in Section 5.1, which failure continues for a period of thirty (30) days (ten [10] business days in the event of a failure to pay money) after receipt of written notice thereof specifying the particulars of such failure, such failure shall constitute a breach under the ECC&RS and the Owner of the Lowe's Parcel and the Owner of Parcel 14 (the "**Curing Party**") may thereafter perform such maintenance obligations, in addition to such Owner's other remedies. Notwithstanding the foregoing, in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the Curing Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the

circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. The Curing Party shall then invoice the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days to pay the Curing Party after receipt of the invoice. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid.

Section 5.3 Taxes:

The Owner of each Parcel shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against such Owner's Parcel. In the event an Owner fails to pay when due all taxes and assessments described herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a breach under these ECC&Rs and either Consenting Owner (the "Curing Party") may, in addition to such Owners' other remedies, thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Party shall then invoice the defaulting Owner for the expenses incurred. The defaulting Owner shall have ten (10) business days after receipt of the invoice to pay the Curing Party. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said ten (10) business day period until paid.

Section 5.4 Insurance:

Each Owner will at all times maintain or cause to be maintained with respect to its Parcel and all Buildings and Improvements thereon: (i) commercial property insurance insuring against risk of direct physical loss or damage, including the perils of flood and earthquake, for the full replacement cost of the Building(s) and Improvements located thereon and (ii) commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Owner's Parcel with minimum limits of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence and FIVE MILLION DOLLARS (\$5,000,000) general aggregate. Nothing herein shall be construed from

prohibiting an Owner which itself, or in combination with its parent corporation, has a net worth in excess of ONE HUNDRED MILLION DOLLARS (\$100,000,000), as determined by generally accepted accounting principles consistently applied, from self-insuring for such insurance coverage. All insurance required pursuant to Section 5.5 shall be written on an occurrence form utilizing the most current ISO policy form (or equivalent)..

Section 5.5 Failure to Carry Insurance:

In the event an Owner fails to maintain the insurance described above, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a breach under these ECC&Rs and either Consenting Owner (the "**Curing Party**") may, in addition to such Owners' other remedies, thereafter obtain and pay for such insurance. The Curing Party shall then invoice the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days after receipt of the invoice to pay the Curing Party. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) days period until paid.

Section 5.6 Cross Indemnity:

To the extent not covered by the insurance policies described above, each Owner (the "**Indemnitor**") will pay, and indemnify and save harmless the other Owner (the "**Indemnitee**") from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from: (i) any injury to or death of a person or loss of or damage to property occurring on the Indemnitor's Parcel; (ii) any use or condition of the Indemnitor's Parcel; and (iii) any negligence or tortious acts of the Indemnitor or any of his tenants, licensees, invitees, customers, agents or employees, except to the extent that such causes of action, suits, claims, demands or judgments arise out of the negligence or intentional misconduct of the Indemnitee.

Section 5.7 Waiver of Subrogation:

Each Owner (the "**Releasor**") hereby releases the other Owners (the "**Releasees**"), to the extent of their agreed insurance coverage or any amounts covered under a program of self insurance pursuant to Section 5.4, from any and all liability for any loss or damage caused by fire or any of the losses covered by the releasing party's property insurance or loss covered by the releasing

party's commercial general liability insurance, even if such property or casualty loss shall be brought about by the fault or negligence of the other party. The Owners agree to include in their insurance a clause permitting such release. Failure by any party to include this release in their insurance policies shall relieve all other parties from the obligation to grant the release to that party. Except as provided herein, nothing contained in this agreement shall be deemed to release any party from liability for damages resulting from the fault or negligence of that party or its agents, contractors or employees.

ARTICLE VI DEFAULT, REMEDIES

Section 6.1 Default:

The occurrence of any one or more of the following events shall constitute a breach of these ECC&Rs by the non-performing party:

(A) The failure to perform any obligation of Article V hereof and to cure such failure within the time requirements cited therein which shall be a breach under these ECC&Rs without necessity of any further notice to the defaulting party other than as provided for in Article V;

(B) The failure to make any payment required to be made hereunder within ten (10) business days of the due date which shall be a breach under these ECC&Rs without necessity of any notice to the defaulting party, or

(C) The failure to observe or perform any other of the covenants, conditions or obligations of these ECC&Rs or to abide by the restrictions and requirements herein provided, other than as described in (A) above, which shall be a breach under these ECC&Rs after expiration of thirty (30) days after the issuance of a notice by a non-defaulting Owner ("**Non-Defaulting Owner**") specifying the nature of the default claimed.

Nothing herein shall prevent a party from raising the defense that a good faith dispute exists as to whether such party failed to perform its obligations under the ECC&Rs but resolution of such dispute does not toll the time limits set forth above absent injunctive relief from a court.

Section 6.2 Remedies for all Owners:

Each non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any Owner or any other person for breach of any easement or restriction benefiting such non-defaulting Owner. Such proceeding shall include the right to restrain by injunction any such

violation or threatened violation and to obtain a decree to compel performance of any such easements or restrictions. No Permittee shall have the right to bring any action to enforce any provision of these ECC&Rs and no enforcing Owner shall have the obligation to join any Permittee in any action to enforce these ECC&Rs.

Section 6.3 Right to Cure:

With respect to any default under Section 6.1 (for which cure rights are not specifically provided in Article V which Article shall govern cure rights for maintenance, taxes and insurance), any Non-Defaulting Owner who is a Consenting Owner (the "Curing Party") shall have the right, but not the obligation, in addition to any remedy available at law or equity, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Owner (except as otherwise limited in Article V); provided, however, that in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the Curing Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Curing Party shall have the right to enter upon the Parcel of the defaulting Owner (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Owner. Each Owner shall be responsible for the non-performance or default of its Occupants and lessees. In the event any Curing Party shall cure a default, the defaulting Owner shall reimburse the Curing Party for all costs and expenses incurred in connection with such curative action, including attorneys' fees and costs, plus interest at the Default Rate, within ten (10) business days of receipt of demand, together with reasonable documentation supporting the expenditures made.

Section 6.4 Liens:

Costs and expenses accruing and/or assessed pursuant to Section 6.3 above and the amounts described in Section 6.1 shall constitute a lien against the defaulting Owner's Parcel. A lien under this Section 6.4 or under Article V shall attach and take effect only upon recordation of a claim of lien in the applicable real estate records office of the county in which the said Parcel is located, by the Curing Party making the claim. The claim of lien shall include the following:

- (A) The name and address of the lien claimant;
- (B) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Curing Party;
- (C) An identification by name and address (if known) of the Owner or reputed Owner of the Parcel or interest therein against which the lien is claimed;
- (D) A description of the Parcel against which the lien is claimed;
- (E) A description of the work performed which has given rise to the claim of lien;
- (F) A statement itemizing the total amount due, including interest;
- (G) A statement that the lien is claimed pursuant to the provisions of these ECC&Rs, reciting the date, book and page of recordation hereof.

The notice shall be duly acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 7.4 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

Section 6.5 Cumulative Remedies:

All of the remedies permitted or available to a Consenting Owner under these ECC&Rs or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

Section 6.6 No Waiver:

No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. No waiver by any Owner of any default under these ECC&Rs shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by a Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of

time specified in such express waiver. One or more written waivers or any default under any provision of these ECC&Rs shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in these ECC&Rs.

Section 6.7 No Termination for Breach:

No breach, whether or not material, of the provisions of these ECC&Rs shall entitle any Owner to cancel, rescind or otherwise terminate these ECC&Rs, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of these ECC&Rs.

Section 6.8 Limitation of Liability:

Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Parcel, or any portion thereof, shall be bound by these ECC&Rs only as to the Parcel or portion of the Parcel acquired or possessed by such person. In addition, such person shall be bound by these ECC&Rs only during the period such person is the fee leasehold Owner or occupant of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section 6.8, the easements, covenants and restrictions in these ECC&Rs shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 6.9 Attorneys Fees:

In the event of a breach or alleged breach hereof, the non-prevailing Owner shall pay the reasonable attorney's fees and costs (and the reasonable attorneys' fees on appeal) of the prevailing Owner regardless of whether or not litigation had been commenced or concluded.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Estoppel Certificates:

Each Owner shall upon not less than thirty (30) days from receipt of written notice from the requesting Owner execute and deliver to the requesting Owner a certificate in recordable form stating that (i) either these ECC&Rs are unmodified and in full force and effect or are modified (and stating the modification); and (ii) whether or not such Owner has sent any notice of any default to any other Owner under these ECC&Rs.

Section 7.2 Term and Perpetuity:

The agreements, conditions, covenants, and restrictions created and imposed herein shall be effective upon the date hereof and shall continue in full force and effect, to the benefit of and being binding upon all Owners, their heirs, executors, administrators, successors, successors-in-title, and assigns until the expiration of sixty (60) years from the date hereof, unless terminated by the consent of all the Owners pursuant to a writing recorded in the real property records of the county and state in which the Shopping Center is located. Said agreements and restrictions shall be unaffected by any change in the ownership of any real property covered by these ECC&Rs or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Notwithstanding the foregoing, the easements contained herein binding and benefiting the Parcels shall be perpetual and shall run with the land. Upon termination of the agreements, conditions, covenants and restrictions of these ECC&Rs, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of these ECC&Rs, except as related to the easements cited and mentioned herein, shall terminate and have no further force or effect.

Section 7.3 Amendment:

These ECC&Rs may not be amended except by agreement of the Consenting Owners in writing and recorded in the real property records of Bernalillo County, New Mexico.

Section 7.4 Notices:

Any notice or invoice required or permitted to be given under these ECC&Rs shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid or deposit with a nationally recognized overnight delivery service, and addressed to the Party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other Party):

To Developer: Armstrong Central Unser Blvd., LLC
1500 N. Priest, Suite 150 E
Tempe, AZ 85281
Attention: SG Ellison and Jason D. Stych, Esq.

cc: Armstrong Development Properties, Inc.
2100 Wharton Street, Suite 700
Pittsburgh, Pennsylvania 15203
Attention: W. Gregg Baldwin

Campbell & Wells, P.A.
2155 Louisiana Blvd. NE, Suite 10300
Albuquerque, New Mexico 87110
Attn: Lawrence M. Wells

Lowe's: Lowe's Home Centers, Inc.
Box 1111
North Wilkesboro NC 28656
Street Address: (1605 Curtis Bridge Road, Wilkesboro, NC 28697)
Attention: Property Management Dept. (FMN6)

Copy to: Lowe's Home Centers, Inc.
Box 1111
North Wilkesboro NC 28656
Street Address: (1605 Curtis Bridge Road, Wilkesboro, NC 28697)
Attention: Legal Department (LGS6)

Sandia: Sandia Plaza Partners, LLC
5850 Eubank NE, Suite B-62
Albuquerque, New Mexico 87111
Attn: Paul Blanchard

Copy to: Wolf & Fox, P.C.
1200 Pennsylvania NE
Albuquerque, New Mexico 87110
Attn: Traci J. Wolf and Bryan T. Fox

Section 7.5 Lessee Designation:

An Owner may designate, by written notice delivered to all other Owners, a lessee with respect to an entire Parcel to act as such Owner's designated agent for all purposes under these ECC&Rs, and to exercise all rights and perform all obligations of such Owner under these ECC&Rs. Upon delivery of such written designation to the other Owners, the designated agent shall be recognized by the other Owners as the party responsible for, and with authority regarding, all matters under these ECC&Rs respecting the Parcel owned by such Owner, except as otherwise expressly set forth below. Such designation shall remain in full force and effect until delivery to the other Owners of a written revocation of the designation by the designating Owner (or such

Owner's successors or assigns). Notwithstanding the foregoing, the designating Owner shall remain primarily responsible and liable for the obligations of such Owner under these ECC&Rs, and the designated agent of an Owner shall have no power or authority to agree or consent to the amendment, modification or termination of these ECC&Rs.

