

484

Recording requested by and
When recorded mail to:

WILLIAM D. BUCKNER, ESQ.
Buckner, Robinson, & Mirkovich
3146 Redhill Avenue, Suite 200
Costa Mesa, CA 92626

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

 269.00
* \$ R 0 0 1 4 6 8 8 0 4 3 \$ *

2023000300837 2:53 pm 12/05/23

434 CR-SC05 D02 E01 34

0.00 0.00 0.00 0.00 99.00 0.00 0.000.00150.00 6.00

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

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (“**Declaration**”) is made as of December 1, 2023, by IMPERIAL RETAIL INVESTMENTS LLC, a California limited liability company, whose business address is 4350 Von Karman Avenue, Suite 200, Newport Beach, California 92660 (“**Declarant**”).

21
34P
28B
FF

RECITALS

A. Declarant is the fee owner of that certain real property located at the southwest corner of the intersection of West Lambert Rd. and South Beach Blvd., in the City of La Habra (“**City**”) and County of Orange (“**County**”), State of California, described on Exhibit "A" attached hereto and made a part hereof by this reference (“**Shopping Center**”).

B. The Shopping Center and proposed improvements thereto are generally depicted on the "**Site Plan**" attached as Exhibit "B" and incorporated herein by this reference. The Site Plan is subject to change pursuant to an amendment of this Declaration or a supplemental declaration, as Declarant deems appropriate.

C. It is the purpose and intent of Declarant by way of this Declaration, to subject the real property comprising the Shopping Center and each of the Parcels (hereinafter defined) therein, to the covenants, conditions and restrictions hereinafter set forth and to establish the easements hereinafter described, pursuant to a general plan of improvements for an integrated retail shopping center for the mutual benefit of the present and future Owners (hereinafter defined) of any and all portions thereof and their respective heirs, executors, successors, assigns, grantees, mortgagees and tenants.

NOW THEREFORE, Declarant hereby declares that the Shopping Center shall be developed, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes set forth in this Declaration (collectively “**Restrictions**”) for the purpose of uniformly enhancing and protecting the value and attractiveness of the Shopping Center, and in furtherance of the general plan for the protection, maintenance and improvement of the Shopping Center as an integrated retail/commercial shopping center. The Restrictions shall run with and burden the Shopping Center and shall be binding upon all Owners having or acquiring any right, title or interest in the Shopping Center or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of every portion of the Shopping Center and any interest therein, and shall

inure to the benefit of, shall be binding upon, and may be enforced by Declarant and each Owner who acquires a fee interest in the Shopping Center, or any portion thereof, and their respective heirs, executors, administrators, successors and assigns.

ARTICLE I
GENERAL PROVISIONS

1.1 Definitions.

(a) "**Building Area**" means the limited areas of the Shopping Center within which buildings may be constructed, placed or located, and within which shall be located all building appurtenances such as stairs leading to or from a door, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structures. The Building Areas are designated on the Site Plan. One or more buildings may be located within a Building Area. For the avoidance of doubt, the Building Area shall not be used in this Declaration for purposes of determining building square footage. The Building Areas are measured from the exterior face of exterior walls and the exterior face of service corridor walls, and the center line of any interior shared wall.

At such time as a particular Building Area is determined, re-determined or revised as the result of the construction or reconstruction of the applicable building(s) therein, it shall be memorialized by a supplemental declaration executed by Declarant. Such supplemental declaration shall, among other things, (i) set forth the corrected Building Area for each building and Parcel within the Shopping Center, (ii) include a corrected Site Plan, and (iii) include the recalculated Proportionate Shares of the Common Area Maintenance Costs for each Building Area within the Shopping Center.

(b) "**Common Area**" shall mean all land area within the Shopping Center to be used in common by invited members of the general public. Common Area includes all land areas within the Shopping Center other than the Building Areas. The approximate location of the Common Areas is depicted on the Site Plan. The Common Area does not include (i) any Outside Sales Area (defined in Section 1.1) during the period such Outside Sales Area is used for sales and/or display purposes, (ii) outdoor patio or dining area, (iii) walk-up, drive-up and drive through lanes and facilities, (iv) loadings docks, ramps and facilities, and (v) exterior ATM pads and ATM sidewalk and cueing areas.

(c) **Intentionally Omitted.**

(d) "**Declarant**" shall mean the undersigned Declarant, its successors, assigns or designees who shall assume Declarant's obligations, and to whom Declarant shall specifically assign in writing Declarant's rights and obligations under this Declaration.

(e) "**Force Majeure**" shall mean those events described in Section 12.7.

(f) "**Governmental Authority**" means any governmental authority, agency, department, district, commission board or instrumentality of the United States, the State of

California, or any political subdivision thereof having jurisdiction over the Shopping Center specifically including, without limitation, the City and the County.

(g) "**Improvement**" shall mean and include buildings, outbuildings, parking and loading areas, roadways and walkways, display and storage areas, fences, walls, poles, signs and all other structures located above the ground level of any Parcel, and any replacements, additions, repairs or alterations thereto.

(h) "**Laws**" shall mean all present or future applicable local, county, state and federal laws, statutes, codes, ordinances, rules, regulations, limitations, restrictions, orders, actions or policies.

(i) "**Monument Sign**" and "**Pylon Sign**" shall mean those freestanding monument signs and pylon signs of the number and at the locations shown on the Signage Plan attached hereto as Exhibit "C" and incorporated herein by this reference.

(j) "**Occupant**" means any person or entity from time to time entitled to the use and occupancy of any Building Area or portion of a Building Area in the Shopping Center under an ownership right or under any lease, sublease, license, concession, or other similar agreement.

(k) "**Outside Sales Area**" means those areas, if any, located outside of a Building Area designated on the Site Plan, which from time to time may be used for sales and/or display purposes. The actual location of such Outside Sales Area may vary from time to time, subject to the prior written approval of Declarant. During the period an Outside Sales Area is (i) used for sales and/or display purposes, such area shall not be considered part of the Common Area, and (ii) not used for sales and/or display purposes such area shall be considered part of the Common Area; provided however, if the Outside Sales Area is located within a Building Area, such Outside Sales Area may be used for the location of a building or buildings.

(l) "**Owner**" shall mean each and every fee owner of the Shopping Center or any Parcel therein during the term of its ownership, specifically including, but not limited to, Declarant so long as Declarant owns any part of the Shopping Center. The term Owner does not include an Occupant who occupies any Building Area under a lease, sublease, license or concession agreement.

(m) "**Parcel**" or "**Parcels**" shall mean each separate legal lot or parcel existing or hereafter created within the Shopping Center. Parcels may be modified and/or created by Declarant, from time to time, in its sole discretion, subject to approval by the applicable Governmental Authority provided such right shall not extend to a Parcel owned by another Owner without such Owner's prior written consent, which consent shall not be unreasonably withheld or delayed.

(n) "**Signs**" shall mean all advertising, placards, signs, marquees, billboards, names, insignia, trademarks, numerals, addresses, and descriptive words or material of any kind affixed, inscribed, erected or maintained in the Shopping Center or on any improvement thereon.

(o) "**Signage Plan**" shall mean the sign plan for the Shopping Center signs, including building signs, Monument Signs and Pylon Signs and their support and lighting, attached hereto as Exhibit "C" and incorporated herein by this reference. The Signage Plan shall comply with all applicable Laws and local signage ordinances.

(p) "**Submittals**" shall mean all documents required to be submitted to Declarant for approval pursuant to Sections 2.1 and 2.2 below.

ARTICLE II CONSTRUCTION OF IMPROVEMENTS, APPROVAL OF PLANS

2.1. Initial Construction of Improvements.

(a) Construction of Improvements. Subject to the provisions of Sections 2.1(b) and 2.1(c), an Owner shall, at its sole cost and expense, construct all Improvements within its Parcel specifically including, but not limited to: (i) its building(s), which building(s) shall not exceed the applicable square footage floor area set forth in Section 4.3, and the sidewalk areas immediately surrounding the building(s); (ii) the Parcel's trash container enclosure; (iii) any landscaping between the sidewalk and the building; (iv) any customer drive-up or drive-thru through lane(s) and facilities; and (v) all other improvements within the Parcel, in accordance with the Owner's "Final Plans" (hereinafter defined) as approved by Declarant, and with all applicable building codes. If, by separate agreement, one Owner is required to construct improvements on another Owner's Parcel as approved in writing by Declarant, then the constructing Owner is granted a temporary license to enter onto the other Owner's Parcel to perform such work.

(b) Building Permits. The constructing Owner shall provide Declarant with an AutoCAD drawing of the footprint and proposed elevations of such Owner's building(s). Declarant and Owner shall agree upon (i) a site plan for Owner's building(s), and (ii) the building elevations (collectively the "**Conceptual Plans**"). No later than thirty (30) calendar days after obtaining the required approval from the Declarant of the Conceptual Plans, Owner shall submit to Declarant its Preliminary Plans (hereinafter defined) for (x) the construction and operation of its improvements, and (y) the erection and maintenance of building signs advertising the business to be conducted on the Premises, in accordance with such Owner's Conceptual Plans as approved by Declarant.

