

Please Return to:

✓ Everitt Commercial Partners, LLC
Attn: Diana Hollaway
3030 S. College Ave, Suite #200
Ft. Collins, CO 80525

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS ("Declaration") is made this 5 day of October, 2007, by TIMBERLINE RETAIL, LLC, a Colorado limited liability company, hereinafter referred to as the "Declarant."

ARTICLE 1

RECITALS

1.1 The Declarant is the owner of those two (2) certain parcels of real property located in the City of Fort Collins, County of Larimer, State of Colorado, legally described as follows:

Lot 1 and Lot 2, Fox Meadows Business Park No. 3, according to the recorded Plat thereof, City of Fort Collins, County of Larimer, State of Colorado.

(hereinafter referred to in its entirety as the "Property").

1.2 The Declarant desires to establish certain non-exclusive easements and other covenants affecting the Property, subject to the covenants, conditions, restrictions and reservations hereinafter set forth.

ARTICLE 2

DEFINITIONS

2.1 "Building Area" shall mean and refer to that part of any Lot upon which a Building has been constructed or erected or upon which a Building may hereafter be constructed or erected in accordance with the applicable regulations of the City.

2.2 "Building(s)" shall mean and refer to any permanent enclosed structure now or hereafter placed, constructed or located upon the Property which, for purposes of this Declaration, shall include any appurtenant canopies, supports, drive-through lanes, trash enclosures, patios, decks and any other outward extensions.

2.3 "City" shall mean and refer to the City of Fort Collins, Colorado.

2.4 "Common Area(s)" shall mean and refer to all of the Property excluding only that part of the Property located within the area designated with hatch marks as depicted on the Site Plan attached hereto as Exhibit "A" and incorporated herein by reference.

2.5 "Common Improvements" shall mean and refer to the common improvements described in Section 5.1 below.

2.6 "Drainage Agreements" shall mean and refer to that certain "Drainage Easement Agreement" dated as of August 11, 1999, and recorded August 13, 1999, at Reception No. 99072717, as amended by that certain "Declaration of Detention Facilities Maintenance Covenant" recorded October 20, 2004, at Reception No. 20040102500 of the Larimer County, Colorado records.

2.7 "Drainage Easement" shall mean and refer to the non-exclusive, perpetual easement for drainage, collection and run-off of surface waters established pursuant to the Drainage Agreements.

2.8 "First Mortgage" shall mean and refer to the Mortgage having first and paramount priority under applicable Colorado law.

2.9 "Improvement(s)" shall mean and refer, as the context requires, to Buildings; drainage, retention and detention ponds or facilities; storm sewer and other collection facilities; streets; sidewalks; parking areas; fences; walls; signs; Landscaping and structures of any kind.

2.10 "Landscaping" shall mean and refer to the lawns, trees, shrubs and other plant material and groundcover located within the Property, together with the irrigation sprinkler systems associated with the same.

2.11 "Lot 1" shall mean and refer to Lot 1, Fox Meadows Business Park No. 3, according to the recorded Plat thereof, City of Fort Collins, County of Larimer, State of Colorado.

2.12 "Lot 2" shall mean and refer to Lot 2, Fox Meadows Business Park No. 3, according to the recorded Plat thereof, City of Fort Collins, County of Larimer, State of Colorado.

2.13 "Lot(s)" shall mean and refer to Lot 1, Lot 2 or both of such lots, as the context requires.

2.14 "Monument Sign" shall mean and refer to the free-standing monument sign to be located on the Common Area at the northerly boundary of Lot 1 near the intersection of the Private Drive and Bighorn Drive as generally depicted upon the Site Plan.

2.15 "Mortgage" shall mean and refer to any mortgage, deed of trust or other security instrument recorded in the office of the Clerk and Recorder of Larimer County, Colorado, and by which Lot 1 or Lot 2, or any part thereof, is encumbered.

2.16 "Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary in any Mortgage under which the interest of any Owner in Lot 1 or Lot 2, or any part thereof, is encumbered, or any successor to the interest of any such Person under such Mortgage.

2.17 "Owner" shall mean and refer to the record owner, whether one (1) or more Persons, of fee simple title to any Lot, but excluding those having such interest merely as security for performance of any obligations, provided that a purchaser at foreclosure sale or trustee's sale shall be deemed an Owner upon issuance of a public trustee's deed for the Lot(s).