Section 7.6 Adjacent Developer Parcels:

Developer may, in its sole discretion, subject the parcels of real property adjacent to the Shopping Center which are owned by Developer (the "**Adjacent Developer Parcels**") to the terms, covenants and conditions of these ECC&Rs. At that time the Adjacent Developer Parcels shall be subject to the obligations created herein and shall benefit from the rights granted to Developer herein. If such Adjacent Developer Parcels are incorporated in the Shopping Center and made subject to these ECC&Rs; and if there are any continuing liabilities of the Owners which are divided between the Owners based on prorations of land area or otherwise, then the prorations shall be adjusted accordingly. Except as provided above, no Owner shall grant easement rights for the benefit of property outside of the Shopping Center other than as provided on the plat recorded prior to or contemporaneously with these ECC&Rs and other than as provided herein. Nothing to the contrary contained in these ECC&Rs shall be construed as limiting or preventing the Developer from further encumbering the Developer Parcels and/or the Sandia Parcel with additional covenants or restrictions provided that in the event of a conflict, the more restrictive covenants or restrictions shall apply.

Section 7.7 Rights of Mortgagees.

No provision of these ECC&Rs shall in any way defeat or render invalid the lien of any first mortgage, deed of trust or other security instrument entered into in good faith and for valuable consideration, whether presently in existence or hereafter recorded against any part of the Shopping Center but such lien shall be, except as otherwise provided in these ECC&Rs, subject and subordinate to the provisions of these ECC&Rs such that, if any portion of the Shopping Center is purchased in connection with a foreclosure of such mortgage, deed of trust or security instrument or is conveyed to the party so secured in lieu of foreclosure, any person so acquiring or purchasing and its successors and assigns shall hold any and all real property so purchased or acquired subject to the provisions of these ECC&Rs.

Section 7.8 No Covenant to Continuously Operate:

No Owner is obligated to continuously operate a business on its Parcel. The Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel. Nothing contained in these ECC&Rs shall be construed, interpreted or otherwise read to require an Owner to operate a business on its Parcel or to prevent an Owner from closing its business on its Parcel.

Section 7.9 Severability:

In the event any provision or portion of these ECC&Rs is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 7.10 No Public Dedication:

Nothing contained herein shall be deemed or implied to be a gift, grant or dedication of the Shopping Center or any portions thereof, to the general public, or for any public use or purpose whatsoever. Except as may be specifically provided herein, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed or considered to be a beneficiary of any of the provisions herein contained.

Section 7.11 Counterparts:

These ECC&Rs may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

Section 7.12 Relationship of the Parties:

Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Parties hereto or the Owners. It is understood that the relationship between the Parties hereto and Owners is an arms length one that shall at all times be and remain that of separate owners of real property. No Party hereto nor any Owner shall have the right to act for or on behalf of another Party or Owner, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Party or Owner to be charged or bound, except as otherwise specifically provided herein.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered these ECC&Rs as of the day and year first written above.

[Remainder of Page Left Intentionally Blank; Signatures on Following Pages]

Unofficial Copy

Signature Page for Developer (ECC&Rs):

ARMSTRONG CENTRAL UNSER BLVD., LLC,
a New Mexico limited liability company

By: GUSTINE INVESTMENTS, INC.
A Pennsylvania corporation
Its: Sole Member

By: Robert H. Gustine
Name: Robert H. Gustine
Title: Secy

STATE OF Pennsylvania)
COUNTY OF Allegheny) ss.

ON THIS 15th day of September, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert H. Gustine, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the Secretary of GUSTINE INVESTMENTS, INC., a Pennsylvania corporation, sole member of ARMSTRONG CENTRAL UNSER BLVD., LLC, a New Mexico limited liability company, and that he/she executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he/she executed such instrument as the act and deed of said corporation.

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

Notary Public
Printed Name:

Diane M. Oberleitner
Diane M. Oberleitner

My Commission Expires:

June 19, 2011

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Diane M. Oberleitner, Notary Public
Upper St. Clair Township, Allegheny County
My commission expires June 19, 2011

Signature Page for Sandia (ECC&Rs):

SANDIA PLAZA PARTNERS, LLC,
a New Mexico limited liability company

By: [Signature]
Name: TRACI J. WOLF
Title: MANAGING MEMBER

STATE OF - New Mexico)
COUNTY OF - Bernalillo) ss.
COUNTY OF _____)

ON THIS 18th day of September, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Traci J. Wolf, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the managing member of Sandia Plaza Partners, a NM LLC, and that he/she executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he/she executed such instrument as the act and deed of said corporation.

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



Notary Public [Signature]
Printed Name: Michael Dayton

Signature Page for Lowe's (ECC&Rs):

LOWE'S HOME CENTERS, INC.,
a North Carolina corporation

By: *Gary E. Wyatt*

Name:

Title:

Gary E. Wyatt

Senior Vice President

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF WILKES)

ON THIS 16 day of September, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Gary E. Wyatt, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that ~~he~~ she is the Sr. Vice President of LOWE'S HOME CENTERS, INC., a North Carolina corporation, and that he/she executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he/she executed such instrument as the act and deed of said corporation.

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

Notary Public

Printed Name:

Teresa F. Lococo

TERESA F. LOCOCO

Notary Public

North Carolina - Wilkes County

My Commission Expires: 4-7-10

My Commission Expires:

4-7-10

CONSENT AND SUBORDINATION

First Community Bank, ("Lender"), is the mortgagee under that certain Mortgage, recorded against a portion of the Shopping Center on October 19, 2007 as Document# 2007147213 in the Official Records of Bernalillo County, New Mexico (the "Mortgage"). The Mortgage secures indebtedness in the original maximum aggregate principal amount of \$10,456,500.00 (the "Indebtedness"). Lender hereby expressly consents to the execution of the foregoing Easements, Covenants, Conditions and Restrictions ("ECC&Rs") by Sandia Plaza Partners, LLC, and the recordation of the ECC&Rs against the Shopping Center and hereby expressly and unconditionally subordinates the lien of the Mortgage and any other document securing the Indebtedness and all rights of Lender related thereto, to the ECC&Rs and unconditionally agrees that the ECC&Rs shall be prior in all respects to the Mortgage any other document securing the Indebtedness and any rights of Lender pursuant thereto.

First Community Bank

By: 

Name:

Title: Regional President

STATE OF New Mexico

COUNTY OF Bernalillo

ss.

On this 17 day of Sept., 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me known to be the Regional President of First Community Bank, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the Purposes therein mentioned, and an oath stated that they are 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.



CONSENT AND SUBORDINATION

The Huntington National Bank, ("Lender"), is or will be the beneficiary under that certain Deed of Trust recorded against a portion of the Shopping Center concurrently herewith in the Official Records of Bernalillo County, New Mexico (the "Deed of Trust"). The Deed of Trust secures indebtedness from Lender (the "Indebtedness"). Lender hereby expressly consents to the execution of the foregoing Easements, Covenants, Conditions and Restrictions ("ECC&Rs") by Armstrong Central Unser Blvd., LLC, and the recordation of the ECC&Rs against the Shopping Center and hereby expressly and unconditionally subordinates the lien of the Deed of Trust and any other document securing the Indebtedness and all rights of Lender related thereto, to the ECC&Rs and unconditionally agrees that the ECC&Rs shall be prior in all respects to the Deed of Trust any other document securing the Indebtedness and any rights of Lender pursuant thereto.

The Huntington National Bank

By: [Signature]
Name: John E. Chigan
Title: VP

STATE OF Pennsylvania
COUNTY OF Allegheny) ss.

On this 11th day of September, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared John E. Chigan, to me known to be the Vice President of Huntington National Bank, the entity that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and an oath stated that they are 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.

[Signature]

NOTARIAL SEAL
Judith D Kapral, Notary Public
City of Pittsburgh, Allegheny County
My commission expires December 04, 2008

Schedule I
Legal Description Lowe's Parcel

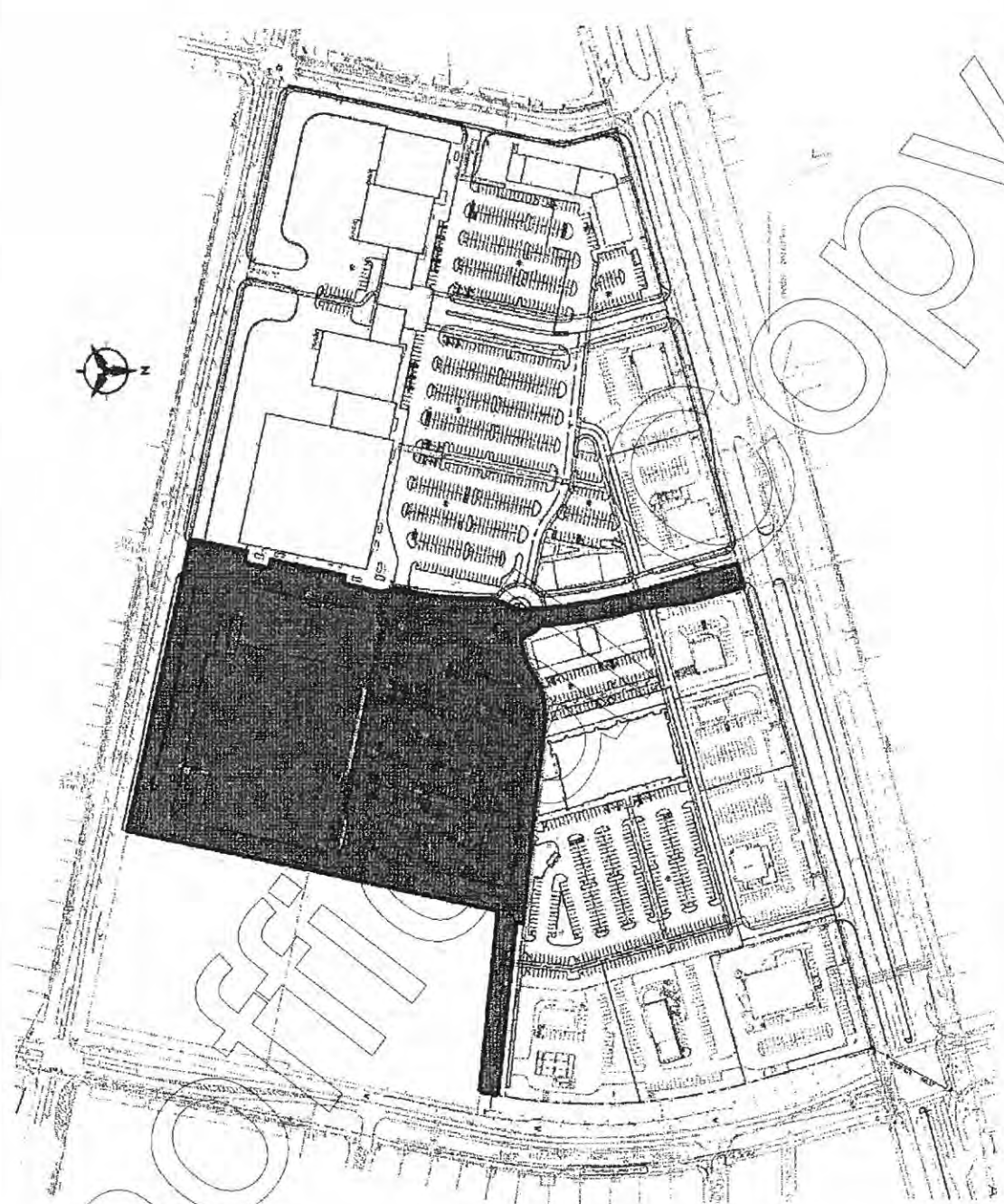
The property shown as Lot 12 on the Site Plan, which is a portion of the property that will be subdivided by plat recorded concurrently herewith:

