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Innisfree Ventures II, LLC  
c/o The Innisfree Companies  
1221 Bridgeway, Suite 1  
Sausalito, California 94965  
Attention: David C. Irmer



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(Space Above This Line For Recorder's Use Only)

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RECIPROCAL EASEMENTS FOR THE VILLAGE MARKETPLACE**

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS ("Declaration") is executed as of May 12, 2014, by INNISFREE VENTURES II, LLC, a California limited liability company, c/o Innisfree Companies, 1221 Bridgeway, Suite I, Sausalito, CA 94965 (referred to herein as "Declarant").

**RECITALS:**

A. Declarant owns that certain real property (the "Property") located in the City of San Leandro ("City"), County of Alameda ("County"), State of California, consisting of one (1) legal parcel as more particularly described in **Exhibit A** hereto, which is expressly incorporated herein.

B. Declarant is in the process of subdividing the Property so as to create three (3) separate legal Parcels (individually, a "Parcel", and collectively, the "Parcels"), which are identified as Parcels A, B, and C on the proposed parcel map attached hereto as **Exhibit B** (the "Proposed Parcel Map"). The Proposed Parcel Map has not yet been signed or recorded. Upon recording of the Proposed Parcel Map, as such may be further revised, Declarant and CVS intend to amend and restate this Declaration in order to substitute the references to the legal descriptions of the Parcels with the final recorded parcel map.

C. Declarant has leased "Parcel B" as shown on **Exhibit B** hereto and as legally described on **Exhibit C hereto**, which is incorporated herein, to Garfield Beach CVS, L.L.C, a California limited liability company ("CVS") for the operation of a CVS drug store. CVS intends to construct a building for its use on Parcel B (the "CVS Building"). Declarant intends to construct separate shops buildings on "Parcel A" and "Parcel B", as shown on **Exhibit B** hereto, and which consists of all of the remainder of Property other than Parcel B. The shops building referenced above are referred to herein collectively as the "Shops Buildings" and each as a "Shops Building."

D. The Parcels and all of the improvements, appurtenances and facilities located thereon (including but not limited to buildings, common areas, sidewalks, parking lot and landscaping) are hereinafter collectively referred to as the "Center."

E. Declarant desires that the Center be managed and operated in a uniform manner, and that the Parcels be subject to the easements and the covenants, conditions and restrictions as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained in this Declaration, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares that the Center is now held, and shall hereafter be held, transferred, sold, leased, improved, conveyed, occupied and used subject to the easements, covenants, conditions and restrictions herein set forth, each and all of which is and are for, and shall inure to the benefit of and pass with each and every portion of the Center and shall apply to and bind the heirs, assignees and successors in interest of any Owner thereof.

1. Definitions.

(a) "Affiliate" means, with respect to any Person, any other Person or group of Persons acting in concert that "controls," is controlled by, or is under common control with the specified Person, and specifically including any officer, member or CAM Operator of the Person and any family member of such officers, members and CAM Operators. The term "control" means either of the following: (i) the beneficial ownership, directly or indirectly, by such Person or group of Persons of equity securities entitling such Person or group of Persons to exercise in the aggregate 20% or more of the voting power of the Person in question; or (ii) the possession by such Person or group of Persons of the power, directly or indirectly, (a) to elect a majority of the board of directors or other governing body of the Person in question or (b) to direct or cause the direction of the management and policies of or with respect to the Person in question, whether by ownership of equity securities, by contract or otherwise. The terms "controlling" and "controlled" have meanings correlative to the foregoing.

(b) "Assessment" is defined in Section 11.

(c) "Building" means any structure or other improvement within any Parcel that is enclosed by exterior walls, floor and roof and is designed for commercial/retail use, and/or any other use permitted hereunder, including, without limitation, the CVS Building and the Shops Buildings.

(d) "Building Areas" means those portions of the Parcels depicted on the site plan attached hereto as **Exhibit D** (the "Site Plan") within which the Buildings may be located, as well as any part of the Common Area Utility Lines that exclusively serve any such Buildings, and any structure or Improvements exclusively used by, or constructed solely for use by any such Parcels (including but not limited to any drive-thrus associated therewith, from the point of entry to the point of exit). During such time as a Building exists on a Parcel, the perimeter of the Building Areas shall be automatically modified to be such area as is outside of the exterior walls of such Building. No trash enclosure shall be constructed within the Center, except in the Building Areas designated for such Improvements on the Site Plan, absent the consent of the Declarant.

(e) "CAM Operator" is defined in Section 5(b)(ii).

(f) "Capital Costs" is defined in Section 5(b)(iii).

(g) "Cart Control System" is defined in Section 4(h).

(h) "Common Area(s)" means, except as otherwise expressly set forth herein, that portion of the Center that is not Building Areas (as the same may be modified from time to time as permitted by the terms of this Declaration). The Common Area includes the Common Utility Facilities as defined below and curbs, gutters, fences, entry areas, drive aisles, walkways, parking areas, landscape areas, and other Improvements and landscaping located within the Common Area. Except with respect to any duty to maintain the same, the Common Area shall also be deemed to include the 21 offsite parking spaces on Juana Avenue or such portions thereof as the Owners, Tenants, Customers and invitees of the Center are entitled to use for as long as such is the case. Notwithstanding anything to the contrary contained herein, the Common Area expressly excludes (a) any structure or Improvements exclusively used by, or constructed solely for use by, one Parcel, including, without limitation drive-thru lanes, loading docks and any outside seating areas, and trash enclosures intended for the exclusive use of one Owner or Lessee. The initial Common Area for the Center is depicted on the Site Plan. Those portions of the Building Areas on each Parcel that are not from time to time used or cannot under the terms of this Declaration be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein, provided Declarant shall not be required to improve any area on which Declarant intends to ultimately develop a Building.

(i) "Common Area Charges" is defined in Section 5(b)(iii).

(j) "Common Utility Facilities" shall mean utility facilities for any two or more Parcels for drainage and sewage, gas, water, electricity and other forms of energy, signals or services, including, but not limited to, sanitary and storm sewers, drainage, detention/retention facilities, pumping facilities, gas and water mains, fire hydrants or other fire protection installations and electric power and telephone lines, that are available for use by Owners and Lessees for their respective Parcels thereon and/or the Common Areas thereof (including those between the Center and the lines or facilities of the governmental body or public utility providing the utility service in question); excluding, however, laterals within five (5) feet of any Building servicing only such Building and located entirely on the Parcel on which said Building is located, which laterals shall be deemed to constitute Utility Lines as defined below and which shall be maintained by the Owner on whose Parcel any such Utility Line is located. "Common Utility Facilities" shall also not include such facilities located in, on or under Buildings, nor any transformer or transformer pad which shall be the responsibility of the Owner of the Parcel upon which the same is located.

(k) "CVS Lease" means that certain Shopping Center Ground Lease referred to in the Recitals, which was entered into by and between Declarant, as landlord, and CVS, as tenant, as the same may be modified or amended from time to time.

(l) "Declarant" means Innisfree Ventures II, LLC, a California limited liability company (for purposes of this subsection "IV LLC"), or any Affiliate thereof that is designated by IV LLC (or any successor Declarant) to be the Declarant in a written notice delivered to each Owner, as long as IV LLC or any Affiliate thereof is an Owner or has an ownership interest in a Parcel. If and when such is not the case, the Declarant shall be the Owner of Parcel A.

(m) "Easements" is defined in Section 4(f).

(n) "Employee Parking Area" is defined in Section 5(h)(ii).

(o) "Entitlements" means any and all final, non-appealable approvals, authorizations and entitlements relating to land use from governmental authorities (including, without limitation, the State's applicable Oversight Board) that are necessary or appropriate in order to develop and improve any portion of the Center as contemplated, including zone changes, general or specific plan amendments, tentative tract maps, conditional use permits and site plan approvals.

(p) "Environmental Laws" means any and all federal, state and local laws, regulations, rules, guidelines and ordinances relating to human health, safety, pollution and protection of the indoor or outdoor environment or otherwise relating to the presence, manufacture, processing, distribution, use, treatment, storage, release, transport, handling, record keeping, notification, disclosure and reporting requirements of and respecting Hazardous Substances, including, without limitation, the Comprehensive Environmental Response Compensation Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and the Occupational Safety and Health Act.

(q) "Gross Leasable Area" or "GLA" means the area computed by measurements of the ground floor (and any additional floor or mezzanine open to the public and/or the subject tenant's or occupant's customers) made to and from the center of party walls and the outside of exterior walls (but not including therein any decorative facade, fascia or architectural treatment, or any overhang such as canopies or non-occupiable extensions of the building or extensions to the loading dock receiving area), and specifically excluding any exterior loading docks, loading zones, or delivery areas, drive thru lanes, exterior trash enclosures or pallet area, if any.

(r) "Habit Lease" means that Village Market Place Net Retail Lease, dated January 28, 2014, entered into by and between Declarant, as landlord, and The Habit Restaurants, LLC, a Delaware limited liability company, as tenant, with respect to certain premises located on Parcel A.

(s) "Hazardous Substance" means any condition or substance that violates or requires action under any applicable Environmental Law.

(t) "Improvements" means all Buildings, outbuildings, parking or loading areas, roads, streets, walkways, utility installations, fences, trash enclosures, walls, poles, signs, hedges, mass or large plantings, and all other improvements and structures of any kind located on any Parcel or otherwise within the Center, and any replacements, additions, repairs or alterations thereto of any kind whatsoever.

(u) "Insurance Charges" is defined in Section 8(e).

(v) "Insured Casualty" means a risk or peril covered by the property insurance required to be maintained by an Owner or the CAM Operator, excluding for this purpose earthquakes (even if covered by such insurance).

(w) "Laws" means all applicable laws, statutes, ordinances, codes, rules and regulations of local, state and federal governmental authorities, including those relating to public health and safety, access for persons with disability, fire safety and building codes, and further including Environmental Law.

(x) "Lease" means any agreement for the leasing, subleasing, rental, use or occupancy of all or any portion of a Parcel, including, without limitation, the CVS Lease as long as the same remain in effect.

(y) "Lessee" or "Tenant" means each lessee, sublessee, licensee, occupant or permittee under a Lease.

(z) "Losses" means, collectively, claims, demands, actions, suits, proceedings, losses, liabilities, damages, judgments, costs and expenses, including reasonable attorneys' fees and costs.

(aa) Intentionally deleted.

(bb) "MS Parcels" is defined in Section 4(c).

(cc) "Monument Sign" means each multi-tenant or other freestanding sign for the Center as CAM Operator may authorize in its sole and absolute discretion, and which is actually installed thereon. The Monument Signs, which have been initially approved for the Center will be located in the areas generally shown on the Site Plan.

(dd) "Mortgage" is any duly recorded deed of trust encumbering an Owner's interest in one or more Parcels given to secure a loan made in good faith and for value, and not for purposes of avoiding any Owner's obligations hereunder.

(ee) "Mortgagee" is a beneficiary under a Mortgage.

(ff) "New Cingular Lease" means that Lease Agreement, which Declarant anticipates entering into by and between Declarant, as landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company for certain premises located on Parcel A.

(gg) "Obstructions" is defined in Section 3.