2.18 "Parking Easement" shall mean and refer to the parking easement described and established pursuant to Section 3.2 below.

2.19 "Person" shall mean and refer to any individual, natural person, partnership, firm, association, corporation, trust, limited liability company, limited liability limited partnership, or any other form of business or government entity.

2.20 "Private Access Easements" shall mean and refer to the private access easements described and established pursuant to Section 3.3 below.

2.21 "Private Drive" shall mean and refer to the private drive to be constructed within the Private Access Easement to provide ingress and egress to and from the Lots in a north-south direction to and from Bighorn Drive.

2.22 "Private Utility Easement" shall mean and refer to the private utility easement described and established pursuant to Section 3.1 below.

2.23 "Site Plan" shall mean and refer to the site plan for the Property filed with the City, as amended from time to time, which depicts the Lots; the Parking Easement; the

Private Access Easements; and the curbs separating sidewalk areas, Landscaping and parking areas. A copy of the Site Plan filed with the City is attached hereto as Exhibit "A" and incorporated herein by reference.

2.24 "Trash Enclosure" shall mean and refer to the fenced-in area located upon Lot 1 as depicted upon the Site Plan for the placement of trash containers, dumpsters and other receptacles for trash and refuse.

2.25 "Utilities" shall mean and refer to all public and private utilities, including, but not limited to, water, sanitary sewer, storm sewer, telephone, telecommunications, electricity, natural gas, irrigation water and other utilities and all equipment, improvements, appurtenances and systems required in connection therewith.

ARTICLE 3

DECLARATION OF EASEMENTS

Subject to all existing easements, reservations, restrictions, covenants and agreements of record, the Declarant does hereby create, declare and establish for the benefit of the Owner of each Lot, its heirs, administrators, personal representatives, successors and assigns, as well as its tenants, employees, licensees and business invitees, the following perpetual, non-exclusive easements in, over, across and upon the Property:

3.1 Declaration of Private Utility Easement. A blanket private utility easement in, over, across and upon all of the Common Area located upon the Property for the installation, repair, replacement, maintenance and operation of Utilities and ingress and egress to and from such Utilities for said purposes for either one (1) or both of the Lots. In the event that the installation or use of the Private Utility Easement by a benefited Lot ("Benefited Lot") will result in damage, destruction or impairment to the other Lot ("Non-Benefited Lot") then, in such event, the Owner requiring the installation, repair, replacement and maintenance of the Utilities on the Lot not owned by such party ("Benefited Owner") shall either (i) provide reasonably satisfactory evidence to the Owner of the Lot to be damaged ("Non-Benefited Owner") of sufficient funds which have been set aside for the restoration of the Non-Benefited Lot after the installation, repair, replacement or maintenance of the Utility or (ii) relocate the Utility within the Private Utility Easement with direct access of the Utility to the Benefited Lot without impairment to the Non-Benefited Lot, all at the expense of the Benefited Owner requiring the installation, maintenance, inspection, operation, replacement or removal of such Utilities.

3.2 Declaration of Parking Easement. A parking easement in, over, across and upon the parking areas located upon the Lots depicted upon the Site Plan for the parking of vehicles thereon, provided, however, in the event a Building is constructed on all or any part of the Parking Easement subsequent to the recording of this Declaration, said Parking Easement shall, without further action, exclude the area located within the newly constructed Buildings and a ten (10) foot envelope surrounding the exterior of such newly constructed Buildings.

3.3 Declaration of Private Access Easements. Private access easements in, over, across and upon that part of the Property depicted upon the Site Plan for vehicular and pedestrian ingress, egress and access to and from the Lots within the Property and the public or private streets or rights-of-way adjacent thereto.

3.4 Declaration of Signage Easement. A signage easement over, under, across and upon that part of the Common Area located upon Lot 1 which provides the most direct practical route for ingress and egress to and from the Monument Sign and the Private Drive or Bighorn Drive.

3.5 Declaration of Trash Enclosure Easement. A trash enclosure easement over, under, across and upon that part of the Common Area located upon Lot 1 which (i) is designated on the Site Plan for a trash enclosure and (ii) which provides the most direct practical route for ingress and egress to and from the Trash Enclosure and the Private Drive or Bighorn Drive.