Tracts 4-A-1, 5-B-1, 5-B-2, Lands of Wefco Partners, Albuquerque, Bernalillo County, 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 January 19, 1987, in Plat Book C-32, page 146 and re-filed April 6, 1987 in Plat Book C-33, page 81.

Tracts 1-A, 1-B, 2-A, 2-B, 3-A, 3-B, 4-B and 6 of the amended Plat of the V.E. Barrett Subdivision of the City of Albuquerque, Bernalillo County, New Mexico, filed in the Office of the County Clerk of Bernalillo County, New Mexico on the 13th day of February 1967, in Plat Book C-6, folio.

UPC Number:

1 010 057 028 063 30324
1 010 057 068 090 30312
1 010 057 056 119 30314
1 010 057 105 130 30303
1 010 057 112 096 30308



ECC & R's
Schedule 1
Lowe's Parcel

 LOWE'S PARCEL

LEGAL DESCRIPTION
TRACT 12 OF UNSEEN CROSSING

Bohannon & Huston
Surveyors
Bohannon & Huston, Inc.
Bohannon & Huston, Inc.
Bohannon & Huston, Inc.

Schedule II
Legal Description Developer Parcels

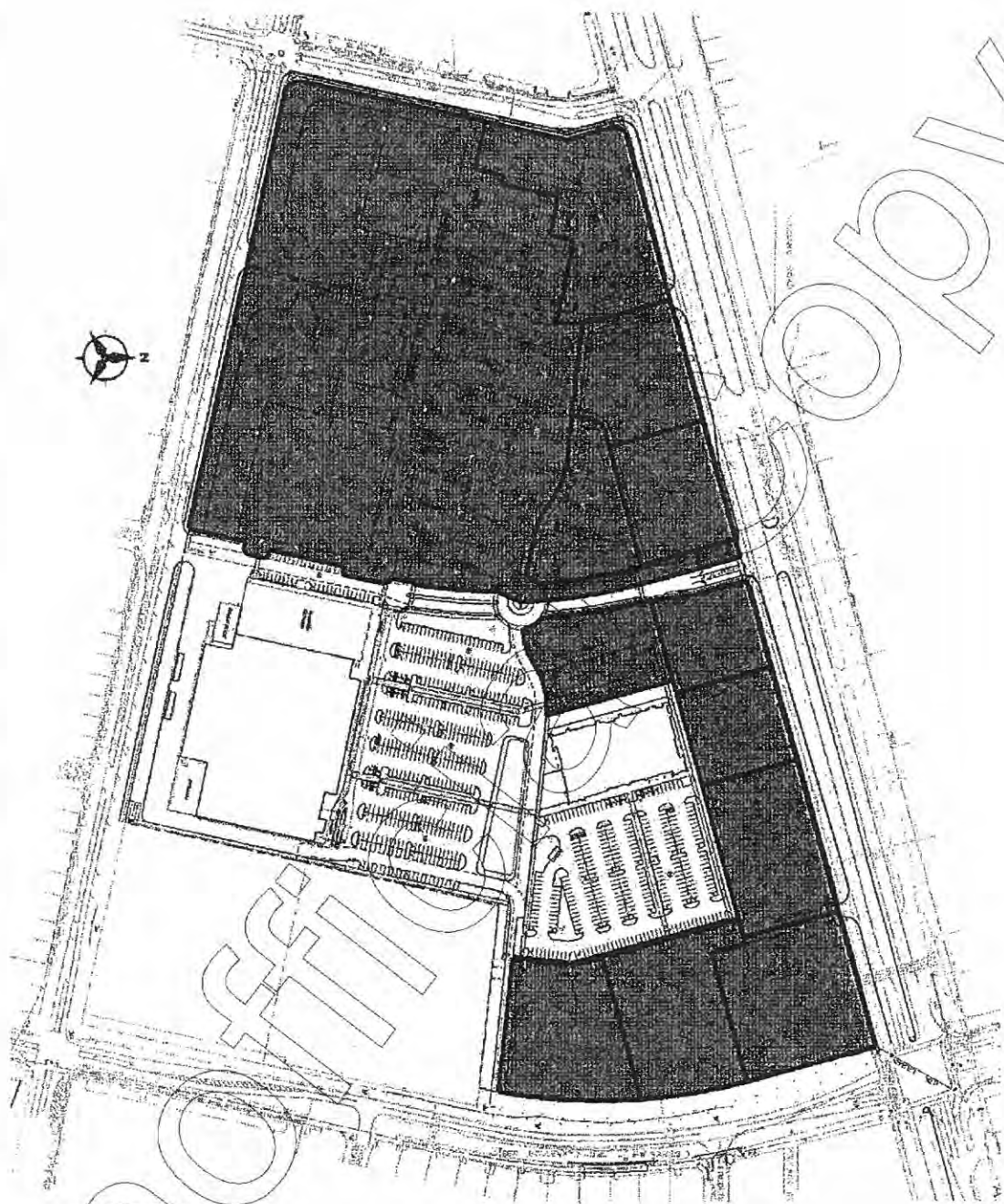
The property shown as Lots 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13 and 14 on the Site Plan, which is a portion of the property that will be subdivided by plat recorded concurrently herewith:

Tracts 4-A-1, 5-B-1, 5-B-2, Lands of Wefco Partners, Albuquerque, Bernalillo County, 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 January 19, 1987, in Plat Book C-32, page 146 and re-filed April 6, 1987 in Plat Book C-33, page 81.

Tracts 1-A, 1-B, 2-A, 3-A, 3-B, 4-B and 6 of the amended Plat of the V.E. Barrett Subdivision of the City of Albuquerque, Bernalillo County, New Mexico, filed in the Office of the County Clerk of Bernalillo County, New Mexico on the 13th day of February 1967, in Plat Book C-6, folio.

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1 010 057 028 063 30324
1 010 057 068 090 30312
1 010 057 056 119 30314
1 010 057 105 130 30303
1 010 057 112 096 30308



ECC & R's
Schedule II
Developer Parcel



DEVELOPER PARCELS

LEGAL DESCRIPTION
TRACTS 1, 2, 3, 4, 5, 6, 8, 9, 10, 11
AND 14 OF UNSEEN CROSSING

Schedule III
Legal Description of Sandia Parcel

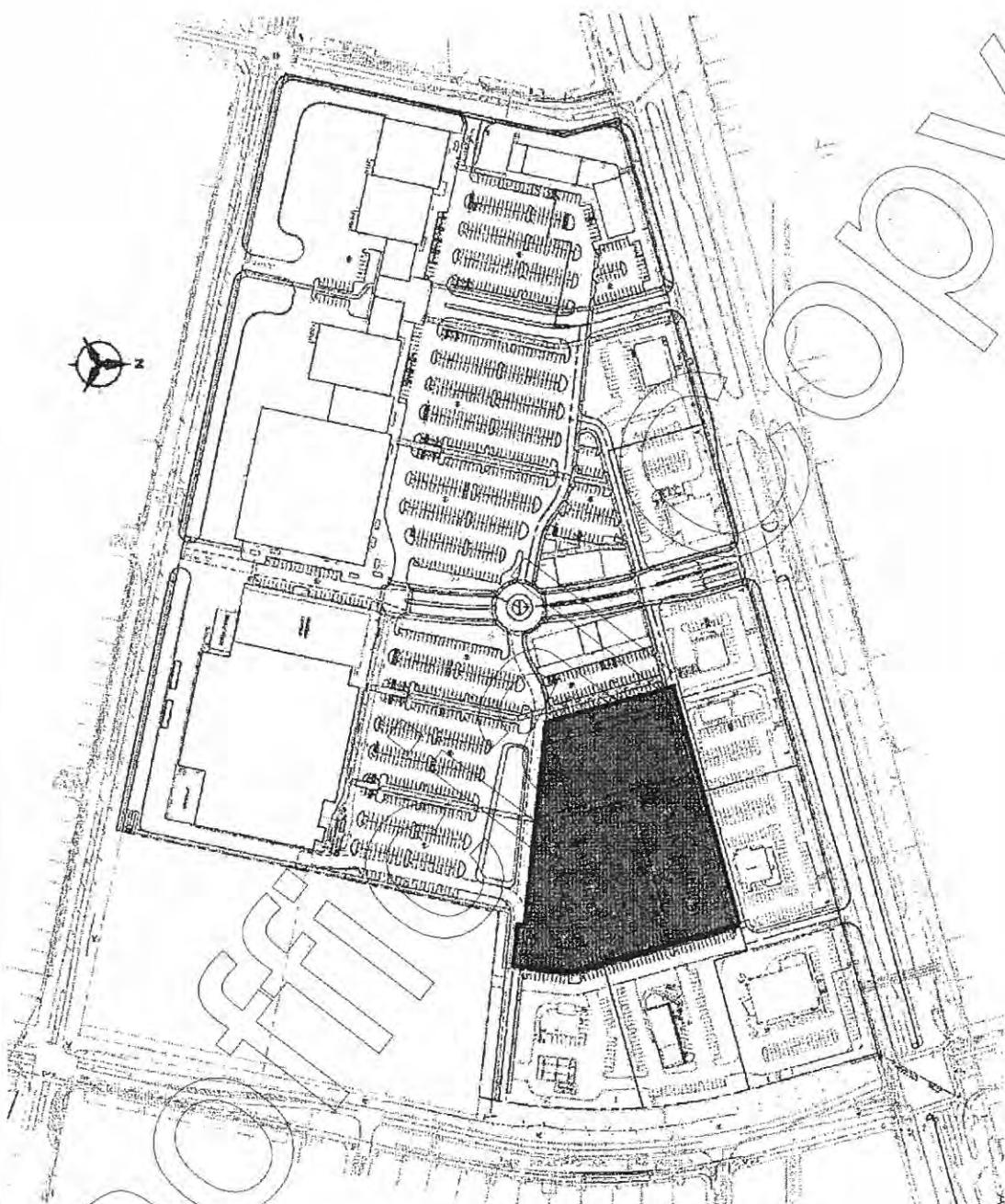
The property shown as Lot 7 on the Site Plan, which is a portion of the property that will be subdivided by plat recorded concurrently herewith:

Tracts 4-A-1, 5-B-1, 5-B-2, Lands of Wefco Partners, Albuquerque, Bernalillo County, 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 January 19, 1987, in Plat Book C-32, page 146 and re-filed April 6, 1987 in Plat Book C-33, page 81.