(hh) "Owner" shall mean the fee simple owner(s) of any Parcel. Notwithstanding the above, as long as CVS or any Affiliate thereof is the Tenant for Parcel B, CVS or the applicable Affiliate shall be deemed the Owner of Parcel B with respect to the exercise of any consent or approval rights granted to an Owner hereunder.

(ii) "Owner's Pro Rata Share" is defined in Section 5(b)(iv).

(jj) "Owner's Utility Work" is defined in Section 4(b)(v).

(kk) "Parcel(s)" is defined in the Recitals.

(ll) "Peet's Lease" means that Retail Lease Peet's Operating Company, Inc. for Premises East 14th Street, San Leandro, California (on Parcel A), dated September 19, 2012, entered into by Declarant, as landlord, and Peet's Operating Company, Inc., as tenant, as amended by that First Amendment to Retail Lease Peet's Operating Company, Inc., dated September 19, 2012, as amended, and as the same may be modified or amended from time to time.

(mm) "Person" shall mean an individual, partnership, firm association, limited liability company, corporation, trust, governmental agency, administrative tribunal, or any other form of business or legal entity.

(nn) "Reconciliation Statement" is defined in Section 5(b)(iv).

(oo) "Release" means a release of any Hazardous Substance in, on or under the Center.

(pp) "Restricted Capital Costs" is defined in Section 5(b)(iii).

(qq) "Restore" means restore, rebuild and repair, and with respect to a casualty, to as nearly as practical to the value, condition and character of such improvements existing immediately prior to the casualty, and "Restoration" refers to the action of Restoring.

(rr) "Rules" is defined in Section 4(g)(iv).

(ss) "Signs" means all names, insignia, trademarks, numerals, addresses, and descriptive words or material of any kind affixed, inscribed, erected or maintained on the Project or on any Improvement thereon.

(tt) "Site Plan" is defined above in this Section. Except as may be expressly provided elsewhere herein, the Site Plan shall not be construed as a covenant that Center will be developed or maintained as shown thereon.

(uu) "Shops Building(s)" is defined in the Recitals.

(vv) "Tenant" means each lessee, sublessee, licensee, occupant or permittee under a Lease.

(ww) "Uninsured Casualty" means a risk or peril not covered by the property insurance required to be maintained by an Owner or by the CAM Operator including for this purpose earthquakes (even if covered by such insurance).

(xx) "Utility Easements" is defined in Section 4(b).

(yy) "Utility Lines" means conduits, lines, pipes, switches, meters, pumps, transformers, hydrants and other facilities and systems for the transmission of utility services, including but not limited to sanitary sewers, storm drains (including, without limitation, the storm water filtration and detention system), water (fire and domestic), gas, electrical, telephone, communication lines and the drainage and storage of surface water, which serve no more than one Parcel or one or more Tenants located on a single Parcel only.

(zz) "Violation" means any violation of Environmental Laws affecting the Center.

## 2. Permitted Uses and Limitations.

(a) Use. Subject to the remainder of this Section, Buildings in the Center may be used for retail sales and services and office uses and no other uses. Notwithstanding the above, but subject to the remainder of this Section, so long as the CVS

Lease is in effect, the Building on Parcel B may be used for any lawful purpose. So long as the proposed use of Parcel B is a lawful retail use, the Owners of Parcels A and C shall not oppose or object to any applications for future Entitlements or any modifications of then-existing Entitlements by the Owner or Lessee of Parcel B. It is expressly agreed that nothing contained in this Declaration shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business within the Center. All construction and use of buildings shall be consistent with current zoning applicable to the Shopping Center and with the conditions of approval granted by the City for the Shopping Center.

(b) Exclusives.

(i) Parcel B Exclusives. As long as the CVS Lease remains in effect, no portions of Parcels A and C shall be used for a health and beauty aids store, a cigarette or smoke shop, a greeting card, party goods or gift store, a store offering one-hour or other on-site photo processing including, without limitation, digital photo processing, a vitamin store, a convenience store, a pharmacy mail order facility, a drug store, a pharmacy prescription department, a Minute Clinic retail health center, the sale of alcoholic beverages, including, without limitation, beer, wine and distilled spirits, for off-premises consumption.

a. As used in this Section: the term "pharmacy prescription department" shall include the dispensing, distribution or furnishing of prescription drugs by physicians, dentists, other health care practitioners, or a facility which accepts prescriptions from customers which are filled elsewhere and delivered to the customer, or entities such as clinics, dispensaries, or health maintenance organizations, where such dispensing is for a fee or a profit. A "pharmacy prescription department" shall not include the distribution or furnishing of free samples of prescription drugs by physicians, dentists, other health care practitioners or entities such as clinics or health maintenance organizations. A "health and beauty aids store" shall mean a store which devotes more than five percent (5%) of its retail selling space to the display and sale of health and beauty aids. A "retail health center" shall include such operations as a "Minute Clinic" or other similar use providing walk-in, non-traumatic medical services, but specifically excluding physician, dentistry, or other health care offices or practitioners that are separately owned and operated, are not located inside any retail store or establishment, and otherwise comply with the other requirements of this Section.

b. Subject to the terms and conditions of the CVS Lease, the Owner and/ or Lessee of Parcel A may, but shall not be obligated to, cause any Person violating any such exclusive to cease such violation through injunctive relief or any other legal remedy to the extent permitted pursuant to applicable Law. Nothing set forth above in this Section shall be construed to limit or preclude any rights granted to the Tenant under the CVS Lease.

(ii) Parcels A and C Exclusives.

(1) As long as the Peet's Lease remains in effect, no Parcel or any portion thereof (except for the premises under the Peet's Lease) shall be used for the sale of coffee beans, tea leaves, and/or coffee beverages other than the sale of coffee beverages that are incidental to such party's primary use. Notwithstanding anything set forth in this subsection (ii) to the contrary, the terms of this subsection (ii) shall not preclude the sale of coffee, tea and/or coffee beverages taking up not more than twenty (20) square feet of floor space (excluding any aisles or walkways) in or on Parcel B as long as the CVS lease is in effect,

as well as during any other periods when such lease is renewed for the operation of a drug store or a quality specialty grocery.

(2) As long as the New Cingular Lease remains in effect, no portion of Parcels A or C (except for the premises under the New Cingular Lease) shall provide, offer, service and/or sell the following goods and services to the public: communication products and services including, but not limited to wireless communications products and services, long and local distances products and services; cable television products and services; Internet access products and services; and any substitutes which are the technological evolution of the foregoing (the "Cingular Exclusive"). The Cingular Exclusive shall also apply to any Tenant leasing or occupying less than 14,000 square feet of GLA on Parcel B, if the CVS Lease is no longer in effect.

(3) As long as the Habit Lease remains in effect, no portion of Parcels A or C (except for the premises under the Habit Lease) shall be used to conduct a business that is a restaurant serving primarily hamburgers (the "Habit Exclusive"). The Habit Exclusive shall also apply to any Tenant leasing or occupying less than 14,000 square feet of GLA on Parcel B, if the CVS Lease is no longer in effect.

(4) Subject to the terms and conditions of each applicable Lease, the Tenant for whom the exclusive set forth in this Section 2(b)(ii) and/or the Owner of the Parcel on which said Tenant's premises is located may, but shall not be obligated to, cause any Person violating any such exclusive to cease such violation through injunctive relief or any other legal remedy to the extent permitted pursuant to applicable Law. Nothing set forth above shall be construed to limit or preclude any rights granted to the Tenants referenced in this Section 2(b)(ii) under each Tenant's respective Lease.

(c) Restricted Uses in General. Without the express written consent of Declarant and CVS as long as the CVS Lease remains in effect, the following uses shall not be permitted in any portion of any Parcel: a restaurant (except for any restaurant in an end cap space, which shall be permitted, and a restaurant for purposes of the above shall not include any coffee shop, such as Starbucks or Peet's), a pinball, video game, or any form of entertainment arcade; a gambling or betting office, other than for the sale of lottery tickets; a massage parlor; a cinema, theater, video store or bookstore selling, renting, or exhibiting primarily material of a pornographic or adult nature; an adult entertainment bar or club; a bowling alley; a roller skating or ice skating rink; a billiards parlor or pool hall; a firearms shooting range or any other use which creates or causes patently excessive noise; a cinema or theater; a health club or exercise salon (except for small tenants using an aggregate of 4,500 square feet or less of Floor Area, such as Curves, Slender Lady, etc.); any type of educational or vocational institution (other than educational or vocational institution(s) in the tutorial business, such as, but not limited to Kumon and Sylvan, and provided further that the premises for each said use individually contains no more than 2,800 square feet of GLA and collectively contain no more than 5,600 square feet of GLA); a flea market; a warehouse; a facility which performs on-site dry cleaning; a gas station; a facility which performs on-site auto repair; or offices in excess of 2,000 square feet total except as incidental to a permitted retail use. The above use restrictions, however, shall not serve to limit any use of Parcel B as long as the CVS Lease remains in effect.

(d) Dollar Stores. Without the express written consent of Declarant and CVS as long as the CVS Lease remains in effect, no Parcel or any portion thereof shall be used for a discount, 99 cents store or "dollar" store which sells general merchandise (a "Dollar



Store"). Examples of a Dollar Store (without limiting such Dollar Stores only to those listed) are stores such as Fred's, Dollar Store, Dollar General, or Family Dollar.

3. Site Plan Changes. No Improvements shall be initially constructed, or on any Parcel until the plans for same (including site layout, landscaping, parking, signage and exterior building elevations, materials and colors) have been approved in writing by Declarant in its sole discretion. No Building shall be constructed in the Center except within the Building Areas. There shall not be any material increase in the collective size of, nor material changes to, the Building Areas, GLA for each Building, and the Common Area, including the parking areas, curb cuts, passageways and accessways from that shown on the Site Plan without the written consent of each Owner. Except with the prior written consent of the Owner of Parcel B, during any period during which the CVS Lease is in effect, (a) no change or alteration shall be made to the CVS Control Area as designated on the Site Plan; (b) no modifications or changes shall be made to the Common Area if the same would adversely affect the accessibility to Parcel B from the Protected Driveways and Protected Curbcuts as shown on the Site Plan; and/or (c) no Buildings, kiosks, planters, trees, shrubs, stairs, or other obstructions (together, "Obstructions") shall be located in or on any portion of the CVS Control Area, if the same would impede access to the CVS Building (or any other Building on Parcel B). Further, no Obstructions shall be located in the Pedestrian Plaza shown on the Site Plan, if the same would affect the visibility of the CVS Building (or any Building on Parcel B) or of any signage thereon. Notwithstanding the above or any other provision herein to the contrary, nothing in this Declaration shall preclude the CAM Operator from making changes to the Common Area to the extent such changes are mandated by applicable Law. Nothing set forth above in this Section shall be construed to limit or preclude any rights granted to the Tenant under the CVS Lease.