ARTICLE 4

MAINTENANCE AND UPKEEP OF COMMON AREA

4.1 Maintenance of Common Area. Except as otherwise provided in Articles 5, 6 and 7 below, each Owner shall be responsible at its cost for the repair and upkeep of the Common Area located upon such Owner's Lot in a manner which is usual and customary for similar developments so as to ensure the usefulness and aesthetically pleasing appearance of the Common Area ("Minimum Common Area Maintenance Standards") and which shall be performed in a workmanlike, diligent and efficient manner and shall include:

(a) maintenance of paved surfaces in a level and smooth condition, free of potholes, with the type of material as originally used or a substitute equal in quality;

- (b) removal of all trash and debris and washing or sweeping as required;
- (c) removal of snow and ice from paved surfaces and sidewalks;
- (d) maintenance of appropriate parking area entrance, exit and directional markers, and other traffic control signs as are reasonably required by the City or as are necessary for proper traffic flow within the Property;
- (e) maintenance and repair of Landscaping and sprinkler systems, including the provision of water service for such Landscaping as required;
- (f) cleaning of lighting fixtures and relamping as needed;
- (g) restriping as required to keep same clearly visible; and
- (h) maintenance of any electrical and storm water lines which exclusively provide service to the Common Area.

Notwithstanding the foregoing, the Owners shall cooperate with each with respect to those activities for which uniform maintenance may be appropriate, including, but not limited to, Landscaping maintenance and snow removal, provided that all decisions relative thereto shall be made only by the mutual agreement of the Owners of both Lots.

4.2 Failure of Owners to Comply With Minimum Common Area Maintenance Standards. In the event that an Owner Maintaining (defined below) the Common Area on its Lot pursuant to the Minimum Common Area Maintenance Standards ("Non-Defaulting Owner") believes in good faith that the Owner of the other Lot has failed to Maintain the Common Area on such Owner's Lot pursuant to the Minimum Common Area Maintenance Standards ("Defaulting Owner"), then Non-Defaulting Owner shall have the right to submit such matter to the dispute resolution process set forth in Article 7 hereinafter for a determination. If the Mediator (defined below) appointed pursuant to Article 7 below shall determine that the Defaulting Owner has failed to satisfy the Minimum Common Area Maintenance Standards, then the Non-Defaulting Owner shall have the right, but not the obligation, to enter upon the Defaulting Owner's Lot and correct any such deficiencies identified by the Mediator, provided that (i) any Maintenance undertaken without the consent of the Defaulting Owner shall not unreasonably interfere with the use of the Common Area located on the Defaulting Owner's Lot by the Defaulting Owner or the occupants thereof (e.g., failure to diligently prosecute repairs after commencement of such activities) and (ii) the Non-Defaulting Owner shall indemnify the Defaulting Owner against

all claims, liens or claims of liens arising directly or indirectly out of or by reason of any work or activity performed on the Common Area located thereon and shall, within twenty (20) days after the filing of any statement of lien, fully pay and satisfy the same or post a bond or other appropriate security to obtain the release of such lien. The Non-Defaulting Owner shall have the right to receive reimbursement from the Defaulting Owner of the pro rata share of the costs incurred by the Non-Defaulting Owner attributable to the correction of such deficiencies determined by the Mediator. In the event the Defaulting Owner shall fail to pay, within fifteen (15) days following request for payment, its share of the cost of correcting such deficiencies, then the Non-Defaulting Owner shall be entitled to all of the rights of a "Paying Owner" as more fully set forth in Sections 6.2, 6.3 and 6.4 below, including, but not limited to, defaulting interest, lien rights and foreclosure rights, as more fully set forth in said sections.

ARTICLE 5

MAINTENANCE OF COMMON IMPROVEMENTS

5.1 Common Improvements. The parties acknowledge that the following common improvements will be located upon Lot 1 but are for the use and benefit of both Lots (collectively, "Common Improvements"):

- A. The part of the Private Drive located upon Lot 1 extending from the northerly boundary of Lot 1 to the southerly boundary of Lot 1.
- B. The Monument Sign.
- C. The Trash Enclosure.