(c) Conditions of Initial Construction. Before construction of the initial Improvements, and before any building materials have been delivered to the Parcel or Shopping Center by any Owner or under any such Owner's authority, the Owner shall comply with all of the following conditions ("**Conditions of Initial Major Construction**"), or procure Declarant's written waiver of such conditions:

(1) Deliver to Declarant for Declarant's approval four (4) sets of Preliminary Plans, prepared by an architect or engineer so licensed in the State of California, which shall include preliminary grading and drainage plans, utilities, sewer and service connections, locations of curbs, gutters, parkways, storage areas, and landscaping, all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable

Declarant to make an informed judgment about the design and quality of the proposed improvements (“**Preliminary Plans**”). Declarant shall not unreasonably disapprove the Preliminary Plans and shall approve, disapprove or approve subject to conditions such Preliminary Plans within thirty (30) days of Declarant's receipt of same from Owner. If Declarant does not respond within the thirty (30) day period, then following an additional ten (10) days prior written notice to Declarant, Declarant will be deemed to have accepted the Preliminary Plans. Approval or disapproval shall be communicated in the manner provided for notices, and disapproval shall be accompanied by detailed specifications of the grounds for disapproval. Following any disapproval, Owner shall submit revised Preliminary Plans. This process shall continue in good faith until the unconditional approval of Declarant is obtained on the Preliminary Plans.

(2) Owner shall prepare final construction plans and specifications conforming to Preliminary Plans as approved by Declarant (“**Final Plans**”), and submit same to Declarant for Declarant's approval. Declarant shall not unreasonably disapprove the Final Plans and shall approve, disapprove or approve subject to conditions to such Plans within thirty (30) days of Declarant's receipt of same from Owner. If Declarant does not respond within the thirty (30) day period, then following an additional ten (10) days prior written notice to Declarant, Declarant will be deemed to have accepted the Final Plans. Approval or disapproval shall be communicated in the manner provided for notices, and disapproval shall be accompanied detailed specification of the grounds for disapproval. Owner shall not submit the Final Plans to any governmental body for the purposes of issuance of a building permit until the Final Plans are approved by Declarant. Upon the approval of the Final Plans by the applicable governmental agency, Owner shall deliver to Declarant one (1) complete set of the Final Plans as approved and permitted by the applicable governmental agency.

(3) Each Owner agrees to notify Declarant in writing of Owner's intention to commence work on any improvements within the Parcel at least ten (10) days before commencement of any such work or delivery of any materials. The notice shall specify the approximate location and nature of the intended improvements. Declarant shall have the right at any time and from time to time to post and maintain on the Shopping Center such notices, as Declarant deems necessary, to protect the Shopping Center and Declarant from the liens of mechanics, laborers, materialmen, suppliers or vendors.

(4) Owner shall procure and deliver to Declarant at Owner's expense true and correct copies of building permits, grading permits and all other permits, approvals and licenses required for the construction of the Improvements to the Parcel constructed by Owner.

(5) Owner shall deliver to Declarant evidence of worker's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Declarant or the Shopping Center as well as builder's all risk liability insurance. Owner shall maintain, keep in force, and pay all premiums required to maintain and keep in force all insurance required of Owner hereunder at all times during which such work is in progress.

(6) Within thirty (30) days after Owner initially opens the Building Area for business to the public, Owner shall deliver to Declarant a copy of the certificate of

occupancy issued by the appropriate Governmental Authority for all Improvements constructed on the Parcel, as well as an "as built" or field marked set of final working drawings showing the Improvements to the Parcel as actually constructed.

(7) Declarant acknowledges that the Preliminary and Final Plans for both the Dutch Bros. Parcel and Improvements and the America's Tire Parcel and Improvements have been approved by Declarant.

2.2 Conditions of Subsequent Construction. Following an Owner's initial construction of the Improvements on its Parcel, no exterior or structural Improvement of any nature, including, but not limited to, any exterior alteration or exterior addition to any existing Improvements of the Common Area, shall be constructed, placed, assembled or maintained within the Shopping Center until the Submittals required by this Section 2.2 have been approved in writing by Declarant, such approval not to be unreasonably withheld, conditioned or delayed. Separate and progressive Submittals regarding Improvements shall be made by an Owner for approval as follows:

(a) Two (2) copies of the proposed plot plan and proposed exterior elevations shall be submitted to Declarant for its review and approval prior to (i) submittal to the applicable Governmental Authority for development plan review, and (ii) preparation of schematic plans and preliminary specifications;

(b) After the applicable Governmental Authority approves the plot plan and elevations, two (2) sets of working drawings and specifications consistent with the approved plot plan and elevations showing in reasonable detail the proposed type of hue, size, shape, height, location, materials, color scheme and elevation of each of the proposed Improvements, all ingress and egress to public streets or roads, and all landscaping, parking, exterior lighting and signage, shall be submitted to Declarant for its approval before (i) submittal to the applicable Governmental Authority for the issuance of a building permit, and (ii) commencement of construction of any Improvements on the applicable Parcel; and

(c) In order to receive proper and timely consideration, each Submittal shall contain a legal description of the applicable Parcel. Partial Submittals may be made and approved, but in no event shall construction or assembly of any Improvement proceed beyond the scope of the approval received. All plans and specifications to be submitted to Declarant hereunder shall be prepared by an architect and/or engineer, licensed in the State of California, and shall be submitted in writing over the signature of the Owner or an agent duly authorized by the Owner in writing.

2.3 Approvals of Subsequent Construction. Provided that the Submittals are in conformity with these Restrictions, and the design and color scheme for the Shopping Center, Declarant shall not unreasonably withhold or delay its approval of any such Submittal. Upon receipt by Declarant of any request for approval of any Submittal, Declarant shall promptly review and approve or disapprove such Submittal within thirty (30) days, and if Declarant does not approve or disapprove in writing of the Submittals within thirty (30) days after receipt, then following an additional ten (10) days prior written notice to Declarant, such Submittals shall be deemed to be approved. Upon approval, Declarant shall endorse its approval on one (1) set of

submitted documents and return the same to the person from whom the documents were received, provided that two (2) sets had been submitted as required above.

2.4 Presumption of Compliance. Notwithstanding anything to the contrary herein contained, after the expiration of twelve (12) months from either (a) the date of issuance of a certificate of occupancy by the applicable municipal or other governmental authority having jurisdiction over any Improvement, or (b) the date of recording a valid Notice of Completion with respect to such Improvement, whichever occurs first, that Improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article II, unless either (i) actual notice of such noncompliance or non-completion, executed by Declarant, shall have been delivered to the Owner and, if permitted, shall appear of record in the office of the County Recorder of Orange County, California, or (ii) legal proceedings shall have been instituted to enforce compliance or completion.

2.5 Identical Replacements. Notwithstanding the foregoing, any Improvements on the Parcel for which Submittals were previously approved by Declarant, as provided above, may be repaired, replaced, or reconstructed without further consent by Declarant; but only if such repair, replacement, or reconstruction is substantially identical to the Improvement previously so approved, subject to compliance with all then applicable building codes and other governmental requirements.

2.6 Exculpation. Declarant shall not be liable in damages to anyone making a Submittal as provided herein, or to any Owner, licensee or other person subject to or affected by these Restrictions, on account of any construction, performance or nonperformance by an Owner of any work on the Parcel or Improvements. Declarant's approval of any Submittal shall not be construed as any representation or warranty of approval by any applicable governmental authority or agency, or constitute the assumption of any responsibility by, or impose any liability upon, Declarant or its representatives as to the accuracy, efficiency or sufficiency thereof.

ARTICLE III REGULATION OF IMPROVEMENTS

3.1 Completion of Improvement. After commencement of construction of any Improvement, the same shall be diligently prosecuted to completion.

3.2 Minimum Building Setback Lines. All building setbacks from public streets shall conform to the requirements of the zoning ordinances of the City and County, as they exist from time to time.

3.3 Excavation and Underground Utilities. No excavation shall be made on any Parcel except in connection with construction of an Improvement and, upon completion thereof exposed openings shall be backfilled and disturbed ground shall be compacted, graded, leveled, and restored to its original condition. All telephone, electrical, and other utility lines shall be installed underground, except that transformer or terminal equipment related thereto may be installed above ground if screened from view of adjacent streets or properties.

3.4 Landscaping. Each Owner shall provide regular maintenance for all planted and undeveloped areas upon its Parcel or Parcels, and shall keep the same free and clear of weeds, debris, trash and rubbish, in a neat and clean condition.

3.5 Drainage. No water shall be drained or discharged from any Parcel or any Improvement thereon, and no Owner shall interfere with the drainage patterns established as of the date of this Declaration in or over the Shopping Center, except in strict accordance with the grading plan(s) therefor approved by the applicable Governmental Authority and by Declarant.

3.6 Signs. All Signs within the Shopping Center shall be subject to the Signage Plan. Any change or amendment to, or deviation from the Signage Plan must be approved in advance by Declarant. The cost of installation of the multi-user Monument Signs and Pylon Signs and the costs of operation, maintenance, repair and replacement of such signs shall be paid by the Owners of the Shopping Center having the right to signage representation on such signs based on their relative square footage sign area. Sign panels on the multi-user Monument Signs and Pylon Signs are hereby allocated as depicted on the Signage Plan.

3.7 Maintenance and Repairs. Each Parcel and all Improvements thereon shall at all times be constructed, kept, and maintained in first-class condition, repair, and appearance similar to other first-class shopping centers in the Northern Orange County, California area, ordinary wear and tear excepted. All repairs, alterations, replacements or additions to Improvements shall be at least equal to the original work in class and quality. The necessity and quality of such repairs shall be measured by the same standards as set forth above for the original construction and maintenance. Each Owner shall be responsible at all times for determining that such Owner's Improvements and the plans and specifications therefor conform and comply in all respects with these Restrictions, all other restrictions of record, all applicable Laws, and all exterior architectural design, location, and color specifications contained therein. Each Owner shall keep, maintain and repair the buildings, whether occupied or unoccupied, located on its Parcel(s) in good and clean order, operation, condition and repair, without public or private nuisance, in conformity with first-class shopping center standards, and in such manner to establish, maintain and present, at all times, the appearance of a clean and unified shopping center. Each Owner hereby agrees to paint the buildings located within its Parcel(s) in the original color scheme or such other color scheme approved by Declarant, at least once every seven (7) years, or as reasonably needed, whichever occurs first.