4. Common Areas and Reservation of Easements.

(a) Reciprocal Easements for Ingress and Egress and Parking. There are hereby reserved and established to and for the benefit of Declarant, and its successors-in-interest, nonexclusive easements appurtenant to each Parcel for ingress, egress, driveway use, parking, loading and unloading of commercial and other vehicles, and otherwise for the enjoyment, comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and Lessees of all or portions of the Buildings, to pass over, through and around and use the Common Areas in the Center, including but not limited to the right to use driveways, roadways, walkways, parking spaces and other facilities constituting Common Areas. Without limitation of the foregoing, there shall be for the benefit of each Parcel in perpetuity nonexclusive cross-easements appurtenant for parking purposes in the Common Areas that may exist from time to time in the Center. Notwithstanding the foregoing to the contrary, absent express written approval of Declarant, the Owners and Lessees of each Parcel (and their respective officers, partners, principals, contractors, employees and agents) shall have no right, easement or license to load or unload trucks or other vehicles other than in areas designated by Declarant or shown on the Site Plan, if the same would impair in any material manner access to or from any Building or use of the Common Area as permitted hereunder. Any drive-through area serving a building is hereby designated as an approved "loading" area for the Lessee of the building served by such drive-through facility.

(b) Reciprocal Easements for Utilities. Declarant hereby establishes, reserves and grants, for the benefit of each Owner, reciprocal non-exclusive easements over those portions of each Parcel that are Common Area for the purpose of maintaining, repairing, and as necessary relocating or replacing any Utility Lines and Common Utility Facilities serving the Center, which easements shall include an easement for reasonable access (by the Owner of

the Parcel to which such easement is appurtenant, and any Tenant of all or any portion of such Parcel) for the purpose of installation, maintenance, inspection, repair, replacement, modification and removal of any Utility Line, or any portion thereof, exclusively serving an Owner's Parcel (the "Utility Easements"). All Utility Lines shall be underground except: (a) ground-mounted electrical transformers; (b) as may be temporarily necessary during periods of construction, reconstruction, repair or temporary service; (c) as may be required by Applicable Laws; (d) as may be required by the provider of such utility service; (e) fire hydrants; (f) gas or utility meters serving Buildings; (g) service lines serving gas or utility meters; (h) emergency generators designed and screened in a commercially reasonable manner; and (i) as may be required to provide a fully functional, operational and serviceable system that would otherwise be commercially unreasonable or imprudent to locate in whole or as to certain elements underground. Such Utility Easements are subject to the following:

(i) Construction Work Associated with Utility Systems. Any Owner who desires to construct and/or install any utilities to connect to the Common Area Utility Lines pursuant to its Utility Easement shall first deliver to the CAM Operator and all other affected Owners, if any, no later than twenty-one (21) days prior to the commencement of such construction and/or installation, written notice of its intention to construct and/or install such utility or connect to such Common Area Utility Line, which written notice shall contain a detailed description of the Utility Line to be constructed and the connection to be made, the name, address and a contact person for the service provider who will install such Utility Line or make such connection, and the plans and specifications for the construction and/or installation of such Utility Line and such connection, together with a detailed description of the location where the Utility Line will be installed or where the connection will be made and the portion of the Common Area that is expected to be disrupted and/or closed to the other users thereof during such construction and/or installation. If such Owner desires to connect to the Common Area Utility Lines, the notice shall provide assurances that such connection will not result in disruption of the utility service to any of the other Parcels. The CAM Operator and any other affected Owner may, within the aforesaid twenty-one (21) day period and in the exercise of its good faith and reasonable discretion, propose alternative locations for the utility facilities or the connection or an alternative construction plan that will minimize the disruption to the use of the Common Area to the maximum extent reasonably possible or propose alternative means to ensure that the proposed connection to the Common Area Utility Line will not disrupt utility service to any other Parcel. If the CAM Operator or any other affected Owner makes any such proposal to an Owner, such Owner agrees to meet and confer (and to cause the service provider who will construct, install, or make the connection to the Common Area Utility Line to meet and confer) with representatives of the CAM Operator or any other affected Owner in order to agree upon a location for the Utility Line or the connection, construction and/or installation plan that will minimize any disruption to the use of the access and/or parking within the Common Area to the maximum extent reasonably possible and the interruption of utility service to any other Parcel. If the CAM Operator or any affected Owner does not respond to the Owner within the twenty-one (21) day period heretofore mentioned, the Owner may thereafter proceed with the construction and/or installation of the Utility Lines or the connection described in its notice to the CAM Operator and other affected Owner in the manner provided in (and in accordance with) the construction and/or installation plan set forth in such notice. Notwithstanding anything to the contrary contained herein, the terms and provisions of this Section 4(b)(i) shall not apply to Declarant's original construction of any Utility Lines and/or Common Utility Facilities on the Parcels or Common Area, it being understood that Declarant may construct and/or install the same without notice and at its sole and absolute discretion, except, with respect to CVS only, as may otherwise be provided in the CVS Lease. Any damage to the Common Area caused by the exercise of any Owner's rights pursuant to its Utility Easement shall be promptly repaired upon

the completion of the subject installation, maintenance, or other work to substantially the same condition as such existed immediately prior to said installation, maintenance or other work.

(ii) Interference With Use of Easement Rights. Each Owner hereby covenants and agrees that its use of the Utilities Easement or connection to the Common Area Utility Lines shall be limited in the manner required to reduce the interference with the use of the other easements granted by this Section 4 and other Utility Easements, or the Parcels by the CAM Operator, Declarant and the other Owners to the greatest extent reasonably possible.

(iii) Notice of Work. Except in the event of an emergency, any maintenance or repair work to, or any removal of, any Utility Line exclusively serving an Owner's Parcel by any Owner or its agents, contractors or representatives shall be performed only after not less than seven (7) days' written notice thereof has been delivered to the CAM Operator, which written notice shall set forth in detail the proposed action to be taken with respect to the utility, the total period of time and the times of the day when such activity will occur, and the portion of any easements granted by this Section 4, including, without limitation, easements for access and parking and any other Utility Easements, that are expected to be disrupted in connection with such activity. The CAM Operator may then make proposals to the Owner regarding the manner and times for performance of the work that will minimize any adverse effects of such work on the use of such easements by, or the provision of utility service to, the CAM Operator, the other Owners and their Tenants and invitees. Each Owner shall implement such proposals to the fullest extent possible and co-operate with the CAM Operator in good faith in order to perform any such work in a manner that will minimize any disruption to the use of such easements and to the provision of utility services to the Center or any portion thereof. In the event of an emergency that imminently threatens life or property, such Owner may act without providing the aforesaid seven (7) day notice; provided that, such Owner shall endeavor to the extent possible to provide the CAM Operator with some form of prior notice and, if prior notice cannot be provided, shall provide the CAM Operator with notice of the work as soon as possible after the commencement thereof.

(iv) Maintenance. Each Owner shall maintain and repair the Utility Lines on its Parcel that are constructed by such Owner (exclusive of those Common Utility Facilities that are constructed by Declarant, which shall be maintained and repaired by the CAM Operator) and those Utility Lines exclusively serving such Owner's Parcel, as well as the corresponding connection to the Common Utility Facilities, without cost to the CAM Operator or any other Owner. Any work by any Owner upon or within those portions of the Common Area improved for parking and access (exclusive of that work associated with Declarant's original construction of the Parcels or Common Area within the Center, including, without limitation, the Common Utility Facilities), shall be done in accordance with the other terms and provisions of this Section 4 and in a manner so as to cause as little interference with the use of the surface of the land as is practicable, and the surface of the land shall be restored in an expeditious manner so that there is minimal disruption of traffic (both vehicular and pedestrian traffic) within the Access Easement and a minimal disruption of any parking in the Common Area. In connection with its entry, such Owner (other than Declarant with respect to the work associated with Declarant's original construction of the Parcels or Common Area) shall use reasonable efforts not to interfere with the quiet enjoyment of any legal occupant or user of the Common Area or to interrupt utility service to any Parcel. Without limitation of the foregoing, such Owner shall perform or cause to be performed any such maintenance work during hours of the day when the work is least likely to interfere with the use of the Common Area, or the Common Area Utility Lines or by the other Owners, their Tenants and Invitees. Upon completion of any maintenance

work by any such Owner within the Common Area as permitted above, any portion of the Common Area affected by such work shall be, at the Owner's sole cost and expense, promptly restored to its condition immediately prior to the work.

(v) Owner's Utility Work Indemnity. Each Owner who performs any work within the Common Area pursuant to its Utility Easement, or who otherwise utilizes its Utility Easements and/or constructs or installs a Utility pursuant hereto or makes a connection to the Common Utility Lines (collectively, "Owner's Utility Work"), shall indemnify, defend and hold the CAM Operator and each other Owner harmless from and against any and all claims, demands, liabilities, losses, costs and/or expenses, including, without limitation, reasonable attorneys' fees and costs and the cost of all repairs, maintenance and improvements necessary to correct or remediate any damage to an Owner's Parcel, or the Common Area, made against or incurred by the CAM Operator or any such other Owner, as a result of or in connection with the Owner's Utility Work.

(c) Monument Signs. Subject to Section 7, Declarant hereby reserves for the benefit of each Parcel whose Owners and/or Tenants are entitled to maintain any signage on a Monument Sign ("MS Parcels") easements to locate and maintain Monument Signs in such locations as are permitted hereunder, and grants to and for the mutual benefit of all MS Parcels, and the Owners and Tenants of such Monument Sign Parcels, a non-exclusive easement to use the Common Area to access and to utilize the Monument Signs for posting the name of the business occupying such Parcels in accordance with, and to the extent permitted by, the terms of this Declaration.

(d) Encroachment. A perpetual non-exclusive appurtenant easement for each Parcel upon, over, across, under and through each adjoining Parcel for the encroachment of any improvements from the dominant Parcel onto the servient (burdened) Parcel as a result of: (i) engineering errors, errors in construction, reconstruction, repair, support, and accommodation of the natural settlement or shifting of any portion of the improvements and for the maintenance thereof; and (ii) minor encroachments by reason of a roof or eave overhang and for the maintenance of such roof or eave overhang by the Owner of the dominant tenement for as long as such encroachments exist; and (iii) encroachment of doorsteps, foundations, footings, utilities and other appurtenances or fixtures and the maintenance thereof by the Owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures; provided, that, in no event shall an easement for encroachment be created in favor of an Owner of a dominant tenement if said encroachment occurred due to the willful misconduct of any such Owner.

(e) Easements for Declarant and the CAM Operator. Each Parcel shall be subject to a non-exclusive easement upon, over, across and under all portions thereof in favor of Declarant and, if different, the CAM Operator and any Property CAM Operator, and their employees, agents and contractors, for: (i) all purposes reasonably related to the performance by Declarant and the CAM Operator and any Property CAM Operator of their obligations, and exercise of their rights and privileges, under this Declaration, including without limitation the inspection, maintenance, repair, relocation and replacement of the Common Area and/or Monument Signs; (ii) construction of the Improvements that Declarant intends to construct in the Project, to advertise and sell Parcels, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Parcel unless authorized by its Owner, which

authorization shall not be unreasonably withheld, conditioned or delayed; and (iii) to perform the obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Improvement or landscaping located on the Parcel.

(f) In General. The easements established by this Section 4 (collectively, the "Easements") are established by and as of the date of recordation of this Declaration, and no further grant of easements, deed or other instrument shall be required in order to create, grant or transfer the Easements. Easements that benefit or burden any Parcel shall be appurtenant to that Parcel, and shall automatically pass to the grantee concurrently with the conveyance of the Parcel, even though the description in the instrument of conveyance may refer only to the fee title to the Parcel.