Tracts 1-A, 1-B, 2-A, 3-A, 3-B, 4-B and 6 of the amended Plat of the V.E. Barrett Subdivision of the City of Albuquerque, Bernalillo County, New Mexico, filed in the Office of the County Clerk of Bernalillo County, New Mexico on the 13th day of February 1967, in Plat Book C-6, folio.

UPC Number:

1 010 057 028 063 30324
1 010 057 068 090 30312
1 010 057 056 119 30314
1 010 057 105 130 30303
1 010 057 112 096 30308

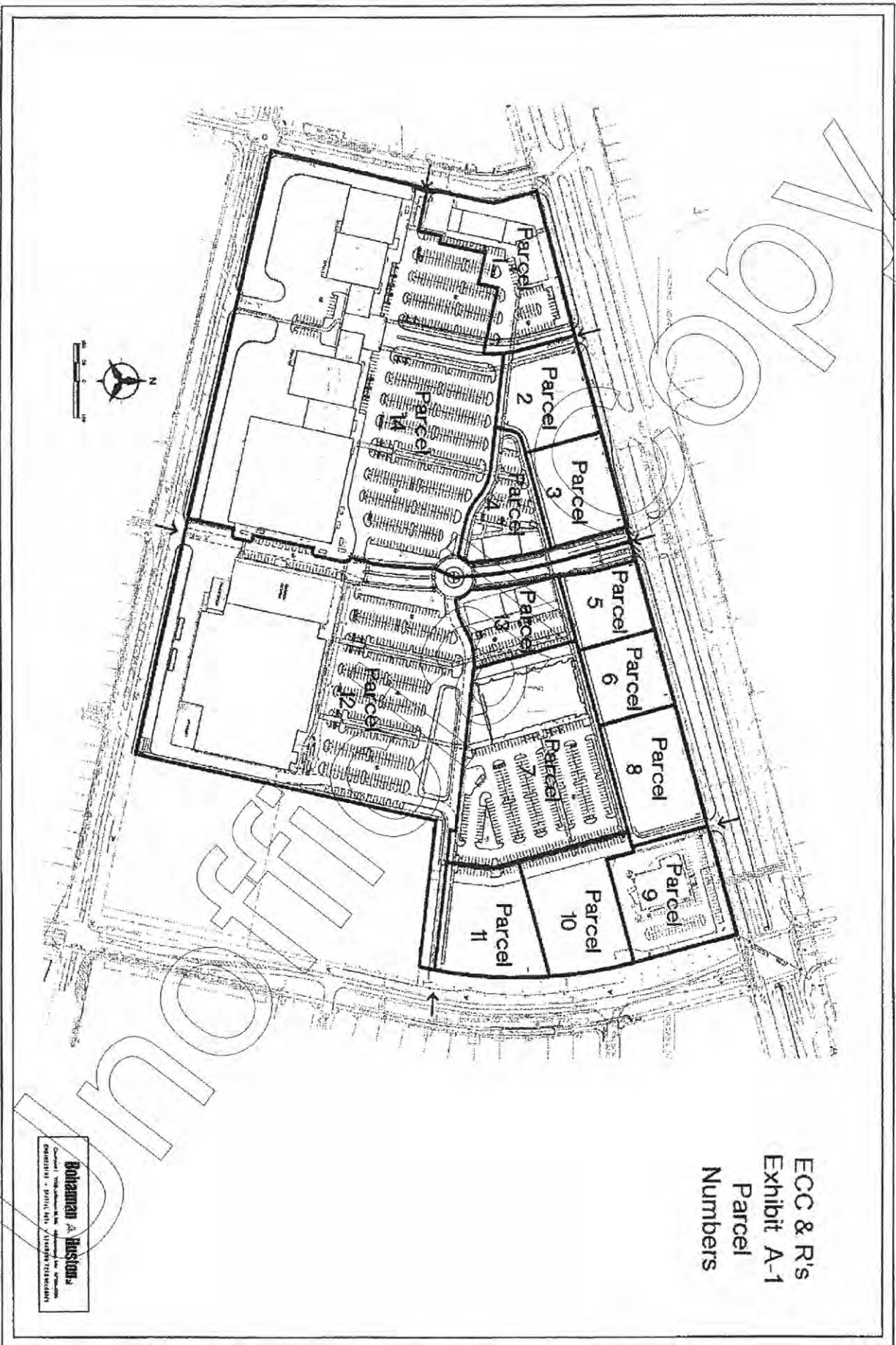


ECC & R's
Schedule III
Sandia Parcel

 SANDIA PARCEL

LEGAL DESCRIPTION
TRACT 7 OF UNSEEN CROSSING

Bohannon & Huston
PLANNERS & ARCHITECTS
10000 N. 10TH ST. - SUITE 100 - ALBUQUERQUE, NM 87112



ECC & R's
Exhibit A-1
Parcel
Numbers

Bohannon & Associates
Civil Engineers
10000 N. 10th St., Suite 100
Phoenix, AZ 85020
Phone: (602) 998-1111
Fax: (602) 998-1112
Website: www.bohannon.com