3.8 Parking Areas. The Common Area shall contain an aggregate number of paved automobile parking spaces for the non-exclusive use by the employees, customers, clients, guests, patrons, contractors and invitees of all tenants of the Shopping Center (the "**Required Center Parking**") no less than the greater of (a) four (4) paved automobile parking spaces for every one thousand (1,000) square feet of building floor area of the Shopping Center; and (b) the number and types of paved automobile parking spaces required by the zoning code of the City, for the applicable use of each Parcel.

No Owner shall make, or allow any person to make, any improvements within the Common Area within its Parcel that would reduce the number of parking spaces therein below the

Required Center Parking, or otherwise suffer or allow any reduction in the number of parking spaces therein below the Required Center Parking, except to the extent resulting from a Taking.

Each Owner and Occupant of any part of the Shopping Center shall use commercially reasonable efforts to cause its employees, to park within its/their own Parcel. If an Owner's Occupants and/or tenants including their employees fail to park their vehicles in the parking areas within the Owner's Parcel, Declarant or the other Owner may give Owner written notice of the first violation of this provision, and Owner shall have two (2) days thereafter to cause the violation to be discontinued and, if not discontinued the offending Owner hereby authorizes Declarant and the other Owner to tow away any vehicle or vehicles belonging to its Parcel's Occupants and/or tenants and their employees that are parked within the other Owner's Parcel and/or to attach violation stickers or notices to such vehicles.

3.9 Compliance with Laws. No Owner shall do or keep or permit anything to be done or kept on such Owner's Parcel that violates any Law.

ARTICLE IV REGULATION OF OPERATIONS AND USES

4.1 Development and Operation of Shopping Center. The Shopping Center shall be developed, operated and maintained in accordance with the Site Plan as an integrated retail shopping center containing a combination of merchants and customer/client service providers which: (i) provide in the aggregate a balance and diversified grouping of retail stores, merchandise and services (including medical services); (ii) efficiently utilize but not exceed the capacity of the available parking area or any portion thereof; and (iii) fixturize, decorate and maintain their respective store premises in a clean and well-maintained manner, having regard for the general standards of appearance prevailing in the Shopping Center.

4.2 Prohibited Operations and Uses. No use or operation will be made, conducted or permitted on or with respect to all or any part of any Parcel or Improvement which is in violation of any applicable Law or which constitutes a nuisance or waste. Included among the uses or operations which are prohibited are the uses and operations listed in Exhibit "D" attached hereto and incorporated herein by this reference ("**Existing Prohibited Use Restrictions**"). No use or operation will be made, conducted, or permitted on all or any part of any Parcel within the Shopping Center which would violate any of the Existing Prohibited Use Restrictions for so long as the Existing Prohibited Use Restriction is in effect. Notwithstanding any contrary provision of this Declaration, where an Existing Prohibited Use Restriction is (i) for the benefit of an existing Tenant and (ii) the Owner of the Parcel leased in whole or in part by an existing Tenant, it may be enforced only by the applicable existing Tenant and/or Owner.

Any Owner who breaches or whose tenant breaches any Existing Prohibited Use Restriction shall indemnify, defend, protect and hold Declarant and all other Owners, and each of their respective partners, members, shareholders, officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against all Claims to the extent arising from or caused in whole or in part by the breach of such Existing Prohibited Use Restriction by the breaching Owner (or by the tenant of such Owner). Notwithstanding the foregoing, the indemnity

obligations under this Section 4.2 shall not apply to the extent any Claim is caused by or resulting from the negligence or willful misconduct of the party that is seeking indemnification.

4.3 Building Restrictions.

(a) No building shall be constructed or located on any part of the Shopping Center other than within the Building Areas shown on the Site Plan.

(b) The buildings to be constructed in the Building Areas as depicted on the Site Plan shall have maximum square footage floor areas and maximum building heights (excluding towers and other architectural features not exceeding five (5) additional feet), not in excess of the following schedule:

<u>Building</u>	<u>Max Building Floor Area</u>
Parcel 1	10,000 sq. ft.
Parcel 2	1,000 sq. ft.

To the extent a building actually constructed within a particular Building Area is less than the maximum permitted Building Area for such Parcel set forth above, then Declarant may unilaterally reallocate such unused Building Area to any other Parcel or Parcels within the Shopping Center, subject to obtaining the prior written approval of the Owner of such Parcel(s), and provided the available parking within such Parcel(s) is sufficient to self-park the Building Area within such Parcel(s) as so increased under both applicable Law and the requirements of this Declaration.

4.4 Permitted Uses of Common Areas. The Common Area of the Shopping Center shall be used for those uses described in Section 4.5 and for no other uses or purposes without the prior written consent of Declarant, which consent shall not be unreasonably withheld or delayed as long as such use does not violate a then existing lease of any Owner. No changes in the number of parking spaces, traffic flow patterns, or in the configuration of the Common Areas from that shown on the Site Plan shall be made without the prior written consent of Declarant and the Owner of the applicable portion of the Common Area, which consents shall not be unreasonably withheld or delayed as long as such change does not violate a then existing lease of any Owner of this Declaration.

4.5 Use of Common Area.

(a) Except for any use or purpose not in furtherance of the operation of the Shopping Center, the Common Area may be used for any of the following uses:

(i) Parking of motor vehicles, and pedestrian and vehicular ingress and egress of the Owners and their respective heirs, successors, assigns, grantees, mortgages, subtenants, licensees and concessionaires of the Building Areas, and agents, employees, customers, and the invitees of any of them (collectively "**Permitted Users**"), to, from, and between the buildings, Common Area and adjacent public street(s);

(ii) Parking stalls, private streets, sidewalks, walls, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, landscaped areas, traffic and parking lighting facilities and the Monument Signs and Pylon Signs at the locations shown on the Site Plan with appropriate underground electrical connections, and all things incidental thereto;

(iii) Utility lines and facilities serving buildings, Building Areas, and/or the Common Area which shall, if reasonably possible, be underground;

(iv) Ingress and egress of delivery and service vehicles to, from and between the Shopping Center or any portion thereof, and the adjacent public streets. Such vehicles may only be parked in unloading or truck parking areas;

(v) Delivery of goods, wares, merchandise and the rendition of services to the Occupants of the Shopping Center;

(vi) Perimeter walls and fences as shown on the Site Plan, if any; and

(vii) Bio-retention basins and facilities as shown on the Site Plan, if any, as amended from time to time.

(b) Notwithstanding the foregoing, the Common Area adjacent to any Building Area may be used by the Owner of such Parcel on which the Common Area is located and its Occupant(s) for the following:

(i) Installation, removal, repair and maintenance of building canopies extending from any Building Area over pedestrian sidewalks and the Common Area not more than ten (10) feet, together with appropriate canopy supports;

(ii) Installation, removal, repair and maintenance of mailboxes, hose bibs, standpipes, fire hose connections, downspouts, yard or floodlights and subsurface building foundations;

(iii) Construction and use of loading ramps, docks, trash rooms and trash bins which shall be located in the service area to the rear of and adjacent to the Building Area; and

(iv) Temporary erection of ladders, scaffolding and storefront barricades during construction, remodeling or repair of buildings and building appurtenances.

(v) The installation, use, repair, maintenance and replacement of waste disposal stations, underground grease interceptors, and, to the extent shown on the Site Plan or approved by Declarant and the applicable Owner, trash enclosures.

(c) The Common Area shall be used reasonably so as not to interfere with customer parking, except that the portion of the Common Area designated for delivery areas shall be used primarily to serve and supply the buildings within the Building Area.

(d) Any undeveloped Building Area may, at the option of its Owner, be treated as Common Area in which event it shall be so improved and operated by such Owner, or it may remain undeveloped, in which event it will be rough graded and maintained by such Owner at such Owner's cost, in a clean, attractive and safe condition in strict compliance with all requirements of the City.

4.6 Charge for Parking. No charge of any kind shall ever be made for ingress to, egress from, or parking in the Shopping Center, unless ordered by Governmental Authority. If so ordered, to the extent permitted by Laws, any such charge shall not be collected from customers and invitees but shall be prorated to the Occupants of the Shopping Center and paid by them as an element Common Area Maintenance Costs. If the Governmental Authority does not permit such a treatment of the charge, but instead requires that it be collected from customers or invitees, each Owner shall collect such charge for their respective Parcel.