(g) Restrictions on the Exercise of Owners' Easements. The exercise of any Owner's easement rights set forth in this Section 4 shall be subject to the terms and provisions of this Section 4(g).

(i) Right to Close. The use of each Easement is subject to the CAM Operator's prior right to close, from time to time, any portions of the Common Area as the CAM Operator may reasonably deem necessary to prevent any claim of prescriptive rights or adverse possession, or in connection with the proper discharge of the CAM Operator's repair, maintenance and/or reconstruction obligations under this Declaration, and the Declarant's prior right of access over the Common Area as reasonably deemed necessary by the Declarant in connection with the development of any Parcel (including, without limitation, Declarant's right to authorize contractors, lenders of Parcels and others to use Declarant's ingress and egress easement rights over and across the Common Area in connection with the development of any Parcel).

(ii) No Obstruction of the Easements for Access and/or Parking. No wall, fence, barrier or other improvement shall be constructed or maintained on or across the Common Area, which prevents or impairs in any material manner the use of the access and parking Easements provided for herein, except such work as may be required from time to time for maintenance and repair of the Common Area, or as otherwise specifically provided herein, provided, however, that (i) temporary fences and barriers may be erected and maintained during periods of construction or repair, and (ii) reasonable traffic controls, including, without limitation, stop signs and directional signs may be installed as may be necessary to guide and control the orderly flow of traffic.

(iii) No Parking Rights. Subject to the right to temporarily park vehicles for maintenance purposes pursuant to Section 4(e), no portion of the Common Area improved with vehicular access ways, curb cuts, or internal drives or drive aisles, as such exist from time to time, shall be used for or be for the purpose of vehicular parking.

(iv) CAM Operator's Right to Institute Rules. The CAM Operator shall have the right to institute reasonable, non-discriminatory rules and regulations (the "Rules") for the use and operation of the Common Area, including, without limitation, in order to assure the free flow of traffic. Any such Rules shall be consistent with this Declaration and shall not materially increase the obligations or materially decrease the rights of any Owner or other party hereunder. A copy of the Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules shall be delivered to each Owner in the manner established in this Declaration for the delivery of notices. Said Rules shall have the same force and effect as if

they were set forth herein and were part of this Declaration and shall be binding on the Owners and their successors in interest, provided the same are delivered to the applicable Owner as specified above.

(v) Taxes and Matter of Record. Each Easement granted herein is granted subject to taxes, assessments, easements and other matters of record and such rules and regulations as shall be from time to time reasonably promulgated by the CAM Operator.

(vi) Staging Areas. In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Owner reserves the right to create a temporary staging and/or storage area in the Common Areas on its Parcel at such location as will not unreasonably interfere with access between such Parcel and the other areas of the Project and the public streets or roadways adjacent to the Project. Any such staging area shall be screened, fenced off and maintained in a safe condition during its use at the expense of the Owner or Tenant undertaking the construction.

(vii) Transfer of Rights. No Owner may sell, convey, assign, encumber or otherwise transfer any Easement created hereby or any right or privilege appurtenant thereto separately from such Owner's Parcel.

(h) Limitations on Use.

(i) Owners/Lessees. No Owner or Lessee of any portion of the Center shall permit any portion of the Common Area to be used as a carnival or similar event. Except as otherwise provided herein, no Owner or Lessee of any portion of the Center shall (1) use the Common Areas for income-producing (selling) promotional events, including sidewalk and truckload sales, (2) solicit business or display merchandise in the Common Areas, (3) store merchandise in the Common Areas, (4) distribute handbills or other advertising matter in the Common Areas or on automobiles located in the Common Areas, or (5) park vehicles bearing large signage and intended primarily as advertising of an Owner or Lessee (i.e., billboard trucks or vehicles that are only rarely moved or used in such Owner's or Lessee's business). Notwithstanding the foregoing to the contrary, periodic sidewalk sales and other promotional events on the sidewalks (other than the sidewalk in front of the storefront of the building on Parcel B) shall be permissible so long as such sales and events do not exceed 3 consecutive days in duration and during such sales the sidewalks are maintained in a neat and orderly manner and shall not adversely affect pedestrian traffic; furthermore, portions of the sidewalks may be used for outdoor dining (including the use of tables and seating) for restaurants and other prepared food purveyors and for general seating areas for all Lessees and invitees. Notwithstanding the foregoing, any Lessee of Parcel B may conduct a grand opening or promotional events that affect the Common Areas so long as such events do not unreasonably interfere with the operations of the other Lessees or access to their premises, and (ii) do not exceed 3 days in length. Other Lessees for premises located on Parcels A or C may also conduct grand opening or promotional events that affect the sidewalk immediately in front of their respective premises so long as such events (i) do not unreasonably interfere with the operations of other Lessees or access to their premises, and (ii) do not exceed 3 days in length. Notwithstanding anything herein to the contrary, the Lessee of Parcel B may, at its option, install and maintain a shopping cart control system ("Cart Control System") in the Common Areas to minimize removal of its shopping carts from the Center. The Cart Control System shall consist primarily of a low voltage antenna line which shall be located under the pavement surface and around the perimeter of all or a portion of the parking lot and access driveways of the Center. In

addition, there shall be one or more transmitters/controllers located in and operated from within the building on Parcel B and wheel locking mechanisms attached to the shopping carts used by the Lessee of Parcel B. To the extent applicable, each Lessee shall be responsible for the retrieval of its own shopping carts.

(ii) Customers. Each Owner and Lessee in the Center shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park in the Common Areas except while shopping or transacting business in the Center. Nothing in this Section 4(h)(ii) shall impose on an Owner any obligation to police any parking activity in the Common Areas. Each Owner shall cause each of its Tenants that provide shopping carts for customer use to identify such carts with company logos, use a mechanism such as a magnetic locking wheel control system to ensure that all carts remain on the Property, and collect all carts from the Common Areas in a timely manner.

(iii) Employees. The CAM Operator shall have the right to require employees, agents and contractors of any Tenant to park in designated areas within the Common Area (the "Employee Parking Area"). Nothing in this Section 4(h)(iii) shall impose on the CAM Operator any obligation to police any parking activity on the Common Areas. The Employee Parking Area shall be subject to the approval of CVS as long as the CVS Lease remains in effect.

(iv) General. All of the activity permitted within the Common Areas shall be conducted with reason and judgment so as not to interfere with the primary purpose of the Common Areas which is to provide parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses. No storage of vehicles is permitted, except by the Lessee of Parcel B within the truck well as shown on the Site Plan, nor any overnight parking other than by employees working during such hours. Notwithstanding the foregoing to the contrary, the Owner of Parcel B may place and maintain in the Common Areas near the building on Parcel B a dumpster or similar refuse container and a compactor. The exact location of any such dumpster or compactor shall be subject to Declarant's prior approval.

Absent express written approval from Declarant or as otherwise set forth in this Declaration, no Common Areas shall be used for the display or sale of merchandise. Use of drive-through facilities and outdoor eating areas shall not be considered the display or sale of merchandise in the Common Areas, except as follows: any Tenant of Parcel B shall have right to (1) use the sidewalks adjacent to the Building thereon for the display and sale of items from said Tenant's store, provided such displays do not unreasonably interfere with ingress to or egress from the Center's parking areas and are in compliance with applicable Laws. Unless mandated by applicable Laws, there shall be no barriers to, controls on, or charge for Customers' use of the parking areas in the Center, and no parking area or any bus stop, rapid transit stop, "park and ride" program or similar transit or parking program within the parking areas contained in the CVS Control Area.

(i) Drainage/Water Flow. All construction work done in the Center shall conform to all storm drain plans approved by the City, County and State.

(j) Arrangement. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Declaration.

(k) Parking Area Ratio. At all times there shall be maintained a parking ratio for the Center as required by applicable municipal codes for all uses then in operation at the Center (including the off-site parking on Juana Avenue).

5. Maintenance.

(a) Buildings. Each Owner shall maintain all buildings and structures on its Parcel(s) in good, clean and slightly condition, painted as often as reasonably necessary to maintain an image of a first class shopping facility. Graffiti shall be removed within two (2) business days of discovery thereof. In the event any Building or Improvement that is not part of the Common Area on a Parcel shall be damaged or destroyed by any casualty, the Owner of the Parcel shall comply with the provisions of Section 9 hereof.

(b) Common Areas. In the event the Common Areas shall be damaged or destroyed by any casualty, the CAM Operator (defined below) shall comply with the provisions of Section 9 hereof.

(i) Standards. The Common Areas shall be operated and maintained in a manner comparable to similar shopping centers in San Leandro, California, including repairing, resurfacing, repaving, restriping and resealing of the parking areas and drive aisles; repairing all curbing, sidewalks and directional markers; cleaning and sweeping; provision of lighting customary for similar shopping centers and at least during all hours of darkness that the Lessee of Parcel B shall be open for business and for 45 minutes thereafter; implementation of any security measures that the CAM Operator (defined below) in its reasonable business judgment may deem prudent (provided no obligation to provide any such security shall exist except as otherwise determined by the CAM Operator in its sole and absolute discretion); installing, maintaining and replacing landscaping as needed, and any other required maintenance, including inspection, testing or monitoring of any fire sprinkler system or alarm system serving more than one lessee's premises in the Center. In addition, the CAM Operator shall adopt and implement a regular program of pest control as may be necessary to keep areas adjoining buildings free of pests and rodents. In undertaking such activities, the CAM Operator shall use commercially reasonable efforts to avoid interfering with the business operations conducted on any Parcel.

(ii) CAM Operator. The CAM Operator (as defined below) shall maintain the Common Areas. "CAM Operator" means the original Declarant, or its designee; provided, however, that at such time as original Declarant is no longer an Owner or has no ownership interest in a Parcel, the CAM Operator shall be the Owner of Parcel A (or if such Owner does not wish to be the CAM Operator), such other Owner as may agree to be the CAM Operator shall be the same. (If the Owners of both Parcel A and Parcel C, but not the Owner of Parcel B, want to be the CAM Operator, then the CAM Operator shall be the Owner whose Parcel contains the most GLA at the time in question. If no Owner agrees to act as the CAM Operator, then a third party, selected by a majority vote of the Owners (and if no majority vote is obtained by the Owner of Parcel A) shall be appointed as the CAM Operator. Notwithstanding anything to the contrary contained herein, the CAM Operator may retain the services of a third party property management firm with experience and expertise reasonably acceptable to the CAM Operator to perform the services required of the CAM Operator hereunder and for the collection of service fees and charges hereunder. As used herein, the term CAM Operator shall mean CAM Operator and/or any such property CAM Operator, as appropriate, so as to allow any such property CAM Operator to perform such obligations on behalf of the CAM Operator.