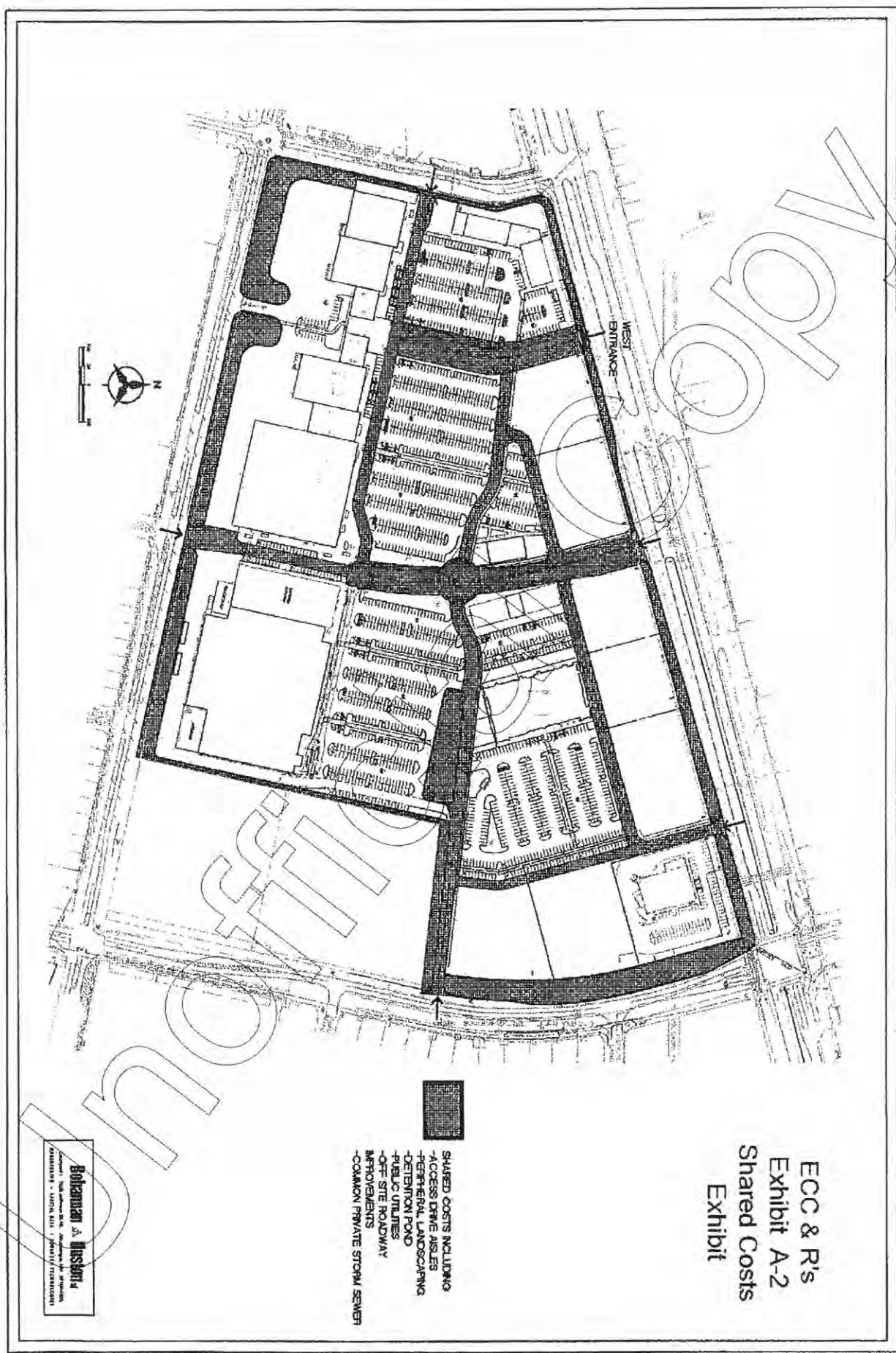
Exhibit A
Site Plan

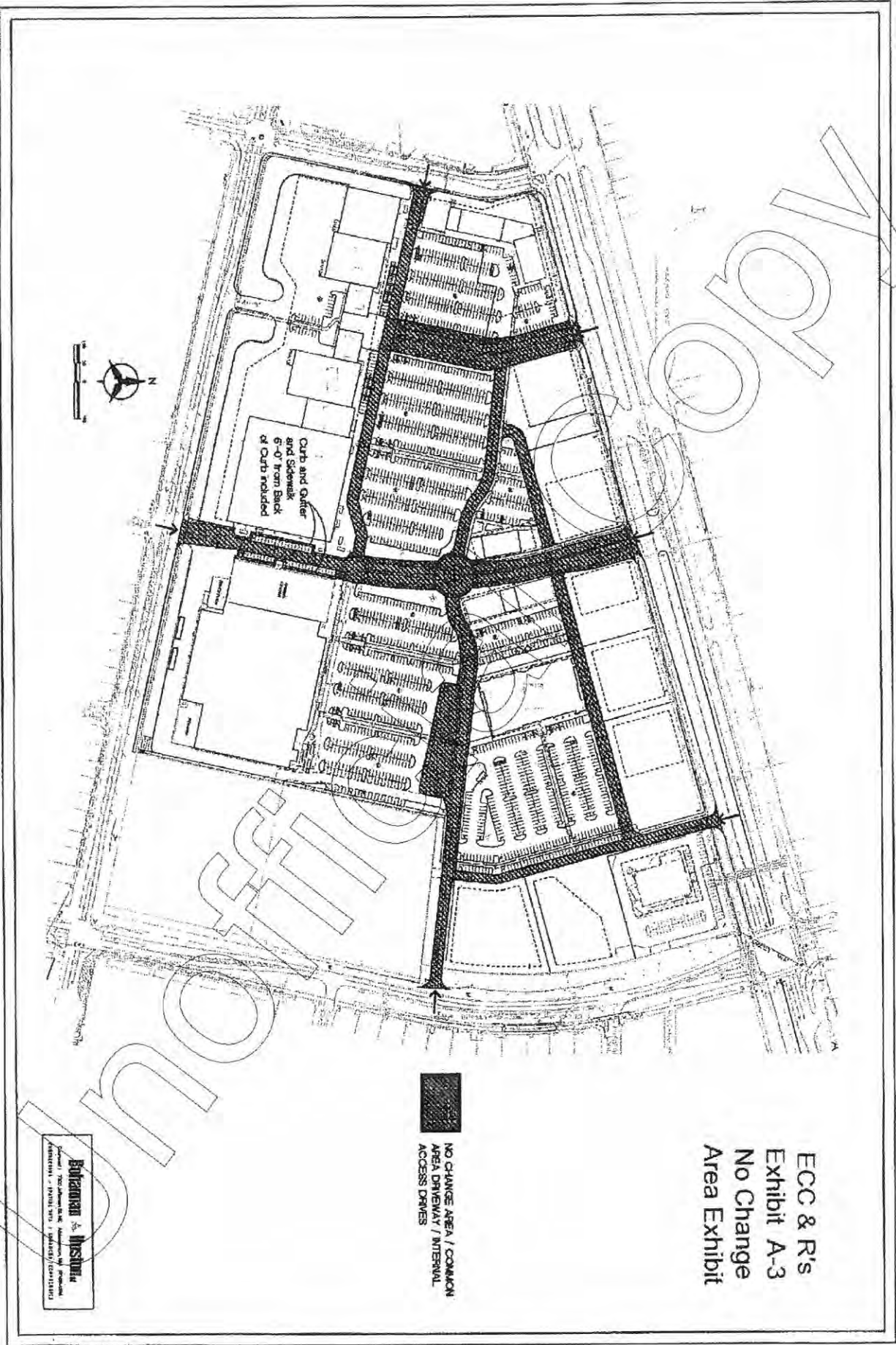
Unofficial Copy

ECC & R's Exhibit A-2 Shared Costs Exhibit

- SHARED COSTS INCLUDING
- ACCESS DRIVE ASSES
- PERMITTER LANDSCAPING
- DETENTION POND
- PUBLIC UTILITIES
- OFF SITE ROADWAY
- IMPROVEMENTS
- COMMON PRIVATE STORM SEWER

Boltmann & Associates
 Consulting Engineers & Architects
 10000 14th Ave. S.W. • Seattle, WA 98148





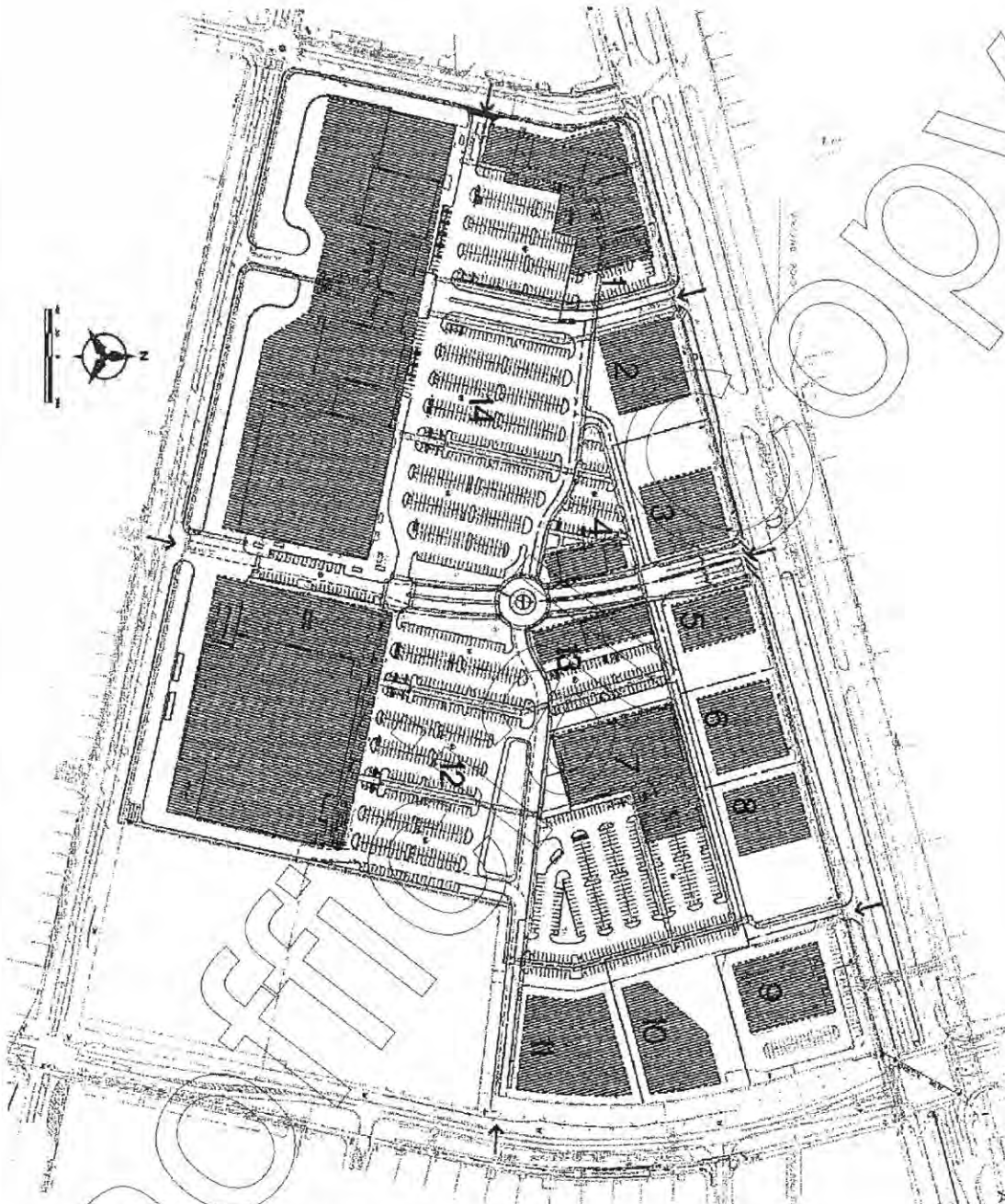
Curb and Gutter
and Schematics
6'-0" from Back
of Curb related



NO CHANGE AREA / COMMON
AREA DRIVEWAY / INTERVAL
ACCESS DRIVES

ECC & R's
Exhibit A-3
No Change
Area Exhibit

BUTTERMAN & HUSTON
Architects, Inc.
10000 1st Avenue, Suite 100
Houston, Texas 77036
713-865-1000