Subject to the approval of the City, the Monument Sign will include a minimum of two (2) panels with one-half (1/2) of such panels to be utilized by the Owner and/or occupants of Lot 1 and one-half (1/2) of such panels to be utilized by the Owner and/or occupants of Lot 2. Unless otherwise agreed in writing by the parties, the Owner and/or occupants of Lot 2 shall have the right, commencing in the calendar year in which this Declaration is recorded, to use the top one-half (1/2) of the panel(s) located on the Monument Sign, with the Owner and occupants of Lot 1 having the right to use the bottom one-half (1/2) of the panel(s) of the Monument Sign.

5.2 Maintenance of Common Improvements. The Owner of Lot 1 shall be responsible for maintaining, operating, repairing, replacing and insuring the Common

Improvements located upon Lot 1 in a manner which is usual and customary for similar developments so as to ensure the usefulness and aesthetically pleasing appearance of the Common Improvements ("Minimum Common Improvement Maintenance Standards") and which shall be performed in a workmanlike, diligent and efficient manner. The costs of the foregoing activities with respect to the Common Improvements (collectively, "Common Expenses") shall be allocated and paid by the parties as follows:

A. The Owner of each Lot shall be responsible for payment of a pro rata share of the cost for the maintenance, operation, repair, replacement and insuring of the Private Drive located upon Lot 1 and the Trash Enclosure, which pro rata share shall be equal to the total gross square footage contained within such Owner's Lot divided by the total gross square footage contained within both Lots constituting the Property.

B. Unless otherwise agreed in writing pursuant to Section 5.1, the Owner of each Lot shall be responsible for payment of fifty percent (50%) of the cost for the maintenance, operation, repair, replacement and insuring of the Monument Sign located upon Lot 1.

5.3 Rights of Owner of Lot 1 in Event of Default by Owner of Lot 2. In the event that the Owner of Lot 2 shall fail to pay, within fifteen (15) days following a request for payment, its share of any of the Common Expenses for the maintenance, operation, repair, replacement and insuring of the Common Improvements, then the Owner of Lot 2 shall be deemed a "Defaulting Owner" and the Owner of Lot 1 shall be entitled to all of the rights of a "Paying Owner" as more fully set forth in Sections 6.2, 6.3 and 6.4 below, including, but not limited to, defaulting interest, lien rights and foreclosure rights as more fully set forth in said sections.

5.4 Failure of Owner of Lot 1 to Comply With Minimum Common Improvement Maintenance Standards. In the event that the Owner of Lot 2 believes in good faith that the Owner of Lot 1 has failed to properly maintain, operate, repair, replace and/or insure ("Maintain" or "Maintenance") the Common Improvements pursuant to the Minimum Common Improvement Maintenance Standards, then the Owner of Lot 2 shall have the right to submit such matter to the dispute resolution process set forth in Article 7 hereinafter for a determination. If the Mediator appointed pursuant to Article 7 below shall determine that the Owner of Lot 1 has failed to satisfy the Minimum Common Improvement Maintenance Standards, then the Owner of Lot 2 shall have the right, but not the obligation, to enter upon Lot 1 and correct any such deficiencies identified by the Mediator, provided that (i) any Maintenance undertaken without the consent of the Owner of Lot 1 shall not unreasonably interfere with the use of the Common Improvements located on Lot 1 by the

Owner or occupants thereof (e.g., failure to diligently prosecute repairs after commencement of such activities) and (ii) the Owner of Lot 2 shall indemnify the Owner of Lot 1 against all claims, liens or claims of liens arising directly or indirectly out of or by reason of any work or activity performed on the Common Improvements located thereon and shall, within twenty (20) days after the filing of any statement of lien, fully pay and satisfy the same or post a bond or other appropriate security to obtain the release of such lien. The Owner of Lot 2 shall have the right to receive reimbursement from the Owner of Lot 1 of the pro rata share of the costs incurred by the Owner of Lot 2 attributable to the correction of such deficiencies determined by the Mediator. In the event the Owner of Lot 1 shall fail to pay, within fifteen (15) days following request for payment, its share of the cost of correcting such deficiencies, then the Owner of Lot 1 shall be deemed a "Defaulting Owner" and the Owner of Lot 2 shall be entitled to all of the rights of a "Paying Owner" as more fully set forth in Sections 6.2, 6.3 and 6.4 below, including, but not limited to, defaulting interest, lien rights and foreclosure rights, as more fully set forth in said sections.