(iii) Common Area Charges. "Common Area Charges" means all sums (including "Capital Costs" as hereinafter defined and to the extent stated herein) expended by the CAM Operator, its agents, contractors and employees for operating, maintaining, repairing, replacing and administering of the Common Areas and certain sidewalks and street parking areas abutting the Shopping Center required by the City to be maintained, including, without limitation, equipping, policing and protecting, lighting, providing sanitation and sewer and other services, providing a public address system, insuring (including self-insurance and the payment of deductible amounts under insurance policies), repairing, replacing and maintaining the same and all other areas and facilities off-site which are used in connection with the maintenance and/or operation thereof. Such costs and expenses shall include, but shall not be limited to, the full cost of: illumination and maintenance of Center signs, whether located on or off the Center; refuse disposal, water, gas, sewage, electricity and other utilities (without limitation), including any and all usage, service, hook up, connection, availability and/or standby fees or charges pertaining to same, and including all costs associated with the provision, maintenance and operation of any Common Area utility systems; the operation, maintenance, repair and replacement of all or any part of the parking areas; and operation of any temporary or permanent utility, and/or utility system, including a sewage disposal system, within or without the Center, together with hook up or connection fees and service charges; compliance with rules, regulations and orders of governmental authorities pertaining to air pollution control, including the cost of monitoring air quality; maintenance for wooded or park areas, retention ponds (if applicable); cleaning, lighting, striping and landscaping; curbs, gutters, sidewalks, drainage and irrigation ditches, conduits, pipes and canals located on or adjacent to the Center; graffiti removal from buildings and Common Areas, and related repainting; premiums for liability, casualty, and property insurance; personal property taxes; licensing fees and taxes, audit fees and expenses; supplies; costs of complying with all governmental regulations, rules, laws, ordinances and codes, cost, lease payment or depreciation of any equipment, improvements or facilities used in the operation or maintenance of the Common Areas; total compensation and benefits (including premiums for workers' compensation or any other insurance or other retirement or employee benefits, and including all costs incurred in providing such benefits) paid to or on behalf of employees involved in the performance of the work specified in this Section or employees otherwise providing services to Tenants or customers of the Center; public transit or carpooling facilities; management fees paid to independent contractors; reserve accounts established for the purchasing and/or replacement of equipment; plus an allowance often percent (10%) of such sums to the CAM Operator as an administrative fee. Common Area Charges shall also include, without limitation, the repair and replacement, resurfacing and repaving of any paved areas, curbs, gutters or other surfaces or areas within the Center, the repair and replacement of any equipment or facilities located within or serving the Center, and the cost of any capital repairs, replacements or improvements made by the CAM Operator to the Center ("Capital Costs"). However, certain Capital Costs (the "Restricted Capital Costs") shall be includable in Common Area Charges each year only to the extent of that fraction allocable to the year in question calculated by amortizing such Restricted Capital Costs over the reasonably useful life (not to exceed five years) of the improvement resulting therefrom, as determined by the CAM Operator, with interest on the unamortized balance at the higher of (i) ten percent (10%) per annum; or (ii) the interest rate as may have been paid by the CAM Operator for the funds borrowed for the purpose of performing the work for which the Restricted Capital Costs have been expended, but in no event to exceed the highest rate permissible by law. The Restricted Capital Costs subject to such amortization procedure are the following: (y) those costs for capital improvements to the Center of a type which do not normally recur more frequently than every five (5) years in the normal course of operation and maintenance of facilities such as the Center (specifically excluding painting of all or a portion of the Center); and (z) expenditures that are required by governmental law, ordinance, regulation or mandate.

(iv) Billing and Payment by Owners. At least 30 days before the start of each calendar year, the CAM Operator shall submit to each Owner of a Parcel, in writing, an estimate of the Common Area Charges for such calendar year and the CAM Operator's computation of (which shall also show the basis for) such Owner's Pro Rata Share (as defined below) thereof. Each Owner shall, during the calendar year to which the estimate applies, pay to the CAM Operator such Owner's Pro Rata Share of the estimated Common Area Charges in equal monthly installments; provided, the CAM Operator shall be permitted to reasonably revise its estimate from time to time upon written notice to the Owners of the Parcels, and the Owners shall adjust their monthly payments accordingly.

Not later than 90 days after the end of each calendar year, the CAM Operator shall provide to each Owner a statement ("Reconciliation Statement") setting forth in reasonable detail the actual amounts of the Common Area Charges for such calendar year and such Owner's Pro Rata Share thereof. If the actual Pro Rata Share of an Owner for any calendar year is less than the estimated payments made for such calendar year, the CAM Operator shall refund the excess to such Owner at such time as the CAM Operator delivers the annual statement. If the actual Pro Rata Share of an Owner for any calendar year is greater than the estimated payments made by such Owner for such calendar year, such Owner shall remit the balance due to the CAM Operator within 30 days after receiving the annual Reconciliation Statement from the CAM Operator.

An "Owner's Pro Rata Share" means that proportion which the GLA on its Parcel bears to the GLA in the Center, whether or not occupied.

(v) Audit. If an Owner is not satisfied with any Reconciliation Statement furnished by the CAM Operator, or wishes to challenge the accuracy or validity of any items therein, such Owner shall give the CAM Operator notice and may audit the CAM Operator's books and records. Audits may not occur more frequently than once per calendar year and only once with respect to any calendar year, and shall be conducted by the Owner's representatives and compensated on a non-contingency fee basis. Access to the CAM Operator's books and records shall be available for audit at the CAM Operator's main office in California at such time as the CAM Operator shall reasonably determine, but not later than 30 days after receipt of such Owner's written request. If an audit reveals any overpayment by such Owner, such Owner shall provide the results of the audit to the CAM Operator in writing and the CAM Operator shall either (a) refund the amount of such overpayment to such Owner or (b) dispute the results of the audit in writing, in either case within 30 days of the CAM Operator's receipt of the audit results. If the CAM Operator disputes the audit results, the parties shall meet (in person or via teleconference) within 15 calendar days to resolve the dispute. If the Parties are unsuccessful in resolving the dispute within a reasonable amount of time thereafter, either Party may submit such dispute to the San Francisco office of JAMS for binding arbitration by giving the other Party a written demand therefor, in which event such Owner shall not have the right to offset or deduct any amounts under this Lease pending the outcome of such arbitration, and if it is determined pursuant to such arbitration that such Owner overpaid, the CAM Operator shall pay to such Owner, within 10 days after the final determination (including any appeal rights), the sums that such Owner was entitled to offset or deduct plus interest thereon from the date such sums were originally due at the Index Rate and all reasonable attorneys' fees, experts' fees, and other costs of any kind incurred by such Owner in such arbitration. If it is determined at such arbitration that such Owner did not overpay, such Owner shall reimburse the CAM Operator for all reasonable attorneys' fees, experts' fees, and other costs of any kind incurred by the CAM Operator in such arbitration. If an audit reveals that any of the Reconciliation Statements overstated the total amount of such costs due by 3% or more (and

the results of such audit are not disputed by the CAM Operator or the results were disputed and resolved in such Owner's favor), the CAM Operator shall promptly pay to such Owner the cost of such audit plus interest on the overstated amount at the Index Rate. If the CAM Operator fails to reimburse any amount required hereunder within 30 days after invoice therefor, such Owner may offset the amount thereof against its next payments if Common Area Charges due to the CAM Operator. The CAM Operator shall retain documentation substantiating Common Area Charges and other relevant financial records for not less than 3 years after the calendar year in which the Common Area Charges were incurred.

(vi) Tenant's Rights; Conflicts. In the event of any conflict between this Declaration and any Lease with respect to the payment of Common Area Charges (including, without limitation, the payment of Capital Costs) and any related audit rights, as between the applicable Tenant and the Owner of the Parcel on which the Tenant's premises is located, the Tenant's Lease shall control (provided nothing in any said Lease or this subsection (vi) shall excuse any Owner's obligation to pay said Owner's Pro Rata Share of Common Area Charges. Additionally, CAM Operator shall cooperate with CVS to allow it to exercise any audit rights granted to it under the CVS Lease regardless of whether the same is consistent herewith.

(c) Compliance With Laws. Each Owner, with respect to its Parcel, shall comply with all Laws relating to the Center at its sole cost. Each Owner shall maintain its Parcel (other than the Common Areas with respect to which it shall be the CAM Operator's obligation to comply) at all times so as to comply with and conform to all Laws. Each Owner shall be responsible, at its sole cost, for compliance with any and all Environmental Laws applicable to its Parcel. If a Release or Violation affecting the Center occurs on a Parcel, then the Owner of the Parcel on which the Release or Violation occurred shall, at no cost to the other Owner, promptly remove or remediate the Release or Violation, in each case to the extent required by and in full compliance with Laws and shall indemnify and hold harmless the other Owner(s) from and against any and all Losses arising out of or in connection with a Release or Violation affecting the Center. Notwithstanding the foregoing, if such a Release or Violation on a Parcel was caused by the Owner or Lessee of the other Parcel, then the Owner of such other Parcel shall at no cost to the Owner of the Parcel affected, promptly remove or remediate the Release or Violation, in each case to the extent required by and in full compliance with Laws and shall indemnify and hold harmless the Owner and any Lessees of the Parcel affected from and against any and all Losses arising out of or in connection with such Release or Violation.

6. Taxes. Each Owner agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and general and special assessments of any kind or nature (including any special assessment district assessments or similar funding mechanism promulgated by the governmental authority) which are levied against that part of the Center owned by it. Taxes shall include, without limitation, assessments and fees levied with respect to any special assessment district within which the Center or any portion thereof is located.

7. Signs. No signs, temporary or permanent, shall be located on the buildings (except signs advertising businesses conducted therein) or in the Common Areas (except on any Monument Sign constructed in the Center as permitted below and/or any drive-thru signage to the extent of drive-thrus permitted hereunder or shown on the Site Plan, including, without limitation for CVS while the CVS Lease remains in effect). All signage shall be in compliance with all applicable Laws and any City approved signage criteria then in effect at the time such signage is installed. No Owner or Tenant shall be entitled to place a sign panel or panels on any Monument Sign except with consent of Declarant, which consent may be

withheld or granted in Declarant's sole and absolute discretion. Notwithstanding the above, the Owner of Parcel B or its Tenant shall have the right to place signage panels in the top position (i.e., immediately below any name of the Center) on each side of any Monument Sign constructed in the Center. All other positions on any Monument Sign shall be assigned by Declarant in its sole and absolute discretion, which assignment shall be evidenced by either a Lease or other written agreement. The costs to repair, maintain and replace any Monument Sign, as well as the costs of lighting thereof, shall be Common Area Charges, but an Owner's Pro Rata Share shall be equal to the proportion which the area of its Lessee sign panels bears to the area of all sign panels thereon that are used or available for advertising Lessees within the Center.

8. Indemnification/Insurance.

(a) Indemnification. Each Owner, and their successors and assigns, hereby indemnifies and saves the other Owners (and the CAM Operator, if any) harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from its own Parcel, except to the extent caused by the act or negligence of the indemnified party. Each Owner covenants and agrees to keep or cause to be kept their respective Parcel(s) and the improvements thereon, free and clear of and from any and all mechanics', materialmen's and other similar liens arising out of or in connection with the operations thereon or other activities undertaken by such Owner or others claiming under such Owner, and to pay and discharge when due any and all lawful claims upon which any such lien may or could be based, and to save and hold the other Owner's Parcel(s) and the improvements thereon, free and harmless of and from any and all such liens and any and all claims of liens and suits or other proceedings pertaining thereto.