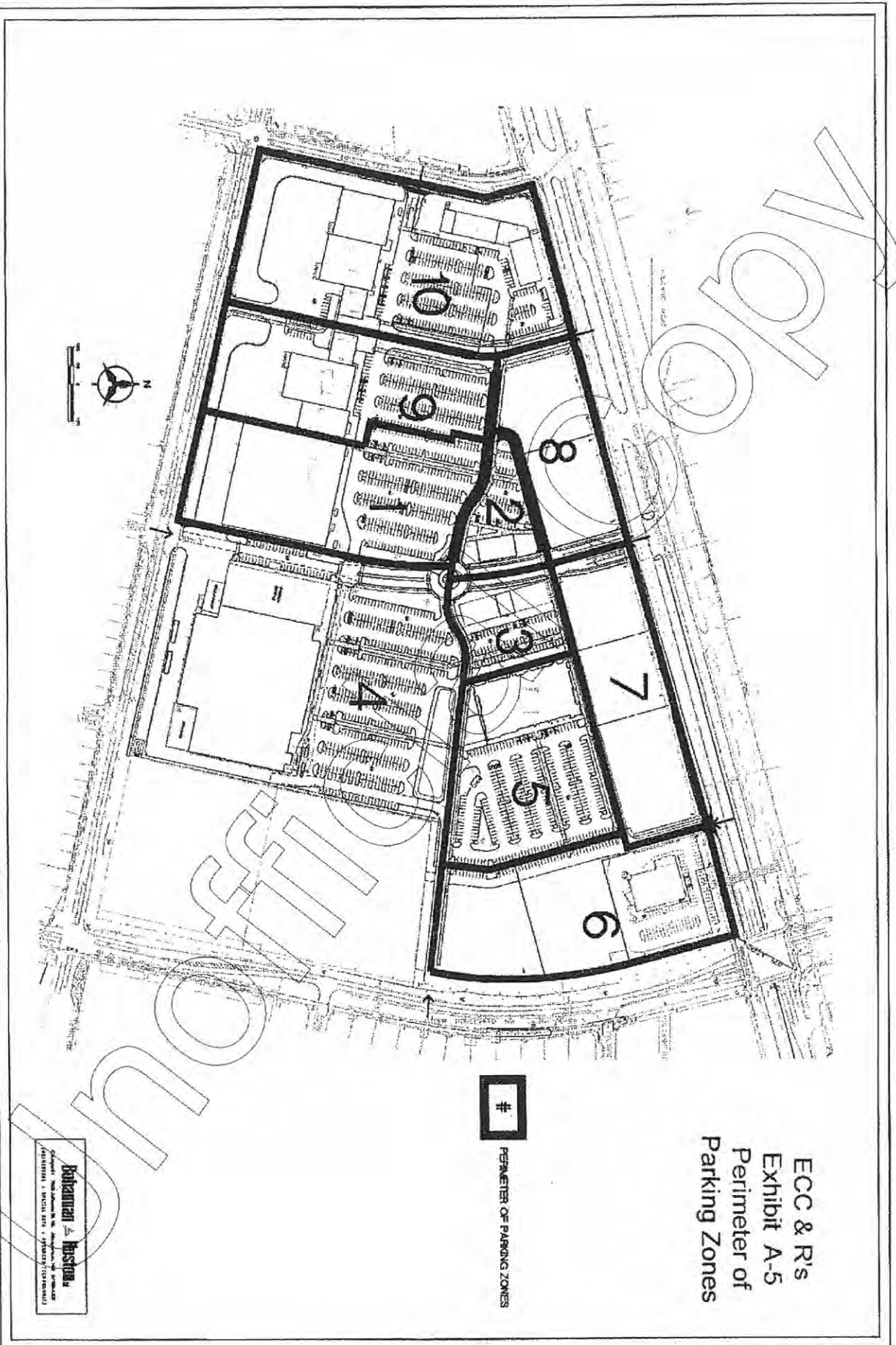


**ECC & R's
Exhibit A-4
Permissible
Building Area**

 PERMISSIBLE BUILDING AREAS

PARCEL #	SF	MAXIMUM BUILDING AREA
1	63,500 SF	19,500 SF
2	27,200 SF	10,000 SF
3	24,650 SF	12,000 SF
4	11,900 SF	10,000 SF
5	16,300 SF	6,300 SF
6	26,500 SF	11,500 SF
7	57,900 SF	12,000 SF
8	22,300 SF	20,000 SF
9	28,400 SF	8,000 SF
10	30,000 SF	5,250 SF
11	43,000 SF	24,500 SF
12	18,500 SF	7,300 SF
13	17,900 SF	24,000 SF
14	267,900 SF	

Robertson & Houston
Architects, Engineers, Planners, and Surveyors
10000 - 100th Ave. - Austin, Texas 78758



ECC & R's
Exhibit A-5
Perimeter of
Parking Zones



PERIMETER OF PARKING ZONES

Robbman & Houston
Surveyors & Engineers
10000 West Loop South, Suite 1000
Houston, Texas 77042
(713) 865-1000

Exhibit B
Sign Criteria

Unofficial Copy

Comprehensive Sign Program

Armstrong Development, Inc.
999 18th St. #2700
Denver, CO 80202

Unser Crossing
SWC of Unser & Central
Albuquerque, NM

Revision Date:
March 27, 2008
May 29, 2008
June 24, 2008
June 30, 2008
July 2, 2008
August 7, 2008
August 27, 2008
September 9, 2008

Prepared by:



■ ADDRESS: 4628 W. WHITTON PKW, AZ. 85019
■ PHONE: (802)-272-9356
■ FAX: (802)-272-4808
■ www.bootzandduke.com

TABLE OF CONTENTS

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**UNSER CROSSING
COMPREHENSIVE SIGN PACKAGE**
Sign specifications and Requirements

The purpose of this Comprehensive Sign Package is to create a graphic environment that is individual and distinctive in identity for the merchant and also compatible with other signs within the Property. The total concept should give an impression of quality and professionalism, as well as, instill a good business image.

The following specifications shall be used for the design of all signs within Unser Crossing; however, in all cases, final written approval by Armstrong Development and/or its assignee is required prior to manufacturing and installation of all signs.

For purposes of this Master Sign Plan, any reference herein to "Tenant" shall also include all tenants, subtenants, licensees and other occupants of Owner's Parcel.

PROCEDURE: All sign drawing proposals will be submitted in three (3) copies to Armstrong Development and/or its assignee for written approval, prior to application for sign permit from the City of Albuquerque.

NOTICE:

WRITTEN APPROVAL AND CONFORMANCE WITH THE REQUIREMENTS SET FORTH HEREIN DOES NOT IMPLY CONFORMANCE WITH APPLICABLE LAWS, CODES, RULES, AND REGULATIONS PROMULGATED BY THE CITY OF ALBUQUERQUE OR ANY OTHER APPLICABLE GOVERNMENTAL AGENCY OR BODY (COLLECTIVELY, THE "LAWS"). ALL SIGNS LOCATED WITHIN THE PROPERTY SHALL BE APPROVED IN WRITING BY DECLARANT, SHALL COMPLY WITH THE APPLICABLE LAWS AND RECEIPT BY OWNER OF A SIGN PERMIT MUST BE RECEIVED PRIOR TO MANUFACTURING AND INSTALLATION OF ANY SIGNAGE.

A. GENERAL PROVISIONS

1. All signs and sign programs must conform to the requirements of this Comprehensive Sign Package, the City of Albuquerque, and all applicable Laws. Applications and submittals for sign permits shall be per the City of Albuquerque procedure and requirements.
2. Signs shall identify the person or company operating the use conducted on the Parcel.

B. GENERAL REQUIREMENTS

1. No signs, advertisements, notices, or other lettering shall be displayed, exhibited, inscripted, painted or affixed in any manner to any part of the building exterior except as approved in writing by Armstrong Development and/or its assignee.

CRITERIA

2. Each electrical sign, and the installation thereof, shall comply with all applicable Laws. Double back connections must be utilized for all electrical connections through the building structure.
3. Tenant shall obtain all necessary permits for signs and the construction and installation of signs.
4. No labels shall be placed on the exposed surfaces of signs except those required by applicable Laws. Required labels shall be applied in inconspicuous locations.
5. All penetrations of the building structure required for sign installation shall be neatly sealed in a watertight manner.
6. The use of a crest, shield, logo, or other established corporate insignia or modifier which has been displayed or associated with Tenant's firm name shall be permitted subject to Armstrong Development and/or its assignee written approval
7. Any sign that does not conform with the requirements of this Master Sign Plan or was not approved by the Armstrong Development and/or its assignee as required hereby shall be immediately removed or brought into conformance at the Tenant's expense.

C. SPECIFIC REQUIREMENTS FOR BUILDING SIGNS

1. Anchors, Majors, Minors, Pads & Shop Tenants

A. Building-Mounted Signs

Building mounted signs shall meet the requirements of the West Route 66 Sector Development Plan, City of Albuquerque Comprehensive City Zoning Code section C-2, and Large Retail Facility.

A building mounted sign on premises or joint premises where there is a freestanding or projecting on or off-premises sign shall not exceed the percentage of facade area listed below:

1. 10% of each facade area to contain signage.

Building-mounted signs that face residential zones shall not be illuminated. Building-mounted signs shall consist of individual letters. Illuminated plastic panel signs are prohibited.

B. Size Guidelines

1. Return Depth for Anchor, Majors, minors, Juniors & Pad tenants may be between 5" and 8". Anchor shall be defined as any user with greater than 50,000 sq ft of leased space.
2. All signs for Shop & Inline suites shall be pan-channel letters with 5" deep returns.
3. Return and trimcap color to be duranotic bronze unless tenant is a national tenant with a standard sign program in which case they may use corporate specifications.
4. Face color may be any standard color. Vinyl overlays will be allowed to encourage creativity in sign design.
5. Trimcap to be 1".
6. Faces to be 3/16 SG grade acrylic.
7. Neon or LED may be used for illumination, neon should be 15mm and spaced at 4" centers, LED's should also be placed at 4" centers.

D. SPECIFIC REQUIREMENTS FOR MONUMENT SIGNS

1. There are 6 monument signs permitted for the entire subdivision site. Two monument signs along Central Avenue at a maximum 26 feet tall and a maximum sign face area of 150 square feet with no more than 8 tenants listed. Two monument signs along Central Avenue up to 18 feet tall with a maximum sign face area of 100 square feet of sign face area, and no more than 6 tenants listed. One monument sign along Unser Boulevard up to a maximum height of 20 feet and a maximum sign face area of 150 square feet and no more than 8 tenants listed. One monument sign on 86th Street up to a maximum height of 18 feet with a maximum sign face area of 100 square feet, no more than 6 tenants listed. No additional monument signs will be permitted for Tracts 1-11. There shall be no more than 2 art icon will be allowed up to a maximum height of 40feet. No tenant signs shall be allowed on the icon signs.
2. Maximum sign face area for free-standing signs is 150 square feet
3. No More than three Directory signs, with a maximum size of 24 square feet, are allowed and do not count as a monument sign
4. Each freestanding sign shall display a numeric street address with a size that is easily readable to drivers on adjacent streets. This numeric street address shall not be calculated as part of the allowed sign face area.

E. LIGHTING

1. All electrical will be U.L. or equivalent approved.
2. Primary copy (store name) required to be lighted. Illumination of secondary copy such as crests, shields, logos, established corporate insignias, or any other modifiers is subject to Armstrong Development and/or it's assignee written approval.
3. Electrical power shall be brought to required location at Tenant's expense. The routing and location of other required items shall not be visible on the front of fascia.
4. Penetration of structure and graphics beams shall not be allowed.
5. Transformers shall be concealed behind fascia and mounted in metal boxes.
6. Up-lighting of any kind is prohibited.

F. DETAIL DRAWING

1. Elevation of building fascia and sign shall be drawn using a minimum $\frac{1}{4}$ " to 1" scale.
2. Drawing shall indicate the following specifications:
 - a. Type, thickness, and color of Plexiglas type of material used for backs, returns, and trim caps, including color
 - b. Finish used on returns
 - c. Type of illumination and mounting method
3. Drawing must include fascia cross section showing electrical connections.

G. WINDOW SIGNS

Window sign shall not exceed two (2) square feet and limited to store name, hours, and phone numbers. Any other variation's must be approved by Armstrong Development and/or it's assignee in writing.

Window signs to be created in a professional manner, and approved by Armstrong Development and/or it's assignee.

H. TRAILER SIGNS OR TEMPORARY SIGNS WILL NOT BE PERMITTED. TEMPORARY BANNER SIGNS FOR SPECIAL EVENTS MAY BE ALLOWED WITH AN ADMINISTRATIVE AMENDMENT.

I. ADDRESS SIGNS

Each store is required to display a street address and suite number above storefront door and service door of four (4) inch white exterior vinyl. These are to be provided by Landlord to maintain uniformity.

J. THE FOLLOWING ARE NOT PERMITTED

Roof signs.

Cloth signs or streamers hanging in front of business.

Exposed seam tubing.

Animated or moving components.

Intermittent or flashing illumination.

Iridescent painted signs.

Letter mounted or painted-on illuminated panels.

Signs or letters painted directly on any surface.