4.7 Exclusive Uses. No use or operation will be made, conducted or permitted in any Parcel or Improvement within the Shopping Center which would violate any exclusive use and/or restriction set forth in **Exhibit "E"** attached hereto and incorporated herein by this reference ("**Existing Exclusive Use Restriction**"), other than the Parcel or Improvement for which the applicable exclusive use has been granted. The Existing Exclusive Use Restriction may be enforced only by the Declarant, the applicable existing Tenant that benefits from the Existing Exclusive Use Restriction and/or the Owner of the applicable Parcel. Any Owner who breaches, or whose Occupant breaches, any Existing Exclusive Use Restriction shall indemnify, defend, protect and hold Declarant and all other Owners, and each of their respective partners, members, shareholders, officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against all actions, claims, liabilities, costs, actual, itemized damages (including consequential and special damages relating to any existing Lease), penalties, fines, or expenses specifically including, but not limited to, reasonable attorneys fees and expenses, and the difference between any abated, reduced, substitute or penalty rent that such tenant is entitled to pay as a result of such violation under the terms of its lease and the amount of rent that would otherwise be payable by such Occupant (collectively "**Claims**"), to the extent arising from or caused in whole or in part by the breach of such Existing Exclusive Use Restriction by the breaching Owner or by the Occupant of such Owner.

ARTICLE V
RESERVATION OF COMMON AREA EASEMENTS;
MAINTENANCE OF COMMON AREAS

5.1 Common Area Maintenance. Each Owner shall exclusively operate, repair and maintain, or cause to be operated and maintained, the Common Area within its Parcel(s), consisting of driveways, sidewalks, parking areas, delivery ways, loading areas, Monument Sign and Pylon Sign structures (excluding any monument signs erected by individual Owner or Occupant), landscaped areas, boundary walls and comfort stations. Common Area Maintenance shall include, but are not limited to, the operation, maintenance and repair of the improvements to the Common Area including, without limitation, (i) planting, landscaping, maintaining, repairing and replacing the landscaping within the Common Area; (ii) operation, maintenance, repair and replacement of

irrigation systems serving landscaping located within the Common Area; (iii) the provision of reasonably adequate lighting of the Common Area during the business hours of darkness including maintenance and repair of the Common Area lighting systems; (iv) maintenance, repair and replacement of water, electricity and other utility services, mains and laterals servicing the Common Area or any Building Area; (v) maintenance of and repairs to the parking areas and perimeter sidewalks including sweeping, bumpers, directional signs, and periodic resurfacing and striping; (vi) graffiti removal to the extent not provided by any governmental agency; (vii) maintenance and repair of the multi-user Monument Signs and Pylon Signs; and (viii) any other items of maintenance and repair that may be needed from time to time to maintain the Common Area and/or to cause the Common Area to comply with all applicable Laws.

5.2 Default Common Area Maintenance Easements and Other Uses. Declarant hereby reserves to itself and to each Owner, a nonexclusive easement on, over, under and across the Common Area of the Shopping Center and each Parcel therein, for the purpose of necessary maintenance or repairs following a default of the same by an Owner or Occupant of the maintenance and repair requirements set forth in Section 5.1, above including, without limitation, the installation, operation, maintenance and repair of irrigation systems and controls. Declarant and each Owner shall also have an easement for ingress and egress over all other non-Building Areas of the Shopping Center and each Parcel therein to gain access to the Common Area, provided that such ingress and egress shall not unreasonably interfere with the use of any Parcel by the Owner or any lawful Occupant thereof.

Upon the failure of a defaulting Owner to cure a breach of the maintenance and repair requirements set forth in Section 5.1 above within thirty (30) days following written notice thereof by an Owner or Declarant (unless, with respect to any such breach the nature of which cannot be reasonably cured within such 30-day period, the defaulting Owner commences such cure within the 30-day period and thereafter diligently prosecutes such cure to completion), Declarant and any Owner has the right to perform such obligation on behalf of such defaulting Owner, whereupon the defaulting Owner shall reimburse the curing Owner or Declarant, for the reasonable, itemized out-of-pocket expenses incurred by the curing Owner or Declarant in performing the required maintenance or repairs on the defaulting Owner's Parcel within thirty (30) days following receipt of the curing Owner's or Declarant's statement (including reasonable supporting documents) and demand therefor.

No Owner shall alter or obstruct the Common Area in any way without the express written approvals of both Declarant and the Owner of the applicable portion of the Common Area, which consents shall not be unreasonably withheld or delayed as long as such alteration or obstruction does not violate a then existing lease of any Owner. In addition to any other remedies it may have, Declarant may, after giving ten (10) days notice to any Owner who violates this provision, enjoin, remove or abate any such obstruction or alteration of the Common Area. In such event, Declarant shall be entitled to reimbursement from such Owner of all of Declarant's costs and expenses associated therewith including, but not limited to, reasonable attorneys fees, upon such Owner's receipt of Declarant's written demand therefor.

5.3 Remedies for Non-Payment. If any Owner shall fail to make any payment when due and payable under this Article, then in addition to all other rights at law for damages

(including, without limitation, reasonable attorneys fees, court costs and other costs of collection or enforcement); rights in equity for specific performance, to enjoin a violation of any provision in this instrument, or to enforce any other compliance therewith, or any other rights or remedies available to Declarant or any Owner, any such unpaid amount (including all such costs and interest on the unpaid amount at the prime commercial rate being charged by the Bank of America, NA, plus five percent (5%) per annum, but not to exceed the then legal maximum rate of interest, from the date due to the date of payment) shall, upon the recordation of a notice of default, become a continuing lien and charge against the applicable Parcel(s) owned by the defaulting Owner until paid. The unpaid amount shall also be the personal obligation of such Owner until paid. In connection therewith, Declarant or any curing Owner may serve upon the defaulting Owner, and may record with the Orange County Recorder, a notice of default reciting the nature of the breach, the legal description of the affected Parcel, the name of the applicable Owner and the total amounts due. If and when the amounts due are paid, Declarant or the curing Owner shall forthwith record an appropriate release of any recorded lien at the sole expense of the defaulting Owner. If the amounts due are not timely paid, Declarant or the curing Owner may foreclose such lien by a sale conducted pursuant to the applicable sections of the California Civil Code or other statutory provisions applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law.

5.4 Express Grants of Easements. Declarant hereby establishes and reserves for its benefit, for the benefit of Declarant, and for the benefit of the Owner of each of the Parcels comprising the Shopping Center, their employees, agents, contractors, Occupants, successors and assigns, non-exclusive easements appurtenant to each such Parcel, over, across, upon, in, under and through the Common Areas, but subject to the other provisions of this Declaration, for the following:

(a) Non-exclusive easements for ingress, egress, and access by and for vehicular and pedestrian traffic and customer vehicle parking upon, over, and across the parking area portions of the Common Area, and ingress, egress, access, and the right of ingress, egress and access between the public streets adjacent to the Shopping Center and any developed and improved portion of the Shopping Center, ;

(b) Non-exclusive easements over, under, through, and across the Common Area for the installation, maintenance, removal, and replacement of storm water drainage systems and structures, water mains, sewers, water sprinkler system lines, telephones, or electrical conduits or systems, gas mains, and other public utilities and service easements. All such systems, structures, mains, sewers, conduits, lines and other public utility instrumentalities shall be installed and maintained below the ground level or surface of the Shopping Center, except where the instrumentality of the particular utility involved is not amenable to being placed underground (such as, but not limited to, transformers and risers). In the event that it becomes necessary for any Owner to cause the installation of a storm drain, utility line, or sewer across the Common Area subsequent to the initial improvement and paving of the Common Area, such activity shall be permitted so long as (i) the benefited Owner ("**Benefited Owner**") complies with all applicable provisions of this Declaration in connection with such work, (ii) the affected portion of the Common Area is replaced or repaired to its original condition following the installation of the utility line, (iii) the Benefited Owner pays for all costs associated with such work and no monetary obligations or

liability are imposed upon the non-benefited Owners by reason of the performance of such work or the installation of such utility line(s), (iv) the Benefited Owner does not block any drive aisle with an open trench, (v) the Benefited Owner provides traffic covers for all affected areas of the Common Area which are not actively being repaired, (vi) the Benefited Owner does not block more than fifty percent (50%) of any drive aisle at any one time, and (vii) notwithstanding anything herein to the contrary (including, without limitation, in the first sentence of this Section 5.4(b), the type and location of the utility to be installed shall be subject to the prior written approval of the Owner who will be burdened thereby ("**Burdened Owner**"), which approval shall be granted or withheld in the Burdened Owner's reasonable discretion. It shall be reasonable for any Burdened Owner to withhold its consent to a proposed easement for a utility facility of the type described in this Section 5.4(b) ("**Utility Facility**") if, among other reasons: (A) the proposed location thereof would be under any Building Area (whether or not a building is constructed thereupon or not), (B) if the proposed location of the Utility Facility would interfere with the development, redevelopment or operation of the Parcel owned by the Burdened Owner ("**Burdened Parcel**"), (C) if the Utility Facility might diminish the utility service available to the Burdened Owner at a later date, (D) if the capacity of the utility service for the Utility Facility would diminish the capacity for such Utility Facility in favor of the Burdened Owner, or (E) if the consent of any existing tenant of the Burdened Parcel is required and such existing tenant fails or refuses to provide such consent. Any Benefited Owner seeking to have a Utility Facility installed on another Owner's Parcel shall provide the Burdened Owner with a written request for approval, which request shall (I) identify the proposed location of such Utility Facility and (II) describe the need for such Utility Facility easement, the nature of the service to be provided, and the anticipated commencement and completion dates for the work. If the Burdened Owner approves the installation of such Utility Facility on its Parcel, then the Benefited Owner shall perform (or cause to be performed) the work required on the Burdened Owner's Parcel in compliance the terms and conditions of this Declaration including, without limitation, those set forth in Section 5.4(c) below. Prior to commencing any work on a Burdened Parcel, including emergency work, the Benefited Owner shall provide to the Burdened Owner evidence of insurance coverage as required by this Declaration. Following the completion of the installation of a Utility Facility on another Owner's Parcel, the Benefited Owner performing such work shall provide the Burdened Owner a copy of an as-built survey showing the location of each such Utility Facility. The Benefited Owner agrees to defend, protect, indemnify and hold harmless the Burdened Owner from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate the Utility Facility; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the Burdened Owner.