(b) Liability Insurance.

(i) Owners. Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration commercial general public liability insurance (or its equivalent) on an occurrence basis, in combined policy limits of not less than Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, with commercially reasonable deductibles, insuring the Owner (as named insured) and the other Owner and all Lessees (as additional insureds) against all claims, demands, actions, suits or proceedings initiated or made by or for any Person as a result of bodily injury (including death), personal injury or property damage (i) occurring upon, in, or about the building(s) and/or loading areas located on such Owner's Parcel or (ii) arising from any acts or omissions of such Owner or any of its agents or employees. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Owner which may cover other property in addition to the property covered by this Declaration.

(ii) CAM Operator. The CAM Operator shall procure and maintain in full force and effect throughout the term of this Declaration commercial general public liability insurance (or its equivalent) on an occurrence basis, in combined policy limits of not less than Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, with commercially reasonable deductibles, insuring the CAM Operator (as named insured) and the Owners and all Lessees (as additional insureds) against all claims, demands, actions, suits or proceedings initiated or made by or for any Person as a result of bodily injury (including death), personal injury or property damage (i) occurring upon, in, or about the Common Areas or (ii) arising from any acts or omissions of the CAM Operator or any of its agents or employees. Such insurance may be written by additional premises

endorsement on any master policy of insurance carried by the CAM Operator which may cover other property in addition to the Common Areas.

(iii) Specific Liability Insurance Requirements: Right to Increase Minimum Coverage Limits. All commercial general liability insurance policies shall insure for contractual indemnity and contain a cross-liability endorsement. Upon the request of either Owner, and provided that such request shall be commercially reasonable taking into account the standard practices at comparable shopping centers in the area, the other Owner (or the CAM Operator, as the case may be) shall increase the limits of insurance carried by it hereunder, and shall carry types of insurance in addition to those required hereunder, to the extent such additional types of coverage first become standard at comparable shopping centers after the date hereof. No Owner shall carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by the other Owner or the CAM Operator if the effect of such separate insurance would be to reduce the coverage of, or recovery available under, other Owner's or the CAM Operator's insurance. The CAM Operator shall not carry any liability insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by either Owner if the effect of such separate insurance would be to reduce the coverage of, or recovery available under, an Owner's insurance.

(c) Property Insurance.

(i) Parcel Owners. At all times during the term of this Declaration, as long as any Building is located on the respective Parcel, the Owner of each Parcel shall maintain or cause its Lessee to maintain "all risks" property insurance (or its equivalent) covering all Buildings and Improvements (which are not part of the Common Area) in a minimum amount equal to 90% of the reasonable replacement cost thereof (exclusive of excavation costs).

(ii) CAM Operator. The CAM Operator shall procure and maintain in full force and effect throughout the term of this Declaration "all risks" property insurance (or its equivalent) covering all improvements located in the Common Areas in a minimum amount equal to 90% of the reasonable replacement cost thereof (exclusive of excavation costs). Such insurance shall exclude flood coverage (unless the Center is located in a Flood Zone A or V) and shall also exclude earthquake coverage (unless required by the lender to the Owner of any Parcel).

(iii) Specific Property Insurance Requirements. All property insurance policies shall contain a severability of interests clause and shall be effected under standard form policies.

(d) General Insurance Requirements. All insurance coverage required to be carried under this Section 8 shall be carried with insurance companies that are (i) admitted or qualified to do business in California and (ii) rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the Owner. The Owners and the CAM Operator shall, upon written request, each provide to the others certificates evidencing the fact that such insurance has been obtained. Notwithstanding anything herein to the contrary, as long as the CVS Lease remains in effect, any and all insurance coverage as required for Parcel B

under this Section 8 may be provided through a self-insurance program in accordance with the terms of said CVS Lease.

(e) Payment for Common Area Insurance. For each full or partial calendar year during the term of this Declaration, each Owner shall pay to the CAM Operator such Owner's Pro Rata Share of the insurance maintained by the CAM Operator under the provisions of Subsections 8(b)(ii) and 8(c)(ii) above (the costs of such insurance being hereinafter referred to as the "Insurance Charges"). Each Owner's Pro Rata Share of the Insurance Charges shall be estimated, paid and reconciled in the same manner as Common Area Charges.

(f) Waiver. Each Owner hereby waives, and releases the other Owner and CAM Operator from, any and all claims, liabilities and rights of action with respect to any property loss caused by the other Owner or CAM Operator which is covered by the property insurance required to be maintained by such Owner or the CAM Operator. Each Owner hereby agrees that any such property insurance maintained by it shall contain a waiver of subrogation clause preventing the insurance company from pursuing the other Owner or and/or CAM Operator for any property loss caused by the other Owner or the CAM Operator.

9. Damage / Destruction.

(a) Common Areas. In the event of any damage to the Common Areas, the CAM Operator shall promptly repair the damage and restore the Common Areas as near as possible to their condition existing prior to the damage. Each Owner shall pay to the CAM Operator such Owner's Pro Rata Share of any deductible and any other shortfall in insurance proceeds, such that the CAM Operator shall not incur out of pocket costs for the repair of such damage.

(b) Parcel Buildings. Except with respect to any Common Area for which CAM Operator is responsible to restore as specified above, in the event any Building or other Improvement on a Parcel is damaged or destroyed by any casualty, the Owner on whose Parcel such Building and/or other Improvement are located shall promptly: (1) repair and/or reconstruct such Building or Improvements in accordance with this Declaration or (2) level such Building and/or Improvements, remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly and well maintained. Nothing in this Article shall be deemed to modify or amend any duties of any tenant under any lease for any portion of the Center to rebuild or repair any improvements in the event of the occurrence of a casualty.

10. Eminent Domain.

(a) Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on any Parcel, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas.

(b) Collateral Claims. Each Owner of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another Owner.

(c) Lessee's Claim. Only as between an Owner and a Lessee of that Owner's Parcel, nothing in this Section 10 shall supersede or control over the terms and the provisions of any Lease between such Owner and such Lessee relating to the disposition or right to seek any awards in connection with any condemnation or eminent domain proceeding regarding the Parcel in question.

(d) Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas on its Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

11. Enforcement Remedy/Lien Right.

(a) Agreement to Pay. Each Parcel is expressly made subject to potential assessment ("Assessment") if the Owner of such Parcel fails to pay any amounts as and when required pursuant to various provisions of this Declaration (the "Assessment Provisions"), and each Owner, by acceptance of a conveyance of such Parcel covenants and agrees for each Parcel owned by it, to pay to the Person entitled thereto any such Assessments. Except for any potential Assessments that may be imposed pursuant to the Assessment Provisions, there are no regular assessments imposed pursuant to this Declaration.

(b) Levying of Assessment. In the event CAM Operator determines that any assessment shall be levied against an Owner who has failed to pay any amounts as and when required by the applicable Assessment Provisions, the CAM Operator shall provide written notice to such Owner upon which such an Assessment is to be levied, describing the amount of the Assessment, the reason therefor, and the date upon which payment is due. In the event said Assessment as specified below. (If the CAM Operator is an Owner not timely paying any amounts owed by it under this Declaration, then any non-defaulting Owner may also sue said defaulting Owner to collect the unpaid amount or amounts in question.) The CAM Operator may enforce delinquent Assessments by suing an Owner directly on the debt established by the Assessment. Additionally, Any Assessment provided for in this Declaration that is not paid within ten (10) days of the due date shall be delinquent. To any such delinquent Assessment shall be added the reasonable costs of collection (including, without limitation, reasonable attorneys' fees), plus the Assessment shall bear interest at the rate of ten percent (10%) per annum, but in any event not higher than the maximum rate permitted by law, commencing thirty (30) days after the date it became delinquent. The CAM Operator may, at its option, and without waiving the right to judicially foreclose its lien against the Parcel in delinquency, pursue any available remedies, including, without limitation, bringing an action at law against any Owner personally obligated to pay the same, and/or upon compliance with the notice provisions set forth herein, entitled "Notice of Lien," to foreclose the lien against the Parcel as provided below. If any action is commenced, the costs of such action, including attorneys' fees, shall be added to the amount of the delinquent Assessment in addition to the reasonable costs of collection, and interest at the rate specified herein. Each Owner vests in the CAM Operator or its assigns the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the

collection of delinquent Assessments. In the event that the CAM Operator is unable to obtain payment from one or more of the Owners for any Assessment(s) prior to the delinquency date for such Assessment(s), the CAM Operator, without releasing any delinquent Owner(s) or its/their Parcel(s) and without waiving any right or remedy set forth herein, may reassess the other Owners for such unpaid Assessment(s); provided that, if the CAM Operator so reassesses any other Owners, the CAM Operator shall promptly thereafter pursue all rights and remedies against the defaulting Owner to collect the delinquent amount (including, without limitation, all rights and remedies of foreclosure) and, upon recovery of the delinquent amount from such defaulting Owner, after the CAM Operator has paid (or been reimbursed) from such recovered amount its costs and expenses incurred in connection with obtaining such recovery, the CAM Operator shall reimburse to the other Owners on a pro rata basis, in accordance with the respective delinquent amount re-assessed to such Owners, all amounts that were re-assessed to (and paid by) such other Owners with respect to the delinquent amount, together with interest thereon for the entire time outstanding at the rate provided in this Section 14.10, to the extent of the recovered amount remaining after application of same to the CAM Operator's costs and expenses.

(c) Foreclosure Sale. Any Assessment or other lien may be foreclosed by sale by the CAM Operator, its attorney or any other Person authorized by the CAM Operator, after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period, pursuant to Sections 2924, 2924b, 2924c, 2924f, 2924g and 2924h of the California Civil Code, as said statutes may from time to time be amended, or other statutes applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law. The CAM Operator is hereby appointed the trustee for purposes of exercising the power of sale herein granted, with full power of substitution. The CAM Operator, through its duly authorized agents, shall have the power to bid on the Parcel at the sale, using as a credit bid the amounts secured by such lien plus trustee's fees and expenses, CAM Operator's funds, or funds borrowed for such purpose, and to acquire and hold, lease, mortgage and convey the same.

(d) Injunctive Relief. Declarant acknowledges and agrees for each Parcel Owner that they have bargained for specific performance of the covenants, conditions, restrictions, rights, easements, and rights-of-way contained in this Declaration, and all other provisions hereof, and that each Owner entitled to enforcement of the terms hereof, including but not limited to Declarant, shall be entitled to seek injunctive relief, including but not limited to temporary restraining orders, preliminary injunctions and permanent injunctions, both mandatory and prohibitory. Subject to the limitations contained in this Declaration, the Owners shall have all remedies, at law or in equity, in order to enforce the terms of this Declaration.

(e) Costs of Enforcement. If any legal or equitable action or proceeding is instituted to enforce any provision of these covenants, conditions and restrictions, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorneys' fees.

(f) Waiver. No waiver by the CAM Operator or any Owner of a breach of any of these covenants, conditions and restrictions and no delay or failure to enforce any of these covenants, conditions and restrictions shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of these covenants, conditions and restrictions. No waiver by the CAM Operator or any Owner of any breach hereunder shall be implied from any omission by the CAM Operator or any Owner to take any action on account of such breach if such breach exists or is repeated, and no express waiver shall affect a breach



other than as specified in said waiver. The consent or approval by the CAM Operator to or of any act by an Owner requiring the CAM Operator's consent or approval shall not be deemed to waive or render unnecessary the CAM Operator's consent or approval to or of any subsequent similar acts by Owner.