Off premise Signs

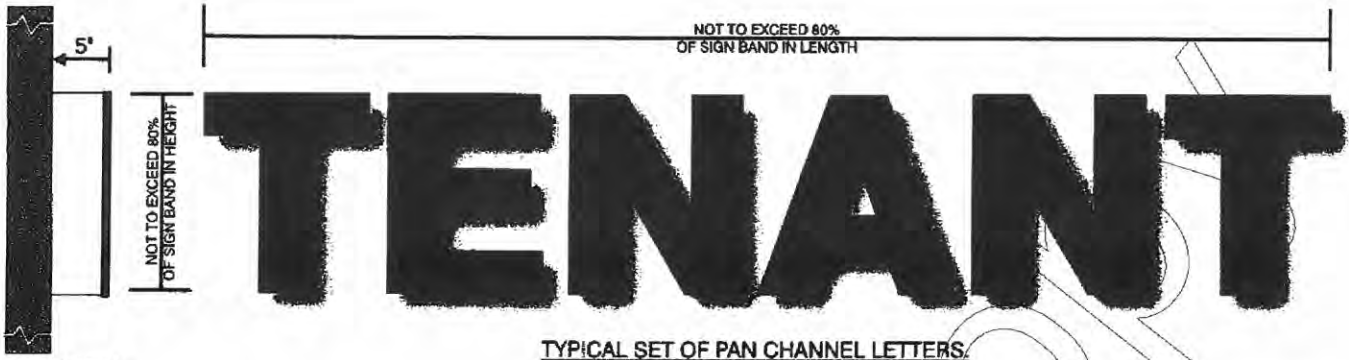
If you have any questions please call:

Charlie Gibson
Bootz and Duke Sign Company
4028 W. Whitton Ave
Phoenix, AZ 85019

Phone: 602-272-9356
Fax: 602-272-4608

Charlie@bootzandduke.com

SIGN EXAMPLE



SIDE VIEW

FABRICATE & INSTALL

TYPICAL SET OF ILLUMINATED PAN CHANNEL LETTERS.

CONSTRUCTION

.063" ALUMINUM BACKS.

.040" ALUMINUM RETURNS, 5" DEEP, COLOR TO BE DETERMINED BY TENANT.

1" TRIM CAP, COLOR TO BE DETERMINED BY TENANT.

VINYL

COLOR TO BE DETERMINED BY TENANT, AS NEEDED.

FACE

3/16" SG ACRYLIC

COLOR TO BE DETERMINED BY TENANT.

ILLUMINATION

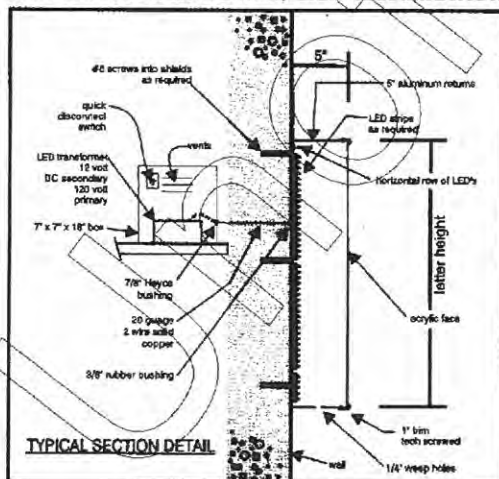
SINGLE TUBE, DOUBLE TUBE AND OR GRID - 4" MAX STROKE BETWEEN TUBES.

DOUBLE BACKS W/ELECTRO-BIT RUBBER BOOTS.

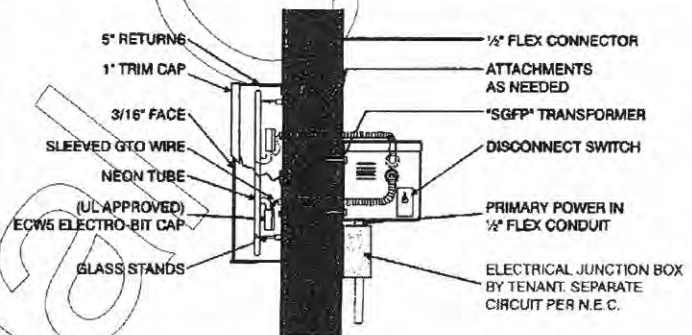
30MA REMOTE TRANSFORMERS.

OR LED'S WITH REMOTE POWER PACKS.

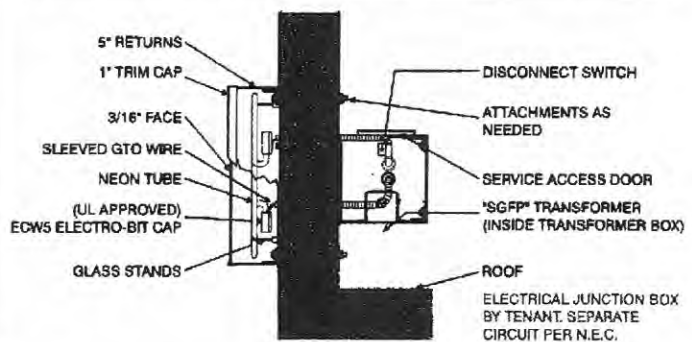
PAN CHANNEL LETTERS W/ L.E.D ILLUMINATION



PAN CHANNEL LETTERS WITH TRANSFORMER BEHIND WALL



PAN CHANNEL LETTERS ON REMOTE RACEWAY (ABOVE ROOF)





PAGE # 8

9

-.25" Aluminum painted with a smooth satin finish for address numbers



Scale: 1/4" = 1'

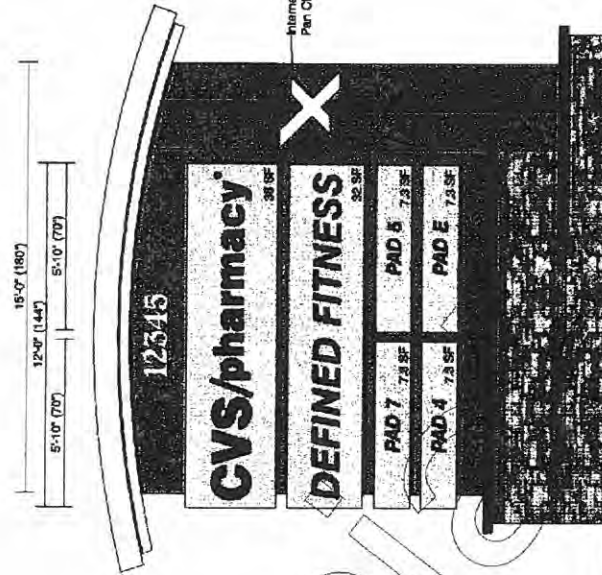
ALL SIGNS FULFILLING AS PER
2005 N.E.C. Specifications

NOTE: ALL SIGNS MANUFACTURED BY BOOTZ & DUKE SIGNS ARE 120 VOLT
ANY OTHER VOLTAGE REQUIREMENTS MUST BE IN WRITING



	EL. KEY 1911 "N"	SMOOTH SATIN FINISH
	EL. KEY 827 "N"	MEDIUM WINTER FINISH
	EL. KEY 6272 "N"	PLUM BRONZE SMOOTH SATIN FINISH
	EL. KEY 1177 "N"	SNOW WHITE SMOOTH SATIN FINISH
	EL. KEY 1346 "N"	CANYON ROCK LEDGESTONE (VIN)
	EL. KEY 1346 "N"	STONE VENISE CANYON ROCK LEDGESTONE (VIN)

-.25" Aluminum painted with a smooth bath finish for address numbers



C1 One(1) 18' Tall Central Ave Signs @ 100 sq ft w/ 6 panels
Scale: 1/4" = 1'

**All Signs Fabricated as per
2005 N.E.C. Specifications**

NOTE: ALL SIGNS MANUFACTURED BY BOOTZ & DUKE SIGNS ARE 120 VOLT ANY OTHER VOLTAGE REQUIREMENTS MUST BE IN WRITING

BOOTZ & DUKE
Signs

CONSIGNEE	USER CROSSING	ADDRESS	4023 W. Whitton Ave., Phoenix, AZ 85019
IMPORTER	ALBUQUERQUE, NM	WEBSITE	www.bysnowandmud.com
EXPORTER	CHARLIE GIBSON	PHONE	(602) 272-9386
TERMINAL	ALBUQUERQUE II	FAX	(602) 272-4608
LEADER P.	A-1332-08 R1	DATE	March 27, 2008
LEADER P.		DATE	

-.25" Aluminum painted with a smooth satin finish for address numbers



Scale: 1/4"=1'

All Signs Fabricated as per
2006 I.B.C.

**All Signs Fabricated as per
2005 N.E.C. Specifications**

**NOTE: ALL SIGNS MANUFACTURED BY BOOTZ & DUKE SIGNS ARE 120 VOLT
ANY OTHER VOLTAGE REQUIREMENTS MUST BE IN WRITING**



USER	USER CROSSING	ADDRESS	4028 W. Whitton Ave., Phoenix, AZ - 85019
ALIAS	Albuquerque, NM	CONTACT	www.bourzandubois.com
ALIAS	Charlie Gibson	PHONE	(602) 772-9336
ALIAS	AV/Morales II	FAX	(602) 272-4808
DOB	11-13-48 RI	DATE	March 27, 2003
DOB	11-13-48 RI	SYNOPSIS	
DOB	11-13-48 RI	PAGE #	12

-.25" Aluminum painted with a smooth satin finish for address numbers



Scale: 1/4"=1'

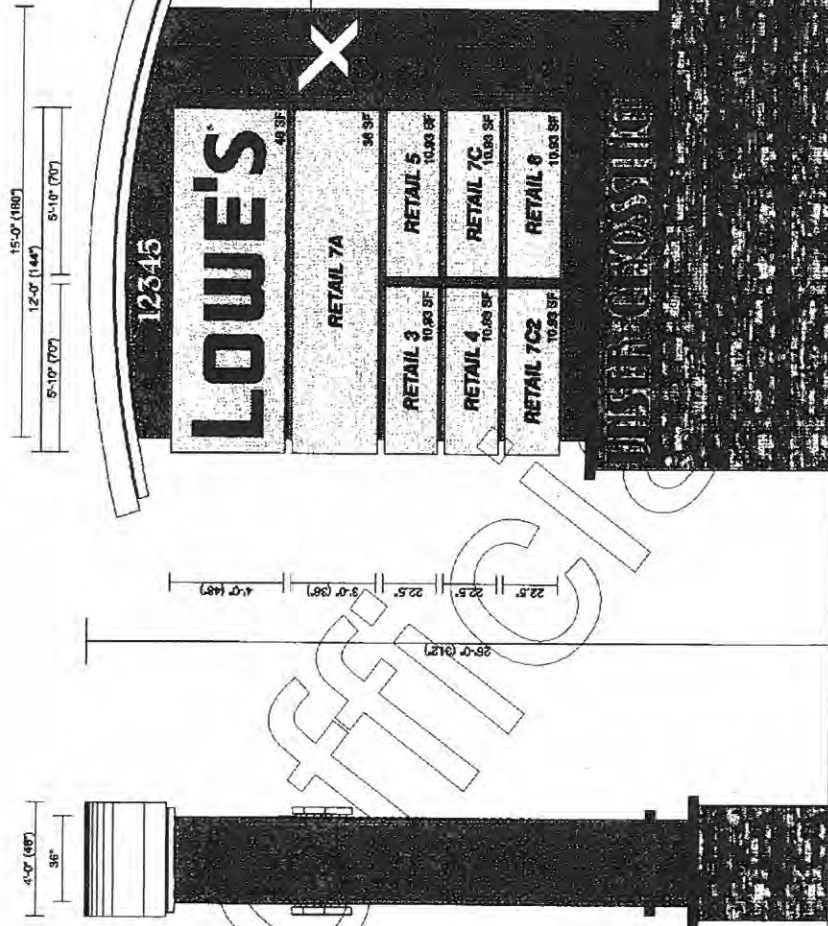
**All Signs Fabricated per
2005 N.E.C. Specifications**