(c) Non-exclusive easements for replacement, repair and maintenance with respect to utility lines and facilities located in the Common Area. Such work may be undertaken pursuant to the utilities easements granted pursuant to this Section provided that in the performance of such work (i) adequate provision is made for the safety and convenience of all persons using the surface of such areas, (ii) such work is performed expeditiously and in a manner which causes as little interference as is reasonably possible to the Shopping Center and the businesses operating therein, (iii) the areas and facilities in the Common Area which are disturbed by such work are, upon completion thereof, replaced or restored to their condition prior to the performance of such

work, (iv) the Owner of the applicable Parcel shall be given as much notice as is reasonably possible and, in non-emergency situations, such notice shall be in writing and delivered not less than fifteen (15) days prior to the commencement of such work, (v) the Benefited Owner does not block any drive aisle with an open trench, (vi) the Benefited Owner provides traffic covers for all affected areas of the Common Area which are not actively being repaired, and (vii) the Benefited Owner does not block more than fifty percent (50%) of any drive aisle at any one time;

(d) Non-exclusive easements through and across the Common Area for reasonable drainage and storm water runoff purposes over the drainage patterns established by the City in the original grading plan for the Shopping Center;

(e) Non-exclusive easements through and across the Common Area for the ingress and egress of vehicles transporting construction materials, equipment, and persons employed in connection with any work provided for herein, and the temporary storage of materials and vehicles being utilized in connection with such construction, subject to all of the other terms in this Declaration. All such storage and staging shall be located entirely within the Parcel in which such construction is being performed; and

(f) Non-exclusive easements over the Common Area for the erection, installation, use, operation, maintenance, repair and replacement of the multi-user Monument and Pylon Signs as shown on the Signage Plan as well as the utilities required for the use and operation of same.

5.5 Declarant's Successor. At such time as Declarant shall cease to be an Owner of any portion of the Shopping Center, Declarant's authority over, and default maintenance of the Common Area as prescribed in this Article V shall be void and of no further force or effect. Declarant shall be entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Declaration arising out of any act, occurrence or omission relating to the Shopping Center, a Parcel or Parcels or to this Declaration occurring after transfer of Declarant's last fee interest in the Shopping Center.

5.6 Reasonable Use of Easements. The easements granted herein shall be used and enjoyed by each Owner in such a manner as to not unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Occupant at any time conducted on its Parcel, including, without limitation, public access to and from such business, traffic patterns within the Shopping Center, and the receipt of delivery of merchandise in connection therewith. Notwithstanding the foregoing, as long as Dutch Bros is open and operating on the Dutch Bros Parcel (in the area shown on the Site Plan), it will not be a default if cars begin to stack beyond the boundaries of the drive through lanes of that Parcel; however, should such stacking occur and materially affect traffic circulation or impede access to other areas of the Shopping Center, then the Occupant of the Dutch Bros Building Area will work with the Owner and other Occupants to establish procedures to mitigate such stacking.

ARTICLE VI
ENFORCEMENT

6.1 Inspection Rights. Declarant and its authorized representatives may, from time to time, at any reasonable hour, enter upon and inspect the Common Areas within the Shopping Center, and any Parcel or any portion thereof, along with the exterior of any Improvements thereon, to ascertain compliance with any of the Restrictions contained herein, but without obligation to do so or liability therefor.

6.2 Default and Remedies. In the event of any breach, default, noncompliance, violation or failure to perform or satisfy any of the Restrictions contained herein (collectively "**Breach**") which has not been cured within thirty (30) days after written notice from Declarant or any other Owner to do so (or if any such Breach is not reasonably susceptible of cure within such thirty (30) day period, then if the Owner has not commenced promptly within the thirty (30) day period and thereafter diligently continued to prosecute such cure to completion), Declarant, in its sole discretion, or any other Owner may enforce any one or more of the following remedies or any other rights or remedies available at law or in equity, whether or not set forth herein. To the maximum extent permitted by law, all remedies provided herein or by law or equity shall be cumulative and not mutually exclusive.

(a) Damages and Indemnity. Declarant and/or any Owner may bring a suit for damages for any compensable Breach of any of the Restrictions contained herein, and for declaratory relief to determine the enforceability of any of the Restrictions. Any Owner which breaches any Restriction hereunder shall indemnify, defend, protect and hold Declarant and all other Owners and each of their respective partners, members, shareholders, officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against all actions, claims, liabilities, costs, damages, penalties, fines, or expenses specifically including, but not limited to, reasonable attorney's fees and expenses (collectively "**6.2 Claims**"), to the extent arising from or caused in whole or in part by the Breach of such Restriction by the breaching Owner (and by the tenant of such Owner). Notwithstanding the foregoing, (i) the indemnity obligations under this Section 6.2(a) shall not apply to the extent any such 6.2 Claim is caused by or results from the negligence or willful misconduct of the party that is seeking indemnification, and (ii) the 6.2 Claims shall expressly exclude consequential and punitive damages.

(b) Equity. By their acquisition of legal title to any Parcel within the Shopping Center, each Owner recognizes and agrees that a Breach by any Owner of one or more of the Restrictions contained herein may cause the Declarant and/or the other Owners to suffer material injury or damages not compensable in money. In the event of such a Breach, the Owners further agree that Declarant and each other Owner shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with these Restrictions and for an injunction to enjoin the continuance of any actual or pending Breach thereof.

(c) Abatement and Lien Rights. Any Breach of the Restrictions or any provisions hereof is hereby declared to be a nuisance, and Declarant and any Owner may prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in breach of these Restrictions, all at the sole cost and expense of the

Owner of the applicable Parcel. Any costs or expenses paid or incurred in abating such nuisance or prosecuting any such remedy including, without limitation, reasonable attorney's fees and costs of collection, together with interest thereon at the maximum rate permitted by law, shall, upon recordation of a notice of default, become a continuing lien and charge against the Parcel(s) to which the Breach exists until paid, and shall also be the personal obligation of that person who was Owner of such Parcel when such charges became due or who committed such Breach. Any such lien shall be enforceable as provided in Section 5.3 above.

6.3 Waiver. No waiver by Declarant or by any other Owner of a Breach of any of these Restrictions and no delay or failure to enforce any of these Restrictions shall be construed or held to be a waiver of any succeeding or preceding Breach of same or any other of these Restrictions. No waiver by Declarant or by any Owner of any Breach hereunder shall be implied from any omission by Declarant or any Owner to take any action on account of such Breach if such Breach persists or is repeated, and no express waiver shall affect a Breach other than as specified in such waiver. The consent or approval by Declarant or by any Owner of any act by any other Owner requiring consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar acts by such Owner.

6.4 Costs of Enforcement. If any legal or equitable action or proceeding is instituted to enforce any provision of this Declaration, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorney's fees, as awarded by the court as part of its judgment or order thereon.

6.5 Rights of Lenders. No breach or violation of any provision of this Declaration shall defeat or render invalid the lien of any mortgage, deed of trust or similar instrument securing a loan made in good faith and for value with respect to the development, construction, or permanent financing or refinancing of any Parcel or any Improvement thereon; provided that all of the provisions of this Declaration shall be binding upon and effective against any subsequent Owner of any Parcel whose title is acquired by foreclosure, whether judicially or by power of sale, trustee's sale, deed in lieu of foreclosure, or otherwise pursuant to such lien rights, but such subsequent Owner shall take title free and clear of any monetary violations hereunder (but not non-monetary violations) occurring prior to such transfer of title.

ARTICLE VII TERM AND MATTERS AFFECTING RIGHTS AND DUTIES

7.1 Term. This Declaration, every provision hereof and every covenant, servitude, condition, restriction and easement contained herein, shall continue in full force and effect from the date of recording of this Declaration until 11:59 p.m. on December 31, 2075. Thereafter, this Declaration shall be deemed to have been automatically renewed for successive terms of five (5) years each unless revoked by an instrument in writing, executed and acknowledged by (a) all Owners, and (b) Declarant during such time as Declarant shall remain an Owner, and recorded in the Office of the County Recorder of Orange County prior to the expiration of the initial term or any five (5) year renewal period.

7.2 Termination or Modification. This Declaration and any provision hereof, may be terminated, modified or amended only with the written consent of all Owners, provided that so long as Declarant shall remain an Owner, no such termination, extension, modification or amendment shall be effective without the written approval of Declarant, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, (i) without written consent of the Owner of the afflicted Parcel, no such action shall be taken which would leave a Parcel landlocked or without utility service or access or parking; would violate any then applicable Law, or would deprive such Owner of benefit expressly granted to such Owner under this Declaration, and (ii) without written consent of the Owner or tenant of the Existing Exclusive Use Restriction set forth in Exhibit "E", no use of the Shopping Center shall be permitted which would violate such restriction or would deprive such owner or tenant of any benefit granted under such exclusive use restriction.

7.3 Notice on Transfer of Parcel. Prior to any sale, transfer, encumbrance or conveyance of an Owner's fee interest in its Parcel(s), to any person or entity (excluding any entity owned or controlled by such Owner, or any transfer related to a merger or consolidation of such Owner), such Owner shall give Declarant and the other Owners prompt written notice of same.