ARTICLE 6

MAINTENANCE AND REPAIR BY JOINT AGREEMENT OF BOTH OWNERS

6.1 Mutual Authorization. If the Owners shall mutually agree upon maintenance, repair and improvements of the Common Areas other than the Common Improvements, such mutual agreement shall be evidenced by a writing signed by each Owner or its duly authorized representative and the costs thereof shall be deemed "Authorized Expenses."

6.2 Payment of Authorized Expenses. If either Owner shall fail to pay its share of any Authorized Expense when due ("Defaulting Owner"), then the other Owner ("Paying Owner") may pay such Authorized Expense on behalf of the Defaulting Owner. In such case, the Paying Owner shall be entitled to immediate repayment from the Defaulting Owner of any funds advanced and such funds shall bear interest from the date of payment by the Paying Owner at the lesser of (i) fifteen percent (15%) per annum or (ii) the maximum interest rate permitted by the laws of the State of Colorado.

6.3 Lien Rights of Paying Owner. The Paying Owner shall have the lien rights provided herein as a remedy for the Defaulting Owner's failure to pay its share of the Authorized Expenses. All obligations to pay for Authorized Expenses pursuant to this Declaration which are chargeable to the Defaulting Owner shall constitute a lien on the Defaulting Owner's Lot superior to all other liens and encumbrances, except (a) tax and special governmental assessment liens on the Lot, and (b) all sums unpaid on a bona fide

third-party First Mortgage, including all unpaid obligatory advances as may be provided by such encumbrance. To evidence the lien as herein permitted, the Paying Owner may, but shall not be required to (i) prepare a written notice setting forth the name and address of the Paying Owner, the amount of such unpaid indebtedness, the amount of accrued interest thereon, the name of the Defaulting Owner, and a description of the Lot and improvements thereon, and (ii) record the same in the office of the Clerk and Recorder of Larimer County, Colorado. Such lien for assessments shall attach from the date of the payment by the Paying Owner.

6.4 Enforcement of Lien. The lien granted to the Paying Owner pursuant to Section 6.3 above may be enforced by foreclosure of the Defaulting Owner's Lot and improvements thereon by the Paying Owner in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Defaulting Owner shall be liable for the amount of unpaid assessments, any penalties and interest thereon, and all costs and expenses incurred by the Paying Owner in connection with the proceedings, including, without limitation, the costs and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred by the Paying Owner in connection therewith. The Paying Owner shall have the power to bid on a Lot and improvements thereon at foreclosure sale and to acquire, hold, lease, mortgage, and/or convey the same.

ARTICLE 7

DISPUTE RESOLUTION PROCESS

In the event the Owners of Lots 1 and 2 are unable to agree that the Owner of either Lot has satisfied the Minimum Common Area Maintenance Standards or if the Owner of Lot 2 in good faith believes that the Owner of Lot 1 has failed to meet the Minimum Common Improvement Maintenance Standards, then such matter may be submitted to a third party ("Mediator") appointed in writing by both Owners to act as a mediator and to resolve such dispute by issuing its decision following a reasonable opportunity by both Owners to present their respective positions with respect to the matter at issue.

In the event the Owners are unable to agree in writing to the designation of a Mediator, then, in such event, either Owner may petition the presiding judge of the Eighth Judicial District of the State of Colorado to appoint a Mediator to render its decision and the party so appointed shall continue as a Mediator with respect to future disputes which arise pursuant to Articles 4 and 5 above. Any such Mediator shall (i) be disinterested in

the outcome of the dispute; (ii) be entitled to reimbursement of expenses and reasonable compensation for its services, which expenses shall be paid equally by both Owners; and (iii) have experience in the operation and/or management of business and/or retail centers in northern Colorado. In the event of a dispute between the Owners, any decision rendered in writing by the Mediator appointed pursuant to this Article 7 shall be made in good faith and shall be final and binding upon the parties with respect to the event in dispute. Any such decision may be enforced by action brought by the prevailing Owner in the Larimer County District Court.