(g) No Termination Right. No default in the performance of this Agreement shall entitle any party to rescind or terminate this Declaration; but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any such default.

## 12. Rights and Obligations of Lenders.

(a) Notwithstanding any other provision in this Declaration for notices of default, the Mortgagee of any Owner in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Declaration. If any notice shall be given of the default of an Owner and such defaulting Owner has failed to cure or commence to cure such default as provided in this Declaration, then the Person giving such notice of default covenants to give such Mortgagee (as long as said Mortgagee's Mortgage is still of record) under any Mortgage affecting the Parcel of the defaulting Owner an additional notice given in the manner provided for hereunder specifying that the defaulting Owner has failed to cure such default and such Mortgagee shall have thirty (30) days after said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, to commence curing within such time and diligently thereafter pursue such cure to completion within a reasonable time thereafter. The giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Person so declaring a default, provided that no rights or interest of any Mortgagee shall be impaired in any manner if the required notice is not sent to such Mortgagee.

(b) No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Parcel, but all liens and encumbrances of said covenants, conditions and restrictions (including, without limitation, the lien to secure Assessments provided for herein) arising from and after foreclosure of such Mortgage shall bind the foreclosing Mortgagee and any Owner whose title is derived therefrom.

(c) A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale under a Mortgage made in good faith and for value, shall acquire title free of any lien or claim for unpaid Assessments against such Parcel(s) (arising after the date the applicable Mortgage was recorded and for which said Mortgagee is the beneficiary thereof) that accrued prior to the time such Mortgagee or transferee takes title to such Parcel, except for liens or claims for a share of such Assessments resulting from a prorata reallocation of such Assessments to all Parcels within the Center pursuant to Section 12(d) hereof.

(d) Notwithstanding anything herein to the contrary, the CAM Operator shall be entitled to recover through a reimbursement assessment against each Parcel and the then Owner thereof any uncollected Assessment of a former Owner that arose prior to such Owner's Mortgagee foreclosing and eliminating any Assessment lien against such Owner's Parcel for recovery of such Assessment; provided, however, that CAM Operator shall exhaust all reasonable remedies available to Operator hereunder for collection of such Assessment from

the former Owner before reallocating the same as a reimbursement assessment. Any such reimbursement assessment shall be assessed in the manner specified in Section 11 and shall be due and payable within thirty (30) days after the applicable Owner's receipt of notice thereof.

13. Expansion of Center. Declarant may expand the Center to include additional land, in which event this Declaration shall be amended to add such land to the Center. A memorandum of any expansion shall be recorded in the land records as an amendment hereto.

14. Release from Liability. Any Person acquiring fee or leasehold title to any Parcel, or property covered by any expansion of the Center, shall be bound by this Declaration only as to the rights and obligations pertaining to the Parcel or expansion property or portion thereof acquired by such Person. In addition, subject to Section 10, such Owner or Lessee shall be bound by this Declaration only during the period such Owner or Lessee is the fee or leasehold owner of such Parcel or expansion property or portion thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although Persons may be released from liability under this section, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Parcels and expansion property running with the land.

15. Limitations on Enforcement Proceedings.

(a) In the event of breach or threatened breach of this Declaration, only Declarant or the Owners of one hundred percent (100%) of the fee interest of a Parcel shall be entitled to institute proceedings, at law or in equity, for full and adequate relief from the consequences of said breach or threatened breach; provided, however, this section is not a limitation on the Assessment powers of Declarant as provided for in Section 10 with respect to the Assessment Provisions. The unsuccessful Person in any action shall pay the prevailing Person's reasonable attorney's fees, accruing from the date such action was filed, and costs.

(b) In the event of a breach of the provisions of this Declaration, the Owner of a Parcel shall be entitled to institute proceedings for full and adequate relief from the consequences thereof. The unsuccessful Person in any action shall pay the prevailing Person's reasonable attorney's fees, accruing from the date such action was filed, and costs.

16. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Declaration shall bind and inure to the benefit of the Declarant and the Owners, their respective heirs, representatives, lessees, successors and assigns; provided, however no successor-in-interest to Declarant hereunder shall succeed to the rights specifically reserved or granted to Declarant unless either (a) Declarant fully and completely assigns those rights to not more than one (1) third party of record, or (b) Declarant no longer has fee title to any Parcel or expansion of the Center. This Declaration shall bind and inure to the benefit of all other Owners as provided herein. The singular number includes the plural and the masculine gender includes the feminine and neuter. This section 16 is subject to Section 22 below.

17. Document Execution, Modification and Cancellation. This Declaration (including exhibits) may be amended or canceled only by the mutual written agreement of (a) Declarant (or its successor Declarant) as long as it has any interest as either Owner or Lessor of any of the Parcels in the Center or expansion thereof and the Owner of Parcel B or (b) one hundred percent (100%) of the Owners of all Parcels. Notwithstanding anything to the contrary

stated in this Declaration, no amendment to Section 12 of this Declaration or that purports to affect the validity or priority of encumbrances of a Mortgagee shall be effective without the written approval of such Mortgagee.

18. Non-merger. So long as Declarant is an Owner or Lessee of any Parcel, this Declaration shall not be subject to the doctrine of merger.

19. Duration. Unless otherwise canceled or terminated, all the easements granted in this Declaration shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after fifty-five (55) years from the date hereof.

20. No Implied Covenant to Operate. It is expressly agreed by the parties hereto, for their own benefit and that of their successors-in-interest, that no Lessee shall be bound by this Declaration to operate from its premises.

21. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

22. Covenants Running with the Land. The covenants, conditions, restrictions and easements contained herein shall run with the land, shall constitute equitable servitudes upon each Parcel in favor of the other Parcels, and shall be binding upon and inure to the benefit of the respective successors and assigns of the Owners thereto.

23. Benefit to Parcels. Each Owner expressly acknowledges and agrees that the Parcels shall benefit from, and be burdened by, the provisions of this Declaration only as specifically set forth herein. The Owner, Lessee or user of a Parcel shall not have the right to claim that any right or easement herein granted for the benefit of a Parcel also benefits its Parcel unless such right or easement is expressly granted herein to and for the benefit of such Parcel. The use restrictions set forth in Section 2(b) are strictly for the benefit of Parcel Owners and shall not be enforceable by any Lessee unless the subject use restriction or restrictions are also contained the applicable Lessee's Lease.

24. Notice. Any notice, request, demand, instruction or other communication required by the Declaration to be given to Declarant shall be in writing and shall be either (a) personally delivered to the party named below by a commercial messenger service regularly retaining receipts for such delivery, (b) sent by registered or certified mail, return receipt requested, or (c) delivered by the air courier services known as Federal Express, Express Mail, Airborne, or Emery Air, and such notice shall be effective upon delivery thereof to Declarant, and shall be addressed to the party as listed below:

Declarant: Innisfree Ventures II, LLC  
c/o The Innisfree Companies  
1221 Bridgeway, Suite 1  
Sausalito, California 94965  
Attention: David C. Imer

If Declarant desires to change its address for the purpose of receipt of notice, such notice or change of address shall be given in the manner specified herein. However, unless and until such written notice of change is actually received, the last address and addressee as stated by

written notice, or provided herein if no written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. This notice provision shall be inapplicable to any judicial or nonjudicial proceeding where California law governs the manner and timing of notice, commencing and prosecuting an action, commencing and prosecuting a foreclosure, or seeking the appointment of a receiver.

25. Election of Remedies. In addition to the rights, powers and remedies given in this Declaration to Declarant, Declarant (and their successors and assigns) may, in its/their own absolute discretion, at any time, and from time to time, exercise any and all rights and powers, and pursue any and all remedies now or hereafter given at law or in equity, including but not limited to any rights or remedies granted herein or by California or federal case, statutory or regulatory law. Their failure to exercise any such right or remedy shall not be deemed a waiver of that right or remedy unless the Person entitled to that right or remedy has so agreed, expressly and in writing, and the failure to so exercise any right or remedy shall not preclude the Person entitled thereto from later exercising any such right or remedy. Any written waiver of default shall not constitute a continuing waiver or waiver of any other same, similar or different events of default on any future occasion, unless such a waiver of such future defaults is expressed, in writing, with precision. No course of dealing between any Person, or any Owner, lessee, or user of any Parcel, or any encumbrancer thereof, in exercising any rights under this Declaration shall operate as a waiver of such rights, nor shall any such delay, unless agreed to in writing by the Persons entitled to enforce this Declaration, constitute a waiver of any obligation or default. No waiver of default shall extend to or impair any other obligation not expressly waived, nor impair any right otherwise consequent on such covenant, provision or obligation. Any waiver may be given subject to satisfaction of conditions stated therein. No power or remedy herein conferred is exclusive of or shall prejudice any other power or remedy given by law or by the terms of this Declaration, nor shall Declarant be forced to make any election of remedies.

26. Waiver of Setoff/Counterclaim. Declarant, for its own benefit and for the benefit of all of its successors and assigns, including but not limited to all parties with interests in the Center, hereby waives any and all rights of setoff, recoupment, and counterclaim with respect to assessments and obligations due under the terms of this Declaration, including rights of setoff, recoupment, and counterclaim with respect to the Center which may arise from claims, transactions or occurrences heretofore or in the future unknown to the claimant.

27. Time of the Essence. Time is of the essence with regard to performance under the terms and provisions of this Declaration, and any amendment, modification or revision thereof, with respect to the actions and obligations of each person bound by the terms hereof. No extension of time for payment of any sum due hereunder shall operate to release, discharge, modify, change, or affect the original liability as established hereunder, either in whole or in part. In accepting an interest in any Parcel, each Owner, Lessee, user, mortgagee, and trust deed beneficiary shall be deemed to take its interest knowingly and willingly subject to this time is of the essence clause.

28. Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

29. Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Declarant and

Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. Declarant and each Owner shall be considered a separate Owner, and no Owner shall have the right to act as an agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

30. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Center, or of any Parcel or portion thereof to the general public, or for any public use of purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of Declarant or any Owner shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.

31. Lessee Obligations. The performance by a Lessee of an Owner's obligations under this Declaration shall satisfy such Owner's obligations hereunder to the extent of such performance with respect to the matter so performed by such Lessee.

32. Governing Law. This Declaration has been entered into and executed in the State of California and shall be interpreted in accordance with the laws of said state, excluding, however, the choice of law provisions in regard to conflicts.

33. Force Majeure. If an Owner is delayed or hindered in performing any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, unusually severe weather, terrorism, earthquake, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other substantial reason of a similar or dissimilar nature that is beyond such Owner's reasonable control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay (not to exceed 120 days in the aggregate). The Owner delayed or hindered shall promptly notify the other Owner of the event causing the delay or hindrance. The foregoing shall not excuse any Owner from securing necessary financing or from making any payments due under this Declaration.