ARTICLE VIII REAL PROPERTY TAXES AND ASSESSMENTS

8.1 Payment of Taxes. All real property taxes, regular and special assessments, and all special improvement district fees, if any, which may be levied, assessed, or charged by any Governmental Authority against a Parcel within the Shopping Center, shall be paid prior to the delinquency by the respective Owner of same, or if the tenant of any Parcel is obligated to make such payments, by the tenant.

8.2 Tax Contests. If any Owner shall deem any real property tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by such Owner to be excessive or illegal, such Owner shall have the right at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section shall require the Owner to pay any such real property tax or assessment as long as (i) no other Owner's Parcel or rights in the Common Area could be materially or adversely affected by such failure to pay, and (ii) the amount or validity thereof shall be contested in good faith.

ARTICLE IX HAZARDOUS MATERIALS

9.1 Hazardous Materials. Each Owner shall:

(a) At all times and in all respects comply with all applicable federal, state and local laws, rules, regulations, orders, decrees, guidelines and ordinances as amended from time to time including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.), Resource Conservation & Recovery Act (42 U.S.C. 6901, et seq.), Safe Drinking Water Act (42 U.S.C. 3000f, et seq.), Toxic Substances Control Act (15 U.S.C. 2601, et seq.), the Clean Air Act (42 U.S.C. 7401, et seq.), Comprehensive Environmental Response, Compensation and

Liability Act (42 U.S.C. 9601, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136, et seq.), the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401, et seq.), the Occupational Safety and Health Act (29 U.S.C. 651, et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. 11001, et seq.), California Health & Safety Code (25100, et seq.; 25280, et seq.; 25300, et seq.; 39000, et seq.) and other comparable state and federal laws, currently in force or enacted in the future ("**Hazardous Materials Laws**"), relating to industrial hygiene, health and safety, environmental protection or the use, analysis, generation, manufacture, storage, sale, treatment, emission, refinement, release, discharge, injection, dumping, handling, disposal or transportation of any petroleum or petroleum products, polychlorinated biphenyls ("**PCBs**"), flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes including, without limitation, any "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic pollutants" or "toxic substances" under any such laws, ordinances or regulations (collectively, "**Hazardous Materials**").

(b) At its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses, and other governmental and regulatory approvals required for occupancy in, and/or use of its Parcel(s).

(c) Promptly notify Declarant and all other Owners in writing of: (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted pursuant to any Hazardous Materials Laws relative to such Owner's Parcel or the Shopping Center; and (ii) any reports made to any governmental agency arising out of or in connection with any Hazardous Materials in or removed from the Owner's Parcel or any building thereon, including any complaints, notices, warnings or asserted violations in connection therewith which may present a material threat to such other Owner(s).

(d) Indemnify, defend, protect, and hold Declarant and all other Owners, and each of their partners, members, shareholders, officers, directors, employees, agents, attorneys, successors and assigns, harmless from and against all actions, claims, liabilities, costs, damages, penalties, fines, forfeitures, losses and expenses (specifically including, but not limited to, reasonable attorneys' fees and expenses), arising from or caused in whole or in part by (i) the presence in, on, under or about the Owner's Parcel, or any building thereon, of any Hazardous Materials caused by the Owner, or any tenant of the Owner or any Occupant of any building located on the Owner's Parcel, (ii) the discharge by the Owner or any tenant of the Owner or any Occupant of any building located on the Owner's Parcel in or from the Shopping Center or the Owner's Parcel or any building thereon, of any Hazardous Materials, (iii) the use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Owner's Parcel or any building thereon by the Owner or any tenant of the Owner or any Occupant of any building located on the Owner's Parcel, or (iv) the failure to comply with any Hazardous Materials Law by the Owner or any tenant of the Owner or any Occupant of any building located on the Owner's Parcel. An Owner's obligations under this Section shall include, without limitation, all costs of any required or necessary repair, cleanup abatement, detoxification or decontamination of the Shopping Center or any building thereon, or the preparation and implementation of any closure, remedial action or other required plans in

connection therewith, and shall survive the termination of this Declaration. For purposes of the release and indemnity provisions of this Section, any acts or omissions of an Owner or Owner's tenant, Occupant or by employees, agents, assignees, sublessees, contractors or subcontractors of Owner or Owner's tenant, Occupant or others acting for or on behalf of an Owner or Owner's tenant or Occupant (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to such Owner.

(e) Use reasonable efforts to require each of its tenants, subtenants and other Occupants of the Owner's Parcel to comply with the provisions of subsections (a) and (b) above, and to provide to the Owner a written notice of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws; relative to such Owner's Parcel or the Shopping Center, (ii) any claim made or threatened by any person against the tenant, subtenant or Occupant relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials, and (iii) any reports made to any governmental agency arising out of or in connection with any Hazardous Materials in or removed from the Owner's Parcel or any building thereon, including any complaints, notices, warnings or asserted violations in connection therewith.

ARTICLE X INSURANCE

10.1 Common Area Insurance. Each Owner shall obtain and maintain, or cause to be obtained and maintained, at such Owner's sole expense, the following types and amounts of insurance on the Common Area of their Parcel:

(a) A comprehensive general public liability insurance policy insuring the Common Area. Such insurance shall name the Declarant and all other Owners, as additional insureds, with limits of not less than Three Million Dollars (\$3,000,000.00) combined single limit for personal injury or death and property damage; and

(b) Workers' compensation insurance on the employees hired by such Owner to maintain the Common Area, if any, to the extent required by law.

Any policy required hereunder may not be canceled without at least thirty (30) days prior written notice to Declarant and to each entity named as an additional insured.

Any insurance maintained for the Common Area shall contain a "waiver of subrogation" in favor of each of the Owners of the Parcels and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. Each Owner shall not less than once every five (5) years, review all insurance policies maintained for the Common Area to determine the adequacy of the coverage and adjust the policies accordingly.

10.2 Owner's Hazard Coverage. Each Owner shall obtain and maintain, or cause to be obtained and maintained, at such Owner's sole expense, a standard fire and extended coverage

policy on all buildings located on such Owner's Parcel. Such insurance shall be in amounts not less than the actual replacement cost of such buildings excluding foundations, excavation costs and the costs of underground flues, pipes and drains. The obligation of any Owner to maintain such insurance may be satisfied by causing such Owner's tenant to procure and maintain same provided such policy shall otherwise satisfy the requirements of this Article X. Each Owner shall, upon written request of Declarant or any other Owner, furnish an insurance certificate or other reasonably satisfactory written evidence of the existence of such insurance at any time during the term of this Declaration.

10.3 Waiver of Insured Claims. Except where due to the gross negligence or willful misconduct by an Owner or its agents, each Owner hereby waives any and every claim which arises or may arise in its favor and against any other Owner during the term of this Declaration for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of the Shopping Center, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies. These mutual waivers shall be in addition to, and not in limitation of, any other waiver or release regarding any loss of, or damage to, the property of any Owner. Inasmuch as the mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation), each Owner shall give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of the mutual waivers, and shall have such insurance policies properly endorsed, if necessary, to prevent invalidation of such insurance coverages by reason of such waivers.

10.4 Declarant Indemnification and Waiver. Each Owner agrees that Declarant shall not be liable for injury to or death of persons, or damage to property of Owner or any other person during the Term of this Declaration, resulting from the use, occupation or enjoyment of the Parcel(s) or the operation of business therein by the Owner of such Parcel(s) or any person holding under such Owner. Each Owner agrees to defend, indemnify and save Declarant harmless from all liability for any real or claimed damage or injury and from all liens, claims and demands arising out of the use of its Parcel(s) and its facilities, construction on the Parcel(s), any repairs or alterations which an Owner or any person holding under such Owner, may make upon the Parcel(s), any claims of any employee of Owner or any person holding under such Owner against Declarant. The foregoing obligation of each Owner to indemnify shall survive the expiration or earlier termination of its ownership of its Parcel(s) and shall include reasonable costs of legal counsel and investigation, together with other costs, expenses and liabilities incurred in connection with any and all claims of damage. To the extent any such loss or damage is covered by insurance, each Owner each hereby waives any rights one may have against Declarant and/or any other Owner on account of any loss or damage occasioned to Declarant or Owner, as the case may be, their respective properties, the Parcel(s) or their contents, or to other portions of the Shopping Center. The parties hereto, on behalf of their respective insurance companies insuring such losses, waive any right of subrogation that one may have against the other. The foregoing waivers of subrogation shall be operative provided that no policy of insurance required herein is invalidated thereby.

ARTICLE XI
DESTRUCTION OF IMPROVEMENTS

11.1 Owners Must Rebuild Per Original Layout. If an Owner shall elect to rebuild or restore the building(s) on its Parcel following an event of destruction, the Owner shall rebuild, repair and restore such buildings and improvements in the same location as presently shown on the Site Plan and in the same general appearance and condition as existed prior to the damage or destruction with such modifications thereto as may then be required by any local governmental agencies.

11.2 Damage to Common Area. In the event the Common Area of the Shopping Center or any portion thereof shall be damaged or destroyed by fire or other casualty or any cause whatsoever, the Owner of the Common Area so damaged or destroyed shall forthwith proceed with due diligence to restore such Common Area to its condition immediately prior to such damage or destruction, at such Owner's sole cost and expense.