ARTICLE 8

MAINTENANCE OF DRAINAGE EASEMENT AND IMPROVEMENTS

8.1 Allocation of Drainage Maintenance Obligations. Pursuant to the terms of the Drainage Agreements, the Owners of the Property are responsible for fifty percent (50%) of all maintenance responsibilities with respect to detention facilities located within the Drainage Easement, which obligation is a covenant running with the Property ("Drainage Maintenance Obligations"). The Owner of each individual Lot shall be responsible for payment of a pro rata share of the Drainage Maintenance Obligations, which pro rata share shall be equal to the total gross square footage contained within such Owner's Lot divided by the total gross square footage contained within both Lots constituting the Property.

8.2 Discharge of Remaining Obligations Under Drainage Agreements. In addition to the allocation and payment of the Drainage Maintenance Obligations pursuant to Section 8.1 above, the Owner of each Lot shall be responsible for the discharge of any other obligations set forth in the Drainage Agreements applicable to such Owner's Lot, including, but not limited to, the maintenance of insurance and the obligation to refrain from constructing any structural or other improvements which would interfere with the use of the Drainage Easement for the purposes set forth in the Drainage Agreements.

ARTICLE 9

INDEMNIFICATION AND LIABILITY INSURANCE

9.1 Indemnification by Owners. Each Owner of a Lot ("Indemnifying Owner") hereby agrees to defend, indemnify and hold harmless the other Owner and the other Owner's tenants from and against all demands, claims, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same, for injury to

person, loss of life or damage to property (a) occurring on the Indemnifying Owner's Lot, except if caused by the negligence or willful act or omission in whole or in part of the other Owner or the tenants of such other Owner or the employees, contractors or agents of such other Owner or tenants, or (b) occurring on the other Owner's Lot if caused by the sole negligence, willful act or omission of the Indemnifying Owner or the tenants of the Indemnifying Owner or the employees, contractors or agents of such Indemnifying Owner or its tenants.

9.2 Insurance Policy. The Owner of each Lot shall, in addition to any insurance obligations under the Drainage Agreements, provide and maintain commercial general liability insurance (including contractual liability coverage) insuring (to the extent coverage is provided by such insurance) such Owner against claims for personal injury, bodily injury or death, and property damage or destruction arising out of such insured party's negligent acts or omissions in its use, operation and/or occupancy of the Property or arising out of its indemnity obligations set forth in Section 9.1 above. Such insurance shall be written with an insurer licensed to do business in the State of Colorado and shall name the other Owner as an additional insured. The limits of liability of all such insurance shall be One Million Dollars (\$1,000,000.00) for personal injury or bodily injury or death of any one (1) person, Two Million Dollars (\$2,000,000.00) for personal injury or bodily injury or death of more than one (1) person in one (1) occurrence and Three Hundred Thousand Dollars (\$300,000.00) with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of Three Million Dollars (\$3,000,000.00) per occurrence. Limits of liability may be provided under a commercial general liability and umbrella policy, if desired. Except as provided below, each Owner shall furnish the other Owner with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be cancelled without the giving of thirty (30) days' prior written notice to the holders of such insurance and the holders of such certificates. The limits of insurance set forth in this Section 9.2 may be adjusted either up or down by the written consent of the Owners of both Lots, so long as such change is consistent with the limits of insurance carried by owners and tenants of similar properties in the Fort Collins, Colorado area, and does not require an Owner to carry "terrorism" insurance.

ARTICLE 10

DAMAGE OR DESTRUCTION

10.1 Damage to Improvements. Except as otherwise provided in Section 5.2 above, if any part of the Improvements on the Common Area is destroyed or damaged by fire or other casualty, the Owner of the affected Lot, at its sole expense, forthwith shall clear and restore such area. The restoration may be by rebuilding the Improvements, or by clearing any debris from the Improvements and either paving such area for parking in general conformity with the parking layout shown on the Site Plan or creating a landscaped area that would be a part of the Common Area. The Owner of any such area so restored shall also install adequate lighting and storm water drainage.