34. Estoppel Certificates. Upon a sale or financing of any Parcel and otherwise no more than once a year, each Owner and its Mortgagee or prospective Mortgagee shall, upon reasonable request to the CAM Operator, be entitled to receive a statement specifying, to the knowledge of the certifying party, that (i) this Declaration is in full force and effect and a binding obligation of the Owners, (ii) this Declaration has not been amended or modified, either orally or in writing, and if so amended, identifying the amendments, and (iii) there is no default by any Owner or the CAM Operator under the Declaration or, if any Owner or the CAM Operator is in default, then specifying the nature and amount (if applicable) of any and all defaults. The CAM Operator shall execute and return such certificate within twenty (20) days following its receipt of any such request. For such a statement, the CAM Operator shall be entitled to charge a reasonable fee based upon its actual administrative expenses in rendering the same.

35. Subdivision. Except as otherwise provided herein, no Parcel may be further subdivided, or its boundaries otherwise modified, except with the prior written approval of all Owners, which may be granted or withheld in each Owner's sole discretion.

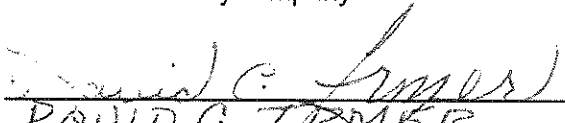
36. Obligation to Refrain from Discrimination. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction

work in the Center, and Each Owner and Tenant shall direct its contractors and subcontractors to refrain from discrimination on such basis. Additionally, each Owner and Tenant shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Center, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Declarant covenants for itself and all persons claiming under or through it that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Center or part thereof, nor shall any Declarant or any Owner or Tenant, or any person claiming under or through any of them respectively, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenants, lessees, subtenants, sublessees or vendees in, of, or for the Center or part thereof. Each Owner and tenant shall include this provision in all deeds, leases, contracts and other instruments executed by such Owner or tenant, and shall enforce the same diligently and in good faith.

IN WITNESS WHEREOF, we have hereunto set our hands and seal on the date and year first above written.

DECLARANT:

INNISFREE VENTURES II, LLC,  
a California limited liability company

By:   
Name: DAVID C. TRAMER  
Its: MANAGER

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

STATE OF California )SS  
COUNTY OF Marin )

On 2.5.14 before me, Martin Konopaski, Notary Public, personally appeared Dana C. Linnert

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) 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 [Signature]



This area for official notarial seal.

**OPTIONAL SECTION  
CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- INDIVIDUAL
- CORPORATE OFFICER(S) TITLE(S)
- PARTNER(S)       LIMITED       GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER

SIGNER IS REPRESENTING:

\_\_\_\_\_  
Name of Person or Entity

\_\_\_\_\_  
Name of Person or Entity

**OPTIONAL SECTION**

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

**THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW**

TITLE OR TYPE OF DOCUMENT: \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_ DATE OF DOCUMENT \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, CITY OF SAN LEANDRO, AND IS DESCRIBED AS FOLLOWS:

LOTS 1, 2, 3, 18 AND 19, BLOCK 14, MAP OF THE ESTUDILLO TRACT, FILED JANUARY 10, 1876, MAP BOOK 5, PAGE 32, ALAMEDA COUNTY RECORDS.

ASSESSOR'S PARCEL NUMBER: 077-0540-009



EXHIBIT B

PROPOSED PARCEL MAP

[Attached]



EXHIBIT C

LEGAL DESCRIPTION OF PARCEL B

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 1,2,3, 18 AND 19, IN BLOCK 14, AS SAID LOTS AND BLOCK ARE SHOWN ON THE MAP OF THE ESTUDILLO TRACT, SAN LEANDRO, FILED JANUARY 10, 1876, IN BOOK 5 OF MAPS, AT PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE WESTERLY MOST POINT OF SAID BLOCK FOURTEEN (14) OF SAID MAP; THENCE ALONG THE SOUTHWEST LINE OF SAID BLOCK SOUTH 47° 19' 00" EAST A DISTANCE OF 6.22 FEET TO THE INTERSECTION OF SAID SOUTHWEST LINE AND A LINE PARALLEL WITH AND 5.50 FEET DISTANT SOUTHEASTERLY, MEASURED AT RIGHT ANGLES FROM THE NORTHWEST LINE OF SAID BLOCK 14; THENCE ALONG SAID PARALLEL LINE NORTH 70° 35' 57" EAST A DISTANCE OF 132.67 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID PARALLEL LINE ALONG A LINE PARALLEL WITH THE NORTHEAST LINE OF SAID BLOCK 14 SOUTH 19° 33' 48" EAST A DISTANCE OF 209.51 FEET; THENCE ALONG A LINE PARALLEL WITH THE SOUTHEAST LINE OF SAID BLOCK 14 NORTH 70° 35' 57" EAST A DISTANCE OF 138.83 FEET; THENCE LEAVING SAID PARALLEL LINE SOUTH 19° 24' 03" EAST A DISTANCE OF 72.82 FEET TO THE AFOREMENTIONED SOUTHEAST LINE; THENCE ALONG SAID SOUTHEAST LINE NORTH 70° 29' 50" EAST A DISTANCE OF 63.72 FEET TO THE NORTHEAST LINE OF LOT 18 OF SAID BLOCK 14; THENCE ALONG SAID NORTHEAST LINE AND THE NORTHEAST LINE OF LOT 3 OF SAID BLOCK 14 NORTH 19° 33' 48" WEST A DISTANCE OF 287.72 FEET TO THE INTERSECTION OF THE AFOREMENTIONED NORTHWEST LINE OF SAID BLOCK 14 AND THE NORTHEAST LINE OF LOT 3; THENCE ALONG SAID NORTHWEST LINE SOUTH 70° 35' 57" WEST A DISTANCE OF 43.01 FEET; THENCE LEAVING SAID NORTHWEST LINE SOUTH 19° 24' 03" EAST A DISTANCE OF 5.50 FEET TO THE AFOREMENTIONED LINE PARALLEL WITH AND 5.50 FEET DISTANT SOUTHEASTERLY, MEASURED AT RIGHT ANGLES FROM THE NORTHWEST LINE OF SAID BLOCK 14; THENCE ALONG SAID PARALLEL LINE SOUTH 70° 35' 57" WEST A DISTANCE OF 159.32 FEET TO THE **TRUE POINT OF BEGINNING** AND THE END OF THE DESCRIPTION HEREIN

SAID LAND CONTAINS 47,260 SQUARE FEET, MORE OR LESS.

EXHIBIT D  
CENTER SITE PLAN

[Attached]

**CVS Pharmacy**  
 NON-PROFIT/CPA  
 34,500 SF BLDG.  
 STORE NUMBER: FIELD 0085  
 MC DOLORES AVE. & E. 14TH ST.  
 SAN LEANDE, CA  
 PROJECT TYPE: BLDG. IMP.  
 CI PROJECT NUMBER: 7478

ARCHITECT OF RECORD

CONSULTANT  
**TAIT**  
 ARCHITECTS

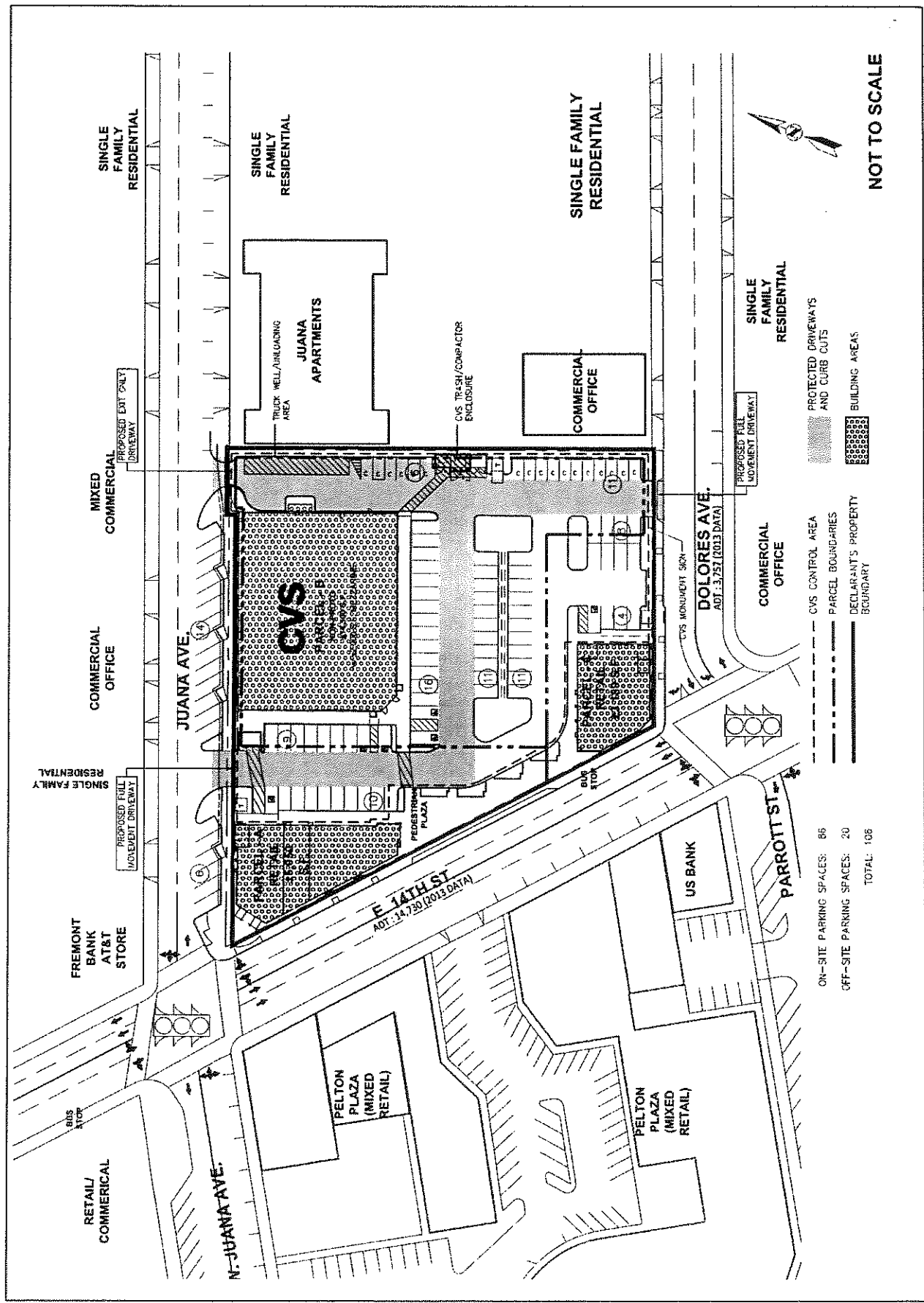
DEVELOPER  
**ARMSTRONG**  
 ARMSTRONG DEVELOPMENT PARTNERS, INC.  
 1000 AVENUE OF THE STARS, SUITE 100  
 EL PASO, TEXAS 79968

SEAL

REVISIONS:

ISSUED BY:	02/06
DATE:	02/17/14
JOB NUMBER:	0007800
FILE:	

CONTRACT  
 LEASE PERMIT  
 SHEET NUMBER



NOT TO SCALE