11.3 Time Limitations for Rebuilding. If an Owner shall elect to rebuild or restore the building(s) on its Parcel following an event of destruction, any building rebuilt, repaired or restored by an Owner pursuant to this Declaration, shall be rebuilt, repaired and restored within eighteen (18) months from the time when the loss or destruction occurred, subject to Force Majeure. Notwithstanding the provisions of Article XI generally, in the event that the provisions of a particular lease between an Owner and its tenant are different from the provisions of Article XI, then (a) as between such Owner and its tenant, the lease provisions shall prevail, and (b) as among the Owners, this Declaration shall prevail.

11.4 Additional Requirements for Rebuilding. Any repair, reconstruction or replacement of any building(s), Common Area, or other improvements performed by any Owner, pursuant to this Article XI shall be performed in accordance with the following requirements:

(a) Plans and specifications therefor not previously approved for the original construction of the building or Common Area shall be submitted to Declarant for its review and approval as to exterior architectural design, exterior construction and location of improvements being restored under the procedure set forth in Article III prior to the commencement of the work of such repair, reconstruction and replacement, which approvals shall be neither delayed nor withheld without good and valid reason and notice thereof made in writing.

(b) The building, Common Area or other improvements being restored shall be at least of equal value per square foot, and at least as usable for its intended purpose, as such building, Common Area, or other improvements were just prior to the happening of such casualty.

11.5 Rebuild or Demolish. In the event any Owner does not commence to rebuild and restore its damaged building(s), or other improvements, under the provisions of this Article within one hundred twenty (120) days following the date of such damage (and is not required to rebuild and/or restore the same pursuant to the terms of an existing Lease), then such Owner shall within the next thirty (30) day period clear its Parcel(s) of all debris and hazardous conditions and shall

thereafter maintain such Parcel(s) in a clean, safe and sightly condition, sealed against dust by paving, landscaping or other suitable ground cover, and otherwise maintained in a condition similar to other similarly situated shopping centers in Orange County; provided that in no event shall any Owner have the right to withdraw its Parcel(s) or any portion thereof from the Restrictions, nor change the Common Area within such Owner's Parcel(s) to Building Area, nor in any way free such Parcel(s) from any easements created and provided for hereunder,. The provisions of this Section 11.5 shall not reduce or affect each Owner's obligations to timely repair and restore the Common Area within its Parcel as provided in Section 11.2 hereof.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Constructive Notice and Acceptance. To the maximum extent permitted by law, every Owner who now or hereafter owns or acquires any right, title or interest in or to any Parcel of the Shopping Center is and shall be conclusively deemed to have consented and agreed to every covenant, servitude, condition, restriction, and easement contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Shopping Center.

12.2 Mutuality, Reciprocity: Runs with Land. All Restrictions and agreements contained herein, as same may be amended and/or supplemented from time to time, are made for the direct, mutual, and reciprocal benefit of each and every part and Parcel of the Shopping Center, shall create reciprocal rights and obligations between the respective Owners of all Parcels and privity of contract and estate between all Owners of all Parcels, their heirs, successors and assigns, and shall, as to the Owner of each Parcel, his heirs, successors and assigns, operate as covenants running with the land for the benefit of all other Parcels. The foregoing notwithstanding each Owner's obligations under the Declaration shall only apply to the portion(s) of the Shopping Center owned or controlled by such Owner.

12.3 Captions. The paragraph headings or captions used herein are for convenience only and are not a part of this instrument and do not in any way limit, define or amplify the scope or intent of the terms and provisions hereof.

12.4 Invalidity of Provision. If any provision of this Declaration as applied to Declarant or any Owner, or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

12.5 Notices. Notices made by the Owners pursuant hereto may be served personally or may be served by depositing the same in the United States mail, postage prepaid, certified or registered mail or nationally recognized overnight delivery service (such as Federal Express), addressed as follows:

If to Declarant: Imperial Retail Investments LLC
4350 Von Karman Avenue, Suite 200
Newport Beach, California 92660
Attn: Mark W. Shenouda

With a copy to: Buckner, Robinson, & Mirkovich
3146 Redhill Avenue, Suite 200
Costa Mesa, CA 92626
Attn: William D. Buckner, Esq.

12.6 Standing to Enjoin. It shall be lawful for any person or persons owning fee simple title to any portion of the Shopping Center, to prosecute any proceedings at law or in equity, including injunctive relief, against any person violating, or attempting to violate, any of the Restrictions, and either to prevent it, him or them from so doing or to recover damages from or on account of such violation. All such remedies shall be cumulative. In the event of any violation or threatened violation by any Owner or its tenant or Occupant of any portion of the Shopping Center owned by it, of any of the terms, covenants and conditions contained herein, the parties agree that irreparable damage shall have occurred to the other Owners and in addition to the other remedies provided herein, any other Owner or the Declarant shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

All costs and expenses of any such suit or proceeding, including reasonable attorney's fees, shall be assessed against the defaulting Owner(s) and shall constitute a lien against its Parcel(s) or the interest therein wrongfully deeded, leased, assigned, conveyed or contracted for until paid. Such lien to be effective upon the recording of notice in the office of the Orange County Recorder, though any such lien shall be subordinate to any bona fide mortgage or deed of trust covering any portion of the Shopping Center, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by a deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such lien, though otherwise subject to the provisions hereof.

12.7 Force Majeure. In the event Declarant or any Owner is delayed, hindered in or prevented from the performance of any act required under this Declaration by reason of a cause beyond the reasonable control of the obligated party, then performance of such act shall be excused for the period of the delay, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Such cause shall include acts of God, strikes, lockouts, weather in which work cannot proceed (even if normal), protests, riots, insurrection, war, unavailability of materials from normal sources, acts of Governmental Authority, including, courts, or acts or conduct of another Owner, its contractors, employees or agents, in violation of this Declaration, but it shall not include delays due to inability or failure to obtain financing or inadequate financial resources.

12.8 Standard of Approval. If this Declaration provides that a consent or approval shall not be unreasonably withheld, such consent or approval shall be granted or withheld without unreasonable delay and, if consent is withheld or approval not granted, the reasons for withholding consent or approval shall be stated with reasonable certainty.

12.9 Attorneys Fees. In the event that suit is brought for the enforcement or interpretation of this Declaration or as the result of any alleged breach, the prevailing party or parties shall be entitled to be paid court costs, including reasonable attorneys fees, by the losing party or parties as part of its judgment.


12.10 Condemnation. In the event of any condemnation (by any duly constituted authority for a public or quasi-public use) of all or any part of the Shopping Center, the entire award for value of the land and improvements so taken shall belong to the Owner whose property was so taken or its tenants, as their interests may appear, and no claim therefor shall be made by other Owners of any other portion of the Shopping Center, provided that all other Owners of the Shopping Center may file collateral claims with the condemning authority over and above the value of the land taken, and provided further that the Owner of any portion of the area taken shall promptly repair and restore the remaining portion of the area owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner.

12.11 Governing Law. This Declaration and the application or interpretation thereof shall be governed exclusively by its terms and by the laws of the State of California.

12.12 Association. As of the date hereof, Declarant has elected not to form an association of the Owners to assume the obligations of the Declarant under this Agreement or to be vested with the rights of the Declarant and the Owners under this Agreement in accordance with the provisions of the Commercial and Industrial Common Interest Development Act (Sections 6500 et seq. of the California Civil Code) ("**Commercial CID Act**"). In the event that (i) all Owners elect in writing, or (ii) it is determined that the provisions of the Commercial CID Act are nevertheless applicable to the Shopping Center as a matter of law, then this Declaration shall be appropriately amended to conform to the applicable provisions of the Commercial CID Act. Any such amendment shall include the establishment of an association of the Owners to assume the obligations of the Declarant under this Agreement and to be vested with the approval and cure rights of the Declarant under this Agreement ("**Association**"). The members of the Association shall be all the Owners.

IN WITNESS WHEREOF, the undersigned Declarant has executed this instrument as of the date first above written.

IMPERIAL RETAIL INVESTMENTS LLC,
a California limited liability company

By: 
M W Shenouda, Manager

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

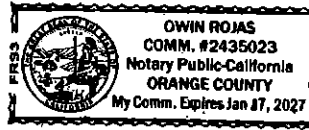
State of CALIFORNIA)
County of ORANGE)

On DECEMBER 5, 2023 before me, OWIN ROJAS, Notary Public, personally appeared M. W. SHENOUDA, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity, and that by his/~~her~~/~~their~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *[Handwritten Signature]*



(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF SHOPPING CENTER

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 2022-131, AS FILED IN BOOK 413, PAGE 29 OF PARCEL MAPS, RECORDS OF ORANGE COUNTY;

EXCEPTING THEREFROM ALL MINERALS, ORES, PRECIOUS AND USEFUL METALS, SUBSTANCES AND HYDROCARBONS OF EVERY KIND AND CHARACTER, BUT WITHOUT THE RIGHT TO USE THE SURFACE THEREOF, AS RESERVED IN DEED FROM EDDY SEE AND OTHERS, RECORDED DECEMBER 30, 1959, IN BOOK 5035, PAGE 594, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