10.2 Repair of Damage. Except as otherwise provided in Section 5.2 above, if any part of the Building located upon a Lot is damaged by fire or other casualty, the Owner thereof shall not be obligated to restore the same, if such Owner, at its sole expense, forthwith shall raze the damaged structures, remove all debris, pave such area for parking in general conformity with the parking layout shown on the Site Plan, and install adequate lighting and storm water drainage. Any area restored in this manner shall be maintained as though it were part of the Common Area until improved with a Building or other Improvements.

10.3 Condemnation. If any part of the Common Area is condemned, the Owner of the affected Lot, at its sole expense, forthwith shall restore the remaining area as much as practicable to provide the same approximate configuration, size, location and number of all light standards, driveways, walkways, parking spaces and curb cuts to adjacent roadways existing prior to the condemnation. Any award on account of a condemnation on the Common Area first shall be used in the restoration of same, and any claim to the award made by a Lot Owner or its tenant or licensee hereunder shall be expressly subject and subordinate to its use in such restoration. The term "condemnation" as used herein shall include all conveyances made in anticipation or in lieu of an actual taking.

ARTICLE 11

USES

11.1 Noxious, Offensive and Hazardous Activities Prohibited. No noxious, offensive or hazardous trades, services or activities shall be conducted on any portion of the Property, nor shall any trades, services or activities be performed thereon which may be or

become an annoyance or nuisance to either Owner or occupant of any portion of the Property, including, without limitation, allowing or creating unsightliness or excessive emission of fumes, odors (provided that normal restaurant odors shall be permitted), glare, vibration, electromagnetic disturbance, gases, radiation, dust, liquid waste, smoke or noise.

11.2 Permissible Uses. The following uses shall specifically be considered as permissible uses within the Property: General and professional office uses, including, without limitation, offices providing medical services, legal services, travel services, and real estate brokerage services; and retail business uses, including, without limitation, automotive parts sales, bakery store, barber shop, beauty shop, bicycle shop, bookstore, camera/photo supply store, card and gift store, computer sales service and software, convenience store with or without gas pumps, dairy products, deli, drugstore and pharmaceutical, dry cleaners, dry goods store, electronic equipment sales and service, fast food outlets, floral shop, garden supply store, gift, grocery store, hardware store, health aids store, health club, hobby supply store, home furnishings, jewelry store, mail and related office service store, music tape and record store, newsstand, notions store, novelty or souvenir shop, office supply store, package and sign store, paint and/or wallpaper store, pet store, post office, restaurant, shoe sales, sporting goods and equipment store, stationary store, toy store, video rental and sales, and similar retail uses, provided that all such uses are permitted by applicable zoning ordinances and regulations of the City and any other governmental office, agency, authority or government having jurisdiction thereof.

11.3 Permanent Prohibited Uses. Notwithstanding the foregoing, the following uses shall not be permitted within or upon the Property and are hereby expressly prohibited: Adult bookstores, stores selling or exhibiting sexually explicit materials, arcades or video game parlors or stores, pinball arcades, adult entertainment facilities, tattoo parlors, pool halls, sale of drug paraphernalia, massage parlors, liquor stores, bars serving alcoholic beverages except as incidental to a restaurant, nightclubs, gun ranges or gun shops, funeral parlors, "flea markets," second-hand or used goods stores or stores selling primarily distressed or damaged merchandise, and automotive repair facilities.

11.4 Remedies. The remedies for breach of any of the restrictions set forth in this Article 11 shall be cumulative, not exclusive and shall include injunctive relief.

ARTICLE 12

GENERAL PROVISIONS

12.1 No Amendment. This Declaration and the easements granted herein may not be amended, vacated, released, abandoned or terminated in whole or in part, except by an instrument executed by the Owners of both Lots and the holders of any First Mortgage encumbering either of the Lots, and recorded in the records of the Clerk and Recorder of Larimer County, Colorado.

12.2 Covenant Running With Land. To the extent necessary to give effect to the Declaration herein made, this Declaration shall constitute a restrictive covenant against the Property and the Property shall hereafter be held, sold, conveyed, transferred, leased, subleased or occupied subject to the terms, conditions, covenants and limitations set forth herein which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, or any portion thereof.