NOTE: ALL SIGNS MANUFACTURED BY BOOTZ & DUKE SIGNS ARE 120 VOLT
ANY OTHER VOLTAGE REQUIREMENTS MUST BE IN WRITING



USER CREATING	USER	428 W Whitton Ave., Phoenix, AZ, 85019
ADDRESS	ADDRESS	428 W Whitton Ave., Phoenix, AZ, 85019
STREET	STREET	428 W Whitton Ave., Phoenix, AZ, 85019
CITY	CITY	Phoenix, AZ, 85019
STATE	STATE	AZ
ZIP	ZIP	85019
PHONE	PHONE	(602) 772-9356
FAX	FAX	(602) 772-4908
DATE	DATE	March 27, 2008
PAGE	PAGE	13

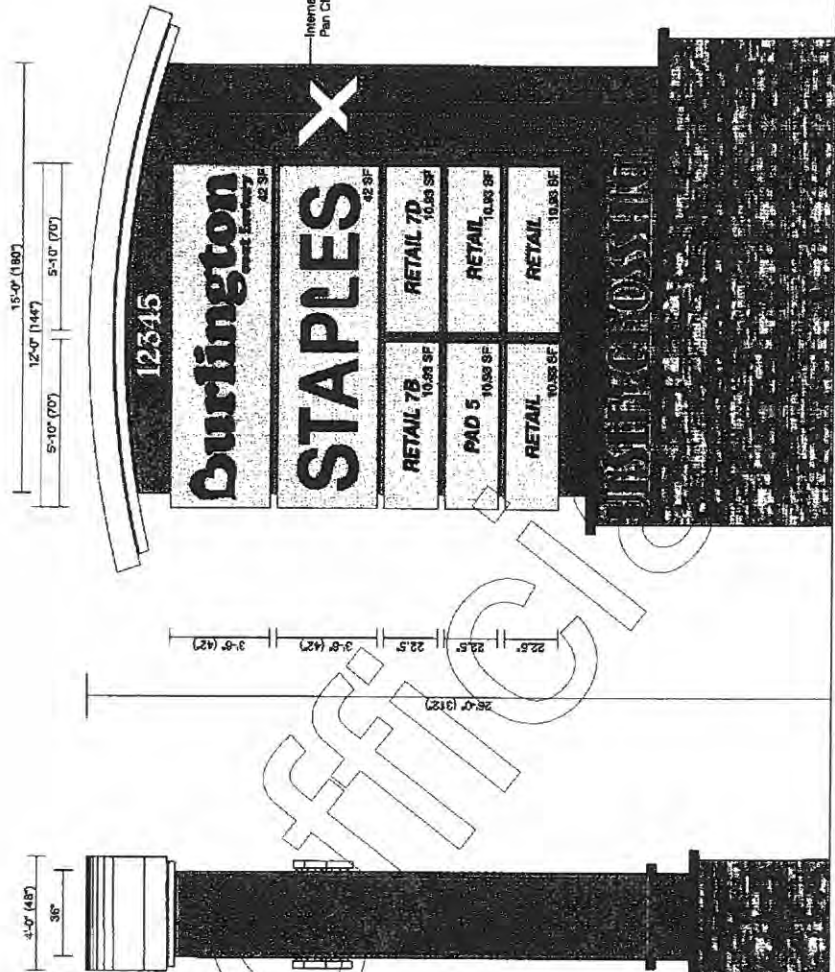
13



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CO-NAME	Unac Crossting	
AUDIENCE	Albuquerque, NM	
SPEAKER	Charles Gibson	
ORGANIZATION	Albuquerque II	
LEADER IN CHARGE	A-132-438 RI	REVISION
DATE	09 - 26	DATE
TIME	March 27-2008	PAGE #
PHONE #	(602) 272-9336	
CELL #	(602) 272-4608	
WEBSITE	www.b64242andb64242.com	
ADDRESS	4073 W. Whitton Ave. - Phoenix, AZ - 85019	

BOOTZ & DUKE



- Manufacture & install a double faced internally illuminated aluminum monument sign.
- Sign will be illuminated with France 400 HID lamps.
- Center ID Pen Channel Letters with internal end halo illumination
- Tenant panels will be raised 2" from sign
- Install on standard steel pipes in approved concrete footings.
- Electrical service to installation site should be existing, if not, will be provided by others
- 25" Aluminum painted with a smooth satin finish for address numbers
- Pen Channel Letters:
- 5' for Clear Louver blocks
 - 5' deep 400 Aluminum G.C returns
 - 1" match face
 - 1" deep 400 Aluminum G.C returns
 - Finish to be 3018 White SQ Acrylic
 - With 3M HP Trans Beryquely vinyl applied
 - Illuminated with 13mm #6500 White Neon.
 - Slud mount 1" from sign face
 - allow for halo-illumination

02 One(1) 26' Tall Central Ave Signs @ 150 sq ft w/ 8 panels
Scale: 1/4"=1'

Engineering Specifications
All Signs Fabricated as per
2006 I.B.C.

Electrical Specifications
All Signs Fabricated as per
2005 N.E.C. Specifications

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[illegible]

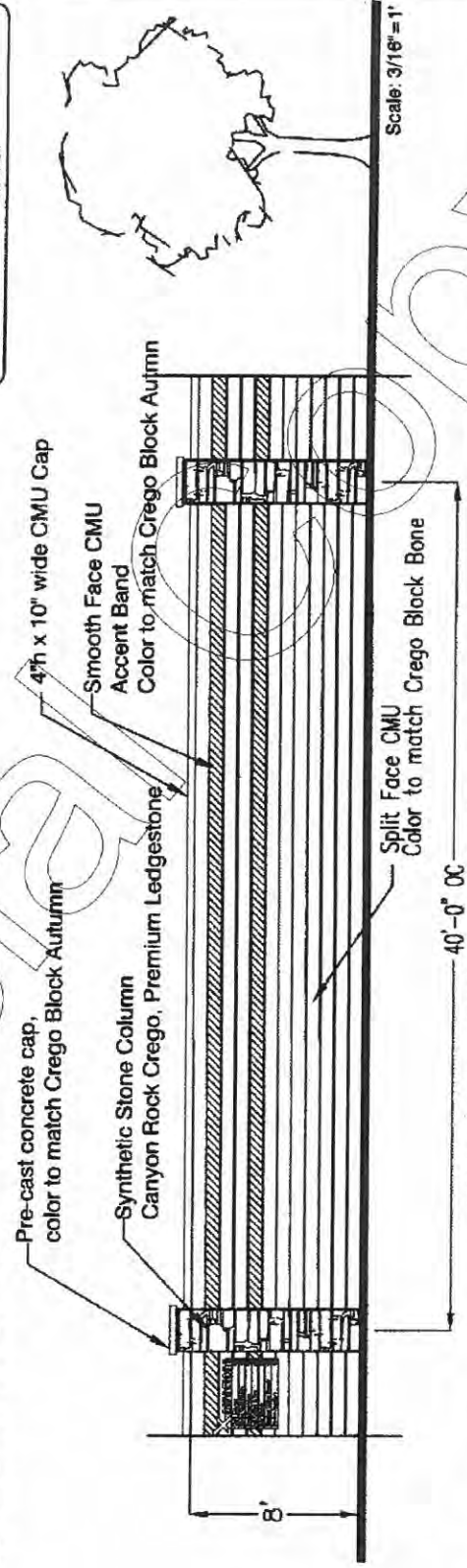
3'-4" (40")

Directory	
Café Express	→
Globo Gym Fitness	→
Book Emporium	→
Jolt Coffee & Tea	→
Sub Weigh	→
Staplers Office Supply	→
Devine Jewelers	→

3'-0" (36")
2'-6" (30")

E Three(3) Directory Signs @ 10 sq ft w/ 7 panels
Scale: 1"=1'

EL RY T174 SMOOTH LAMIN FINISH	EL RY T27 "CASA" SMOOTH SATIN FINISH	EL RY T177 "ROOT BEER FLOAT" SMOOTH SATIN FINISH
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BOOTZ & DUKE
Signs

OWNER	Under Crossing
ADDRESS	Albuquerque, NM
DESIGNER	Charlie Gibson
DATE	AVMarden II
PROJECT	A-132-08 R1
SECTION	
DATE	March 27, 2008
SCALE	1/8" = 1'

4028 W. Whittier Ave. - Phoenix, AZ - 85019
www.bootzandduke.com
PHONE # (602) 272-9556
FAX # (602) 272-4608

-Install on standard steel pipes in approved concrete footings.

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3531047P	User Crossing	ADDRESS: 4028 W. Whittan Ave., Phoenix, AZ - 85019	DATE: 17
4522420P	Albuquerque, NM	WEBSITE: www.bortonsanddupr.com	
5311046P	Charlie Gibson	PHONE: (602) 773-9856	
5311047P	AVMonitors II	FAX: (602) 271-4968	
5311048P	A-1132-08 R1	DATE: March 27, 2008	
5311049P	EXTENSION:		

5

BOOTZ & DUKE

DISA
Darren Sorell
Architect
10000 N. 19th Ave., Suite 100
Phoenix, AZ 85021
Tel: 602.772.9256
Fax: 602.772.9256
www.darren-sorell.com



ARMSTRONG
DEVELOPMENT
10000 N. 19th Ave., Suite 100
Phoenix, AZ 85021
Tel: 602.772.9256
Fax: 602.772.9256
www.armstrongdevelopment.com

Unser Crossing Site Plan for Building Permit Central Avenue and Unser Boulevard Albuquerque, New Mexico 87121

UNSER CROSSING
MASTER PLAN
C-001
DATE: 03.27.2008
BY: [Signature]

KEYED NOTES

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PROJECT NAME	Unser Crossing
ADDRESS	Albuquerque, NM
DESIGNER	Charlie Gibson
CLIENT	ARMSTRONG II
DATE	03.27.2008
SCALE	AS SHOWN
BY	[Signature]
CHECKED BY	[Signature]
DATE	03.27.2008
PROJECT #	A-113-08 RI
DATE	03.27.2008
PAGE #	18