APN: 018-431-35

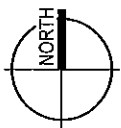
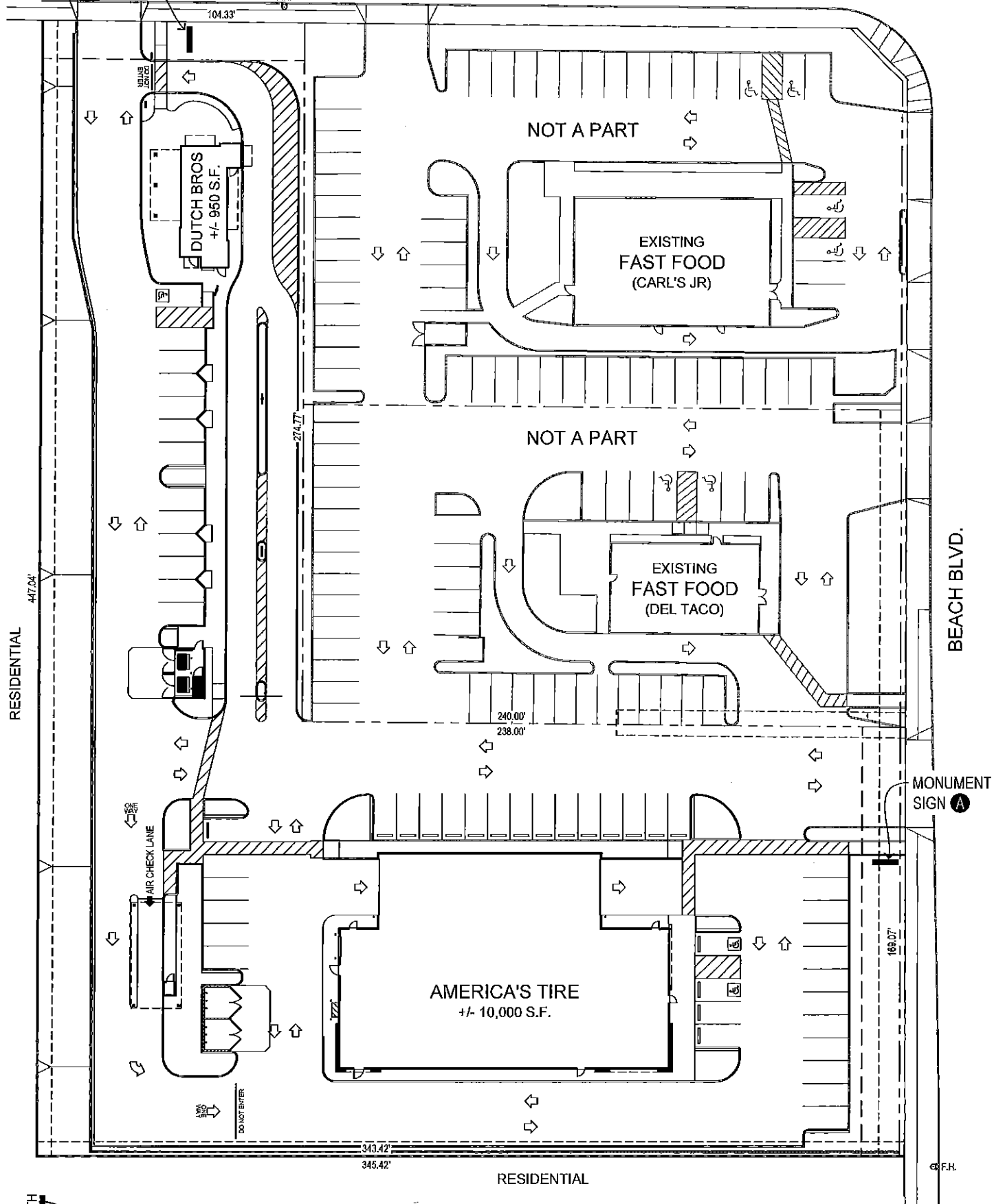
EXHIBIT "B"

SITE PLAN

(see next page)

MONUMENT SIGN B

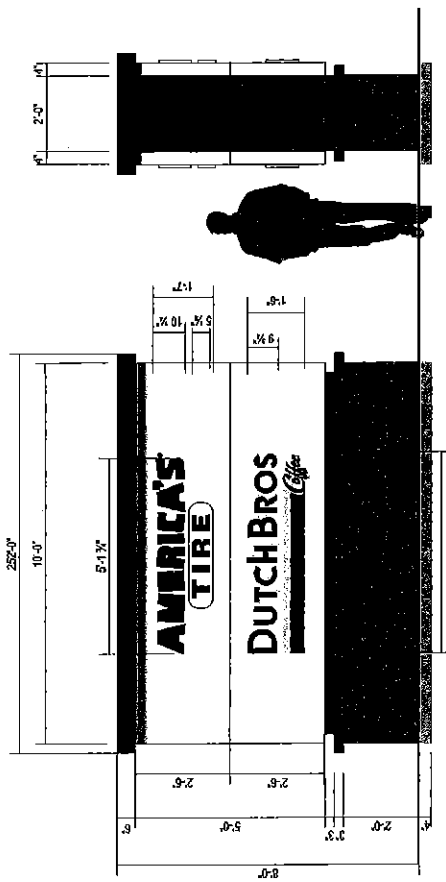
LAMBERT RD.



F.H.

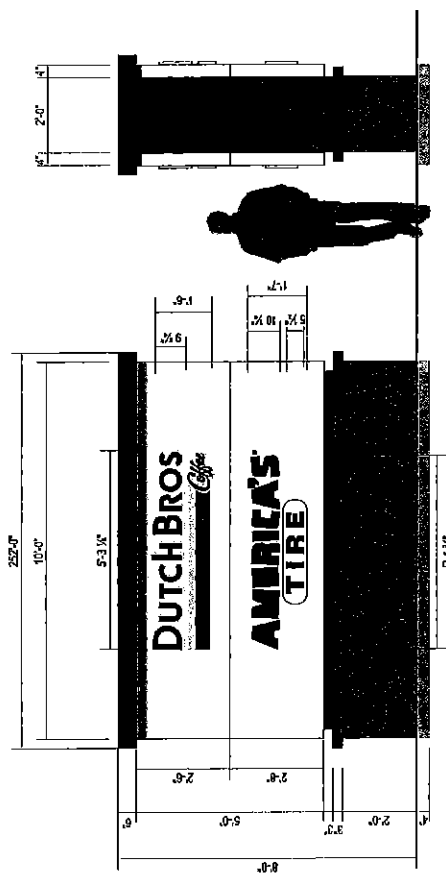
EXHIBIT "C"
SIGNAGE PLAN

(see next page)



NOTE: MONUMENT IS LOCATED ON BEACH BLVD.

A DIF EXTERIOR MONUMENT SIGN
Scale: 3/8" = 1'-0"



NOTE: MONUMENT IS LOCATED ON LAMBERT RD.

B DIF EXTERIOR MONUMENT SIGN
Scale: 3/8" = 1'-0"

EXHIBIT "D"

PROHIBITED USES

No use or operation will be made, conducted or permitted on or with respect to all or any part of any Parcel or Improvement which is in violation of any applicable Regulation or which constitutes a nuisance or waste. Included among the uses or operations which are prohibited are uses or operations which produce or are accompanied by any of the following characteristics, which list is not intended to be all-inclusive:

- (1) any public or private nuisance;
- (2) any vibration, noise, sound or disturbance which due to intermittence, beat, frequency, shrillness or loudness is not consistent with a first class integrated retail shopping center;
- (3) any lighting which is not shielded so as to be confined within the boundary of the Shopping Center;
- (4) any air or water pollution which is not consistent with a first-class integrated retail shopping center;
- (5) any emission of odorous, noxious, caustic, or corrosive matter or gas, whether toxic or nontoxic, which is not consistent with a first-class integrated retail shopping center;
- (6) any litter, dust, dirt, or fly ash which is inconsistent with a first class integrated retail shopping center;
- (7) any unusual firing, explosion or other damaging or dangerous hazard, including the storage, display, or sale of explosives;
- (8) any mobile home or trailer court; labor camp; junk yard; stock yard; distillation of bones, or animal raising, rendering, slaughter, or disposition of any kind (but specifically excluding veterinarians and pet stores to the extent same are otherwise permitted hereunder);
- (9) any drilling for, excavation, refining and/or removal of earth materials, oil, gas, hydrocarbon substances, water, geothermal steam, and any other subsurface substances of any nature whatsoever, except as part of normal grading operations in connection with construction of approved Improvements;
- (10) any dumping, disposal, incineration, or reduction of garbage or refuse of any nature whatsoever, other than handling or reducing any such waste matter if actually produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;
- (11) any auction public sale, or other auction house operation;
- (12) any commercial excavation of building or construction materials;
- (13) any smelting of iron, tin, zinc, or other ores.

EXHIBIT "E"

EXISTING EXCLUSIVE USES AND RESTRICTIONS

The following use restrictions shall only be applicable during such time as the listed tenant or its successor and assign has a validly existing lease.

DUTCH BROS

Except for any existing property within the Development that Landlord may control with a competing use that is in existence prior to February 4, 2022, Landlord (and any successors, assigns, or affiliates of Landlord, or any person or entity under Landlord's control) agrees that it will not sell, lease, manage, use, or occupy or allow the occupation of such property to any party whose primary business is selling any of the following: coffee, blended drinks, smoothies, or energy drinks ("Exclusive Covenant"). "Primary Business" shall be defined as twenty percent (20%) of sales for all of the following: coffee, blended drinks, smoothies, or energy drinks. In addition, with respect to (i) any lease that is in existence prior to February 4, 2022 that may allow for a change in use that would violate the Exclusive Covenant, and (ii) that Ground Lease Agreement dated March 31, 2022 between Landlord and Halle Properties, L.L.C. (the "America's Tire Lease"), Landlord (including any successors, assigns, or affiliates of Landlord, or any person or entity under Landlord's control) shall not consent to a proposed change in use if such use would violate the Exclusive Covenant, if Landlord is entitled under such lease to withhold its consent to a proposed change in use.