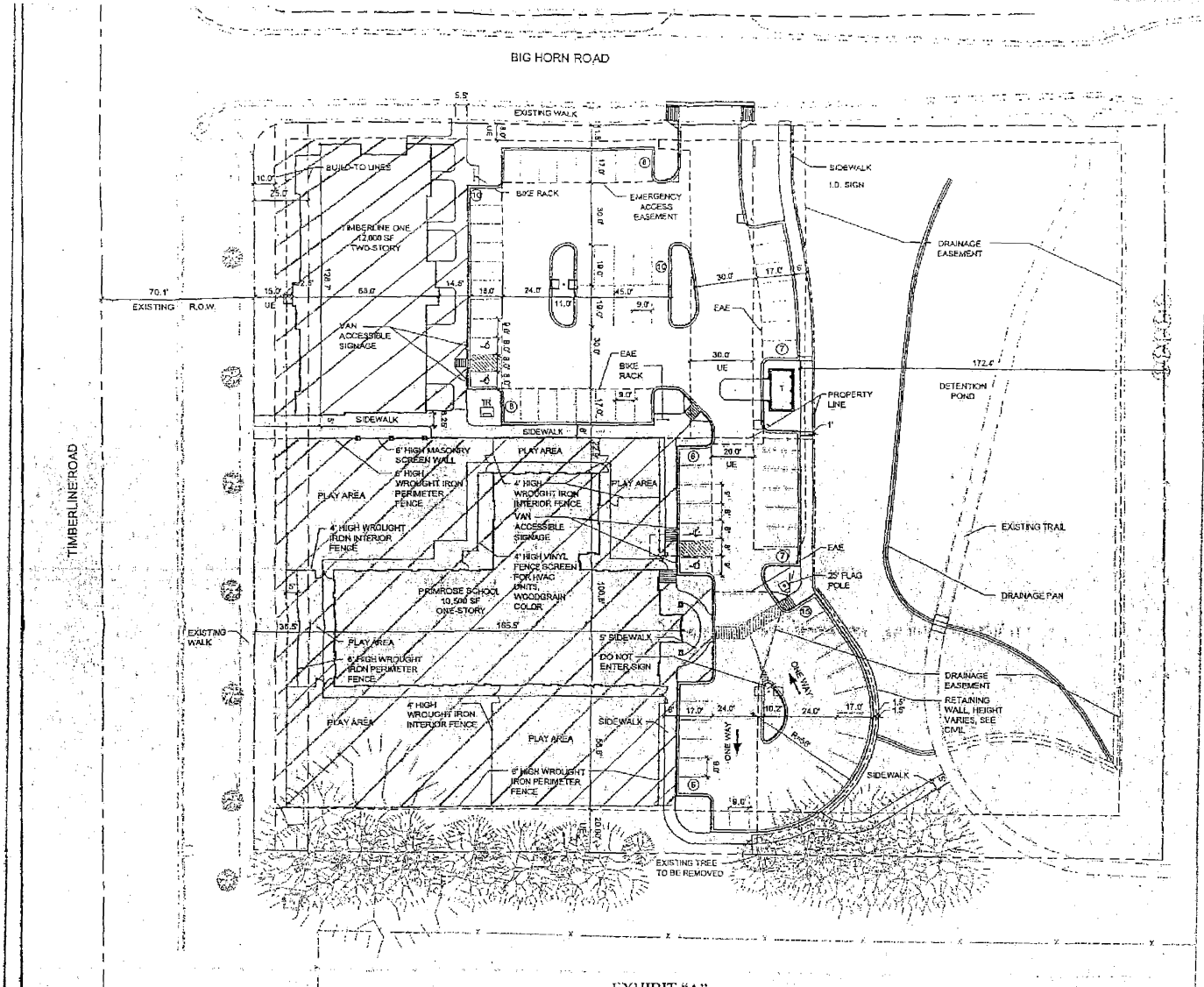
12.3 Successors and Assigns. The terms and provisions of this Declaration shall be binding upon and inure to the benefit of the Declarant, the Owners of the Property, and their respective heirs, administrators, personal representatives, successors, and assigns.

12.4 No Partnership. This Declaration shall not create an association, partnership, joint venture or a principal and agency relationship between the Owners of the Lots or their tenants or licensees.

12.5 No Waiver. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or of any other provision set forth herein.

12.6 Partial Invalidity. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

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All of the area within the Property boundaries is Common Area except that which is designated with hatch marks.

EXHIBIT "A"
 Site Plan of Property